

# INCOME TAX ACT 58 OF 1962

[ASSENTED TO 25 MAY 1962]

[DATE OF COMMENCEMENT: 1 JULY 1962]

*(English text signed by the State President)*

**as amended by**

Income Tax Amendment Act 90 of 1962  
Income Tax Amendment Act 6 of 1963  
Income Tax Act 72 of 1963  
Income Tax Act 90 of 1964  
Income Tax Act 88 of 1965  
Income Tax Act 55 of 1966  
Income Tax Act 95 of 1967  
Income Tax Act 76 of 1968  
Income Tax Act 89 of 1969  
Income Tax Act 52 of 1970  
Income Tax Act 88 of 1971  
Insolvency Amendment Act 6 of 1972  
Income Tax Act 90 of 1972  
Income Tax Act 65 of 1973  
Income Tax Act 85 of 1974  
Income Tax Act 69 of 1975  
Income Tax Act 103 of 1976  
Income Tax Act 113 of 1977  
Revenue Laws Amendment Act 114 of 1977  
Income Tax Act 101 of 1978  
Income Tax Act 104 of 1979  
Income Tax Act 104 of 1980  
Income Tax Act 96 of 1981  
Income Tax Act 91 of 1982  
Income Tax Act 94 of 1983  
Income Tax Amendment Act 30 of 1984  
Income Tax Act 121 of 1984  
Income Tax Act 96 of 1985  
Income Tax Act 65 of 1986  
Transfer of Powers and Duties of the State President Act 97 of 1986  
Taxation Laws Amendment Act 108 of 1986  
Income Tax Act 85 of 1987  
Income Tax Act 90 of 1988  
Income Tax Amendment Act 99 of 1988  
Income Tax Act 70 of 1989  
Legal Succession to the South African Transport Services Act 9 of 1989  
Income Tax Act 101 of 1990  
Income Tax Act 129 of 1991  
Taxation Laws Amendment Act 136 of 1991  
Income Tax Act 141 of 1992  
Income Tax Act 113 of 1993  
Revenue Laws Amendment Act 140 of 1993  
Income Tax Amendment Act 168 of 1993  
Income Tax Act 21 of 1994  
Income Tax Act 21 of 1995  
Income Tax Act 36 of 1996  
Revenue Laws Amendment Act 46 of 1996  
General Law Amendment Act 49 of 1996  
Income Tax Act 28 of 1997  
South African Revenue Service Act 34 of 1997

Taxation Laws Amendment Act 30 of 1998  
Taxation Laws Amendment Act 32 of 1999  
Revenue Laws Amendment Act 53 of 1999  
Taxation Laws Amendment Act 30 of 2000  
Revenue Laws Amendment Act 59 of 2000  
Taxation Laws Amendment Act 5 of 2001  
Revenue Laws Amendment Act 19 of 2001  
Second Revenue Laws Amendment Act 60 of 2001  
Taxation Laws Amendment Act 30 of 2002  
Revenue Laws Amendment Act 74 of 2002  
Exchange Control Amnesty and Amendment of Taxation Laws Act 12 of 2003  
Revenue Laws Amendment Act 45 of 2003  
Prevention and Combating of Corrupt Activities Act 12 of 2004  
Taxation Laws Amendment Act 16 of 2004  
Revenue Laws Amendment Act 32 of 2004  
Second Revenue Laws Amendment Act 34 of 2004

**Regulations under this Act**

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TRADES RECOGNIZED AS EXPORT SERVICE INDUSTRIES, 1976

TRADES RECOGNIZED AS EXPORT SERVICE INDUSTRIES, 1983

TRADES RECOGNIZED AS EXPORT SERVICE INDUSTRIES, 1986

### ACT

**To consolidate the law relating to the taxation of incomes and donations, to provide for the recovery of taxes on persons, to provide for the deduction by employers of amounts from the remuneration of employees in respect of certain tax liabilities of employees, and to provide for the making of provisional tax payments and for the payment into the National Revenue Fund of portions of the normal tax and interest and other charges in respect of such taxes, and to provide for related matters.**

[Long title amended by s. 20 of Act 6 of 1963 and substituted by s. 39 of Act 5 of 2001.]

### ARRANGEMENT OF SECTIONS

#### PRELIMINARY

#### Section

1. Interpretation.

#### CHAPTER I ADMINISTRATION

2. Act to be administered by Commissioner.  
3. Exercise of powers and performance of duties.  
4. Preservation of secrecy.

#### CHAPTER II THE TAXES *Part I*

##### *Normal Tax*

5. Levy of normal tax and rates thereof.

5A. ....

[S. 5A inserted by s. 6 of Act 88 of 1971 and repealed by s. 4 of Act 104 of 1980.]

6. Normal tax rebates.

[S. 6 repealed by s. 7 of Act 88 of 1971 and inserted by s. 5 of Act 104 of 1980.]

*6bis*. Rebate in respect of foreign income taxes on royalties and similar income.

[S. *6bis* inserted by s. 7 of Act 88 of 1965.]

*6ter*. ....

[S. *6ter* inserted by s. 8 (1) of Act 95 of 1967 and repealed by s. 6 of Act 129 of 1991.]

*6quat*. Rebate in respect of foreign taxes on income.

[S. *6quat* inserted by s. 9 of Act 89 of 1969, repealed by s. 5 of Act 94 of 1983 and inserted by s. 5 of Act 85 of 1987.]

*6quin*. ....

[S. *6quin* inserted by s. 6 (1) of Act 104 of 1979 and repealed by s. 6 of Act 94 of 1983.]

7. When income is deemed to have accrued or to have been received.

- 7A. Date of receipt or accrual of antedated salaries or pensions and of certain retirement gratuities.

[S. 7A inserted by s. 6 of Act 69 of 1975.]

8. Certain amounts to be included in income or taxable income.

- 8A. Gains made by directors of companies or by employees in respect of rights to acquire marketable securities.

[S. 8A inserted by s. 11 of Act 89 of 1969.]

- 8B. Taxation of amounts derived from broad-based employee share plan

[S. 8B inserted by s. 6 (1) of Act 104 of 1980, repealed by s. 6 (1) of Act 101 of 1990 and inserted by s. 8 (1) of Act 32 of 2004.]

- 8C. Taxation of directors and employees on vesting of equity instruments

[S. 8C inserted by s. 7 (1) of Act 96 of 1981, repealed by s. 7 of Act 101 of 1990 and inserted by s. 8 (1) of Act 32 of 2004.]

8D. ....

[S. 8D inserted by s. 7 (1) of Act 96 of 1981 and repealed by s. 8 (1) of Act 101 of 1990.]

- 8E. Dividends on certain shares deemed to be interest in relation to the recipient thereof.  
[S. 8E inserted by s. 6 of Act 70 of 1989.]
- 8F. Limitation of deduction of certain interest payments  
[S. 8F inserted by s. 10 (1) of Act 32 of 2004.]
9. Circumstances in which amounts are deemed to have accrued from sources within the Republic.
- 9A. Blocked foreign funds  
[S. 9A inserted by s. 8 of Act 85 of 1987, repealed by s. 8 of Act 59 of 2000 and inserted by s. 13 of Act 74 of 2002.]
- 9B. Circumstances in which certain amounts received or accrued in relation to disposal of listed shares are deemed to be of capital nature.  
[S. 9B inserted by s. 9 of Act 101 of 1990.]
- 9C. ....  
[S. 9C inserted by s. 9 (1) of Act 28 of 1997 and repealed by s. 9 of Act 59 of 2000.]
- 9D. Net income of controlled foreign companies  
[S. 9D inserted by s. 9 (1) of Act 28 of 1997 and substituted by s. 14 (1) of Act 74 of 2002.]
- 9E. Taxation of foreign dividends  
[S. 9E inserted by s. 20 (1) of Act 30 of 2000 and substituted by s. 15 (1) of Act 74 of 2002.]
- 9F. Income from foreign sources  
[S. 9F inserted by s. 12 of Act 59 of 2000.]
- 9G. Taxable income in respect of foreign equity instruments.  
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10. Exemptions.
- 10A. Exemption of capital element of purchased annuities.  
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11. General deductions allowed in determination of taxable income.
- 11A. Deductions in respect of expenditure and losses incurred prior to commencement of trade.  
[S. 11A inserted by s. 28 (1) of Act 45 of 2003.]
- 11B. Deductions in respect of research and development.  
[S. 11B inserted by s. 29 of Act 45 of 2003.]
- 11C. Deductions in respect of foreign dividends  
[S. 11C inserted by s. 18 (1) of Act 32 of 2004.]
- 11*bis*. ....  
[S. 11*bis* inserted by s. 10 (1) of Act 90 of 1962 and repealed by s. 20 of Act 74 of 2002.]
- 11*ter*. Allowance to manufacturers in economic development areas in respect of the cost of power, water and transport.  
[S. 11*ter* inserted by s. 10 of Act 90 of 1964 and substituted by s. 12 of Act 88 of 1965.]
- 11*quat*. Allowance to manufacturers in economic development areas in respect of increased administrative and manufacturing costs.  
[S. 11*quat* inserted by s. 10 of Act 90 of 1964 and substituted by s. 12 of Act 88 of 1965.]
- 11*quin*. Allowance in respect of expenditure on housing for employees of manufacturers in economic development areas.  
[S. 11*quin* inserted by s. 10 of Act 90 of 1964 and substituted by s. 12 of Act 88 of 1965.]
- 11*sex*. Deductions of compensation for railway operating losses.  
[S. 11*sex* inserted by s. 10 of Act 90 of 1972.]
- 11*sept*. ....  
[S. 11*sept* inserted by s. 14 (1) of Act 85 of 1974, substituted by s. 9 (1) of Act 104 of 1979 and repealed by s. 15 of Act 129 of 1991.]
- 11*oct*. Allowance in respect of expenditure on submissions relating to undertakings in economic development areas.  
[S. 11*oct* inserted by s. 10 (1) of Act 91 of 1982.]
12. ....  
[S. 12 repealed by s. 16 of Act 129 of 1991.]
- 12A. ....  
[S. 12A inserted by s. 16 of Act 55 of 1966 and repealed by s. 17 of Act 129 of 1991.]

- 12B. Deduction in respect of certain machinery, plant, implements, utensils and articles.  
[S. 12B inserted by s. 11 of Act 90 of 1988.]
- 12C. Deduction in respect of certain machinery, plant, implements, utensils and articles.  
[S. 12C inserted by s. 14 (1) of Act 101 of 1990.]
- 12D. Deduction in respect of certain pipelines, transmission lines and railway lines  
[S. 12D inserted by s. 23 (1) of Act 30 of 2000.]
- 12E. Deductions in respect of small business corporations.  
[S. 12E inserted by s. 12 of Act 19 of 2001 and amended by s. 31 (1) (a) of Act 45 of 2003.]
- 12F. Deduction in respect of certain aircraft hangars, aprons, runways and taxiways.  
[S. 12F inserted by s. 12 of Act 19 of 2001.]
- 12G. Additional industrial investment allowance in respect of industrial assets used for qualifying strategic industrial projects.  
[S. 12G inserted by s. 12 of Act 19 of 2001.]
- 12H. Deduction in respect of learnership agreements.  
[S. 12H inserted by s. 18 (1) of Act 30 of 2002.]
13. Deductions in respect of buildings used in a process of manufacture.  
[S. 13 amended by s. 30 of Act 60 of 2001.]
- 13*bis*. Deductions in respect of buildings used by hotel keepers.  
[S. 13*bis* inserted by s. 15 of Act 88 of 1965.]
- 13*ter*. Deductions in respect of residential buildings.  
[S. 13*ter* inserted by s. 13 (1) of Act 91 of 1982.]
- 13*quat*. Deductions in respect of erection or improvement of buildings in urban development zones.  
[S. 13*quat* inserted by s. 33 of Act 45 of 2003.]
14. Deductions in respect of ships.
- 14*bis*. Deductions in respect of aircraft.  
[S. 14*bis* inserted by s. 16 of Act 88 of 1965.]
15. Deductions from income derived from mining operations.
- 15A. ....  
[S. 15A inserted by s. 15 (1) of Act 69 of 1975 and repealed by s. 15 of Act 101 of 1990.]
16. ....  
[S. 16 substituted by s. 16 of Act 89 of 1969 and repealed by s. 13 of Act 21 of 1994.]
- 16A. Deductions of expenses incurred by medical practitioners and dentists on courses or congresses outside the Republic.  
[S. 16A inserted by s. 10 of Act 70 of 1989.]
17. ....  
[S. 17 substituted by s. 14 of Act 90 of 1962 and by s. 14 (1) of Act 113 of 1977 and repealed by s. 25 of Act 59 of 2000.]
- 17A. Expenditure incurred by a lessor of land let for farming purposes, in respect of soil erosion works.  
[S. 17A inserted by s. 11 of Act 76 of 1968.]
18. Deduction in respect of medical and dental expenses.  
[S. 18 repealed by s. 15 of Act 88 of 1971 and inserted by s. 12 of Act 104 of 1980.]
- 18A. Deduction of donations to certain public benefit organisations.  
[S. 18A inserted by s. 15 of Act 52 of 1970 and substituted by s. 16 (1) of Act 96 of 1981 and by s. 24 (1) of Act 30 of 2000.]
- 18B. ....  
[S. 18B inserted by s. 11 (1) of Act 65 of 1986 and repealed by s. 14 of Act 21 of 1994.]
19. ....  
[S. 19 repealed by s. 25 (1) of Act 30 of 2000.]
20. Set-off of assessed losses.
- 20A. Ring-fencing of assessed losses of certain trades  
[S. 20A inserted by s. 19 of Act 89 of 1969, repealed by s. 20 of Act 101 of 1990 and inserted by s. 36 (1) of Act 45 of 2003.]
- 20B. Limitation of losses from disposal of certain assets  
[S. 20B inserted by s. 20 (1) of Act 32 of 2004.]

21. Deduction of alimony, allowance or maintenance.  
[S. 21 substituted by s. 16 of Act 90 of 1962.]
- 21*bis*. .....  
[S. 21*bis* inserted by s. 7 of Act 6 of 1963, substituted by s. 20 (1) of Act 85 of 1974 and repealed by s. 19 of Act 94 of 1983.]
- 21*ter*. Special deduction in respect of industrial undertakings in economic development areas.  
[S. 21*ter* inserted by s. 20 (1) of Act 89 of 1969.]
- 21*quat*. .....  
[S. 21*quat* inserted by s. 17 of Act 65 of 1973 and repealed by s. 17 of Act 90 of 1988.]
22. Amounts to be taken into account in respect of values of trading stocks.
- 22A. Schemes of arrangement involving trading stock.  
[S. 22A inserted by s. 19 (1) of Act 88 of 1971.]
23. Deductions not allowed in determination of taxable income.
- 23A. Limitation of allowances granted to lessors of certain assets.  
[S. 23A inserted by s. 21 (1) of Act 121 of 1984 and substituted by s. 12 of Act 70 of 1989.]
- 23B. Prohibition of double deductions.  
[S. 23B inserted by s. 25 (1) of Act 129 of 1991.]
- 23C. Reduction of cost or market value of certain assets.  
[S. 23C inserted by s. 25 (1) of Act 129 of 1991 and amended by s. 33 (1) (a) of Act 60 of 2001.]
- 23D. Limitation of allowances granted in respect of certain assets.  
[S. 23D inserted by s. 19 (1) of Act 113 of 1993.]
- 23E. Provisions relating to leave pay.  
[S. 23E inserted by s. 19 (1) of Act 113 of 1993.]
- 23F. Acquisition or disposal of trading stock.  
[S. 23F inserted by s. 17 of Act 21 of 1994 and amended by s. 30 (1) of Act 30 of 2000.]
- 23G. Sale and leaseback arrangements  
[S. 23G inserted by s. 16 (1) of Act 28 of 1997.]
- 23H. Limitation of certain deductions  
[S. 23H inserted by s. 31 (1) of Act 30 of 2000.]
24. Credit agreements and debtors allowance.  
[S. 24 substituted by s. 16 (1) of Act 65 of 1986.]
- 24A. Transactions whereby fixed property is or company shares are exchanged for shares.  
[S. 24A inserted by s. 23 of Act 89 of 1969 and substituted by s. 20 (1) of Act 88 of 1971.]
- 24B. Transactions where assets are acquired in exchange for shares issued  
[S. 24B inserted by s. 9 (1) of Act 101 of 1978, substituted by s. 13 (1) of Act 104 of 1979, repealed by s. 32 of Act 30 of 2000 and inserted by s. 22 (1) of Act 32 of 2004.]
- 24C. Allowance in respect of future expenditure on contracts.  
[S. 24C inserted by s. 18 (1) of Act 104 of 1980.]
- 24D. Deduction of certain expenditure incurred in respect of any National Key Point or specified important place or area.  
[S. 24D inserted by s. 20 (1) of Act 96 of 1981.]
- 24E. .....  
[S. 24E inserted by s. 18 of Act 91 of 1982 and repealed by s. 18 of Act 90 of 1988.]
- 24F. Taxable income of film owners.  
[S. 24F inserted by s. 17 (1) of Act 85 of 1987.]
- 24G. Taxable income of toll road operators.  
[S. 24G inserted by s. 20 (1) of Act 90 of 1988.]
- 24H. Persons carrying on trade or business in partnership.  
[S. 24H inserted by s. 21 of Act 90 of 1988.]
- 24I. Gains or losses on foreign exchange transactions.  
[S. 24I inserted by s. 21 of Act 113 of 1993.]
- 24J. Incurral and accrual of interest.  
[S. 24J inserted by s. 21 (1) of Act 21 of 1995.]
- 24K. Incurral and accrual of amounts in respect of interest rate agreements  
[S. 24K inserted by s. 20 (1) of Act 28 of 1997.]

- 24L. Incurral and accrual of amounts in respect of option contracts  
[S. 24L inserted by s. 28 (1) of Act 53 of 1999.]
- 24M. Incurral and accrual of amounts in respect of assets acquired or disposed of for unquantified amount  
[S. 24M inserted by s. 25 (1) of Act 32 of 2004.]
- 24N. Incurral and accrual of amounts in respect of disposal or acquisition of equity shares  
[S. 24N inserted by s. 26 (1) of Act 32 of 2004.]
25. Income of beneficiaries and estates of deceased persons.
- 25A. Determination of taxable incomes of permanently separated spouses.  
[S. 25A inserted by s. 21 (1) of Act 55 of 1966.]
- 25B. Income of trusts and beneficiaries of trusts.  
[S. 25B inserted by s. 27 (1) of Act 129 of 1991 and amended by s. 22 of Act 141 of 1992.]
- 25C. Income of insolvent estates  
[S. 25C inserted by s. 21 of Act 28 of 1997 and substituted by s. 13 of Act 5 of 2001 and by s. 43 of Act 45 of 2003.]
- 25D. Determination of taxable income in foreign currency.  
[S. 25D inserted by s. 33 of Act 59 of 2000 and substituted by s. 37 (1) of Act 60 of 2001, by s. 28 (1) of Act 74 of 2002 and by s. 44 (1) of Act 45 of 2003.]
26. Determination of taxable income derived from farming.
- 26A. Inclusion of taxable capital gain in taxable income.  
[S. 26A inserted by s. 14 of Act 5 of 2001.]
27. Determination of taxable income of co-operative societies and companies.
28. Determination of taxable income from insurance business.
- 28bis. ....  
[S. 28bis inserted by s. 19 of Act 88 of 1965 and repealed by s. 38 (1) of Act 60 of 2001.]
29. Taxable income of companies carrying on long-term insurance business.  
[S. 29 amended by s. 18 of Act 90 of 1962, repealed by s. 23 of Act 121 of 1984 and inserted by s. 25 (1) of Act 113 of 1993.]
- 29A. Taxation of long-term insurers  
[S. 29A inserted by s. 30 of Act 53 of 1999.]
30. ....  
[S. 30 repealed by s. 20 (1) of Act 21 of 1994.]
31. Determination of taxable income of certain persons in respect of international transactions  
[S. 31 substituted by s. 23 (1) of Act 21 of 1995.]
- 31A. ....  
[S. 31A inserted by s. 47 (1) of Act 45 of 2003 and repealed by s. 29 (1) of Act 32 of 2004.]
32. Assessment in the case of submarine cable or wireless business.
33. Assessment of owners or charterers of ships or aircraft who are not residents of the Republic.  
[S. 33 amended by s. 40 of Act 60 of 2001.]
34. ....  
[S. 34 repealed by s. 19 of Act 90 of 1962.]
35. Assessment of persons not ordinarily resident or registered, managed or controlled in the Republic who derive income from royalties or similar payments.
36. Calculation of redemption allowance and unredeemed balance of capital expenditure in connection with mining operations.
37. Calculation of capital expenditure on sale, transfer, lease or cession of mining property.  
[S. 37 substituted by s. 42 (1) of Act 60 of 2001.]
- 37A. ....  
[S. 37A inserted by s. 27 of Act 89 of 1969 and repealed by s. 26 of Act 94 of 1983.]
- 37B. ....  
[S. 37B inserted by s. 12 (1) of Act 101 of 1978 and repealed by s. 22 (1) of Act 21 of 1994.]
- 37C. Determination of taxable income of persons previously assessable under certain other laws.

- [S. 37C inserted by s. 3 of Act 30 of 1984.]
- 37D. Determination of taxable income of married women.  
[S. 37D inserted by s. 27 of Act 101 of 1990.]
- 37E. Application of certain provisions where taxpayer carries on value-added process.  
[S. 37E inserted by s. 3 (1) of Act 136 of 1991 and substituted by s. 30 (1) of Act 113 of 1993.]
- 37F. Determination of taxable income derived by persons previously assessable under certain other laws.  
[S. 37F inserted by s. 24 (1) of Act 21 of 1995.]
- 37G. Determination of taxable income derived from small business undertakings.  
[S. 37G inserted by s. 24 (1) of Act 21 of 1995.]
- 37H. Tax holiday scheme for certain companies.  
[S. 37H inserted by s. 12 (1) of Act 46 of 1996.]

*Part II*

*Special Provisions relating to Companies*

38. Classification of companies.
39. Redetermination of company's status.
40. Objection and appeal.
- 40A. Close corporations.  
[S. 40A inserted by s. 25 of Act 121 of 1984.]
- 40B. Conversion of co-operative to company.  
[S. 40B inserted by s. 17 of Act 96 of 1985, repealed by s. 29 (1) of Act 101 of 1990 and inserted by s. 31 of Act 113 of 1993.]

*Part III*

*Special Rules relating to Company Formations, Share-for-share Transactions, Amalgamation Transactions, Intra-group Transactions, Unbundling Transactions and Liquidation Distributions*

[Part III repealed by s. 25 (1) of Act 21 of 1995, inserted by s. 44 (1) of Act 60 of 2001 and substituted by s. 34 (1) of Act 74 of 2002.]

41. General.  
[S. 41 repealed by s. 25 (1) of Act 21 of 1995, inserted by s. 44 (1) of Act 60 of 2001 and substituted by s. 34 (1) of Act 74 of 2002.]
42. Company formations.  
[S. 42 repealed by s. 25 (1) of Act 21 of 1995, inserted by s. 44 (1) of Act 60 of 2001 and substituted by s. 34 (1) of Act 74 of 2002.]
43. Share-for-share transactions.  
[S. 43 repealed by s. 25 (1) of Act 21 of 1995, inserted by s. 44 (1) of Act 60 of 2001 and substituted by s. 34 (1) of Act 74 of 2002.]
- 43A. ....  
[S. 43A inserted by s. 29 of Act 94 of 1983 and repealed by s. 25 (1) of Act 21 of 1995.]
44. Amalgamation transactions  
[S. 44 substituted by s. 34 (1) of Act 74 of 2002.]
45. Intra-group transactions.  
[S. 45 repealed by s. 25 (1) of Act 21 of 1995, inserted by s. 44 (1) of Act 60 of 2001 and substituted by s. 34 (1) of Act 74 of 2002.]
46. Unbundling transactions.  
[S. 46 repealed by s. 25 (1) of Act 21 of 1995, inserted by s. 44 (1) of Act 60 of 2001 and substituted by s. 34 (1) of Act 74 of 2002.]
47. Transactions relating to liquidation, winding-up and deregistration.  
[S. 47 repealed by s. 25 (1) of Act 21 of 1995 and inserted by s. 34 (1) of Act 74 of 2002.]

*Part IV*

*Undistributed Profits Tax*

48. ....  
[S. 48 repealed by s. 30 (1) of Act 101 of 1990.]
49. ....  
[S. 49 repealed by s. 31 (1) of Act 101 of 1990.]
50. ....  
[S. 50 repealed by s. 32 (1) of Act 101 of 1990.]



51. .... [S. 51 repealed by s. 33 (1) of Act 101 of 1990.]  
 52. .... [S. 52 repealed by s. 34 (1) of Act 101 of 1990.]  
 53. .... [S. 53 repealed by s. 35 (1) of Act 101 of 1990.]

*Part V*

*Donations Tax*

54. Levy of donations tax.  
     [S. 54 substituted by s. 24 of Act 90 of 1988.]  
 55. Definitions for purposes of this Part.  
 56. Exemptions.  
 57. Donations by a body corporate at the instance of any person.  
     [S. 57 substituted by s. 26 of Act 21 of 1995.]  
 57A. Donations by spouses married in community of property.  
     [S. 57A inserted by s. 27 of Act 21 of 1995.]  
 58. Property disposed of under certain transactions deemed to have been disposed of under donations.  
 59. Persons liable for tax.  
 60. Payment and assessment of tax.  
 61. Extension of scope of certain provisions of Act for purposes of donations tax.  
 62. Value of property disposed of under donations.  
 63. Objection and appeal.  
 64. Rate of donations tax.

*Part VI*

*Levy on Financial Services*

[Part VI substituted by s. 4 of Act 136 of 1991.]

64A.

[S. 64A inserted by s. 4 of Act 136 of 1991 and substituted by s. 29 (1) of Act 141 of 1992.]

*Part VII*

*Secondary Tax on Companies*

[Part VII inserted by s. 34 (1) of Act 113 of 1993.]

- 64B. Levy and recovery of secondary tax on companies  
     [S. 64B inserted by s. 34 (1) of Act 113 of 1993.]  
 64C. Certain amounts distributed deemed to be dividends  
     [S. 64C inserted by s. 34 (1) of Act 113 of 1993.]

CHAPTER III

GENERAL PROVISIONS

*Part I*

*Returns*

65. Returns to be in form and submitted at place prescribed by Commissioner.  
     [S. 65 substituted by s. 60 of Act 45 of 2003.]  
 66. Notice by Commissioner requiring returns for assessment of taxes under this Act and manner of furnishing returns and interim returns.  
 67. Registration as taxpayer.  
 [S. 67 repealed by s. 32 of Act 129 of 1991 and inserted by s. 62 of Act 45 of 2003.]  
 67A. Registration of tax practitioners.  
     [S. 67A inserted by s. 9 of Act 34 of 2004.]  
 68. Income and capital gain of married persons and minor children.  
     [s. 68 substituted by s. 20 of Act 5 of 2001.]  
 69. Duty to furnish returns as to employees, their earnings and other matters.  
 70. Duty of companies to furnish returns.  
 70A. Return of information by Portfolio of Collective Investment Scheme.  
 [S. 70A inserted by s. 21 of Act 5 of 2001 and substituted by s. 40 (1) of Act 74 of 2002.]  
 70B. Return of information in respect of financial instruments administered by portfolio administrators.

- [S. 70B inserted by s. 21 of Act 5 of 2001.]
71. Return of payments in respect of bearer warrants.  
[S. 71 substituted by s. 41 of Act 74 of 2002.]
72. Return as to shareholdings.
- 72A. Return relating to controlled foreign company.  
[S. 72A inserted by s. 46 of Act 59 of 2000 and substituted by s. 65 (1) of Act 45 of 2003.]
73. Duty of persons submitting accounts in support of returns, or preparing accounts for other persons.
- 73A. Record keeping by persons who render returns.  
[S. 73A inserted by s. 22 of Act 5 of 2001 and amended by s. 66 (a) of Act 45 of 2003.]
- 73B. Record keeping in relation to taxable capital gain or assessed capital loss.  
[S. 73B inserted by s. 22 of Act 5 of 2001.]
- 73C. Retention period of records where objection and appeal lodged.  
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74. General provisions with regard to information, documents or things.  
[S. 74 substituted by s. 14 of Act 46 of 1996.]
- 74A. Furnishing of information, documents or things by any person.  
[S. 74A inserted by s. 14 of Act 46 of 1996.]
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- 88B. Purpose of Part.  
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- 88C. Circumstances where inappropriate to settle.  
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- 88D. Circumstances where appropriate to settle.  
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- 88E. Power to settle and disclosure.  
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     [S. 89*bis* inserted by s. 14 of Act 6 of 1963.]

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[S. 89*quat* inserted by s. 46 of Act 85 of 1974, repealed by s. 37 of Act 94 of 1983, inserted by s. 34 (1) of Act 121 of 1984 and substituted by s. 22 (1) of Act 65 of 1986.]

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AMOUNTS TO BE DEDUCTED OR WITHHELD BY EMPLOYERS AND PROVISIONAL  
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LOAN PORTION OF THE NORMAL TAX

[Fifth Schedule added by s. 26 (1) of Act 52 of 1970.]

Sixth Schedule

[Sixth Schedule added by s. 28 (1) of Act 90 of 1972 and repealed by s. 51 (1) of Act 113 of 1993.]

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DETERMINATION OF TAXABLE CAPITAL GAINS AND ASSESSED CAPITAL LOSSES

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

Ninth Schedule


PUBLIC BENEFIT ACTIVITIES

[Ninth Schedule added by s. 41 of Act 30 of 2002.]

 Cases

PRELIMINARY (s 1)

1 Interpretation

 Cases

In this Act, unless the context otherwise indicates-

'agent' includes any partnership or company or any other body of persons corporate or unincorporate acting as an agent;

'aggregate capital gain' means an amount determined in terms of paragraph 6 of the Eighth Schedule;

[Definition of 'aggregate capital gain' inserted by s. 5 (a) of Act 5 of 2001.]

'aggregate capital loss' means an amount determined in terms of paragraph 7 of the Eighth Schedule;

[Definition of 'aggregate capital loss' inserted by s. 5 (a) of Act 5 of 2001.]

'assessed capital loss' means an amount determined in terms of paragraph 9 of the Eighth Schedule;

[Definition of 'assessed capital loss' inserted by s. 5 (a) of Act 5 of 2001.]

'assessment' means the determination by the Commissioner, by way of a notice of assessment (including a notice of assessment in electronic form) served in a manner contemplated in section 106 (2)-

- (a) of an amount upon which any tax leviable under this Act is chargeable; or
- (b) of the amount of any such tax; or
- (c) of any loss ranking for set-off; or
- (d) of any assessed capital loss determined in terms of paragraph 9 of the Eighth Schedule,

[Para. (d) added by s. 5 (c) of Act 5 of 2001.]

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

[Definition of 'assessment' amended by s. 3 (a) of Act 90 of 1962, substituted by s. 4 (1) (a) of Act 88 of 1971 and by s. 4 (1) (a) of Act 69 of 1975 and amended by s. 2 (1) (a) of Act 104 of 1980 and by s. 12 (1) (a) of Act 45 of 2003.]

'assisted gold mine' .....

[Definition of 'assisted gold mine' inserted by s. 5 (a) of Act 76 of 1986 and deleted by s. 2 (a) of Act 141 of 1992.]

'average exchange rate' in relation to a year of assessment means-

- (a) the average determined by using the closing spot rates at the end of daily, weekly or monthly intervals during that year of assessment; or
- (b) the weighted average determined by using the closing spot rates at the end of daily, weekly or monthly intervals during that year of assessment during which income is received or accrued or expenditure is incurred, which average must be based on-
  - (i) the net amount of receipts and accruals (excluding those of a capital nature) and deductible expenditure during each such period; and
  - (ii) the net amount of capital gains or capital losses determined in respect of any disposal of assets during that period,

which must be consistently applied within that year of assessment;

[Definition of 'average exchange rate' inserted by s. 6 (1) (a) of Act 74 of 2002.]

'benefit fund' means-

- (a) any friendly society registered under the Friendly Societies Act, 1956 (Act 25 of 1956), or any fund established before 13 June 1986 which is not so registered solely because of the provisions of section 2 (2) (a) of that Act; or

[Para. (a) substituted by s. 3 (1) (a) of Act 101 of 1978 and by s. 2 (1) (a) of Act 65 of 1986.]

- (b) any medical scheme registered under the provisions of the Medical Schemes Act, 1998

(Act 131 of 1998); or

[Para. (b) substituted by s. 3 (1) (a) of Act 101 of 1978 and by s. 10 (1) (a) of Act 53 of 1999.]

(c) .....

[Para. (c) substituted by s. 2 (a) of Act 21 of 1995 and by s. 19 (1) (a) of Act 30 of 1998 and deleted by s. 19 (1) (b) of Act 30 of 1998.]

'**bonus debentures or securities**' means debentures or securities issued by a company, whether by way of a bonus award or otherwise, in such a manner that the company's reserves or unappropriated profits are in whole or in part applied in paying up such debentures or securities;

[Definition of 'bonus debentures or securities' inserted by s. 4 (1) (a) of Act 85 of 1974.]

'**building society**' means a building society registered under the Building Societies Act, 1986 (Act 82 of 1986);

[Definition of 'building society' inserted by s. 1 (1) (a) of Act 108 of 1986.]

'**business day**' means any day which is not a Saturday, Sunday or public holiday;

[Definition of 'business day' inserted by s. 2 (1) (a) of Act 113 of 1993.]

'**capital gain**' means an amount determined in terms of paragraph 3 of the Eighth Schedule;

[Definition of 'capital gain' inserted by s. 5 (d) of Act 5 of 2001.]

'**capital loss**' means an amount determined in terms of paragraph 4 of the Eighth Schedule;

[Definition of 'capital loss' inserted by s. 5 (d) of Act 5 of 2001.]

'**capitalization shares**' means shares are issued by a company, whether by way of a bonus award or otherwise, in such manner that the Company's reserves (including any share premium account) or unappropriated profits are in whole or in part applied in paying up such shares;

[Definition of 'capitalization shares' inserted by s. 4 (1) (b) of Act 85 of 1974.]

'**Chief Executive Officer**' .....

[Definition of 'Chief Executive Officer' inserted by s. 2 (a) of Act 36 of 1996 and deleted by s. 34 (1) of Act 34 of 1997.]

'**child**', in relation to any person, includes any person adopted by him-

- (a) under the provisions of the Adoption of Children Act, 1923 (Act 25 of 1923), or Children's Act, 1937 (Act 31 of 1937), or the Children's Act, 1960 (Act 33 of 1960); or
- (b) under the law of any country other than the Republic, provided the adopted person is under such law accorded the status of a legitimate child of the adoptive parent and the adoption was made at a time when the adoptive parent was ordinarily resident in such country;

[Definition of 'child' inserted by s. 4 (a) of Act 90 of 1964.]

'**close corporation**' means a close corporation within the meaning of the Close Corporations Act, 1984 (Act 69 of 1984);

[Definition of 'close corporation' inserted by s. 2 (1) (a) of Act 121 of 1984.]

'**Commissioner**' means the Commissioner for the South African Revenue Service;

[Definition of 'Commissioner' deleted by s. 4 (b) of Act 90 of 1964, inserted by s. 2 (1) (b) of Act 104 of 1980 and substituted by s. 34 (1) of Act 34 of 1997.]

'**company**' includes -

- (a) any association, corporation or company (other than a close corporation) incorporated or deemed to be incorporated by or under any law in force or previously in force in the Republic or in any part thereof, or any body corporate formed or established or deemed to be formed or established by or under any such law; or

[Para. (a) substituted by s. 4 (1) (c) of Act 85 of 1974 and by s. 2 (1) (b) of Act 121 of 1984.]

- (b) any association, corporation or company incorporated under the law of any country other than the Republic or any body corporate formed or established under such law; or

[Para. (b) substituted by s. 4 (1) (c) of Act 85 of 1974 and by s. 13 (1) (a) of Act 30 of 2000.]

(c) .....

[Para. (c) substituted by s. 4 (1) (c) of Act 85 of 1974 and deleted by s. 13 (1) (b) of Act 30 of 2000.]

- (d) any association (not being an association referred to in paragraph (a) or (f)) formed in the Republic to serve a specified purpose, beneficial to the public or a section of the public; or

[Para. (d) substituted by s. 2 (1) (c) of Act 121 of 1984 and by s. 13 (1) (c) of Act 30 of 2000.]

(e) any-

- (i) portfolio comprised in any collective investment scheme in securities

contemplated in Part IV of the Collective Investment Schemes Control Act, 2002, managed or carried on by any company registered as a manager under section 42 of that Act for purposes of that Part; or

- (ii) arrangement or scheme carried on outside the Republic in pursuance of which members of the public are invited or permitted to invest in a portfolio of a collective investment scheme, where two or more investors contribute to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest; or;

[Para. (e) added by s. 3 (b) of Act 90 of 1962, amended by s. 2 (1) (a) of Act 28 of 1997 and substituted by s. 13 (1) (d) of Act 30 of 2000 and by s. 6 (1) (b) of Act 74 of 2002.]

- (f) a close corporation;

[Para. (f) added by s. 2 (1) (d) of Act 121 of 1984.]

**'connected person'** means-

- (a) in relation to a natural person-
  - (i) any relative; and
  - (ii) any trust of which such natural person or such relative is a beneficiary;
- (b) in relation to a trust-
  - (i) any beneficiary of such trust; and
  - (ii) any connected person in relation to such beneficiary;
- (bA) in relation to a connected person in relation to a trust (other than a collective investment scheme in property shares managed or carried on by any company registered as a manager under section 42 of the Collective Investment Schemes Control Act, 2002, for purposes of Part V of that Act), includes any other person who is a connected person in relation to such trust;

[Para. (bA) inserted by s. 19 (1) (c) of Act 30 of 1998 and substituted by s. 6 (1) (c) of Act 74 of 2002.]

- (c) in relation to a member of any partnership-
  - (i) any other member; and
  - (ii) any connected person in relation to any member of such partnership;
- (d) in relation to a company-
  - (i) its holding company as defined in section 1 of the Companies Act, 1973 (Act 61 of 1973);
  - (ii) its subsidiary as so defined;
  - (iii) any other company where both such companies are subsidiaries (as so defined) of the same holding company;
  - (iv) any person, other than a company as defined in section 1 of the Companies Act, 1973 (Act 61 of 1973), who individually or jointly with any connected person in relation to himself, holds, directly or indirectly, at least 20 per cent of the company's equity share capital or voting rights;

[Sub-para. (iv) substituted by s. 2 (1) (a) of Act 21 of 1994 and by s. 2 (1) (b) of Act 28 of 1997.]

- (v) any other company if at least 20 per cent of the equity share capital of such company is held by such other company, and no shareholder holds the majority voting rights of such company;

[Sub-para. (v) substituted by s. 2 (1) (a) of Act 21 of 1994.]

- (vA) any other company if such other company is managed or controlled by-
  - (aa) any person who or which is a connected person in relation to such company; or
  - (bb) any person who or which is a connected person in relation to a person contemplated in item (aa); and

[Sub-para. (vA) inserted by s. 2 (1) (d) of Act 28 of 1997 and substituted by s. 19 (1) (d) of Act 30 of 1998.]

- (vi) where such company is a close corporation-
  - (aa) any member;
  - (bb) any relative of such member or any trust which is a connected person in relation to such member; and
  - (cc) any other close corporation or company which is a connected person in relation to-

- (i) any member contemplated in item (aa); or
  - (ii) the relative or trust contemplated in item (bb); and
- [Item (cc) substituted by s. 2 (1) (e) of Act 28 of 1997.]

- (e) in relation to any person who is a connected person in relation to any other person in terms of the foregoing provisions of this definition, such other person,

and in this definition the expression '**beneficiary**' means any person who has been named in the will or deed of trust concerned-

- (i) as a beneficiary; or
- (ii) as a person upon whom the trustee of the trust has the power to confer a benefit from such trust;

[Definition of 'connected person' inserted by s. 2 (1) (b) of Act 113 of 1993.]

'**controlled group company**' means a controlled group company contemplated in the definition of 'group of companies';

[Definition of 'controlled group company' inserted by s. 6 (1) (d) of Act 74 of 2002.]

'**controlling group company**' means a controlling group company contemplated in the definition of 'group of companies';

[Definition of 'controlling group company' inserted by s. 6 (1) (d) of Act 74 of 2002.]

'**controlled foreign company**' means a controlled foreign company as defined in section 9D, and includes any reference in this Act, prior to the amendment thereof by the Revenue Laws Amendment Act, 2002, to a controlled foreign entity;

[Definition of 'controlled foreign company' inserted by s. 6 (1) (d) of Act 74 of 2002.]

'**date of deep level production**' in relation to any deep level gold mine, means the date which the Government Mining Engineer certifies as the date on which stoping below a vertical depth of seven thousand five hundred feet from the surface commenced;

'**date of assessment**', in relation to any assessment, means the date specified in the notice of such assessment as the due date or, where a due date is not so specified, the date of such notice;

[Definition of 'date of assessment' inserted by s. 4 (1) (b) of Act 69 of 1975.]

'**date of sequestration**' means-

- (a) the date of voluntary surrender of an estate, if accepted by the Court; or
- (b) the date of provisional sequestration of an estate, if a final order of sequestration is granted by the Court;

[Definition of 'date of sequestration' inserted by s. 12 (1) (b) of Act 45 of 2003.]

'**depreciable asset**' means an asset as defined in paragraph 1 of the Eighth Schedule (other than trading stock), in respect of which a capital deduction or allowance determined with reference to the cost or value of that asset is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss;

[Definition of 'depreciable asset' inserted by s. 12 (1) (b) of Act 45 of 2003.]

'**designated country**' .....

[Definition of 'designated country' inserted by s. 6 (1) (e) of Act 74 of 2002 and deleted by s. 12 (1) (c) of Act 45 of 2003.]

'**dependant**' .....

[Definition of 'dependant' substituted by s. 4 (1) (b) of Act 88 of 1971 and by s. 4 (1) (d) of Act 85 of 1974, amended by s. 3 (1) (a) of Act 104 of 1979 and by s. 2 (1) (c) of Act 104 of 1980 and deleted by s. 2 (b) of Act 90 of 1988.]

'**director**', in relation to a close corporation, means any person who in respect of such close corporation holds any office or performs any functions similar to the office or functions of a director of a company other than a close corporation;

[Definition of 'director' inserted by s. 2 (1) (a) of Act 96 of 1985.]

'**dividend**' means any amount distributed by a company (not being an institution to which section 10 (1) (d) applies) to its shareholders or any amount distributed out of the assets pertaining to any portfolio referred to in paragraph (e) of the definition of 'company' in this section to shareholders in relation to such portfolio (including, in the case of any co-operative society or company referred to in section 27, any amount distributed on or after 1 April 1977 to its members, whether divided among the members in accordance with their rights as shareholders or according to the value of business transactions between individual members and such society or company or on some other basis), and in this definition the expression 'amount distributed' includes -



- (a) in relation to a company that is being wound up or liquidated, or the corporate existence of which is finally terminated, any profits distributed, whether in cash or otherwise, other than those of a capital nature earned before or during the winding-up or liquidation from the disposal of any asset before 1 October 2001 (any such profits distributed by the liquidator of the company being deemed for the purposes of this definition to have been distributed by the company): Provided that the amount of any capital profits so distributed which are attributable to the disposal of any asset on or after 1 October 2001, but which was acquired by that company before that date shall, for the purposes of this definition be limited to the amount of profit determined as if that asset had been acquired on 1 October 2001 for a cost equal to the market value of that asset as contemplated in paragraph 29 of the Eighth Schedule;

[Para. (a) substituted by s. 4 (1) (c) of Act 69 of 1975 and by s. 6 (1) (g) of Act 74 of 2002.]

- (b) in relation to a company that is not being wound up or liquidated, any profits distributed, whether in cash or otherwise, and whether of a capital nature or not, including an amount equal to the nominal value, at the time of issue thereof, of any capitalization shares awarded to shareholders and the nominal value of any bonus debentures or securities awarded to shareholders;
- (c) in the event of the partial reduction or redemption of the capital of a company, including the acquisition of shares in terms of section 85 of the Companies Act, 1973 (Act 61 of 1973), so much of the sum of any cash and the value of any asset given to a shareholder as exceeds the cash equivalent of-
- (i) the amount by which the nominal value of the shares of that shareholder is reduced; or
  - (ii) the nominal value of the shares so acquired from such shareholder, as the case may be; and

[Para. (c) substituted by s. 4 (1) (d) of Act 69 of 1975 and by s. 10 (1) (b) of Act 53 of 1999.]

- (d) in the event of the reconstruction of a company, so much of the sum of any cash and the value of any asset given to a shareholder as exceeds the nominal value of the shares held by him before the reconstruction,

[Para. (d) substituted by s. 4 (1) (d) of Act 69 of 1975.]

but does not include-

- (e) the nominal value of any capitalization shares awarded to a shareholder to the extent to which such shares have been paid up by means of the application of the whole or any portion of the share premium account of a company; or
- (f) subject to the provisions of the first proviso to this definition, any cash and the value of any asset given to a shareholder to the extent to which the cash and the value of the asset represents a reduction of the share premium account of a company; or

[Para. (f) substituted by s. 4 (1) (e) of Act 69 of 1975 and by s. 10 (1) (c) of Act 53 of 1999.]

- (g) .....

[Para. (g) substituted by s. 4 (1) (e) of Act 69 of 1975, amended by s. 2 (1) (c) of Act 113 of 1993 and deleted by s. 10 (1) (d) of Act 53 of 1999.]

- (h) the nominal value of any capitalization shares awarded to shareholders as part of the equity share capital of a company;

[Para. (h) substituted by s. 4 (1) (e) of Act 69 of 1975 and by s. 10 (1) (e) of Act 53 of 1999.]

- (i) (i) any amount distributed by any co-operative society or company referred to in section 27 by way of a bonus out of its profits for any year of assessment of such society or company commencing before 1 April 1977, if such amount is divided among the members according to the value of the business transactions between the society or company and the members and is distributed not later than twelve months after the end of such year of assessment;
- (ii) any amount distributed by such society or company by way of a bonus, to the extent that such amount is allowable as a deduction from the income of such society or company under the provisions of section 27; and
- (iii) any amount distributed out of the stabilization fund referred to in section 27 (2)

(h):

[Para. (i) inserted by s. 4 (1) (b) of Act 113 of 1977.]

Provided that, for the purposes of this definition-

- (i) where a company has on or after 1 January 1974 transferred any amount from reserves (excluding any share premium account) or undistributed profits to the share capital or the share premium account of the company without applying the amount in paying up capitalization shares or has applied the amount in paying up capitalization shares the nominal value of which did not in whole or in part constitute an amount distributed as contemplated in the foregoing provisions of this definition, the amount so transferred (reduced by so much thereof as constitutes such an amount distributed) shall be deemed-
  - (aa) to the extent that such amount (as so reduced) is shown to consist of profits of a capital nature, to be a profit of a capital nature available for distribution by the company to shareholders who, in the event of a distribution by the company at any time (whether before or during the winding-up or liquidation of the company) of profits of a capital nature would be entitled to participate in such a distribution; and
  - (bb) to the extent that subparagraph (aa) does not apply, to be a profit which is not of a capital nature and is available for distribution by the company to shareholders who, in the event of a distribution by the company at any time (whether before or during the winding-up or liquidation of the company) of profits which are not of a capital nature would be entitled to participate in such a distribution, regardless of whether in either case the company in fact has or has not any profits available for distribution;
- (ii) where the share capital of the company consists of different classes of share capital, any amount deemed by paragraph (i) of this proviso to be available for distribution to shareholders shall, in applying that paragraph, be apportioned between such classes of share capital in accordance with the rights of the holders of the corresponding classes of shares to participate in distributions of profits of a capital nature or profits which are not of a capital nature, as the case may be, and the amount deemed by the said paragraph to be available for distribution to the shareholders in respect of any such class of shares shall be the amount allocated to the share capital of that class under such apportionment;
- (iiA) where any amount is under the provisions of paragraph (i) of this proviso or that paragraph as applied by paragraph (ii) of this proviso, deemed to be a profit available for distribution to shareholders and any of the shares of any class (hereinafter referred to as the original shares) held by any such shareholders are converted into shares of any other class or the original shares are cancelled and shares of any other class are issued in place of the original shares, the said amount shall, to the extent that it relates to or may have been apportioned to the original shares, be deemed to relate to and to be a profit available for distribution to the shareholders in respect of the shares of such other class and the provisions of this proviso shall, to the extent that the said amount is deemed to consist of a profit as aforesaid, apply in respect of such amount as though it were an amount referred to in paragraph (i) of this proviso, and the shareholders in respect of the shares of such other class shall, regardless of the rights attaching to such shares, be deemed as respects the said amount to be entitled to participate in profits of the same nature as the profit deemed by this paragraph to be available for distribution to the shareholders, whether such profit is of a capital nature or is not of a capital nature;
 

[Para. (iiA) inserted by s. 4 (1) (f) of Act 69 of 1975.]
- (iiB) subject to the provisions of paragraphs (iiA) and (iv) of this proviso, where any amount is under the provisions of paragraph (i) of this proviso or that paragraph as applied by paragraph (ii) of this proviso, deemed to be a profit available for distribution to shareholders and any shares issued by the company are cancelled without a return of the share capital or any share premium relating to such shares, such share capital or share premium or any reserve created by reason of the cancellation of such shares shall, to the extent that the said profit may be apportioned to the said shares, be deemed to consist of a profit (of the same nature as the aforesaid profit) available for distribution to shareholders who are or may become interested in such share capital, share premium or reserve, and where any cash is or any assets are given to shareholders by way of a return of or a distribution out of such share capital, share premium or reserve the sum of the amount of

such cash and the value of such assets shall, to the extent that such sum does not exceed the amount deemed by this paragraph to consist of a profit available for distribution to shareholders, be deemed to be a profit (of the same nature as the first-mentioned profit) distributed to the shareholders;

[Para. (iiB) inserted by s. 4 (i) (f) of Act 69 of 1975.]

(iii) if, in the event of the subsequent partial reduction or redemption of the share capital (including any share premium) of the company, including any acquisition of shares in terms of section 85 of the Companies Act, 1973 (Act 61 of 1973), or the reconstruction of the company, any cash or asset is given to shareholders and such cash or asset (or a portion thereof) represents a return of share capital or share premium, the amount of share capital or share premium so returned-

(aa) to shareholders entitled to participate in distributions of profits which are not of a capital nature and in respect of whom any amount is deemed under paragraph (i) (bb) of this proviso to be such a profit available for distribution to such shareholders, shall (to the extent that the amount returned to such shareholders does not exceed the aggregate of the amounts of the profits so deemed to be available for distribution to such shareholders) be deemed to be a profit, not of a capital nature, distributed to such shareholders, and the amounts so deemed to be available for distribution shall be deemed to have been reduced accordingly; or

(bb) to shareholders entitled to participate in distributions of profits of a capital nature and in respect of whom any amount is deemed under paragraph (i) (aa) of this proviso to be such a profit available for distribution to such shareholders, shall (to the extent that the amount returned to such shareholders (less so much thereof as is deemed under subparagraph (aa) of this paragraph to be a profit, not of a capital nature, distributed to such shareholders) does not exceed the aggregate of the amounts of the profits deemed under the said paragraph (i) (aa) to be available for distribution to such shareholders) be deemed to be a profit of a capital nature distributed to such shareholders and the amounts so available for distribution shall be deemed to have been reduced accordingly;

[Para. (iii) amended by s. 4 (1) (g) of Act 69 of 1975 and by s. 10 (1) (h) of Act 53 of 1999.]

(iv) where the company has lost some of its paid-up share capital (including any share premium) as a result of losses actually incurred by it and such share capital is in consequence partially reduced to take account of such losses, any amounts which in terms of this proviso are at the date of such partial reduction of such share capital deemed to be profits available for distribution to shareholders shall be deemed to have been reduced to the extent that such losses are so accounted for and in such manner that, as far as possible and on the basis, where necessary, of an apportionment between different classes of share capital in accordance with the rights of shareholders-

(aa) any such profits which are of a capital nature and relate to shareholders entitled to participate in profits of that nature, are reduced by so much of the amount by which the said share capital is reduced as is attributable to losses of a capital nature; and

(bb) any such profits which are not of a capital nature and relate to shareholders entitled to participate in profits which are not of a capital nature, are reduced by so much of the amount by which the said share capital is reduced as is attributable to losses which are not of a capital nature;

(v) in the event of the winding-up or liquidation of the company-

(aa) any profits which in terms of the preceding provisions of this proviso are, at the commencement of the winding-up or liquidation, deemed to be available for distribution to shareholders shall, if the company has lost some of its paid-up share capital (including any share premium) as a result of losses actually incurred by it, be deemed to have been reduced in such manner that, as far as possible and on the basis, where necessary, of an apportionment between different classes of share capital in accordance with the rights of shareholders-

(A) any such profits which are of a capital nature and relate to shareholders entitled to participate in profits of that nature, are reduced by so much of

the loss of the said share capital as is attributable to losses of a capital nature; and

- (B) any such profits which are not of a capital nature and relate to shareholders entitled to participate in profits which are not of a capital nature, are reduced by so much of the loss of the said share capital as is attributable to losses which are not of a capital nature; and
- (bb) the aggregate of any cash and the value of any assets given to shareholders entitled to participate in profits not of a capital nature shall, to the extent that such aggregate exceeds so much of the sum of the share capital and any share premium contributed by such shareholders (less so much of such share capital and share premium as has been lost) as remains after deducting therefrom an amount equal to so much of any profits, not of a capital nature, which are deemed by this proviso (after applying subparagraph (aa) of this paragraph) to be available for distribution to such shareholders at the commencement of the winding-up or liquidation, as relates to the said share capital, be deemed to be a profit, not of a capital nature, distributed to such shareholders, but the amount of that profit shall not be determined at an amount which exceeds the aforesaid amount:

Provided further that a reserve of any company which consists of or includes any amount transferred from the share premium account of the company shall, except to the extent to which such reserve consists of any other amount, be deemed for the purposes of this definition to be a share premium account of, or share premium received by, such company;

[Definition of 'dividend' amended by s. 3 (c) of Act 90 of 1962, substituted by s. 4 (1) (e) of Act 85 of 1974 and amended by s. 4 (1) (a) of Act 113 of 1977, by s. 3 (1) (b) of Act 101 of 1978, by s. 1 (1) (b) of Act 108 of 1986, by s. 2 (1) (d) of Act 113 of 1993, by s. 10 (1) (f) and (g) of Act 53 of 1999, by s. 13 (1) (e) of Act 30 of 2000, by s. 6 (1) (f) of Act 74 of 2002 and by s. 12 (1) (d) of Act 45 of 2003.]

**'domestic company'** .....

[Definition of 'domestic company' inserted by s. 4 (1) (f) of Act 85 of 1974 and deleted by s. 2 (a) of Act 59 of 2000.]

**'entertainment expenditure'** means expenditure incurred in providing hospitality of any kind, including, without limiting the scope of the definition, expenditure incurred in providing or supplying-

- (a) food, drink or accommodation; or
- (b) any ticket or voucher entitling any person to admission to any theatre, exhibition or club or to attend any show, display or performance or to use or enjoy any sporting, recreational or other facility; or
- (c) any gift of goods intended for the personal use or enjoyment of any person; or
- (d) any travel facility; or
- (e) any voucher entitling the recipient or any holder thereof to exchange it for food, drink or accommodation or any such ticket, voucher, gift or travel facility,

and expenditure which is incidental to or is incurred in connection with the provision or supply of any such hospitality, food, drink, accommodation, ticket, voucher, gift or travel facility, but excluding such expenditure in respect of hospitality as is referred to in section 8 (1) (d);

[Definition of 'entertainment expenditure' inserted by s. 2 (1) (e) of Act 121 of 1984.]

**'equity share capital'** means, in relation to any company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution, and the expression **'equity shares'** shall be construed accordingly;

**'executor'** means any person to whom letters of administration have been granted by a Master or an Assistant Master of the High Court appointed under the Administration of Estates Act, 1965 (Act 66 of 1965), in respect of the estate of a deceased person under any law relating to the administration of estates, and includes a person acting or authorized to act under letters of administration granted outside the Republic but signed and sealed by such a Master or Assistant Master for use within the Republic and, in any case where the estate is not required to be administered under the supervision of such a Master or Assistant Master, the person administering the estate;

[Definition of 'executor' substituted by s. 2 (1) (f) of Act 28 of 1997.]

**'external company'** .....

[Definition of 'external company' inserted by s. 4 (1) (i) of Act 85 of 1974 and deleted by s. 2 (b) of Act 59

of 2000.]

**'financial instrument'** includes -

- (a) a loan, advance, debt, stock, bond, debenture, bill, share, promissory note, banker's acceptance, negotiable certificate of deposit, deposit with a financial institution, a participatory interest in a portfolio of a collective investment scheme, or a similar instrument;
- (b) any repurchase or resale agreement, forward purchase arrangement, forward sale arrangement, futures contract, option contract or swap contract;
- (c) any other contractual right or obligation the value of which is determined directly or indirectly with reference to-
  - (i) a debt security or equity;
  - (ii) any commodity as quoted on an exchange; or
  - (iii) a rate index or a specified index;
- (d) any interest-bearing arrangement; and
- (e) any financial arrangement based on or determined with reference to the time value of money or cash flow or the exchange or transfer of an asset;

[Definition of 'financial instrument' inserted by s. 6 (1) (h) of Act 74 of 2002.]

**'financial year'**, in relation to any company, means-

- (a) the period, whether of 12 months or not, commencing upon the date of incorporation or creation of such company and ending upon the last day of February immediately succeeding such date or upon such other date as the Commissioner having regard to the circumstances of the case may approve; or
- (b) any period subsequent to the period referred to in paragraph (a), whether of 12 months or not, commencing immediately after the last day of the immediately preceding financial year of such company and ending upon the first anniversary of such last day or upon such other date as the Commissioner having regard to the circumstances of the case may approve;

[Definition of 'financial year' inserted by s. 1 (a) of Act 6 of 1963 and substituted by s. 6 (1) (a) of Act 89 of 1969 and by s. 2 (1) (a) of Act 94 of 1983.]

**'foreign dividend'** means any dividend received by or which accrued to any person from a foreign company as defined in section 9D;

[Definition of 'foreign dividend' inserted by s. 12 (1) (e) of Act 45 of 2003.]

**'foreign equity instrument'** means-

- (a) a share or depository receipt in respect of a share listed on any-
  - (i) stock exchange contemplated in paragraph (b) of the definition of 'listed company';
  - (ii) any national, regional or local exchange outside the Republic which is comparable to a stock exchange contemplated in subparagraph (i); or
  - (iii) any interdealer quotation system outside the Republic that regularly publishes or releases firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise;

[Para. (a) substituted by s. 6 (1) (i) of Act 74 of 2002.]

- (b) a participatory interest in an arrangement or scheme contemplated in paragraph (e) (ii) of the definition of 'company' in section 1;

[Para. (b) substituted by s. 6 (1) (i) of Act 74 of 2002.]

- (c) any other contractual right or obligation which derives its value from any specified index outside the Republic; or
- (d) any coin made mainly from gold or platinum,

and any option, future or contract relating to such share, participatory interest, investment or contractual right or obligation or coin;

[Definition of 'foreign equity instrument' inserted by s. 17 (1) (a) of Act 60 of 2001 and amended by s. 6 (1) (j) of Act 74 of 2002.]

**'gross income'**, in relation to any year or period of assessment, means-

- (i) in the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident; or

- (ii) in the case of any person other than a resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such person from a source within or deemed to be within the Republic,
- during such year or period of assessment, excluding receipts or accruals of a capital nature, but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described hereunder, namely -
- (a) any amount received or accrued by way of annuity, including any amount contemplated in the definition of 'annuity amount' in section 10A (1);  
[Para. (a) substituted by s. 2 (1) (e) of Act 113 of 1993.]
- (b) any amount payable to the taxpayer by his spouse or former spouse, under any judicial order or written agreement of separation or under any order of divorce, by way of alimony or allowance or maintenance of the taxpayer or any children;
- (c) any amount, including any voluntary award, received or accrued in respect of services rendered or to be rendered or any amount (other than an amount referred to in section 8 (1)) received or accrued in respect of or by virtue of any employment or the holding of any office: Provided that-
- (i) the provisions of this paragraph shall not apply in respect of any benefit or advantage in respect of which the provisions of paragraph (i) apply;  
[Para. (i) substituted by s. 2 (1) (b) of Act 96 of 1985.]
- (ii) any amount received by or accrued to or for the benefit of any person in respect of services rendered or to be rendered by any other person shall for the purposes of this definition be deemed to have been received by or to have accrued to the said other person;
- (iii) to (vi) inclusive .....  
[Sub-paras. (iii) to (vi) inclusive deleted by s. 9 (a) of Act 30 of 2002.]
- [Para. (c) amended by s. 3 (d) of Act 90 of 1962, by s. 5 (a) of Act 55 of 1966 and by s. 4 (1) (h) of Act 69 of 1975 and substituted by s. 2 (1) (f) of Act 121 of 1984.]
- (cA) any amount received by or accrued to any person who-
- (i) is a natural person;
- (ii) is or was a labour broker as defined in the Fourth Schedule (other than a labour broker in respect of which a certificate of exemption has been issued in terms of that Schedule);
- (iii) is or was a personal service company as defined in the Fourth Schedule; or
- (iv) is or was a personal service trust as defined in the Fourth Schedule, as compensation for any restraint of trade imposed on such person;  
[Para. (cA) inserted by s. 13 (1) (f) of Act 30 of 2000.]
- (d) any amount, including any voluntary award, received or accrued in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of any office or employment or of any appointment (or right or claim to be appointed) to any office or employment: Provided that-
- (i) the provisions of this paragraph shall not apply to any lump sum award from any pension fund, provident fund or retirement annuity fund;
- (ii) any such amount which becomes payable in consequence of or following upon the death of any person shall be deemed to be an amount which accrued to such person immediately prior to his death;  
[Para. (d) amended by s. 2 (1) (b) of Act 65 of 1986.]
- (e) any amount determined in accordance with the provisions of the Second Schedule (other than any amount included under paragraph (eA)), in respect of lump sum benefits received by or accrued to such person from or in consequence of his membership or past membership of-
- (i) any fund which has in respect of the current or any previous year of assessment been approved by the Commissioner, whether under this Act or any previous Income Tax Act, as a pension fund, provident fund or retirement annuity fund; or
- (ii) a fund referred to in paragraph (a) or (b) of the definition of 'pension fund', if such person was a member or past member of such fund during any such year: Provided that the provisions of paragraph (g) of subsection (1) of section *nine* shall

*mutatis mutandis* apply in the case of any amount determined as aforesaid;

[Para. (e) amended by s. 3 (e) of Act 90 of 1962, by s. 4 (a) of Act 72 of 1963, by s. 2 (1) (b) of Act 94 of 1983, by s. 2 (1) (g) of Act 28 of 1997, by ss. 19 (1) (e) and (f) of Act 30 of 1998 and by s. 3 (a) of Act 19 of 2001.]

- (eA) where, in relation to a member who effectively remains in the employment of the same employer, or the dependants or nominees of a deceased member-
- (i) any amount in a fund contemplated in paragraph (a) or (b) of the definition of 'pension fund', the rules of which provide that on retirement of such member a portion of his benefit has to be taken in the form of an annuity, has been transferred to a fund, the rules of which entitle such member, or the dependants or nominees of a deceased member, to a benefit on retirement in the form of a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments and annuities); or
  - (ii) a fund contemplated in paragraph (a) or (b) of the definition of 'pension fund', the rules of which provide that on retirement of such member a portion of his benefit has to be taken in the form of an annuity, is wholly or partially converted by way of an amendment to its rules or otherwise, to entitle such member, or the dependants or nominees of a deceased member, to a benefit on retirement in the form of a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments and annuities); or
  - (iii) any amount in a fund contemplated in paragraph (a) or (b) of the definition of 'pension fund' has become payable to the member or is being utilised to redeem a debt,

[Sub-para. (iii) added by s. 19 (1) (i) of Act 30 of 1998.]

an amount equal to two-thirds-

- (aa) of the amount so transferred; or
- (bb) in the case of a conversion, of the amount representing the amount converted for the benefit or ultimate benefit of the member or the dependants or nominees of the deceased member, and such amount shall be deemed to have been received by or accrued to or in favour of such member, dependants or nominees, as the case may be: Provided that where a court granting a decree of divorce in respect of such member has made an order that any part of such amount shall be paid to the former spouse of such member, as provided for in section 7 (8) of the Divorce Act, 1979 (Act 70 of 1979), such part shall for the purposes of this paragraph be deemed to be an amount converted for the benefit or ultimate benefit of such member; or

[Sub-para. (bb) substituted by s. 10 (1) (i) of Act 53 of 1999 and amended by s. 17 (1) (b) of Act 60 of 2001.]

- (cc) in the case of an amount becoming payable to a member or being utilised to redeem a debt, of the amount so payable or so utilised:

[Item (cc) added by s. 19 (1) (k) of Act 30 of 1998.]

Provided that the Commissioner may, on application by a fund, in particular circumstances, increase the proportion of one-third contemplated in subparagraph (i) up to a maximum of one-half on the following conditions:

- (a) that on 12 March 1997 the proportion of the benefit on retirement in such fund that could be taken in the form of a lump sum was greater than one-third, but not greater than one-half, of the total capitalized value of all benefits;
- (b) that the rules of such fund are amended so that the maximum proportion of such member's benefit on retirement that can be taken in the form of a lump sum is one-third of the total capitalized value of all benefits; and
- (c) such further conditions as the Commissioner may determine from time to time;

[Para. (eA) inserted by s. 4 (1) (a) of Act 90 of 1972, substituted by s. 4 (1) (a) of Act 65 of 1973, deleted by s. 2 (1) (f) of Act 113 of 1993, inserted by s. 2 (1) (h) of Act 28 of 1997 and amended by s. 19 (1) (g) of Act 30 of 1998.]

- (eB) any amount received by or accrued to any person by way of any distribution by any pension fund or provident fund to such person (other than any amount recoverable in terms of the provisions of section 37D of the Pension Funds Act, 1956 (Act 24 of 1956)),

where such person or any other person from whom such person received the right to participate in such fund or distribution has during such year or any previous year of assessment as an employer contributed any sum to such fund for the benefit of its employees or former employees;

[Para. (eB) inserted by s. 13 (1) (g) of Act 30 of 2000.]

- (f) any amount received or accrued in commutation of amounts due under any contract of employment or service;
- (g) any amount received or accrued from another person, as premium or like consideration-
  - (i) for the use or occupation or the right of use or occupation of land or buildings; or
  - (ii) for the use or the right of use of plant or machinery; or
  - (ii) *bis* for the use or the right of use of any motion picture film or any film or video tape or disc for use in connection with television or any sound recording or advertising matter connected with such motion picture film, film or video tape or disc; or
  - (iii) for the use or right of use of any patent as defined in the Patents Act, 1978 (Act 57 of 1978), or any design as defined in the Designs Act, 1993 (Act 195 of 1993), or any trade mark as defined in the Trade Marks Act, 1993 (Act 194 of 1993), or any copyright as defined in the Copyright Act, 1978 (Act 98 of 1978), or any model, pattern, plan, formula or process or any other property or right of a similar nature; and

[Sub-para. (iii) substituted by s. 2 (1) (a) of Act 129 of 1991 and by s. 10 (1) (j) of Act 53 of 1999.]

[Para. (g) amended by s. 3 (f) and (g) of Act 90 of 1962 and by s. 6 (1) (b) of Act 89 of 1969 and substituted by s. 4 (1) (b) of Act 65 of 1973.]

- (gA) any amount received or accrued from another person as consideration (or payment of like nature) for the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information, or for the rendering of or the undertaking to render any assistance or service in connection with the application or utilization of such knowledge or information;

[Para. (gA) inserted by s. 4 (1) (c) of Act 65 of 1973 and substituted by s. 2 (d) of Act 59 of 2000.]

- (h) in the case of any person to whom, in terms of any agreement relating to the grant to any other person of the right of use or occupation of land or buildings, or by virtue of the cession of any rights under any such agreement, there has accrued in any such year or period the right to have improvements effected on the land or to the buildings by any other person-
  - (i) the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements; or
  - (ii) if no amount is so stipulated, an amount representing the fair and reasonable value of the improvements;

[Sub-para. (ii) substituted by s. 2 (1) (g) of Act 113 of 1993.]

- (i) the cash equivalent, as determined under the provisions of the Seventh Schedule, of the value during the year of assessment of any benefit or advantage granted in respect of employment or to the holder of any office, being a taxable benefit as defined in the said Schedule, and any amount required to be included in the taxpayer's income under section 8A;

[Para. (i) substituted by s. 6 (1) (c) of Act 89 of 1969, by s. 6 (a) of Act 52 of 1970 and by s. 2 (1) (g) of Act 121 of 1984.]

- (j) so much of the sum of any amounts received or accrued during any year of assessment in respect of disposals of assets the cost of which has in whole or in part been included in capital expenditure taken into account (whether under this Act or any previous Income Tax Act) for the purposes of any deduction in respect of any mine under section 15 (a) of this Act or the corresponding provisions of any previous Income Tax Act, as exceeds the sum of so much of any capital expenditure as in the case of such mine is unredeemed at the commencement of the said year of assessment and the capital expenditure that is incurred during that year in respect of such mine, as determined before applying the definition of 'capital expenditure incurred' in section 36 (11);

[Para. (j) substituted by s. 6 (1) (d) of Act 89 of 1969, by s. 4 (1) (d) of Act 65 of 1973, by s. 4 (1) (j) of Act 85 of 1974, by s. 2 (1) (c) of Act 94 of 1983 and by s. 2 (b) of Act 141 of 1992.]



- (jA) any amount received by or accrued to any person during the year of assessment from the disposal of any asset manufactured, produced, constructed or assembled by that person, which is similar to any other asset manufactured, produced, constructed or assembled by that person for purposes of manufacture, sale or exchange by that person or on that person's behalf;

[Para. (jA) inserted by s. 17 (1) (c) of Act 60 of 2001.]

- (k) any amount received or accrued by way of a dividend: Provided that where any foreign dividend declared by a foreign company -

- (i) is received by or accrues to a portfolio of a collective investment scheme referred to in paragraph (e) (i) of the definition of 'company'; and  
(ii) is distributed by that portfolio by way of a dividend, or a portion of a dividend, to any person who is entitled to that dividend by virtue of being a holder of any participatory interest in that portfolio,

that foreign dividend shall, to the extent that it is declared to that person as contemplated in subparagraph (ii), be deemed to have been declared by that foreign company directly to that person and to be a foreign dividend which is received by or accrued to that person;

[Para. (k) substituted by s. 4 (1) (c) of Act 88 of 1971, by s. 13 (1) (h) of Act 30 of 2000, by s. 2 (e) of Act 59 of 2000, by s. 17 (1) (d) of Act 60 of 2001 and by s. 12 (1) (f) of Act 45 of 2003.]

- (l) any amount received or accrued by way of grant or subsidy in respect of any soil erosion works referred to in section 17A (1) or any of the matters mentioned in items (a) to (i), inclusive, of paragraph 12 (1) of the First Schedule;

[Para. (l) substituted by s. 5 (b) of Act 76 of 1968, by s. 4 (1) (c) of Act 113 of 1977 and by s. 2 (1) (h) of Act 113 of 1993.]

- (lA) .....

[Para. (lA) inserted by s. 5 of Act 95 of 1967 and deleted by s. 2 (c) of Act 141 of 1992.]

- (lB) any amount received by or accrued to or in favour of any person from the State by way of a subsidy or reimbursement under any scheme designed to encourage the establishment, expansion or carrying on of industrial or commercial undertakings in an economic development area;

[Para. (lB) inserted by s. 3 (1) (a) of Act 91 of 1982.]

- (m) any amount received or accrued under or upon the surrender or disposal of, or by way of any loan or advance granted on or after 1 July 1982 by the insurer concerned under or upon the security of, any policy of insurance upon the life of any person who, at any time while the policy was in force, was an employee of the taxpayer or, where the taxpayer is a company, was a director or employee of that company, if any premium paid in respect of such policy is or was deductible from the taxpayer's income, whether in the current or any previous year of assessment, under the provisions of section 11: Provided that where any amount received or accrued under or upon the surrender or disposal of any such policy falls to be included in the taxpayer's gross income, the amount so to be included in his gross income shall be reduced by the amount of any loan or advance under or upon the security of that policy which has been included in his gross income, whether in the current or any previous year of assessment: Provided further that where any such policy has been terminated by the insurer and a paid-up policy has been issued the terminated policy and the paid-up policy shall for the purposes of this paragraph be deemed to be one and the same policy;

[Para. (m) substituted by s. 4 (1) (d) of Act 88 of 1971 and by s. 3 (1) (b) of Act 91 of 1982 and amended by s. 2 (1) (d) of Act 94 of 1983.]

- (n) any amount which in terms of any other provision of this Act is specifically required to be included in the taxpayer's income, and for the purposes of this paragraph all amounts which in terms of subsection (4) of section *eight* are required to be included in the taxpayer's income shall be deemed to have been received by or to have been accrued to the taxpayer from a source within the Republic notwithstanding that such amounts may have been recovered or recouped outside the Republic:

Provided that where during any year of assessment the taxpayer has become entitled to any amount which is payable on a date or dates falling after the last day of such year, there shall be deemed to have accrued to him during such year-

- (a) if the taxpayer has on or before 23 May 1990 submitted a return of income drawn on the basis that the present value of such amount has accrued to him during such year, the present value of such amount; or
- (b) in any other case, such amount:

Provided further that where the provisions of paragraph (a) of the first proviso are applicable, there shall be deemed to have accrued to the taxpayer during any subsequent year of assessment in which he receives such amount or any portion thereof, a sum equal to the difference between such amount or portion thereof and the present value of such amount or portion thereof so deemed to have accrued to him during the first-mentioned year of assessment;

[Definition of 'gross income' amended by s. 2 (1) (a) of Act 101 of 1990 and by s. 2 (c) of Act 59 of 2000.]

**'group of companies'** means two or more companies in which one company (hereinafter referred to as the 'controlling group company') directly or indirectly holds shares in at least one other company (hereinafter referred to as the 'controlled group company'), to the extent that-

- (a) at least 75 per cent of the equity shares of each controlled group company are directly held by the controlling group company, one or more other controlled group companies or any combination thereof; and
- (b) the controlling group company directly holds 75 per cent or more of the equity shares in at least one controlled group company;

[Definition of 'group of companies' inserted by s 6 (1) (k) of Act 74 of 2002.]

**'hotel keeper'** means any person carrying on the business of hotel keeper or boarding or lodging house keeper where meals and sleeping accommodation are supplied to others for money or its equivalent;

[Definition of 'hotel keeper' substituted by s. 6 (1) (e) of Act 89 of 1969 and by s. 2 (b) of Act 36 of 1996.]

**'income'** means the amount remaining of the gross income of any person for any year or period of assessment after deducting therefrom any amounts exempt from normal tax under Part I of Chapter II;

**'insolvent estate'** means an insolvent estate as defined in section 2 of the Insolvency Act, 1936 (Act 24 of 1936);

[Definition of 'insolvent estate' inserted by s. 2 (1) (i) of Act 28 of 1997.]

**'international headquarter company'** .....

[Definition of 'international headquarter company' inserted by s. 2 (f) of Act 59 of 2000 and deleted by s. 12 (1) (g) of Act 45 of 2003.]

**'listed company'** means a company where its shares or depository receipts in respect of its shares are listed on-

- (a) an exchange as defined in section 1 and licensed under section 10 of the Securities Services Act, 2004; or
- (b) a stock exchange in a country other than the Republic which has been recognised by the Minister as contemplated in paragraph (c) of the definition of 'recognised exchange' in paragraph 1 of the Eighth Schedule;

[Definition of 'listed company' inserted by s 6 (1) (l) of Act 74 of 2002.]

**'local authority'** means-

- (a) any rural council, municipal council, town council, village council, town board, local board, village management board, health committee or school board or any district council;
- (b) the Rand Water Board, the Far West Rand Dolomitic Water Association formed on 6 July 1964, any water board constituted in terms of section 108 (2) of the Water Act, 1956 (Act 54 of 1956), or regional water services corporation, or any other institution which has powers similar to those of any such water board or water services corporation; and
- (c) any regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act 109 of 1985), or any joint services board established under section 4 of the KwaZulu and Natal Joint Services Act, 1990 (Act 84 of 1990);

[Definition of 'local authority' amended by s. 4 (b) of Act 72 of 1963 and substituted by s. 5 (a) of Act 88 of 1965 and by s. 2 (d) of Act 141 of 1992.]

**'married'** .....

[Definition of 'married' deleted by s. 5 (e) of Act 5 of 2001.]

**'married person'** .....

[Definition of 'married person' substituted by s. 3 (h) of Act 90 of 1962, by s. 5 (b) of Act 88 of 1965, by s.

4 (1) (e) of Act 88 of 1971 and by s. 4 (1) (b) of Act 90 of 1972 and amended by s. 2 (1) of Act 104 of 1980, by s. 1 of Act 30 of 1984, by s. 2 (a) of Act 90 of 1988 and by s. 2 (a) of Act 70 of 1989 and deleted by s. 2 (b) of Act 21 of 1995.]

'**married woman**' does not include a married woman who is living apart from her husband in circumstances which indicate that the separation is likely to be permanent;  
[Definition of 'married woman' inserted by s. 2 (b) of Act 70 of 1989 and substituted by s. 5 (f) of Act 5 of 2001.]

'**mining for gold**' or '**to mine for gold**' includes mining for uranium or to mine for uranium;  
'**mining operations**' and '**mining**' include every method or process by which any mineral (including natural oil) is won from the soil or from any substance or constituent thereof;  
[Definition of 'mining operations' and 'mining' amended by s. 4 (c) of Act 72 of 1963.]

'**Minister**' means the Minister of Finance;  
[Definition of 'Minister' inserted by s. 13 (1) (i) of Act 30 of 2000.]

'**mutual building society**' means a mutual building society registered under the Mutual Building Societies Act, 1965 (Act 24 of 1965);  
[Definition of 'mutual building society' inserted by s. 1 (1) (c) of Act 108 of 1986.]

'**natural oil**' means any liquid or solid hydrocarbon or combustible gas existing in a natural condition in the earth's crust, but does not include coal or bituminous shales or other stratified deposits from which oil can be obtained by destructive distillation, or gas arising from marsh or other surface deposits;

[Definition of 'natural oil' inserted by s. 4 (d) of Act 72 of 1963.]

'**neighbouring country**' means Botswana, Lesotho, Namibia and Swaziland;  
[Definition of 'neighbouring country' inserted by s. 2 (1) (a) of Act 85 of 1987 and substituted by s. 2 (e) of Act 141 of 1992 and by s. 2 (c) of Act 36 of 1996.]

'**new deep level gold mine**' .....  
[Definition of 'new deep level gold mine' deleted by s. 2 (c) of Act 70 of 1989.]

'**new gold mine**' .....  
[Definition of 'new gold mine' amended by s. 4 (e) of Act 72 of 1963 and deleted by s. 2 (c) of Act 70 of 1989.]

'**nominal value**' means-

- (a) in relation to shares issued by a company-
  - (i) if the shares have a par value, such par value; or
  - (ii) if the shares do not have a par value, an amount equal to the amount at which the par value of those shares would be determined if the company were to convert the shares into shares having a par value:

Provided that in the case of capitalization shares the nominal value thereof at the time of the issue thereof shall be deemed to be the amount of the company's reserves (including any share premium account) and unappropriated profits applied in paying up such shares as contemplated in the definition of 'capitalization shares' in this section and the amount of such reserves applied in paying up any share premium in respect of the said shares; or in relation to bonus debentures or securities issued by a company, the amount of the company's reserves or unappropriated profits applied in paying up such debentures or securities as contemplated in the definition of 'bonus debentures or securities' in this section;

[Definition of 'nominal value' inserted by s. 4 (1) (k) of Act 85 of 1974.]

'**other deep level gold mine**' means any producing gold mine in respect of which the Government Mining Engineer has upon application made to him recognized on or before 22 May 1989 that its principal object is the mining of gold bearing ores at vertical depths exceeding 2286 metres from the surface and in respect of which he is satisfied, at the time the application is lodged with him, that mining at such depths has commenced or will be commenced within a period of five years;

[Definition of 'other deep level gold mine' substituted by s. 2 (d) of Act 70 of 1989.]

'**pension fund**' means-

- (a) (i) any superannuation, pension, provident or dependants' fund or pension scheme established by law; or
- (ii) any superannuation, pension, provident or dependants' fund or pension scheme established for the benefit of the employees of any local authority; or

(iii) any fund contemplated in subparagraph (ii) which includes as members employees of any municipal entity created in accordance with the provisions of the Municipal Systems Act, 2000 (Act 32 of 2000), over which one or more local authorities exercise ownership control as contemplated by that Act, where such fund was established-

- (aa) on or before 14 November 2000, and such employees were employees of a local authority immediately prior to becoming employees of such municipal entity; or
- (bb) after 14 November 2000, and such fund has been approved by the Commissioner subject to such limitations, conditions and requirements as contemplated in paragraph (c);

[Sub-para. (iii) substituted by s. 6 (1) (m) of Act 74 of 2002.]

[Para. (a) substituted by s. 2 (c) of Act 21 of 1995 and by s. 3 (b) of Act 19 of 2001.]

(b) with effect from a date determined by the Commissioner in relation to any fund hereinafter referred to (not being a date earlier than 4 December 1981), any pension fund established for the benefit of employees of a control board as defined in section 1 of the Marketing of Agricultural Products Act, 1996 (Act 47 of 1996), or for the benefit of employees of the Development Bank of Southern Africa, if the Commissioner is satisfied that the rules of such fund are in all material respects identical to those of the Government Employees' Pension Fund; or

[Para. (b) substituted by s. 2 (1) (c) of Act 96 of 1985 and by s. 2 (1) (j) of Act 28 of 1997.]

(c) the Municipal Councillors Pension Fund provisionally registered under the Pension Funds Act, 1956 (Act 24 of 1956), on 23 May 1988, or any fund (other than a retirement annuity fund or a fund contemplated in paragraph (a) or (b) which is approved by the Commissioner in respect of the year of assessment in question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of the said Act: Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine, and shall not approve a fund in respect of any year of assessment unless he is in respect of that year of assessment satisfied-

(i) that the fund is a permanent fund *bona fide* established for the purpose of providing annuities for employees on retirement from employment or for the dependants or nominees of deceased employees, or mainly for the said purpose and also for the purpose of providing benefits other than annuities for the persons aforesaid; and

[Para. (i) substituted by s. 2 (d) of Act 21 of 1995.]

(ii) that the rules of the fund provide-

- (aa) that all annual contributions of a recurrent nature to the fund shall be in accordance with specified scales;
- (bb) that membership of the fund throughout the period of employment shall be a condition of the employment by the employer of all persons of the class or classes specified therein who enter his employment on or after the date upon which the fund comes into operation;
- (cc) that persons who immediately prior to the said date were employed by the employer and who on the said date fall within the said class or classes may, on application made within a period of not more than 12 months as from the said date, be permitted to become members of the fund on such conditions as may be specified in the rules;
- (dd) that not more than one-third of the total value of the annuity or annuities to which any employee becomes entitled, may be commuted for a single payment, except where the annual amount of such annuity or annuities does not exceed R1 800 or such other amount as the Minister of Finance may from time to time fix by notice in the *Gazette*;

[Sub-para. (dd) substituted by s. 2 (1) (b) of Act 101 of 1990 and amended by s. 2 (1) (i) of Act 113 of 1993.]

(ee) for the administration of the fund in such a manner as to preclude the employer from controlling the management or assets of the fund and from

deriving any monetary advantage from moneys paid into or out of the fund, except-

- (A) any monetary advantage approved by the Registrar of Pension Funds; or
- (B) that where the employer is a partnership, a member of the partnership may be permitted to derive such monetary advantage if he was previously an employee and, on becoming a partner, was permitted to retain his membership of the fund as though he had not ceased to be an employee, his contributions being based upon his pensionable emoluments during the 12 months which ended on the day on which he ceased to be an employee and his benefits from the fund being calculated accordingly;

[Item (ee) substituted by s. 2 (g) of Act 59 of 2000.]

- (ff) that the Commissioner shall be notified of all amendments of the rules; and
- (gg) that no portion of any annuity payable to the dependant or nominee of a deceased member shall be commuted later than six months from the date of the death of such member; and

[Sub-para. (gg) substituted by s. 2 (e) of Act 21 of 1995.]

- (iii) that the rules of the fund have been complied with;

[Para. (c) amended by s. 2 (1) (c) of Act 65 of 1986 and by s. 1 (1) of Act 99 of 1988.]

[Definition of 'pension fund' amended by s. 3 (i) of Act 90 of 1962, by s. 4 (1) (c) of Act 90 of 1972, by s. 3 (1) (c) of Act 101 of 1978, by s. 3 (1) (c) of Act 104 of 1979 and by s. 3 (1) (c) of Act 91 of 1982 and substituted by s. 2 (1) (e) of Act 94 of 1983.]

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

[Definition of 'permanent establishment' inserted by s. 5 (g) of Act 5 of 2001.]

**'person'** includes an insolvent estate, the estate of a deceased person and any trust;

[Definition of 'person' substituted by s. 2 (1) (b) of Act 129 of 1991, by s. 2 (f) of Act 141 of 1992 and by s. 2 (1) (k) of Act 28 of 1997.]

**'post-1966 gold mine'** .....

[Definition of 'post-1966 gold mine' inserted by s. 5 (b) of Act 55 of 1966 and deleted by s. 2 (1) (c) of Act 129 of 1991.]

**'post-1973 gold mine'** means an independent workable proposition in respect of which the State President or the Minister of Mines has, after 1 January, 1974, on the recommendation of the Mining Leases Board signified in writing his decision to grant a lease of the right to mine for gold, and includes any other gold mine which, in the opinion of the Government Mining Engineer, is an independent workable proposition which was established as such after the said date;

[Definition of 'post-1973 gold mine' inserted by s. 4 (1) (l) of Act 85 of 1974.]

**'post-1990 gold mine'** means a gold mine which, in the opinion of the Director-General: Mineral and Energy Affairs, is an independent workable proposition and in respect of which a mining authorization for gold mining was issued for the first time after 14 March 1990;

[Definition of 'post-1990 gold mine' inserted by s. 2 (1) (c) of Act 101 of 1990 and amended by s. 2 (g) of Act 141 of 1992.]

**'prescribed'** means prescribed or deemed to be prescribed by or under this Act;

**'prescribed rate'** in relation to any interest payable in terms of this Act, means for the purposes

of-

- (a) interest payable to any taxpayer under the provisions of section 89*quat* (4), a rate determined at four percentage points below the rate contemplated in paragraph (b); or
- (b) any other provision of this Act, such rate as the Minister may from time to time fix by notice in the *Gazette* in terms of section 80 (1) (b) of the Public Finance Management Act, 1999 (Act 1 of 1999): Provided that where the Minister fixes a new rate in terms of that Act, that new rate applies for purposes of this Act from the first day of the second month following the date on which that new rate came into operation;

[Para. (b) substituted by s. 3 of Act 16 of 2004.]

[Definition of 'prescribed rate' inserted by s. 2 (1) (h) of Act 121 of 1984, substituted by s. 2 (1) (b) of Act

85 of 1987, amended by GN R780 of 14 April 1989, by s. 2 (1) (j) of Act 113 of 1993, by GN 465 of 11 March 1994, by GN 1503 of 20 November 1998, by GN 538 of 22 April 1999, by GN R1021 of 27 August 1999 and by GN 182 of 25 February 2000 and substituted by s. 13 (1) (j) of Act 30 of 2000 and by s. 6 (1) (n) of Act 74 of 2002 .]

**'provident fund'** means any fund (other than a pension fund, benefit fund or retirement annuity fund) which is approved by the Commissioner in respect of the year of assessment in question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of the Pension Funds Act, 1956 (Act 24 of 1956): Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine, and shall not approve a fund in respect of any year of assessment unless he is in respect of that year of assessment satisfied-

- (a) that the fund is a permanent fund *bona fide* established solely for the purpose of providing benefits for employees on retirement from employment or solely for the purpose of providing benefits for employees on retirement from employment or solely for the purpose of providing benefits for the dependants or nominees of deceased employees or deceased former employees or solely for a combination of such purposes; and

[Para. (a) substituted by s. 2 (f) of Act 21 of 1995.]

- (b) that the rules of the fund contain provisions similar in all respects to those required to be contained in the rules of a pension fund in terms of subparagraphs (aa), (bb), (cc), (ee) and (ff) of paragraph (ii) of the proviso to paragraph (c) of the definition of 'pension fund'; and

[Para. (b) substituted by s. 2 (1) (f) of Act 94 of 1983.]

- (c) that the rules of the fund have been complied with;

[Definition of 'provident fund' amended by s. 2 (1) (d) of Act 65 of 1986.]

**'Public Private Partnership'** means a Public Private Partnership as defined in regulation 16 of the Treasury Regulations issued in terms of section 76 of the Public Finance Management Act, 1999 (Act 1 of 1999);

[Definition of 'Public Private Partnership' inserted by s. 3 (1) (c) of Act 32 of 2004.]

**'qualifying statutory rate'** .....

[Definition of 'qualifying statutory rate' inserted by s. 6 (1) (o) of Act 74 of 2002 and deleted by s. 12 (1) (h) of Act 45 of 2003.]

**'regulation'** means a regulation in force under this Act;

**'relative'** in relation to any person, means the spouse of such person or anybody related to him or his spouse within the third degree of consanguinity, or any spouse of anybody so related, and for the purpose of determining the relationship between any child referred to in the definition of 'child' in this section and any other person, such child shall be deemed to be related to its adoptive parent within the first degree of consanguinity;

[Definition of 'relative' inserted by s. 4 (c) of Act 90 of 1964.]

**'representative taxpayer'** means-

- (a) in respect of the income of a company, the public officer thereof;
- (b) in respect of the income under his management, disposition or control, the agent of any person, including an agent appointed as such under the provisions of section *ninety-nine*, and for the purposes of this paragraph the term 'agent' includes every person in the Republic having the receipt, management or control of income on behalf of any person permanently or temporarily absent from the Republic or remitting or paying income to or receiving moneys for such person;
- (c) in respect of income the subject of any trust or in respect of the income of any minor or mentally disordered or defective person or any other person under legal disability, the trustee, guardian, curator or other person entitled to the receipt, management, disposal or control of such income or remitting or paying to or receiving moneys on behalf of such person under disability;
- (d) in respect of income paid under the decree or order of any court or judge to any receiver or other person, such receiver or person, whoever may be entitled to the benefit of such income, and whether or not it accrues to any person on a contingency or an uncertain event;
- (e) in respect of the income received by or accrued to any deceased person during his lifetime and the income received by or accrued to the estate of any deceased person, the

- (f) executor or administrator of the estate of such deceased person,  
in respect of the income received by or accrued to an insolvent estate, the trustee or administrator of such insolvent estate,

[Para. (f) added by s. 2 (1) (l) of Act 28 of 1997.]

but nothing in this definition shall be construed as relieving any person from any liability, responsibility or duty imposed upon him by this Act: Provided that for the purposes of this definition income includes any amount received or accrued or deemed to have been received or accrued in consequence of the disposal of any asset envisaged in the Eighth Schedule;

[Definition of 'representative taxpayer' amended by s. 5 (h) of Act 5 of 2001.]

**'Republic'** means the Republic of South Africa;

[Definition of 'Republic' inserted by s. 6 (1) (f) of Act 89 of 1969, substituted by s. 6 (b) of Act 52 of 1970 and by s. 4 (1) (d) of Act 90 of 1972 and amended by s. 4 (1) (m) of Act 85 of 1974 and by s. 2 (1) (g) of Act 94 of 1983.]

**'resident'** means any-

- (a) natural person who is -
- (i) ordinarily resident in the Republic; or
  - (ii) not at any time during the relevant year of assessment ordinarily resident in the Republic, if that person was physically present in the Republic-
    - (aa) for a period or periods exceeding 91 days in aggregate during the relevant year of assessment, as well as for a period or periods exceeding 91 days in aggregate during each of the three years of assessment preceding such year of assessment; and
    - (bb) for a period or periods exceeding 549 days in aggregate during such three preceding years of assessment,
 in which case that person will be a resident with effect from the first day of that relevant year of assessment:

Provided that-

- (A) a day shall include a part of a day, but shall not include any day that a person is in transit through the Republic between two places outside the Republic and that person does not formally enter the Republic through a 'port of entry' as contemplated in section 9 (1) of the Immigration Act, 2002 (Act 13 of 2002), or at any other place in the case of a person authorised by the Minister of Home Affairs in terms of section 31 (2) (c) of that Act; and

[Item (A) substituted by s. 6 (1) (p) of Act 74 of 2002 and by s. 12 (1) (k) of Act 45 of 2003.]

- (B) where a person who is a resident in terms of this subparagraph is physically outside the Republic for a continuous period of at least 330 full days immediately after the day on which such person ceases to be physically present in the Republic, such person shall be deemed not to have been a resident from the day on which such person so ceased to be physically present in the Republic; or

[Sub-para. (ii) amended by s. 12 (1) (i) and (j) of Act 45 of 2003.]

- (b) person (other than a natural person) which is incorporated, established or formed in the Republic or which has its place of effective management in the Republic;

[Para. (b) substituted by s. 12 (1) (l) of Act 45 of 2003.]

but does not include any person who is deemed to be exclusively a resident of another country for purposes of the application of any agreement entered into between the governments of the Republic and that other country for the avoidance of double taxation;

[Definition of 'resident' inserted by s. 2 (h) of Act 59 of 2000 and amended by s. 33 (1) of Act 12 of 2003.]

**'retirement annuity fund'** means any fund (other than a pension fund, provident fund or benefit fund) which is approved by the Commissioner in respect of the year of assessment in question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of the Pension Funds Act, 1956 (Act 24 of 1956): Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine, and shall not approve any fund in respect of any year of assessment unless he is in respect of that year of assessment satisfied-

- (a) that the fund is a permanent fund *bona fide* established for the sole purpose of providing

life annuities for the members of the fund or annuities for the dependants or nominees of deceased members; and

[Para. (a) substituted by s. 2 (g) of Act 21 of 1995.]

(b) that the rules of the fund provide-

(i) for contributions by the members, including contributions made by way of transfer of members' interests in approved pension funds, provident funds or other retirement annuity funds;

[Sub-para. (i) amended by s. 4 (d) of Act 90 of 1964 and substituted by s. 2 of Act 96 of 1981.]

(ii) that not more than one-third of the total value of any annuities to which any person becomes entitled, may be commuted for a single payment, except where the annual amount of such annuities does not exceed R1 800 or such other amount as the Minister of Finance may from time to time fix by notice in the *Gazette*;

[Sub-para. (ii) substituted by s. 4 (1) (e) of Act 90 of 1972, amended by s. 3 (1) (d) of Act 91 of 1982, substituted by s. 2 (1) (d) of Act 101 of 1990 and amended by s. 2 (1) (k) of Act 113 of 1993.]

(iii) that no portion of any annuity payable to the dependant or nominee of a deceased member may be commuted later than six months from the date of the death of such member;

[Sub-para. (iii) substituted by s. 2 (h) of Act 21 of 1995.]

(iv) adequate security to safeguard the interests of persons who may become entitled to annuities;

(v) that no member shall become entitled to the payment of any annuity after he reaches the age of seventy years or, except in the case of a member who becomes permanently incapable through infirmity of mind or body of carrying on his occupation, before he reaches the age of fifty-five years;

(vi) that where a member dies before he becomes entitled to the payment of an annuity, the benefits shall not exceed a refund to his estate or to his dependants or nominees of the sum of the amounts (with or without reasonable interest thereon) contributed by him and an annuity or annuities to his dependants or nominees;

[Sub-para. (vi) substituted by s. 2 (i) of Act 21 of 1995.]

(vii) that where a member dies after he has become entitled to an annuity no further benefit shall be payable other than an annuity or annuities to his dependants or nominees;

[Sub-para. (vii) substituted by s. 2 (i) of Act 21 of 1995.]

(viii) .....

[Sub-para. (viii) substituted by s. 6 (1) (g) of Act 89 of 1969 and deleted by s. 4 (a) of Act 103 of 1976.]

(ix) .....

[Sub-para. (ix) substituted by s. 6 (1) (g) of Act 89 of 1969 and deleted by s. 4 (a) of Act 103 of 1976.]

(x) that a member who discontinues his contributions prematurely shall be entitled either to an annuity (payable from the date on which he would have become entitled to the payment of an annuity if he had continued his contributions) determined in relation to his actual contributions or to be reinstated as a full member under conditions prescribed in the rules of the fund;

(xi) that upon the winding up of the fund a member's interest therein must either be used to purchase a policy of insurance which the Commissioner is satisfied provides benefits similar to those provided by such fund or be paid for the member's benefit into another approved retirement annuity fund;

(xii) that save-

(aa) as is contemplated in subparagraph (ii); or

(bb) for the transfer of any member's total interest in any approved retirement annuity fund into another approved retirement annuity fund prior to the member becoming entitled to the payment of an annuity,

no member's rights to benefits shall be capable of surrender, commutation or assignment or of being pledged as security for any loan;

[Sub-para. (xii) substituted by s. 19 (1) (l) of Act 30 of 1998.]

(xiii) that the Commissioner shall be notified of all amendments of the rules; and

(c) that the rules of the fund have been complied with;



[Definition of 'retirement annuity fund' amended by s. 2 (1) (e) of Act 65 of 1986.]

**'retirement-funding employment'** means-

- (a) in relation to any employee or the holder of an office (including a member of a body of persons whether or not established by or in terms of any law), who-
- (i) in the case of such employee, derives in respect of his employment any income constituting remuneration as defined in paragraph 1 of the Fourth Schedule (but leaving out of account the provisions of paragraph (c) of that definition and including the amount of any allowance or advance in respect of transport expenses contemplated in section 8 (1) (b), but not an allowance or advance contemplated in section 8 (1) (b) (iii) which is based on the actual distance travelled by the recipient, and which is calculated at a rate per kilometre which does not exceed the appropriate rate per kilometre fixed by the Minister of Finance under the said section 8 (1) (b) (iii)) and is a member of or, as an employee, contributes to a pension fund or provident fund established for the benefit of employees of the employer from whom such income is derived; or

[Sub-para. (i) substituted by s. 2 (1) (l) of Act 113 of 1993, by s. 2 (1) (b) of Act 21 of 1994 and by s. 6 (1) (q) of Act 74 of 2002.]

- (ii) in the case of such holder of an office, derives in respect of his office any income by way of salary, emoluments, fees or other remuneration and is, as respects such office, a member of or contributes to a pension fund or provident fund established-
- (aa) by law or for the benefit of holders of office; or
- (bb) for the benefit of employees of the person from whom such income is derived,

the employment of such employee or the holding of such office, as the case may be, as respects that part of his said income as is taken into account in the determination of the contributions made by him or on his behalf to such pension fund or provident fund; or

[Para. (a) substituted by s. 2 (1) (i) of Act 121 of 1984.]

- (b) in relation to any member of a partnership who has retained his membership of a pension fund as contemplated in paragraph (ii) (ee) of the proviso to paragraph (c) of the definition of 'pension fund' in section 1, his membership of the partnership, as respects that part of his income from the partnership in the form of his share of profits as does not exceed the amount of his pensionable emoluments contemplated in the said paragraph (ii) (ee);

[Para. (b) substituted by s. 2 (1) (h) of Act 94 of 1983.]

[Definition of 'retirement-funding employment' inserted by s. 3 (1) (d) of Act 104 of 1979.]

**'scientific research'** .....

[Definition of 'scientific research' deleted by s. 12 (1) (m) of Act 45 of 2003.]

**'Secretary'** .....

[Definition of 'Secretary' inserted by s. 4 (e) of Act 90 of 1964 and deleted by s. 2 (1) (e) of Act 104 of 1980.]

**'securities lending arrangement'** means a 'lending arrangement' as defined in the Uncertificated Securities Tax Act, 1998 (Act 31 of 1998);

[Definition of 'securities lending arrangement' inserted by s. 12 (1) (n) of Act 45 of 2003.]

**'shareholder'**-

- (a) in relation to any company referred to in paragraph (a), (b), (c) or (d) of the definition of 'company' in this section, means the registered shareholder in respect of any share, except that where some person other than the registered shareholder is entitled, whether by virtue of any provision in the memorandum or articles of association of the company or under the terms of any agreement or contract, or otherwise, to all or part of the benefit of the rights of participation in the profits, income or capital attaching to the share so registered, that other person shall, to the extent that such other person is entitled to such benefit, also be deemed to be a shareholder; or

[Para. (a) substituted by s. 12 (1) (o) of Act 45 of 2003.]

- (b) in relation to any company referred to in paragraph (e) of the said definition, the registered holder of any participatory interest included in the relevant portfolio, except that where some person other than the holder of any participatory interest is entitled,

whether by virtue of any provision in the trust deed entered into for the purposes of the relevant collective investment scheme or under the terms of any agreement or contract, or otherwise, to all or part of the benefit of the rights of participation in the profits, income or capital attaching to the participatory interest, that other person shall, to the extent that such other person is entitled to such benefit, also be deemed to be a shareholder; or

[Para. (b) substituted by s. 6 (1) (r) of Act 74 of 2002 and by s. 12 (1) (o) of Act 45 of 2003.]

(c) in relation to any close corporation, means a member of such corporation.

[Para. (c) added by s. 2 (1) (j) of Act 121 of 1984.]

[Definition of 'shareholder' substituted by s. 3 (j) of Act 90 of 1962.]

**'South African company' .....**

[Definition of 'South African Company' inserted by s. 4 (1) (w) of Act 85 of 1974, substituted by s. 4 (b) of Act 103 of 1976, by s. 2 (1) (d) of Act 96 of 1985 and by s. 2 (d) of Act 36 of 1996 and deleted by s. 2 (i) of Act 59 of 2000.]

**'South African Revenue Service'** means the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997;

[Definition of 'South African Revenue Service' inserted by s. 34 (1) of Act 34 of 1997.]

**'special trust'** means a trust created-

- (a) solely for the benefit of a person who suffers from-
  - (i) any 'mental illness' as defined in section 1 of the Mental Health Act, 1973 (Act 18 of 1973); or
  - (ii) any serious physical disability, where such illness or disability incapacitates such person from earning sufficient income for the maintenance of such person, or from managing his or her own financial affairs: Provided that where the person for whose benefit the trust was so created dies, such trust shall be deemed not to be a special trust in respect of years of assessment ending on or after the date of such person's death; or
- (b) by or in terms of the will of a deceased person, solely for the benefit of beneficiaries who are relatives in relation to that deceased person and who are alive on the date of death of that deceased person (including any beneficiary who has been conceived but not yet born on that date), where the youngest of those beneficiaries is on the last day of the year of assessment of that trust under the age of 21 years.; and

[Definition of 'special trust' inserted by s. 5 (i) of Act 5 of 2001 and substituted by s. 9 (b) of Act 30 of 2002.]

**'specified date'**, in relation to any company, means-

- (a) in respect of the year of assessment ending the thirtieth day of June, 1962, that date or, if such company's return is under the proviso to subsection (13) of section *sixty-six* accepted in respect of a period ending upon some other date, such other date; or
- (b) in respect of any other year of assessment, the last day of such other year of assessment;

[Definition of 'specified date' substituted by s. 1 (b) of Act 6 of 1963.]

**'specified period'**, in relation to a year of assessment of any company commencing on or after 1 April 1977, means-

- (a) where such year of assessment is the first financial year of such company, the period commencing on the first day of such year and ending six months after the specified date in respect of such year; and
- (b) where such year of assessment is a subsequent financial year of such company, the period commencing the day after the end of the specified period in respect of the immediately preceding year of assessment and ending six months after the specified date in respect of the year of assessment in question:

Provided that where by reason of the amalgamation under section 94 of the Co-operative Societies Act, 1939 (Act 29 of 1939), of two or more agricultural co-operative (as defined in section 27 (9) of this Act), the assets and liabilities of such co-operative have vested in a new agricultural co-operative (as so defined), the Commissioner may, having regard to the circumstances of the case, direct that the specified period of each of the co-operatives which have so amalgamated, as applicable in relation to the final year of assessment of the co-operative in question be extended so as to end on such day as the Commissioner may determine;

[Definition of 'specified period' inserted by s. 4 (1) (d) of Act 113 of 1977 and substituted by s. 3 (1) (e) of

Act 104 of 1979.]

'**spouse**', in relation to any person, means a person who is the partner of such person-

- (a) in a marriage or customary union recognised in terms of the laws of the Republic;
- (b) in a union recognised as a marriage in accordance with the tenets of any religion; or
- (c) in a same-sex or heterosexual union which the Commissioner is satisfied is intended to be permanent,

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

[Definition of 'spouse' inserted by s. 5 (j) of Act 5 of 2001.]

'**tax**' or '**the tax**' or '**taxation**' means any levy or tax leviable under this Act; and for the purposes of Part IV of Chapter III includes any levy or tax leviable under any previous Income Tax Act;

[Definition of 'tax' or 'the tax' or 'taxation' amended by s. 1 (c) of Act 6 of 1963 and substituted by s. 19 (1) (m) of Act 30 of 1998.]

'**taxable amount**' .....

[Definition of 'taxable amount' inserted by s. 4 (1) (f) of Act 88 of 1971 and deleted by s. 2 (1) (f) of Act 104 of 1980.]

'**taxable capital gain**' means an amount determined in terms of paragraph 10 of the Eighth Schedule;

[Definition of 'taxable capital gain' inserted by s. 5 (k) of Act 5 of 2001.]

'**taxable income**' means the aggregate of-

- (a) the amount remaining after deducting from the income of any person all the amounts allowed under Part I of Chapter II to be deducted from or set off against such income; and
- (b) all amounts to be included or deemed to be included in the taxable income of any person in terms of this Act;

[Definition of 'taxable income' substituted by s. 4 (1) (g) of Act 88 of 1971, by s. 2 (1) (g) of Act 104 of 1980 and by s. 5 (l) of Act 5 of 2001.]

'**taxpayer**' means any person chargeable with any tax leviable under this Act and includes every person required by this Act to furnish any return;

[Definition of 'taxpayer' amended by s. 1 (d) of Act 6 of 1963 and substituted by s. 19 (1) (n) of Act 30 of 1998 and by s. 6 (1) (s) of Act 74 of 2002.]

'**territory**' .....

[Definition of 'territory' inserted by s. 6 (1) (h) of Act 89 of 1969, substituted by s. 2 (h) of Act 141 of 1992 and deleted by s. 2 (j) of Act 59 of 2000.]

'**this Act**' includes the regulations;

'**trade**' includes every profession, trade, business, employment, calling, occupation or venture, including the letting of any property and the use of or the grant of permission to use any patent as defined in the Patents Act, 1978 (Act 57 of 1978), or any design as defined in the Designs Act, 1993 (Act 195 of 1993), or any trade mark as defined in the Trade Marks Act, 1993 (Act 194 of 1993), or any copyright as defined in the Copyright Act, 1978 (Act 98 of 1978), or any other property which is of a similar nature;

[Definition of 'trade' substituted by s. 6 (1) (i) of Act 89 of 1969, by s. 2 (1) (d) of Act 129 of 1991 and by s. 10 (1) (k) of Act 53 of 1999.]

'**trading stock**' includes -

- (a) anything-
  - (i) produced, manufactured, constructed, assembled, purchased or in any other manner acquired by a taxpayer for the purposes of manufacture, sale or exchange by him or on his behalf; or  
[Sub-para. (i) substituted by s. 17 (1) (e) of Act 60 of 2001.]
  - (ii) the proceeds from the disposal of which forms or will form part of his gross income, otherwise than in terms of paragraph (j) or (m) of the definition of 'gross income', or as a recovery or recoupment contemplated in section 8 (4) which is included in gross income in terms of paragraph (n) of that definition; or  
[Sub-para. (ii) substituted by s. 6 (1) (t) of Act 74 of 2002.]
- (b) any consumable stores and spare parts acquired by him to be used or consumed in the course of his trade,

but does not include a foreign currency option contract and a forward exchange contract as defined in section 24I (1);

[Definition of 'trading stock' substituted by s. 2 (1) (e) of Act 101 of 1990, by s. 2 (1) (m) of Act 113 of 1993 and by s. 13 (1) (k) of Act 30 of 2000.]

'**trust**' means any trust fund consisting of cash or other assets which are administered and controlled by a person acting in a fiduciary capacity, where such person is appointed under a deed of trust or by agreement or under the will of a deceased person;

[Definition of 'trust' inserted by s. 2 (i) of Act 141 of 1992.]

'**trustee**', in addition to every person appointed or constituted as such by act of parties, by will, by order of declaration of court or by operation of law, includes an executor or administrator, tutor or curator, and any person having the administration or control of any property subject to a trust, usufruct, fideicommissum or other limited interests or acting in any fiduciary capacity or having, either in a private or in an official capacity, the possession, direction, control or management of any property of any person under legal disability;

'**year of assessment**' means any year or other period in respect of which any tax or duty leviable under this Act is chargeable, and any reference in this Act to any year of assessment ending the last or the twenty-eighth or the twenty-ninth day of February shall, unless the context otherwise indicates, in the case of a company be construed as a reference to any financial year of that company ending during the calendar year in question.

[Definition of 'year of assessment' substituted by s. 1 (e) of Act 6 of 1963, amended by s. 4 (f) of Act 72 of 1963 and substituted by s. 4 (f) of Act 90 of 1964 and by s. 9 (c) of Act 30 of 2002.]

## CHAPTER I ADMINISTRATION (ss 2-4)

### 2 Act to be administered by Commissioner

#### Cases

- (1) The Commissioner shall be responsible for carrying out the provisions of this Act.
- (2) .....

[Sub-s. (2) deleted by s. 34 (1) of Act 34 of 1997.]

### 3 Exercise of powers and performance of duties

#### Cases

(1) The powers conferred and the duties imposed upon the Commissioner by or under the provisions of this Act may be exercised or performed by the Commissioner personally, or by any officer or person engaged in carrying out the said provisions under the control, direction or supervision of the Commissioner.

[Sub-s. (1) substituted by s. 13 (1) (a) of Act 45 of 2003.]

(2) Any decision made and any notice or communication issued or signed by any such officer or person may be withdrawn or amended by the Commissioner or by the officer or person concerned, and shall for the purposes of the said provisions, until it has been so withdrawn, be deemed to have been made, issued or signed by the Commissioner: Provided that a decision made by any such officer in the exercise of any discretionary power under the provisions of this Act or of any previous Income Tax Act shall not be withdrawn or amended after the expiration of three years from the date of the written notification of such decision or of the notice of assessment giving effect thereto, if all the material facts were known to the said officer when he made his decision.

[Sub-s. (2) amended by s. 3 (1) of Act 141 of 1992 and by s. 13 (1) (b) of Act 45 of 2003.]

(3) Any written decision made by the Commissioner personally in the exercise of any discretionary power under the provisions of this Act or of any previous Income Tax Act shall not be withdrawn or amended by the Commissioner if all the material facts were known to him when he made his decision.

(4) Any decision of the Commissioner under the definitions of 'benefit fund', 'pension fund', 'provident fund', 'retirement annuity fund' and 'spouse' in section 1, section 6, section 8 (4) (b), (c), (d) and (e), section 9D, section 10 (1) (cH), (cK), (e), (iA), (j) and (nB), section 11 (e), (f), (g), (gA), (j), (l), (t), (u) and (w), section 12C, section 12E, section 12G, section 13, section 14, section 15, section 22 (1), (3) and (5), section 24 (2), section 24A (6), section 24C, section 24D, section 24I, section 25D, section 27, section 30, section 31, section 35 (2), section 38 (4), section 41 (4), section 57, section 76A, paragraphs 6, 7, 9, 13, 13A, 14, 19 and 20 of the First Schedule, paragraph (b) of the definition of 'formula A' in paragraph 1 and

paragraph 4 of the Second Schedule, paragraphs 18, 19 (1), 20, 21, 24 and 27 of the Fourth Schedule, paragraphs 2, 3, 6, 9 and 11 of the Seventh Schedule and paragraphs 29 (2A), 29 (7), 31 (2), 65 (1) (d) and 66 (1) (e) of the Eighth Schedule, shall be subject to objection and appeal.

[Sub-s. (4) added by s. 3 (1) of Act 21 of 1994 and substituted by s. 3 (1) of Act 21 of 1995, by s. 20 (1) of Act 30 of 1998, by s. 3 of Act 59 of 2000, by s. 6 of Act 5 of 2001, by s. 4 of Act 19 of 2001, by s. 18 of Act 60 of 2001, by s. 7 of Act 74 of 2002, by s. 13 (1) (c) of Act 45 of 2003 and by s. 4 (a) of Act 16 of 2004.]

(5) The Commissioner may, in writing, and on such conditions as may be agreed upon between the Commissioner and the executive officer of the Financial Services Board appointed in terms of section 13 of the Financial Services Board Act, 1990 (Act 97 of 1990), delegate to that executive officer his or her power-

- (a) to approve a fund contemplated in the definition of a 'pension fund', 'provident fund' or 'retirement fund', subject to-
  - (i) any limitation or condition as may be determined by the Commissioner in terms of those definitions; and
  - (ii) the compliance by any such fund with the requirements under those definitions; and
- (b) to withdraw any such approval if any of the limitations, conditions or requirements listed in paragraph (a) are not met.

[Sub-s. (5) added by s. 4 (b) of Act 16 of 2004.]

(6) Any person aggrieved by a decision of the executive officer to approve or to withdraw an approval of a fund in terms of subsection (5) must, notwithstanding section 26 (2) of the Financial Services Board Act, 1990, lodge his or her objection with the Commissioner in the manner contemplated in Part III of Chapter III of this Act.

[Sub-s. (6) added by s. 4 (b) of Act 16 of 2004.]

(7) A decision by the executive officer against which an objection has been lodged is, for the purpose of subsection (6), deemed to be a decision of the Commissioner.

[Sub-s. (7) added by s. 4 (b) of Act 16 of 2004.]

#### **4 Preservation of secrecy**

##### **▣ Cases**

(1) Every person employed or engaged by the Commissioner in carrying out the provisions of this Act shall preserve and aid in preserving secrecy with regard to all matters that may come to his or her knowledge in the performance of his or her duties in connection with those provisions, and shall not communicate any such matter to any person whatsoever other than the taxpayer concerned or his or her lawful representative nor suffer or permit any such person to have access to any records in the possession or custody of the Commissioner except in the performance of his or her duties under this Act or by order of a competent court: Provided that -

- (a) any information obtained by the Commissioner in the performance of his duties under the provisions of this Act or any previous Income Tax Act may be used by him for the purposes of the provisions of any other fiscal law administered by him;

[Para. (a) substituted by s. 3 (a) of Act 85 of 1987 and substituted by s. 34 (1) of Act 34 of 1997.]

- (b) the Auditor-General shall in the performance of his duties in terms of section 3 of the Auditor-General Act, 1995 (Act 12 of 1995), have access to documents in the possession or custody of the Commissioner;

[Para. (b) substituted by s. 4 of Act 21 of 1994 and by s. 21 (a) of Act 30 of 1998.]

- (c) the provisions of this subsection shall not be construed as preventing the Commissioner from-
  - (i) disclosing to the Chief of the Central Statistical Services such information in relation to any person as may be required by such Chief in connection with the collection of statistics in complying with the provisions of the Statistics Act, 1976 (Act 66 of 1976), or any regulation thereunder; or
  - (ii) publishing a list of approved public benefit organisations for the purposes of the provisions of sections 18A and 30;
  - (iii) disclosing to the Governor of the South African Reserve Bank or any other person to whom the powers, functions and duties have been delegated by the Minister in

terms of Exchange Control Regulations, 1961, issued in terms of section 9 of the Currency and Exchanges Act, 1933 (Act 9 of 1933), such information as may be required for purposes of exercising any power or performing any function or duty in terms of those Regulations.

[Sub-para. (iii) added by s. 34 of Act 12 of 2003.]

[Para. (c) added by s. 3 (a) of Act 36 of 1996, deleted by s. 34 (1) of Act 34 of 1997, added by s. 21 (b) of Act 30 of 1998 and substituted by s. 11 (a) of Act 53 of 1999 and by s. 14 (a) of Act 30 of 2000.]

[Sub-s. (1) amended by s. 4 of Act 104 of 1979.]

- (d) the provisions of this subsection shall not be construed as preventing the Commissioner from disclosing to the Board administering the National Student Financial Aid Scheme, any information relating to the name and address of the employer of any borrower or bursar to whom any loan or bursary has been granted in terms of such scheme; and

[Para. (d) added by s. 11 (b) of Act 53 of 1999.]

- (e) the Commissioner shall disclose information in respect of any class of taxpayers to the Director-General of the National Treasury, to the extent necessary for the purposes of tax policy design or revenue estimation;

[Para. (e) added by s. 19 (a) of Act 60 of 2001.]

[Sub-s. (1) amended by s. 14 (a) of Act 45 of 2003.]

(1A) The Statistician-General or any person acting under the direction and control of such Statistician-General, shall not disclose any information supplied under subsection (1)(c) to any person or permit any person to have access thereto, except in the exercise of his powers or the carrying out of his duties to publish statistics in any anonymous form.

[Sub-s. (1A) inserted by s. 3 (b) of Act 85 of 1987, deleted by s. 34 (1) of Act 34 of 1997, inserted by s. 21 (c) of Act 30 of 1998 and substituted by s. 11 (c) of Act 53 of 1999.]

(1B) The Commissioner may apply *ex parte* to a judge in chambers for an order allowing him or her to disclose to the National Commissioner of the South African Police Service, contemplated in section 6 (1) of the South African Police Service Act, 1995 (Act 68 of 1995), or the National Director of Public Prosecutions, contemplated in section 5 (2) (a) of the National Prosecuting Authority Act, 1998 (Act 32 of 1998), such information, which may reveal evidence-

- (a) that an offence, other than an offence in terms of this Act or any other Act administered by the Commissioner or any other offence in respect of which the Commissioner is a complainant, has been or may be committed, or where such information may be relevant to the investigation or prosecution of such an offence, and such offence is a serious offence in respect of which a court may impose a sentence of imprisonment exceeding five years; or

- (b) of an imminent and serious public safety or environmental risk,

and where the public interest in the disclosure of the information outweighs any potential harm to the taxpayer concerned should such information be disclosed: Provided that any information, document or thing provided by a taxpayer in any return or document, or obtained from a taxpayer in terms of section 74A, 74B or 74C, which is disclosed in terms of this subsection, shall not, unless a competent court otherwise directs, be admissible in any criminal proceedings against such taxpayer, to the extent that such information, document or thing constitutes an admission by such taxpayer of the commission of an offence contemplated in paragraph (a).

[Sub-s. (1B) inserted by s. 3 (b) of Act 36 of 1996, deleted by s. 34 (1) of Act 34 of 1997 and inserted by s. 19 (b) of Act 60 of 2001.]

(1C) For the purposes of subsection (1B), the Commissioner may delegate the powers vested in him or her by that subsection, to any other officer.

[Sub-s. (1C) inserted by s. 19 (b) of Act 60 of 2001.]

(1D) The Director-General or any person acting under the direction and control of such Director-General shall not disclose any information supplied under subsection (1) (e) to any other person or permit any other person to have access thereto, except in the performance of any function contemplated in subsection (1) (e).

[Sub-s. (1D) inserted by s. 19 (b) of Act 60 of 2001.]

(1E) The National Police Commissioner or the National Director of Public Prosecutions or any person acting under the direction and control of such National Police Commissioner or National Director of Public Prosecutions, shall not disclose any information supplied under subsection (1B) to any other person

or permit any other person to have access thereto, except in the exercise of his or her powers or the carrying out of his or her duties -

- (a) for purposes of any investigation of, or prosecution for, an offence contemplated in subsection (1B); or
- (b) to combat any public safety or environmental risk contemplated in subsection (1B).

[Sub-s. (1E) inserted by s. 19 (b) of Act 60 of 2001 and substituted by s. 8 (a) of Act 74 of 2002.]

(2) (a) Every person employed or engaged as contemplated in subsection (1) shall, before acting under this Act, take and subscribe before a magistrate or justice of the peace or a commissioner of oaths, such oath or solemn declaration, as the case may be, of fidelity or secrecy as may be prescribed.

[Para. (a) substituted by s. 6 of Act 55 of 1966, amended by s. 3 of Act 96 of 1981 and substituted by s. 3 (c) of Act 36 of 1996, by s. 34 (1) of Act 34 of 1997 and by s. 14 (b) of Act 45 of 2003.]

(b) Any oath of secrecy taken and subscribed under the provisions of any previous Income Tax Act by any person who is employed in carrying out the provisions of this Act shall be deemed to be an oath taken and subscribed in terms of this subsection.

(c) The Director-General of the National Treasury, and any person acting under the direction and control of that Director-General, who performs any function as contemplated in subsection (1) (e), shall take and subscribe before a magistrate or justice of the peace or a commissioner of oaths, such oath or solemn declaration, as the case may be, of fidelity or secrecy as may be prescribed.

[Para. (c) added by s. 19 (c) of Act 60 of 2001.]

(2A) No person shall in any manner publish or make known to any other person (not being an officer carrying out his duties under the control, direction or supervision of the Commissioner) the contents or tenor of any instruction or communication given or made by the Commissioner or any such officer in the performance of his or their duties under this Act for or concerning the examination or investigation of the affairs of any taxpayer or class of taxpayers or the fact that such instruction or communication has been given or made, or any information concerning the tax matters of a taxpayer or class of taxpayers: Provided that the provisions of this subsection shall not be construed-

- (i) as preventing any taxpayer or his representative who is or may be affected by any such examination, investigation or furnishing of information from publishing or making known information concerning his own tax matters; or
- (ii) subject to the provisions of subsection (1), as in any way limiting the duties or powers of the Commissioner or any such officer; or
- (iii) as preventing any person from publishing or making known anything which has been published or made known by the taxpayer or his representative as contemplated in paragraph (i) or by the Commissioner or any such officer in the exercise of his duties or powers.

[Sub-s. (2A) inserted by s. 3 (a) of Act 70 of 1989.]

(2B) The provisions of this section shall not apply in respect of any information relating to any person, where that person has consented that such information may be published or made known to any other person.

[Sub-s. (2B) inserted by s. 19 (d) of Act 60 of 2001.]

(3) Any person who contravenes the provisions of subsection (1), (1A), (1D), (1E) or (2A), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

[Sub-s. (3) substituted by s. 3 (c) of Act 85 of 1987, by s. 3 (b) of Act 70 of 1989, by s. 3 (d) of Act 36 of 1996, by s. 34 (1) of Act 34 of 1997, by s. 14 (b) of Act 30 of 2000 and by s. 8 (b) of Act 74 of 2002.]

(4) Any person employed or engaged as contemplated in subsection (1) who carries out any provisions of the Act as contemplated in subsection (1) before he or she has taken the prescribed oath or solemn declaration shall be guilty of an offence and liable on conviction to a fine not exceeding R500.

[Sub-s. (4) substituted by s. 3 (e) of Act 36 of 1996 and by s. 14 (c) of Act 45 of 2003.]

## CHAPTER II

### THE TAXES (ss 5-64C)

#### Part I

#### Normal Tax (ss 5-37H)

## 5 Levy of normal tax and rates thereof

### Cases

(1) Subject to the provisions of the Fourth Schedule there shall be paid annually for the benefit of the National Revenue Fund, an income tax (in this Act referred to as the normal tax) in respect of the taxable income received by or accrued to or in favour of-

(a) .....

[Para. (a) deleted by s. 10 (1) (a) of Act 30 of 2002.]

(b) .....

[Para. (b) substituted by s. 10 (1) (b) of Act 30 of 2002 and deleted by s. 15 (a) of Act 45 of 2003.]

(c) any person (other than a company) during the year of assessment ended the last day of February each year; and

[Para. (c) substituted by s. 10 (1) (b) of Act 30 of 2002 and by s. 15 (b) of Act 45 of 2003.]

[Sub-s. (1) substituted by s. 5 of Act 90 of 1964 and amended by s. 5 (a) of Act 103 of 1976 and by s. 41 of Act 36 of 1996.]

(1A) Notwithstanding the provisions of subsection (1) (c)-

(a) where the income of any person for any year of assessment includes any net remuneration as defined in paragraph 11B of the Fourth Schedule, the normal tax payable by such person in respect of such year shall not be less than the sum of the amounts of Standard Income Tax on Employees required to be determined in relation to such net remuneration under the provisions of the said paragraph; and

(b) where the taxable income of any person for any year of assessment was derived solely from such net remuneration and the employees tax required to be deducted or withheld from such net remuneration under the said Schedule consisted solely of such Standard Income Tax on Employees, the normal tax payable by him in respect of such year shall be an amount equal to the sum of the amounts of such Standard Income Tax on Employees required to be so determined.

[Sub-s. (1A) inserted by s. 5 (a) of Act 88 of 1971, deleted by s. 3 (a) of Act 104 of 1980 and inserted by s. 3 of Act 90 of 1988.]

(2) Subject to the provisions of subsections (2A) and (3) to (7), inclusive, and the provisions of the Fourth Schedule, the rates of tax chargeable in respect of taxable income shall be fixed annually by Parliament, but the rates fixed by Parliament in respect of any year of assessment or financial year or, if the rates so fixed have been varied by the Minister of Finance by way of an amendment made under subsection (3), which is still in force, the rates as so varied, shall be deemed to continue in force until the next such determination or variation of rates and shall be applied for the purposes of calculating the tax payable in respect of any such taxable income received by or accrued to or in favour of any person during the next succeeding year of assessment or financial year, as the case may be, if in the opinion of the Commissioner the calculation and collection of the tax chargeable in respect of such taxable income cannot without risk of loss of revenue be postponed until after the rates for that year have been determined.

[Sub-s. (2) substituted by s. 6 (1) (a) of Act 95 of 1967, by s. 5 (b) of Act 103 of 1976 and by s. 5 (a) of Act 113 of 1977.]

(2A) (a) In the case of any company which derives taxable income from mining for natural oil, the normal tax payable in respect of such taxable income shall be determined in accordance with the rates referred to in subsection (2) which are in force in respect of the year of assessment in question, and in addition thereto there shall, in respect of such taxable income, be paid by such company, by way of additional normal tax, an amount equal to 40 per cent of the amount remaining after deducting the said amount of normal tax from such taxable income.

(b) The normal tax and the additional normal tax chargeable in respect of taxable income referred to in paragraph (a), shall be reduced to or by such an amount, and on such conditions, as the Minister of Mineral and Energy Affairs may with the concurrence of the Minister of Finance determine.

(c) For the purposes of this subsection where sulphur, salt or any other mineral is won by any company in the course of mining for natural oil, the income derived from the mining of such sulphur, salt or other mineral shall be deemed to be derived from the mining for natural oil.

[Sub-s. (2A) inserted by s. 6 (1) (b) of Act 95 of 1967 and substituted by s. 7 (a) of Act 89 of 1969, by s. 5 (b) of Act 113 of 1977 and by s. 3 (a) of Act 129 of 1991.]

(2B) (a) Notwithstanding the provisions of subsection (1), any portion of the normal tax which in terms of paragraph (b) of this subsection, the Income Tax Act, 1970, or any subsequent Income Tax Act is a loan portion of such tax and has been paid by the person concerned, shall be repayable to such person in the manner and at the time provided in the Fifth Schedule.



(b) The portions of the normal tax determined in accordance with the provisions of paragraph 1 (g) or (h) of the Schedule to the Income Tax Act, 1965 (Act 88 of 1965), paragraph 1 (g) or (h) of the Schedule to the Income Tax Act, 1966 (Act 55 of 1966), paragraph 1 (h) or (i) of the Schedule to the Income Tax Act, 1967 (Act 95 of 1967), paragraph 1 (h) or (i) of the Schedule to the Income Tax Act, 1968 (Act 76 of 1968), and paragraph 2 (h) or (i) of the Schedule to the Income Tax Act, 1969 (Act 89 of 1969), shall be loan portions of the normal tax.

[Sub-s. (2B) inserted by s. 7 of Act 52 of 1970.]

(3) After the promulgation of any Act of Parliament fixing rates of normal tax for years of assessment specified therein, before the date mentioned in subsection (6) and when Parliament is not in session the Minister of Finance may from time to time by notice in the *Gazette* amend the provisions of such Act so as to effect a variation or further variation of the said rates -

- (a) by increasing or reducing the rate at which any loan portion of the normal tax is payable in terms of the said Act; or
- (b) where no loan portion of the normal tax is in terms of the said Act payable by taxpayers of any category, by imposing a charge in respect of the normal tax payable by such taxpayers which shall be a loan portion of such tax and be payable in addition to the tax chargeable under the said Act:

Provided that the rates fixed under the said Act shall not be varied under this subsection so as to impose upon any taxpayer, in addition to the tax payable by him under the said Act, any charge or charges to tax in excess of ten per cent of the basic tax payable by him under that Act.

[Sub-s. (3) added by s. 6 of Act 88 of 1965, substituted by s. 6 (1) (c) of Act 95 of 1967 and by s. 7 (b) of Act 89 of 1969, deleted by s. 5 (1) (a) of Act 65 of 1973 and inserted by s. 5 (c) of Act 103 of 1976.]

(4) For the purposes of subsection (3) the basic tax payable by any taxpayer in respect of any year of assessment referred to in that subsection shall be deemed to be the normal tax payable by him for such year in terms of the Act referred to in the said subsection before the addition of any loan portion contemplated in the said subsection and before the deduction of any discount provided for in the said Act but after the deduction of any rebate provided for in section 6 of this Act.

[Sub-s. (4) added by s. 6 of Act 88 of 1965, substituted by s. 6 of Act 76 of 1968, deleted by s. 5 (1) (a) of Act 65 of 1973, inserted by s. 5 (c) of Act 103 of 1976 and substituted by s. 3 (b) of Act 104 of 1980.]

(5) Any amendment made in terms of subsection (3) -

- (a) may be made so as to apply only to persons other than companies or only to companies or both to such persons and to companies, and may differentiate between such persons and companies; or
- (b) may, subject to the provisions of the proviso to subsection (3), be made so as to provide that the loan portion of the normal tax payable by companies shall be calculated at rates which differ according to the various categories of taxable income in respect of which rates of normal tax have been enacted in the Act referred to in subsection (3).

[Sub-s. (5) added by s. 6 of Act 88 of 1965, amended by s. 7 (1) (a) of Act 55 of 1966, deleted by s. 5 (1) (a) of Act 65 of 1973 and inserted by s. 5 (c) of Act 103 of 1976.]

(6) Any amendment made under subsection (3) which is in force immediately before the date of promulgation of the Act of Parliament fixing rates of normal tax for the years of assessment succeeding the years of assessment referred to in subsection (3), shall, unless Parliament otherwise provides, lapse on that date, and in such case it shall as from that date cease to have the force of law.

[Sub-s. (6) added by s. 6 of Act 88 of 1965, deleted by s. 5 (1) (a) of Act 65 of 1973 and inserted by s. 5 (c) of Act 103 of 1976.]

(7) Subject to the provisions of sections 79 and 102 and the provisions of the Fourth Schedule, where a taxpayer has been assessed for normal tax in respect of any year of assessment and the rate of the tax payable by him has been subsequently fixed or varied, his assessment for such year shall be adjusted, any amounts paid in excess being refundable to him and amounts shortpaid being recoverable from him.

[Sub-s. (7) added by s. 6 of Act 88 of 1965, substituted by s. 7 (1) (b) of Act 55 of 1966, deleted by s. 5 (1) (a) of Act 65 of 1973 and inserted by s. 5 (c) of Act 103 of 1976.]

(8) .....

[Sub-s. (8) added by s. 6 of Act 88 of 1965, substituted by s. 6 (1) (d) of Act 95 of 1967 and deleted by s. 5 (1) (a) of Act 65 of 1973.]

(9) For the purposes of subsection (10) 'special remuneration' means any amount received by or accrued to any mineworker over and above his normal remuneration and any regular allowance, in respect

of special services rendered by him (otherwise than in the course of his normal duties) in combating any fire, flood, subsidence or other disaster in a mine or in rescuing persons trapped in a mine or in performing any hazardous task during any emergency in a mine, if such services are rendered by him as a member of a team recognized by the management of the mine and the members of such team have been appointed for the purpose of rendering such services.

[Sub-s. (9) added by s. 7 (c) of Act 89 of 1969 and substituted by s. 5 (b) of Act 88 of 1971 and by s. 3 (a) of Act 94 of 1983.]

(10) Where any taxpayer's income includes any special remuneration, or where the provisions of section 7A (4A) or paragraph 15 (3) or 17 or 19 (1) of the First Schedule or paragraph 7 of the Second Schedule are applicable in the case of the taxpayer in respect of any year of assessment, the normal tax payable by the taxpayer in respect of such year (as determined before the deduction of any rebate) shall be determined in accordance with the formula-

$$Y = \left( \frac{A}{B + D - (C + L)} \right) \times (B - L) + (L + R)$$

in which formula-

- (a) 'Y' represents the amount of normal tax to be determined;
- (b) 'A' represents the amount of normal tax (as determined before the deduction of any rebate) calculated at the full rate of tax chargeable for the said year in respect of a taxable income equal to the amount represented by the expression 'B + D - (C + L)' in the formula;

[Para. (b) substituted by s. 4 (b) of Act 91 of 1982, by s. 3 of Act 65 of 1986 and by s. 5 (b) of Act 21 of 1994, amended by s. 4 (b) of Act 21 of 1995 and substituted by s. 7 (1) (b) of Act 5 of 2001.]

- (c) 'B' represents the taxpayer's taxable income for the said year;
- (d) 'C' represents an amount equal to the sum of-

- (i) the amount of any special remuneration (as defined in subsection (9)) which is included in the taxpayer's income for the said year.
- (iA) .....

[Sub-para. (iA) inserted by s. 4 (b) of Act 96 of 1981, substituted by s. 4 (c) of Act 91 of 1982, amended by s. 3 (c) of Act 94 of 1983, substituted by s. 4 (c) of Act 21 of 1995 and deleted by s. 7 (1) (c) of Act 5 of 2001.]

- (ii) where the provisions of paragraph 15 (3) of the First Schedule are in the case of the taxpayer applicable in respect of the said year, an amount determined in accordance with those provisions as being the amount, if any, by which the taxable income derived by the taxpayer during the said year from the disposal of plantations and forest produce exceeds the annual average taxable income derived by him from that source over the three years of assessment immediately preceding the said year;
- (iii) where the provisions of paragraph 17 of the First Schedule are in the case of the taxpayer applicable in respect of the said year, an amount equal to so much of the taxable income of the taxpayer for such year as has been derived from the disposal of sugar cane as a result of fire in his cane fields and but for such fire would not have been derived by him in that year;

[Sub-para. (iii) substituted by s. 3 (b) of Act 129 of 1991.]

- (iiiA) where the provisions of subparagraph (1) of paragraph 19 of the First Schedule are in the case of the taxpayer applicable in respect of the said year, the amount by which his taxable income derived from farming for that year exceeds his average taxable income from farming as determined in relation to that year in accordance with subparagraph (2) of the said paragraph; and
- [Sub-para. (iiiA) inserted by s. 3 (d) of Act 94 of 1983.]

- (iv) .....

[Sub-para. (iv) substituted by s. 4 (e) of Act 21 of 1995 and deleted by s. 7 (1) (c) of Act 5 of 2001.]

- (v) .....

[Sub-para. (v) deleted by s. 5 (c) of Act 21 of 1994.]

- (e) 'D' represents an amount equal to so much of any current contribution to a retirement annuity fund as is allowable as a deduction in terms of section 11 (*n*) (*aa*) (A) solely by reason of the inclusion in the taxpayer's income of any amount contemplated in paragraph (*d*) (i), (ii), (iii) and (iiiA) and paragraph (*f*);

[Para. (*e*) inserted by s. 4 (*d*) of Act 91 of 1982, deleted by s. 3 (*b*) of Act 121 of 1984 and added by s. 4 (*f*) of Act 21 of 1995.]

- (f) 'L' represents an amount equal to the sum of-
- (i) in relation to any amount which accrued to the taxpayer on or after 1 September 1995 to which the provisions of section 7A (4A) are applicable in respect of the said year, the lesser of-
- (*aa*) that amount; or
- (*bb*) an amount equal to three times the annual average of the amounts derived by such taxpayer during the three years of assessment which immediately preceded the year of assessment under charge by way of remuneration as defined in paragraph 1 of the Fourth Schedule, including any amount referred to in paragraph (vii) of that definition but excluding so much of the sum of any other amounts contemplated in the said section 7A (4A) as were included in the amounts represented by the symbols 'C' and 'L' in respect of the said year and any previous year of assessment; and
- (ii) in relation to any amount which accrued to the taxpayer on or after 1 September 1995 to which the provisions of paragraph 7 of the Second Schedule are applicable, any amount determined in accordance with the provisions of that Schedule and included in his income for the said year; and
- [Para. (*f*) added by s. 4 (*f*) of Act 21 of 1995.]
- (g) 'R' represents the greater of the amounts determined by applying the formula-

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

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

Provided that where, as a result of the death or insolvency of the taxpayer, the period assessed is less than 12 months, the symbol 'R' shall be determined with reference to the said year only

[Para. (*g*) added by s. 4 (*f*) of Act 21 of 1995 and substituted by s. 7 (1) (*d*) of Act 5 of 2001 and by s. 5 (1) of Act 19 of 2001.]

Provided that in no case shall the amount of normal tax so payable be less than the amount of normal tax which would be chargeable at the relevant rate fixed in terms of subsection (2) in respect of the first rand of taxable income, and nothing in this section contained shall be construed as relieving any person from liability for taxation under this Act upon any portion of his taxable income: Provided further that where the sum of the amounts included in symbol 'L' exceed the taxpayer's taxable income for the said year, the amount of normal tax so payable shall be calculated on the taxpayer's total taxable income for the said year, at the greater of the relevant rate contemplated in the preceding proviso and the amount determined as symbol 'R' in relation to the preceding year only.

[Sub-s. (10) added by s. 5 (*c*) of Act 88 of 1971, amended by s. 5 (*b*) of Act 90 of 1972, by s. 5 (1) (*b*) and

(c) of Act 65 of 1973 and by s. 5 (d) of Act 103 of 1976, substituted by s. 3 (c) of Act 104 of 1980 and amended by s. 4 (a) of Act 96 of 1981, by s. 4 (a) and (e) of Act 91 of 1982, by s. 3 (b) of Act 94 of 1983, by s. 3 (a) and (c) of Act 121 of 1984, by s. 5 (a) of Act 21 of 1994, by ss. 4 (a) and (g) of Act 21 of 1995 and by s. 7 (1) (a) of Act 5 of 2001.]

[S. 5 substituted by s. 2 of Act 6 of 1963.]

#### **5A** .....

[S. 5A inserted by s. 6 of Act 88 of 1971, amended by s. 5 (1) of Act 85 of 1974, by s. 5 of Act 69 of 1975, by s. 6 of Act 103 of 1976, by s. 6 of Act 113 of 1977 and by s. 5 of Act 104 of 1979 and repealed by s. 4 of Act 104 of 1980.]

### **6 Normal tax rebates**

(1) There shall be deducted from the normal tax payable by any natural person an amount equal to the sum of the amounts allowed to the taxpayer by way of rebates under subsection (2).

[Sub-s. (1) substituted by s. 4 (a) of Act 90 of 1988, by s. 4 (1) (a) of Act 70 of 1989, by s. 4 (a) of Act 129 of 1991 and by s. 5 (a) of Act 21 of 1995.]

(2) In the case of a natural person there shall, subject to the provisions of subsection (4), be allowed by way of-

(a) a primary rebate, an amount of R5 800; and

[Para. (a) amended by s. 4 of Act 36 of 1996, by s. 3 of Act 28 of 1997, by s. 22 (a) of Act 30 of 1998, by s. 5 (a) of Act 32 of 1999, by s. 15 (a) of Act 30 of 2000, by s. 6 (a) of Act 19 of 2001 and by s. 11 of Act 30 of 2002 and substituted by s. 35 of Act 12 of 2003 and by s. 6 of Act 16 of 2004.]

(b) a secondary rebate, if the taxpayer was or, had the taxpayer lived, would have been at least 65 years of age on the last day of the year of assessment, an amount of R3 200.

[Para. (b) amended by s. 22 (b) of Act 30 of 1998, by s. 5 (b) of Act 32 of 1999, by s. 15 (b) of Act 30 of 2000 and by s. 6 (b) of Act 19 of 2001 and substituted by s. 35 of Act 12 of 2003 and by s. 6 of Act 16 of 2004.]

[Sub-s. (2) amended by s. 5 (a) and (b) of Act 91 of 1982, by s. 4 of Act 121 of 1984, by s. 3 (a) and (b) of Act 96 of 1985, by s. 4 of Act 85 of 1987 and by s. 4 (b) and (c) of Act 90 of 1988, substituted by s. 4 (1) (a) of Act 70 of 1989, amended by s. 3 of Act 101 of 1990, by s. 4 of Act 129 of 1991 and by s. 4 of Act 141 of 1992 and substituted by s. 5 (a) of Act 21 of 1995.]

(3) .....

[Sub-s. (3) amended by s. 5 of Act 96 of 1981, by s. 5 of Act 91 of 1982, by s. 4 of Act 94 of 1983, by s. 3 of Act 96 of 1985, by s. 4 of Act 90 of 1988, by s. 4 of Act 70 of 1989, by s. 3 of Act 101 of 1990, by s. 4 of Act 129 of 1991 and by s. 4 of Act 141 of 1992 and deleted by s. 5 (b) of Act 21 of 1995.]

(4) Where the period assessed is less than 12 months, the amount to be allowed by way of a rebate under subsection (2) shall be such amount as bears to the full amount of such rebate, the same ratio as the period assessed bears to 12 months unless, where such period terminates at the death of the taxpayer or commences at the death of the spouse of the taxpayer, the Commissioner in the special circumstances of the case otherwise directs.

[Sub-s. (4) substituted by s. 4 (e) of Act 90 of 1988 and by s. 5 (c) of Act 21 of 1995.]

[S. 6 amended by s. 4 of Act 90 of 1962, by s. 3 of Act 6 of 1963, by s. 5 of Act 72 of 1963, by s. 8 of Act 55 of 1966, by s. 7 of Act 95 of 1967, by s. 7 of Act 76 of 1968 and by s. 8 (1) of Act 89 of 1969, repealed by s. 7 of Act 88 of 1971 and inserted by s. 5 of Act 104 of 1980.]

#### **6bis** .....

[S. 6bis inserted by s. 7 of Act 88 of 1965, substituted by s. 6 of Act 85 of 1974 and by s. 5 of Act 129 of 1991 and repealed by s. 4 of Act 28 of 1997.]

#### **6ter** .....

[S. 6ter inserted by s. 8 (1) of Act 95 of 1967, amended by s. 7 of Act 85 of 1974 and repealed by s. 6 of Act 129 of 1991.]

### **6quat Rebate in respect of foreign taxes on income**

(1) Subject to the provisions of subsection (2), a rebate determined in accordance with this section shall be deducted from the normal tax payable by any resident in whose taxable income there is included-

(a) any income received by or accrued to such resident from any source outside the Republic (other than any foreign dividend contemplated in paragraph (d)) which is-

(i) not deemed to be from a source within the Republic; or

(ii) .....

[Sub-para. (ii) deleted by s. 9 (1) (a) of Act 74 of 2002.]

(b) any proportional amount contemplated in section 9D; or

(c) .....

(d) any foreign dividend; or

[Para. (d) substituted by s. 16 (1) (a) of Act 45 of 2003.]

(e) any taxable capital gain contemplated in section 26A, from a source outside the Republic which is not deemed to be from a source in the Republic; or

[Para. (e) added by s. 8 (b) of Act 5 of 2001 and substituted by s. 9 (1) (b) of Act 74 of 2002.]

(f) any amount-

(i) contemplated in paragraphs (a), (b) or (d) which is received by or accrued to any other person and which is deemed to have been received by or accrued to such resident in terms of section 7;

(ii) of capital gain of any other person from a source outside the Republic which is not deemed to be from a source in the Republic and which is attributed to that resident in terms of paragraph 68, 69, 70, 71, 72 or 80 of the Eighth Schedule; or

(iii) contemplated in paragraphs (a), (b), (d) or (e) which represents capital of a trust, and which is included in the income of that resident in terms of section 25B (2A) or taken into account in determining the aggregate capital gain or aggregate capital loss of that resident in terms of paragraph 80 (3) of the Eighth Schedule,

[Para. (f) added by s. 20 (1) (b) of Act 60 of 2001 and substituted by s. 9 (1) (b) of Act 74 of 2002.]

(1A) For the purposes of subsection (1), the rebate shall be an amount equal to the sum of any taxes on income proved to be payable to any sphere of government of any country other than the Republic, without any right of recovery by any person (other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment), by-

(a) such resident in respect of-

(i) any income contemplated in subsection (1) (a); or

(ii) any dividend contemplated in subsection (1) (d); or

[Sub-para. (ii) substituted by s. 8 (d) of Act 5 of 2001.]

(iii) any amount of taxable capital gain as contemplated in subsection (1) (e); or

[Sub-para. (iii) added by s. 8 (e) of Act 5 of 2001.]

(b) any controlled foreign company, in respect of such proportional amount contemplated in subsection (1) (b), subject to section 72A (3);

[Para. (b) substituted by s. 9 (1) (d) of Act 74 of 2002 and by s. 16 (1) (c) of Act 45 of 2003.]

(c) .....

[Para. (c) deleted by s. 16 (1) (d) of Act 45 of 2003.]

(d) .....

[Para. (d) substituted by s. 9 (1) (e) of Act 74 of 2002 and deleted by s. 16 (1) (d) of Act 45 of 2003.]

(e) any portfolio of a collective investment scheme in respect of the amount of any foreign dividend which is deemed to have been declared to such resident in terms of the proviso to paragraph (k) of the definition of 'gross income' and included in the taxable income of that resident; or

[Para. (e) added by s. 20 (1) (d) of Act 60 of 2001 and substituted by s. 9 (1) (f) of Act 74 of 2002 and by s. 16 (1) (e) of Act 45 of 2003.]

(f) any other person contemplated in subsection (1) (f) (i) or (ii) or any trust contemplated in subsection (1) (f) (iii), in respect of the amount included in the taxable income of that resident as contemplated in subsection (1) (f),

[Para. (f) added by s. 20 (1) (d) of Act 60 of 2001.]

which is so included in that resident's taxable income: Provided that where such resident is a member of any partnership or a beneficiary of any trust and such partnership or trust is liable for tax as a separate entity in such other country, a proportional amount of any tax payable by such entity, which is attributable to the interest of such resident in such partnership or trust, shall be deemed to have been payable by such resident.

[Sub-s. (1A) amended by s. 8 (c) and (f) of Act 5 of 2001 and by s. 9 (1) (c) of Act 74 of 2002.]

(1B) Notwithstanding the provisions of subsection (1A)-

(a) the rebate or rebates of any tax proved to be payable as contemplated in subsection (1A), shall not in aggregate exceed an amount which bears to the total normal tax payable the

same ratio as the total taxable income attributable to the income, proportional amount, foreign dividend, taxable capital gain or amount, as the case may be, which is included as contemplated in subsection (1), bears to the total taxable income: Provided that-

- (i) in determining the amount of the taxable income that is attributable to that income, proportional amount, foreign dividend, taxable capital gain or amount, any allowable deductions contemplated in sections 11 (*n*), 18 and 18A must be deemed to have been incurred proportionately in respect of income derived from sources within and outside the Republic;
- (iA) the taxes contemplated in subsection (1A) (*b*) that are attributable to any proportional amount which-
  - (aa) is taken into account in the determination of the taxable income of the resident by virtue of an election made by that resident in terms of section 9D (12) or 9D (13); or
  - (bb) relates to any amount contemplated in section 9D (9) (*b*) (ii) or (iii) which are not excluded from the application of section 9D (2) in terms of those subparagraphs,
 shall in aggregate be limited to the amount of the normal tax which is attributable to those proportional amounts;
 

[Para. (iA) inserted by s. 16 (1) (*g*) of Act 45 of 2003.]
- (ii) where the sum of any such taxes proved to be payable (excluding any taxes contemplated in paragraph (iA) of this proviso) exceeds the rebate as so determined (hereinafter referred to as the excess amount), that excess amount may-
  - (aa) be carried forward to the immediately succeeding year of assessment and shall be deemed to be a tax on income paid to the government of any other country in that year; and
  - (bb) be set off against the amount of any normal tax payable by that resident during that year of assessment in respect of any amount derived from any other country which is included in the taxable income of that resident during that year, as contemplated in subsection (1), after any tax payable to the government of any other country in respect of any amount so included during such year of assessment which may be deducted in terms of subsection (1) and (1A), has been deducted from the amount of such normal tax payable in respect of such amount so included; and

[Para. (ii) amended by s. 16 (1) (*h*) of Act 45 of 2003.]
- (iii) the excess amount shall not be allowed to be carried forward for more than seven years reckoned from the year of assessment when such excess amount was for the first time carried forward;

[Para. (*a*) substituted by s. 9 (1) (*g*) of Act 74 of 2002 and amended by s. 16 (1) (*f*) of Act 45 of 2003.]

(*b*) ...

(*c*) .....

[Para. (*c*) amended by s. 9 (1) (*h*) of Act 74 of 2002 and deleted by s. 16 (1) (*i*) of Act 45 of 2003.]

(*d*) .....

[Para. (*d*) amended by s. 9 (1) (*i*) of Act 74 of 2002 and deleted by s. 16 (1) (*i*) of Act 45 of 2003.]

(*e*) no rebate shall be allowed in respect of any tax payable on any amount contemplated in subsection (1) (*d*), if the resident has elected to deduct the amount of withholding tax as contemplated in section 11C (4).

[Para. (*e*) substituted by s. 16 (1) (*j*) of Act 45 of 2003 and by s. 4 (1) of Act 32 of 2004.]

(2) The rebate under subsection (1) shall not be granted in addition to any relief to which the resident is entitled under any agreement between the governments of the Republic and the said other country for the prevention of or relief from double taxation, but may be granted in substitution for the relief to which the resident would be so entitled.

(3) For the purposes of this section-  
'controlled company' .....

[Definition of 'controlled company' deleted by s. 9 (1) (*j*) of Act 74 of 2002.]

'controlling company' .....

[Definition of 'controlling company' deleted by s. 9 (1) (j) of Act 74 of 2002.]  
'group of companies' .....

[Definition of 'group of companies' deleted by s. 9 (1) (j) of Act 74 of 2002.]  
'qualifying interest' .....

[Definition of 'qualifying interest' deleted by s. 16 (1) (k) of Act 45 of 2003.]

'taxes on income' does not include any compulsory payment to the government of any other country which constitutes a consideration for the right to extract any mineral or natural oil;

[Definition of 'taxes on income' inserted by s. 9 (1) (k) of Act 74 of 2002.]

(4) For the purposes of this section the amount of any foreign tax proved to be payable as contemplated in subsection (1A) in respect of any amount which is included in the taxable income of any resident during any year of assessment, shall be converted to the currency of the Republic on the last day of that year of assessment by applying the average exchange rate for that year of assessment.

[Sub-s. (4) substituted by s. 9 (1) (l) of Act 74 of 2002.]

(5) Where a rebate was allowed in terms of this section against the normal tax payable by any resident in any previous year of assessment in respect of any amount of tax which was proved to be payable to the government of any other country, and-

- (a) it is proved by that resident that the amount of the tax actually payable to such government exceeds the amount of tax in respect of which the rebate was so allowed; or
- (b) the Commissioner is satisfied that the amount of the tax actually payable to such government is less than the amount of tax in respect of which the rebate was so allowed,

the Commissioner may, notwithstanding the provisions of section 79 or section 81 (5), but subject to subsection (1B) (a) issue a reduced or additional assessment, as the case may be, reflecting the amount of the rebate in respect of that amount of tax actually payable in that other currency translated to the currency of the Republic at the average exchange rate applicable for that previous year of assessment, which shall be allowed against normal tax: Provided that the Commissioner shall not issue any such reduced or additional assessment after the expiration of six years from the date of the assessment in terms of which the rebate of the amount of tax proved to be payable was so allowed, unless the Commissioner is satisfied that the fact that the amount of tax proved to be payable to such other government was incorrectly reflected was due to fraud or misrepresentation or non-disclosure of material facts.

[Sub-s. (5) amended by s. 9 (1) (m) of Act 74 of 2002.]

[S. 6*quat* inserted by s. 9 of Act 89 of 1969, repealed by s. 5 of Act 94 of 1983, inserted by s. 5 of Act 85 of 1987, amended by s. 5 of Act 28 of 1997, by s. 12 of Act 53 of 1999 and by s. 16 of Act 30 of 2000 and substituted by s. 4 of Act 59 of 2000.]

**6quin** .....

[S. 6*quin* inserted by s. 6 (1) of Act 104 of 1979 and repealed by s. 6 of Act 94 of 1983.]

## **7 When income is deemed to have been accrued or to have been received**

### **Cases**

(1) Income shall be deemed to have accrued to a person notwithstanding that such income has been invested, accumulated or otherwise capitalized by him or that such income has not been actually paid over to him but remains due and payable to him or has been credited in account or reinvested or accumulated or capitalized or otherwise dealt with in his name or on his behalf, and a complete statement of all such income shall be included by any person in the returns rendered by him under this Act.

(2) Any income received by or accrued to any person married with or without community of property (hereinafter referred to as the recipient) shall be deemed for the purposes of this Act to be income accrued to such person's spouse (hereinafter referred to as the donor) if-

- (a) such income was derived by the recipient in consequence of a donation, settlement or other disposition made by the donor on or after 20 March 1991 or of a transaction, operation or scheme entered into or carried out by the donor on or after that date, and the sole or main purpose of such donation, settlement or other disposition or of such transaction, operation or scheme was the reduction, postponement or avoidance of the donor's liability for any tax, levy or duty which, but for such donation, settlement, other disposition, transaction, operation or scheme, would have become payable by the donor under this Act or any other Act administered by the Commissioner; or
- (b) income was received by or accrued to the recipient -
  - (i) from any trade carried on by the recipient in partnership or association with the

- (ii) donor or which is in any way connected with any trade carried on by the donor; or from the donor or any partnership of which the donor was at the time of such receipt or accrual a member or any private company of which the donor was at such time the sole or main shareholder or one of the principal shareholders, and such income represents the whole or any portion of the total income so received by or accrued to the recipient which exceeds the amount of income to which the recipient would reasonably be entitled having regard to the nature of the relevant trade, the extent of the recipient's participation therein, the services rendered by the recipient or any other relevant factor; or

(c) .....

[Para. (c) deleted by s. 6 of Act 21 of 1995.]

[Sub-s. (2) amended by s. 5 of Act 90 of 1962, substituted by s. 8 of Act 88 of 1965, amended by s. 2 of Act 30 of 1984 and by s. 5 of Act 90 of 1988 and substituted by s. 5 of Act 70 of 1989, by s. 4 of Act 101 of 1990 and by s. 7 of Act 129 of 1991.]

(2A) In the case of spouses who are married in community of property-

- (a) any income (other than income derived from the letting of fixed property) which has been derived from the carrying on of any trade shall, if such trade is carried on-
  - (i) by only one of the spouses, be deemed to have accrued to that spouse; or
  - (ii) jointly by both spouses, be deemed, subject to the provisions of subsection (2) (b), to have accrued to both spouses in the proportions determined by them in terms of the agreement that regulates their joint trade or, if there is no such agreement, in the proportion to which each spouse would reasonably be entitled having regard to the nature of the relevant trade, the extent of each spouse's participation therein, the services rendered by each spouse or any other relevant factor; and
- (b) any income derived from the letting of fixed property and any income derived otherwise than from the carrying on of any trade shall be deemed to have accrued in equal shares to both spouses: Provided that any such income which does not fall into the joint estate of the spouses shall be deemed to be income accrued to the spouse who is entitled thereto.

[Sub-s. (2A) inserted by s. 5 (1) of Act 141 of 1992.]

(2B) So much of any deduction or allowance which may be made under the provisions of this Act in the determination of the taxable income derived from any income derived to in subsections (2) and (2A) as relates to any portion of such income which is under the provisions of that subsection deemed to be income accrued to a spouse shall be deemed to be a deduction or allowance which may be made in the determination of the taxable income of such spouse.

[Sub-s. (2B) inserted by s. 5 (1) of Act 141 of 1992.]

(2C) For the purposes of subsection (2A)-

- (a) any benefit paid or payable to a spouse in his capacity as a member or past member of a pension fund, provident fund, benefit fund, retirement annuity fund or any other fund of a similar nature shall be deemed to be income derived by such spouse from a trade carried on by him;

[Para. (a) substituted by s. 23 (1) of Act 30 of 1998.]

- (b) any annuity amount (as defined in section 10A) paid or payable to a spouse shall be deemed to be income derived by such spouse from a trade carried on by him; and

(c) where any spouse is the-

- (i) registered holder of a patent as defined in the Patents Act, 1978 (Act 57 of 1978), or any design as defined in the Designs Act, 1993 (Act 195 of 1993), or any trade mark as defined in the Trade Marks Act, 1993 (Act 194 of 1993); or

[Sub-para. (i) substituted by s. 13 of Act 53 of 1999.]

- (ii) author of a work on which copyright has been conferred in terms of the Copyright Act, 1978 (Act 98 of 1978), or the owner of such a copyright by reason of assignment, testamentary disposition or operation of law; or

- (iii) holder of any other property or right of a similar nature, any income derived from the grant of the right of use of such patent, design, trade mark, copyright or other property or right shall be deemed to be income derived by such spouse from a trade carried on by him.

[Sub-s. (2C) inserted by s. 5 (1) of Act 141 of 1992.]



(3) Income shall be deemed to have been received by the parent of any minor child, if by reason of any donation, settlement or other disposition made by that parent of that child-

- (a) it has been received by or has accrued to or in favour of that child or has been expended for the maintenance, education or benefit of that child; or
- (b) it has been accumulated for the benefit of that child.

(4) Any income received by or accrued to or in favour of any minor child of any person, by reason of any donation, settlement or other disposition made by any other person, shall be deemed to be the income of the parent of such minor child, if such parent or his spouse has made a donation, settlement or other disposition or given some other consideration in favour directly or indirectly of the said other person or his family.

(5) If any person has made any donation, settlement or other disposition which is subject to a stipulation or condition, whether made or imposed by such person or anybody else, to the effect that the beneficiaries thereof or some of them shall not receive the income or some portion of the income thereunder until the happening of some event, whether fixed or contingent, so much of any income as would, but for such stipulation or condition, in consequence of the donation, settlement or other disposition be received by or accrue to or in favour of the beneficiaries, shall, until the happening of that event or the death of that person, whichever first takes place, be deemed to be the income of that person.

[Sub-s. (5) substituted by s. 9 of Act 55 of 1966.]

(6) If any deed of donation, settlement or other disposition contains any stipulation that the right to receive any income thereby conferred may, under powers retained by the person by whom that right is conferred, be revoked or conferred upon another, so much of any income as in consequence of the donation, settlement or other disposition is received by or accrues to or in favour of the person on whom that right is conferred, shall be deemed to be the income of the person by whom it is conferred, so long as he retains those powers.

(7) If by reason of any donation, settlement or other disposition made, whether before or after the commencement of this Act, by any person (hereinafter referred to as the donor)-

- (a) the donor's right to receive or have paid to him or for his benefit any amount by way of rent, dividend, interest, royalty or similar income in respect of any movable or immovable property (including without limiting the foregoing any lease, company share, marketable security, deposit, loan, copyright, design or trade mark) or in respect of the use of, or the granting of permission to use, such property, is ceded or otherwise made over to any other person or to a third party for that other person's benefit in such manner that the donor remains the owner of or retains an interest in the said property or if the said property or interest is transferred, delivered or made over to the said other person or to a third party for the said other person's benefit, in such manner that the donor is or will at a fixed or determinable time be entitled to regain ownership of or the interest in the said property; or
- (b) the donor's right to receive or have paid to him or for his benefit any income that is or may become due to him by any other person acting in a fiduciary capacity is ceded or otherwise made over to any other person or to a third party for that other person's benefit in such manner that the donor is or will at a determinable time be entitled to regain the said right,

any such rent, dividend, interest, royalty or income (including any amount which, but for this subsection, would have been exempt from tax in the hands of the said other person) as is received by or accrues to or for the benefit of the said other person on or after 1 July 1983 and which would otherwise, but for the said donation, settlement or other disposition, have been received by or have accrued to or for the benefit of the donor, shall be deemed to have been received by or to have accrued to the donor.

[Sub-s. (7) added by s. 7 (1) of Act 94 of 1983.]

(8) Where by reason of or in consequence of any donation, settlement or other disposition (other than a donation, settlement or other disposition to an entity which is not a resident and which is similar to a public benefit organisation contemplated in section 30) made by any resident, any amount is received by or accrued to any person who is not a resident (other than a controlled foreign company in relation to such resident), which would have constituted income had that person been a resident, there shall be included in the income of that resident so much of that amount as is attributable to that donation, settlement or other disposition.

[Sub-s. (8) added by s. 5 of Act 59 of 2000, substituted by s. 10 (1) of Act 74 of 2002, amended by s. 17 of

Act 45 of 2003 and substituted by s. 5 (1) of Act 32 of 2004.]

(9) Where any asset has been disposed of for a consideration which is less than the market value of such asset, the amount by which such market value exceeds such consideration shall for the purposes of this section be deemed to be a donation.

[Sub-s. (9) added by s. 5 of Act 59 of 2000.]

(10) Any resident who, at any time during any year of assessment makes any donation, settlement or other disposition as contemplated in this section, shall disclose such fact to the Commissioner in writing when submitting his return of income for such year and at the same time furnish such information as may be required by the Commissioner for the purposes of this section.

[Sub-s. (10) added by s. 5 of Act 59 of 2000.]

#### **7A Date of receipt or accrual of antedated salaries or pensions and of certain retirement gratuities**

(1) For the purposes of this section-

'antedated salary or pension' means an amount of salary or pension which has become payable to any person under a permanent grant, made with retrospective effect, of a salary or pension or of an increase in a salary or pension, and which in terms of such grant is payable in respect of a period ending on or before the date on which the grant has become effective;

'pension' means an annuity payable under any law or under the rules of a pension fund or provident fund or by an employer to a former employee of that employer or to the dependant or nominee of a deceased person who was employed by such employer;

[Definition of 'pension' substituted by s. 7 (1) (a) of Act 21 of 1995.]

'salary' means salary, wages or similar remuneration payable by an employer to an employee, but does not include any bonus or any amount referred to in subsection (4).

(2) Where any antedated salary or pension has been received by or has accrued to any person during any year or period of assessment and the period in respect of which such antedated salary or pension has become payable (hereinafter referred to as the accrual period) commenced before the commencement of the said year or period of assessment, such antedated salary or pension shall at the opinion of the taxpayer be deemed-

- (a) if the accrual period commenced not more than two years before the commencement of the said year or period of assessment, to have been received by or to have accrued to the said person in part during each of the years or periods of assessment in which any portion of the accrual period falls (the part of the said amount relating to any such year or period of assessment being determined on the basis of a reasonable apportionment of the whole of the said amount between all the said years or periods of assessment); or
- (b) if the accrual period commenced more than two years before the commencement of the first-mentioned year or period of assessment, to have been received by or to have accrued to the said person in three equal annual instalments (the first and second instalments two years and one year respectively before the date on which the said amount accrued to the said person and the third instalment on the said date).

(3) Where any member of the citizen force or of the commandos has bound himself to serve in such force or the commandos for a continuous period of service of at least eighteen months as contemplated in section 22 (6A) or 44 (5A) of the Defence Act, 1957 (Act 44 of 1957), the provisions of subsection (2) shall *mutatis mutandis* apply in respect of any gratuity which has become payable to him by the State upon and by reason of the completion of such period of service, as though such gratuity were antedated salary or pension granted permanently and with retrospective effect, in respect of the said period of service.

[Sub-s. (3) substituted by s. 7 (1) of Act 103 of 1976.]

(4) .....

[Sub-s. (4) amended by s. 4 (1) (a) of Act 65 of 1986 and deleted by s. 8 (1) (a) of Act 129 of 1991.]

(4A) Where the taxable income of any taxpayer for any year of assessment includes any amount (other than an amount contemplated in paragraph (e) of the definition of 'gross income' in section 1) received by or accrued to him as an employee or the holder of any office by way of bonus, gratuity or compensation upon or because of the termination of his services or because of the impending termination of his services within five years (or such longer period as the Commissioner may approve) from the date of actual receipt or accrual of such amount, and-

- (a) the taxpayer has attained the age of 55 years; or

[Para. (a) substituted by s. 7 (1) (c) of Act 21 of 1995.]

- (b) the termination or impending termination of the taxpayer's services is due to superannuation, ill-health or other infirmity; or  
[Para. (b) substituted by s. 8 (1) (b) of Act 129 of 1991.]

(c) .....

[Para. (c) substituted by s. 8 (1) (b) of Act 129 of 1991 and deleted by s. 7 (1) (d) of Act 21 of 1995.]

(d) the Commissioner is satisfied that-

- (i) the termination or impending termination of the taxpayer's services is due to his employer having ceased to carry on or intending to cease carrying on the trade in respect of which the taxpayer was employed or to the taxpayer having become redundant in consequence of his employer having effected a general reduction in personnel or a reduction in personnel of a particular class; and

[Sub-para. (i) substituted by s. 3 of Act 113 of 1993.]

- (ii) the circumstances of the case warrant this concession,  
[Para. (d) inserted by s. 4 (1) (c) of Act 65 of 1986.]

the normal tax payable by the taxpayer in respect of such year shall, subject to the provisions of section 5, be determined in accordance with the provisions of section 5 (10), but nothing herein contained shall be construed as relieving any person from liability for taxation under this Act upon any portion of his taxable income.

[Sub-s. (4A) inserted by s. 6 of Act 96 of 1981 and amended by s. 7 (1) (b) of Act 21 of 1995.]

(5) .....

[Sub-s. (5) deleted by s. 5 of Act 36 of 1996.]

[S. 7A inserted by s. 6 of Act 69 of 1975.]

## 8 Certain amounts to be included in income or taxable income

### Cases

(1) (a) (i) There shall be included in the taxable income of any person (hereinafter referred to as the 'recipient') for any year of assessment any amount which has been paid or granted during that year by his or her principal as an allowance or advance, excluding any portion of any allowance or advance actually expended by that recipient -

(aa) on travelling on business, as contemplated in paragraph (b);

(bb) on any accommodation, meals and other incidental costs, as contemplated in paragraph (c), while such recipient is by reason of the duties of his or her office or employment obliged to spend at least one night away from his or her usual place of residence in the Republic;<sup>1\*</sup> or

(cc) by reason of the duties attendant upon his or her office, as contemplated in paragraph (d).

(ii) There shall not be included in the taxable income of a person in terms of the provisions of paragraph (a) (i), any amount paid or granted by a principal in reimbursement of, or as an advance for, any expenditure incurred or to be incurred by the recipient-

(aa) on the instruction of his or her principal in the furtherance of the trade of that principal; and

(bb) where that recipient must produce proof to that principal that such expenditure was wholly incurred as aforesaid and must account to that principal for that expenditure:

Provided that where that expenditure was incurred to acquire any asset, the ownership in that asset must vest in that principal.

(iii) For the purposes of this paragraph, 'principal' in relation to a recipient includes his or her employer or the authority, company, body or other organisation in relation to which any office is held, or any associated institution, as defined in the Seventh Schedule, in relation to such employer, authority, company, body or organisation.

(iv) The provisions of this paragraph shall not apply in respect of any allowance or advance received by or accrued to a person contemplated in section 9 (1) (e) stationed outside the Republic which is attributable to that person's services rendered outside the Republic.

[Sub-para. (iv) added by s. 11 (1) (a) of Act 74 of 2002.]

[Para. (a) substituted by s. 6 (a) of Act 141 of 1992 and by s. 12 (1) (a) of Act 30 of 2002.]

(b) For the purposes of paragraph (a) (i) (aa)-

- (i) any allowance or advance in respect of transport expenses shall, to the extent to which such allowance or advance has been expended by the recipient on private travelling

(including travelling between his place of residence and his place of employment or business or any other travelling done for his private or domestic purposes), be deemed not to have been actually expended on travelling on business;

[Sub-para. (i) amended by s. 4 (a) of Act 96 of 1985 and by s. 9 (a) of Act 129 of 1991.]

- (ii) subject to the provisions of subparagraph (iii), where such allowance or advance has been paid to the recipient in order that it may be utilized for defraying expenditure in respect of any motor vehicle used by the recipient, the portion of the allowance expended by the recipient during the year of assessment for business purposes shall, unless an acceptable calculation based on accurate data is furnished by the recipient, be deemed to be an amount calculated by applying the rate per kilometre<sup>2\*</sup> determined in the manner prescribed by the Minister of Finance by notice in the *Gazette* for the category of vehicle used, on a distance travelled during the said year for business purposes (other than private travelling as contemplated in subparagraph (i): Provided that where an allowance or advance has been paid to a recipient in relation to a motor vehicle in respect of which he has been granted the right of use as contemplated in paragraph 7 of the Seventh Schedule, no regard shall be had to such rate per kilometre in order to determine the portion of such allowance or advance expended by the recipient for business purposes: Provided further that-

(aa) the recipient shall, unless the contrary appears, be deemed to have used the vehicle during such year for such business purposes over a distance equal to the difference between the total number of kilometres travelled by him in such vehicle during such year (but not exceeding 32 000 kilometres) and a distance of 14 000 kilometres;

[Para. (aa) substituted by s. 9 (b) of Act 129 of 1991 and amended by s. 6 (1) (a) of Act 28 of 1997.]

(bb) where the vehicle has been used for business purposes during a period in such year which is less than the full period of such year, the reference in paragraph (aa) of this proviso to the distances of 32 000 kilometres and 14 000 kilometres shall be construed as a reference to the distances which bear to 32 000 kilometres and 14 000 kilometres, respectively, the same ratio as the period of use for business purposes bears to 12 months;

[Para. (bb) substituted by s. 9 (b) of Act 129 of 1991 and amended by s. 6 (1) (a) of Act 28 of 1997.]

(cc) where the recipient has during the whole or any portion of the year of assessment interchangeably used more than one vehicle for business purposes, the provisions of paragraphs (aa) and (bb) of this proviso shall be applied separately to each such vehicle;

[Para. (cc) substituted by s. 24 (1) of the Act 30 of 1998.]

[Sub-para. (ii) substituted by s. 6 (a) of Act 85 of 1987 and amended by s. 8 (1) (a) of Act 21 of 1995.]

- (iii) where such allowance or advance is based on the actual distance travelled by the recipient in using a motor vehicle on business (excluding the said private travelling), or such actual distance is proved to the satisfaction of the Commissioner to have been travelled by the recipient, the amount expended by the recipient on such business travelling shall, unless the contrary appears, be deemed to be an amount determined on such actual distance at the rate per kilometre<sup>3\*</sup> fixed by the Minister of Finance by notice in the *Gazette* for the category of vehicle used;

- (iv) where any motor vehicle which is owned or leased by an employee, his spouse or his child, whether directly or indirectly by virtue of an interest in a company or trust or otherwise, has been let to the employer or any associated institution in relation to the employer, the sum of the rental paid by the employer or associated institution and any expenditure defrayed by the employer or associated institution in respect of the vehicle, shall be deemed to be an allowance paid to the employee in respect of transport expenses, and in such case the said rental shall for the purposes of this Act (excluding this paragraph) be deemed not to have been received by or to have accrued to the lessor of such motor vehicle, and for the purposes of paragraph 2 (b) of the Seventh Schedule such employee shall be deemed not to have been granted the right to use such motor vehicle.

[Sub-para. (iv) added by s. 5 (1) (a) of Act 101 of 1990.]

[Para. (b) amended by s. 12 (1) (b) of Act 30 of 2002.]

(c) A recipient shall, for the purposes of paragraph (a) (i) (bb), be deemed to have actually expended-

- (i) where that recipient proves to the Commissioner the amount of the expenses incurred by him or her in respect of accommodation, meals or other incidental costs (other than any amount of expenditure borne by the employer otherwise than by way of payment or granting of the allowance), the amount so actually incurred but limited to the amount of the allowance or advance paid or granted to meet those expenses; or
- (ii) for each day or part of a day in the period during which that recipient is absent from his or her usual place of residence, an amount in respect of meals and other incidental costs, or incidental costs only, determined by the Minister for the relevant year of assessment by way of notice in the *Gazette*, but limited to the amount of the allowance paid or granted to meet those expenses: Provided that this subparagraph does not apply to the extent that-
  - (aa) the employer has borne the expenses (otherwise than by way of granting the allowance or advance) in respect of which the allowance was paid or granted for that day or part of that day; or
  - (bb) the recipient has proved to the Commissioner any amount of actual expenditure in respect of meals or incidental costs for that day or part of that day, as contemplated in subparagraph (i).

[Sub-para. (ii) substituted by s. 11 (1) (b) of Act 74 of 2002.]

[Para. (c) amended by s. 4 (c) of Act 96 of 1985, by s. 5 of Act 65 of 1986, by s. 6 (b) and (c) of Act 85 of 1987 and by s. 5 (1) (b) of Act 101 of 1990 and substituted by s. 12 (1) (c) of Act 30 of 2002.]

(d) Any allowance granted to the holder of any public office contemplated in paragraph (e) to enable him to defray expenditure incurred by him in connection with such office shall for the purposes of paragraph (a) be deemed to have been so expended by him to the extent that expenditure relevant to such allowance and not otherwise recoverable by him has actually been incurred by him for the purposes of his office in respect of-

- (i) secretarial services, duplicating services, stationery, postage, telephone calls, the hire of office accommodation and the maintenance of such accommodation;
  - (ii) travelling;
  - (iii) hospitality extended at any official or civic function which the holder of such office is by reason of the nature of such office normally expected to arrange;
  - (iv) .....
- [Sub-para. (iv) deleted by s. 12 (1) (d) of Act 30 of 2002.]
- (v) subsistence and incidental costs incurred in the circumstances contemplated in paragraph (c).

[Para. (d) amended by s. 6 (d) of Act 85 of 1987.]

(e) For the purposes of paragraph (d) the holder of a public office includes-

- (i) the President, Deputy President, a Minister, Deputy Minister, a member of the National Assembly, a permanent delegate to the National Council of Provinces, a Premier, a member of an Executive Council or a member of a provincial legislature;

[Sub-para. (i) substituted by s. 4 (d) of Act 96 of 1985, by s. 6 (e) of Act 85 of 1987, by s. 6 (1) (a) of Act 21 of 1994 and by s. 14 (1) (a) of Act 53 of 1999.]

- (ii) any member of a municipal council, a traditional leader, a member of a provincial House of Traditional Leaders and a member of the Council of Traditional Leaders; and  
[Sub-para. (ii) substituted by s. 14 (1) (a) of Act 53 of 1999.]
- (iii) a person occupying the office of president, chairman or chief executive officer of any non-profitmaking organization which is organized on a national or regional basis to represent persons with common interests and the funds of which are derived wholly or mainly from subscriptions of members or donations from the general public.  
[Sub-para. (iii) substituted by s. 6 (b) of Act 141 of 1992.]

- (f) Where it is expected of any person contemplated in paragraph (e)(i) to defray any expenditure referred to in paragraph (d) out of his salary received as the holder of any public office, an amount equal to a portion (which shall be determined by the National Assembly or the President, as the case may be, as provided for in the Remuneration of

Public Office Bearers Act, 1998 (Act 20 of 1998)) of such salary shall for the purposes of paragraph (d) be deemed to be an allowance granted to such person.

[Para. (f) added by s. 6 (1) (b) of Act 21 of 1994 and substituted by s. 14 (1) (b) of Act 53 of 1999.]

(g) Where, during any year of assessment, any person contemplated in paragraph (e) has held a public office for less than 12 months, the amount determined in terms of paragraph (f), shall be reduced to an amount which bears to the relevant amount, the same ratio as the number of months (in the determination of which a part of a month shall be reckoned as a full month), for which the office was held bears to 12 months.

[Para. (g) added by s. 6 (1) (b) of Act 21 of 1994 and substituted by s. 17 (1) (a) of Act 30 of 2000 and by s. 12 (1) (e) of Act 30 of 2002.]

[Sub-s. (1) substituted by s. 5 (1) (a) of Act 121 of 1984.]

(2) .....

[Sub-s. (2) amended by s. 6 (1) (a), (b) and (c) of Act 90 of 1962, substituted by s. 8 (a) of Act 85 of 1974, amended by s. 7 (1) (a) of Act 69 of 1975 and deleted by s. 6 (c) of Act 141 of 1992.]

(3) .....

[Sub-s. (3) amended by s. 6 (1) (d) of Act 90 of 1962 and by s. 8 (b) and (c) of Act 85 of 1974 and deleted by s. 6 (c) of Act 141 of 1992.]

(4) (a) There shall be included in the taxpayer's income all amounts allowed to be deducted or set off under the provisions of sections 11 to 20, inclusive, section 24D, section 24F, section 24G, section 24I, section 24J and section 27 (2) (b) and (d) of this Act, except section 11 (k), (p) and (q), section 11 *quin*, section 12 (2) or section 12 (2) as applied by section 12 (3), section 12A (3), section 13 (5), or section 13 (5) as applied by section 13 (8), or section 13*bis* (7), or section 15 (a), or section 15A, or under the corresponding provisions of any previous Income Tax Act, whether in the current or any previous year of assessment which have been recovered or recouped during the current year of assessment: Provided that the provisions of this paragraph shall not apply in respect of any such amount so recovered or recouped which has been included in the gross income of such taxpayer in terms of paragraph (eB) or (jA) of the definition of 'gross income'.

[Para. (a) amended by s. 6 (1) (a) of Act 90 of 1964, substituted by s. 9 (1) (a) of Act 88 of 1965, by s. 10 (1) (a) of Act 55 of 1966, by s. 10 (a) of Act 89 of 1969, by s. 8 (d) of Act 85 of 1974, by s. 7 (1) (b) of Act 69 of 1975, by s. 7 (1) (a) of Act 113 of 1977, by s. 8 (a) of Act 94 of 1983, by s. 5 (1) (b) of Act 121 of 1984 and by s. 6 (f) of Act 85 of 1987 and amended by s. 6 (a) of Act 90 of 1988, by s. 17 (1) (b) of Act 30 of 2000, by s. 21 (1) (a) of Act 60 of 2001 and by s. 6 of Act 32 of 2004.]

(b) If any amount referred to in paragraph (a) of this subsection is an amount which has been recovered or recouped during any year of assessment by a resident who carries on any business as owner or charterer of any ship as a result of the loss, sale or disposal in any other manner by that person of a ship, and if that person satisfies the Commissioner that-

- (i) he will within a period of one year (or such longer period as the Commissioner in the circumstances of the case may allow) after the end of that year of assessment conclude a contract for the acquisition by him of a further ship to replace the aforesaid ship;
- (ii) such further ship will be used by him for the purposes of his trade for a period of not less than ten years or, if the said amount was recovered or recouped by him on or after the seventeenth day of August, 1966, for a period of not less than seven years; and
- (iii) such further ship will be a ship in relation to which the provisions of section 14 (1) (b) will apply and will continue to apply for the said period of not less than ten years or, if the said amount was recovered or recouped by him on or after the seventeenth day of August, 1966, the further ship will be a ship in relation to which the provisions of section 14 (1) (a) or (b) will apply and will continue to apply for the said period of not less than seven years,

the said amount shall, notwithstanding anything to the contrary contained in paragraph (a) of this subsection, but subject to the provisions of paragraphs (c), (d) and (dA) of this subsection-

- (aa) if it was recovered or recouped before the seventeenth day of August, 1966, not be included in the income of that person for the aforesaid year of assessment, but shall be included in his income for the period of assessment ending on the date of his death, insolvency or liquidation (in the case of a company), as the case may be; or
- (bb) if it was recovered or recouped on or after 17 August, 1966, not be included in the income of that person for the aforesaid year of assessment except to the extent that such

amount is not, in terms of the definition of 'adjustable cost' or 'adjustable cost price' in section 14 (2), deductible from the cost or estimated cost price of such further ship:

[Sub-para. (bb) substituted by s. 8 (e) of Act 85 of 1974.]

Provided that the provisions of this paragraph shall not apply to any amount which has been recovered or recouped as a result of any such loss, sale or disposal which has taken or takes place on or after 1 April 1995.

[Para. (b) amended by s. 6 (1) (e) of Act 90 of 1962, substituted by s. 10 (1) (b) of Act 55 of 1966 and amended by s. 8 (1) (b) of Act 21 of 1995 and by s. 6 (a) of Act 59 of 2000.]

(c) Within three months after the end of the year of assessment during which any amount referred to in paragraph (b) has been recovered or recouped by the person concerned in respect of any ship of more than two hundred gross register tons, there shall be deposited by the said person with the Public Debt Commissioners for such period and on such conditions as may be approved by the Commissioner an amount equal to the amount to be excluded from such person's income in terms of that paragraph, less such amount, if any, as has in the meantime been paid by the said person in respect of the cost price of the further ship referred to in that paragraph.

[Para. (c) substituted by s. 10 (1) (b) of Act 55 of 1966 and by s. 6 of Act 90 of 1972.]

(d) If owing to any occurrence (other than the loss by the said person of the further ship referred to in paragraph (b) or because of any circumstance arising during any year of assessment the Commissioner is no longer satisfied in regard to the matters in regard to which he is in terms of that paragraph or the corresponding provisions of any previous Income Tax Act required to be satisfied, the amount not included in the taxpayer's income in terms of that paragraph or the corresponding provisions of any previous Income Tax Act shall be included in the income of the taxpayer for the year of assessment during which such occurrence takes place or such circumstance arises.

[Para. (d) substituted by s. 10 (1) (b) of Act 55 of 1966.]

(dA) If as a result of the loss, sale or disposal in any other manner by the person concerned of the further ship referred to in paragraph (b) there has accrued to or has been received by the taxpayer an amount in excess of the cost thereof less the amount not included in the taxpayer's income in terms of subparagraph (bb) of the said paragraph, so much of the excess as does not exceed such lastmentioned amount shall (unless such lastmentioned amount has been included in income in terms of paragraph (d)) be deemed to have been recovered or recouped and shall, in addition to any amount referred to in paragraph (a) which has been recovered or recouped, be included in the taxpayer's income for the year of assessment during which such further ship was so lost, sold or disposed of.

[Para. (dA) inserted by s. 10 (1) (c) of Act 55 of 1966.]

(dB) For the purposes of paragraph (a), where any company which is or was a parent company contemplated in paragraph (b) of the definition of 'South African ship' in section 14 (2) has -

- (i) exercised the election in terms of section 14 (1D) in relation to any other company which is or was a subsidiary company contemplated in the last-mentioned paragraph; and
- (ii) sold or disposed of in any other manner any shares held in such other company during any year of assessment,

such company shall be deemed to have recovered or recouped during such year of assessment an amount equal to the lesser of -

- (aa) the total of all amounts allowed to be deducted or set off under the provisions of sections 11 (o), 12C and 14, whether in such or any previous year of assessment, in the determination of such company's taxable income in respect of any ship owned by such other company, at the date of sale or disposal of such shares; and
- (bb) the market value of such ship as at the date of sale or disposal of such shares.

[Para. (dB) inserted by s. 6 (1) (a) of Act 36 of 1996.]

(e) Notwithstanding paragraph (a), but subject to paragraph (eB), (eC), (eD) and (eE), there shall not be included in the income of a person any amount recovered or recouped as a result of the disposal of any asset, where that person has elected that paragraph 65 or 66 of the Eighth Schedule applies in respect of the disposal of that asset.

[Para. (e) amended by s. 6 (1) (b) of Act 90 of 1964, substituted by s. 10 (b) of Act 89 of 1969 and by s. 7 (1) (b) of Act 113 of 1977, amended by s. 8 (b) of Act 94 of 1983, by s. 6 (b) of Act 90 of 1988, by s. 5 (1) (c) of Act 101 of 1990, by s. 8 (1) (c) of Act 21 of 1995, by s. 17 (1) (c) of Act 30 of 2000 and by s. 7 of Act 19 of 2001 and substituted by s. 18 (1) (a) of Act 45 of 2003.]

(eA) Where a person acquires more than one asset (hereinafter referred to as 'the replacement

asset or assets') contemplated in paragraph (e), that person must, in applying paragraphs (eB), (eC) and (eD), apportion the amount recovered or recouped to each replacement asset in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each replacement asset bear to the total amount of those receipts and accruals expended in acquiring all those replacement assets.

[Para. (eA) inserted by s. 18 (1) (b) of Act 45 of 2003.]

- (eB) Where a replacement asset in relation to an asset of a person as contemplated in paragraph (e) constitutes a depreciable asset, that person shall be deemed to have recovered or recouped in a year of assessment so much of the amount contemplated in paragraph (e) apportioned to that asset as contemplated in paragraph (eA) as bears to the total amount of the recovery or recoupment contemplated in paragraph (e) the same ratio as the amount of any capital deduction or allowance allowed in that year of assessment in respect of that replacement asset bears to the total amount of the capital deduction or allowance (determined with reference to the cost or value of that asset at the time of acquisition thereof) allowable for all years of assessment in respect of that replacement asset.

[Para. (eB) inserted by s. 18 (1) (b) of Act 45 of 2003.]

- (eC) Where a person during any year of assessment disposes of a replacement asset in relation to an asset contemplated in paragraph (e) and any portion of the recovery or recoupment which is apportioned to that replacement asset has not been included in the income of that person in terms of paragraph (eB) or (eD), that portion must be deemed to be an amount recovered or recouped by that person in respect of that replacement asset in that year of assessment.

[Para. (eC) inserted by s. 18 (1) (b) of Act 45 of 2003.]

- (eD) Where during any year of assessment a person ceases to use a replacement asset in relation to an asset contemplated in paragraph (e), in respect of which paragraph 66 of the Eighth Schedule applies, for the purposes of that person's trade and any portion of the amount which is apportioned to that replacement asset has not been included in the income of that person in terms of paragraph (eB) or (eC), that portion must be deemed to be an amount recovered or recouped in that year of assessment.

[Para. (eD) inserted by s. 18 (1) (b) of Act 45 of 2003.]

- (eE) Where a person contemplated in paragraph (e) fails to conclude a contract or fails to bring any replacement asset into use within the period prescribed in paragraphs 65 or 66 of the Eighth Schedule, as the case may be, paragraph (e) shall not apply and that person must-

- (i) deem the amount contemplated in paragraph (e) to be an amount recovered or recouped for purposes of paragraph (a) on the date on which the relevant period ends;
- (ii) determine interest at the prescribed rate on the amount recovered or recouped from the date of the disposal contemplated in paragraph (e) to the date contemplated in subparagraph (i); and
- (iii) deem that interest to be an amount recovered or recouped for purposes of paragraph (a) on the date contemplated in subparagraph (i).

[Para. (eE) inserted by s. 18 (1) (b) of Act 45 of 2003.]

(f) If as a result of the loss, sale or disposal in any other manner by the taxpayer of the further asset referred to in paragraph (e) there has accrued to or has been received by the taxpayer an amount in excess of the cost thereof less the amount referred to in the said paragraph, so much of the excess as does not exceed such last-mentioned amount shall (unless such last-mentioned amount has been included in income in terms of the proviso to the said paragraph) be deemed to have been recovered or recouped and shall be included in the taxpayer's income for the year of assessment during which such further asset was so lost, sold or disposed of in addition to any recovery or recoupment referred to in paragraph (a).

[Para. (f) substituted by s. 8 (1) (d) of Act 21 of 1995.]

(g) If any amount referred to in paragraph (a) of this subsection is an amount which has been recovered or recouped by any person during any year of assessment as a result of the loss, sale or disposal in any other manner by such person of an aircraft, and if that person satisfies the Commissioner that-

- (i) he will within a period of one year (or such longer period as the Commissioner in the



circumstances of the case may allow) after the end of that year of assessment conclude a contract for the acquisition by him of a further aircraft to replace the aforesaid aircraft; and

- (ii) such further aircraft will be used by him for the purposes of his trade for a period of not less than three years,

the said amount shall, notwithstanding anything to the contrary contained in paragraph (a), but subject to the provisions of paragraphs (h), (i) and (j), not be included in the income of that person for the aforesaid year of assessment, except to the extent that such amount is not in terms of paragraph (a) of subsection (2) of section *fourteen bis* deductible from the cost or estimated cost price of such further aircraft: Provided that the provisions of this paragraph shall not apply to any amount which has been recovered or recouped as a result of any such loss, sale or disposal which takes place on or after 1 August 1992.

[Para. (g) added by s. 9 (1) (b) of Act 88 of 1965 and amended by s. 6 (d) of Act 141 of 1992.]

(h) Within three months after the end of the year of assessment during which any amount referred to in paragraph (g) has been recovered or recouped by the person concerned, there shall be deposited by the said person with the Public Debt Commissioners for such period and on such conditions as may be approved by the Commissioner an amount equal to the amount to be excluded from such person's income in terms of that paragraph, less such amount, if any, as has in the meantime been paid by the said person in respect of the cost price of the further aircraft referred to in that paragraph.

[Para. (h) added by s. 9 (1) (b) of Act 88 of 1965.]

(i) If owing to any occurrence (other than the loss by the person concerned of the further aircraft referred to in paragraph (g)) or because of any circumstance arising during any year of assessment, the Commissioner is no longer satisfied in regard to the matters to which he is in terms of that paragraph required to be satisfied, the amount not included in the taxpayer's income in terms of that paragraph shall be included in the income of the taxpayer for the year of assessment during which such occurrence takes place or such circumstance arises.

[Para. (i) added by s. 9 (1) (b) of Act 88 of 1965.]

(j) If as a result of the loss, sale or disposal in any other manner by the person concerned of the further aircraft referred to in paragraph (g) there has accrued to or has been received by the taxpayer an amount in excess of the cost thereof less the amount not included in the taxpayer's income in terms of the said paragraph, so much of the excess as does not exceed such last-mentioned amount shall (unless such last-mentioned amount has been included in income in terms of paragraph (i)) be deemed to have been recovered or recouped and shall, in addition to any amount referred to in paragraph (a) which has been recovered or recouped, be included in the taxpayer's income for the year of assessment during which such further aircraft was so lost, sold or disposed of.

[Para. (j) added by s. 9 (1) (b) of Act 88 of 1965.]

(k) For the purposes of paragraph (a), where during any year of assessment any person has-

- (i) donated any asset;
- (ii) transferred in whatever manner or form any asset to any shareholder of that company; or

[Sub-para. (ii) substituted by s. 11 (1) (c) of Act 74 of 2002.]

(iii) disposed of any asset to a person who is a connected person in relation to that person, in respect of which a deduction or an allowance has been granted to such person in terms of any of the provisions referred to in that paragraph, such person shall be deemed to have recovered or recouped an amount equal to the market value of such asset as at the date of such donation, transfer or disposal.

[Para. (k) added by s. 4 (1) of Act 113 of 1993, substituted by s. 7 (g) of Act 19 of 2001 and by s. 21 (1) (b) of Act 60 of 2001 and amended by s. 11 (1) (d) of Act 74 of 2002.]

(l) For the purposes of paragraph (a), where-

- (i) any person was entitled to a deduction in respect of any interest or related finance charges (including a discount or premium), which was incurred or deemed to have been incurred by such person in relation to any financial arrangement during any year of assessment and such interest or related finance charges were allowed as a deduction in terms of the provisions of this Act during such year of assessment in the hands of such person;
- (ii) such person has transferred such financial arrangement during any year of assessment to any other person; and
- (iii) any obligation or part thereof in respect of such interest or related finance charges which such person is legally liable to pay has, as a result of such transfer, been transferred to such other person,

such person shall be deemed to have recovered or recouped an amount equal to the amount of such obligation or part thereof so transferred during the year of assessment in which such obligation or part thereof has been so transferred.

[Para. (l) added by s. 6 (1) (b) of Act 36 of 1996.]

- (m) Subject to the provisions of section 20, where-
- (i) as a result of the cancellation, termination or variation of an agreement or due to the prescription, waiver or release of a claim for payment, any person was during any year of assessment relieved or partially relieved from the obligation to make payment of any expenditure actually incurred;
  - (ii) such expenditure was at the date on which such person was so relieved or partially relieved not paid; and
  - (iii) such expenditure or any allowance in relation to such expenditure was in the current or any previous year of assessment allowed as a deduction from such person's income,

such person shall for the purposes of paragraph (a) be deemed to have recovered or recouped an amount equal to the amount of the obligation from which the person was so relieved or partially relieved during the year of assessment in which the person was so relieved or partially relieved.

[Para. (m) added by s. 6 (1) (b) of Act 28 of 1997.]

(n) Where a taxpayer disposes of an industrial asset contemplated in section 12G before completion of the write off period of that asset for purposes of section 11 (e), 12C or 13, as applicable, there shall be included in the taxpayer's income, all amounts allowed to be deducted in respect of that industrial asset under section 12G, whether in the current year or any previous year of assessment, which have been recovered or recouped during the current year of assessment, in addition to the inclusion of those amounts in terms of paragraph (a).

[Para. (n) added by s. 7 (h) of Act 19 of 2001.]

(4A) The provisions of subsection (4) (a), (e), (f) or (k) shall not apply in respect of any amount which is deemed to have been allowed as a deduction in terms of subparagraph (ix) of the proviso to section 11 (e), section 11 (o) (bb), section 12B (4B), section 12C (4A), section 12D (3A), section 13 (1A), section 13bis (3A) or section 13ter (6A).

[Sub-s. (4A) inserted by s. 6 (b) of Act 59 of 2000.]

(5) (a) Any amount which has been paid, whether in the form of rent or otherwise, by any person for the right of use or occupation of any movable or immovable property and has been allowed as a deduction in the determination of such person's taxable income, and which or the equivalent of which is upon the subsequent acquisition of such property by that or any other person applied in reduction or towards settlement of the purchase price of such property, shall be included in the income of the person by whom the property is acquired as aforesaid for the year of assessment in which such person exercises the option or concludes the agreement, as the case may be, in consequence of which the property is acquired by him: Provided that the provisions of this subsection shall not apply in any case where, in consequence of the acquisition of such property, the person who has acquired the property or any other person has derived a taxable benefit the cash equivalent of which has been included in his gross income in terms of the provisions of paragraph (i) of the definition of 'gross income' in section 1.

[Para. (a) amended by s. 4 (e) of Act 96 of 1985.]

(b) Where any amount has been paid by any person for the right of use or occupation of any property which is thereafter acquired by that or any other person for a consideration which in the opinion of the Commissioner is not an adequate consideration or for no consideration, it shall for the purposes of paragraph (a) be deemed, unless the Commissioner having regard to the circumstances of the case otherwise decides, that the said amount, or so much thereof as does not exceed the fair market value of such property as determined by the Commissioner less the amount of the consideration, if any, for which it has been acquired as aforesaid, has been applied in reduction or towards settlement of the purchase price of such property.

[Para. (b) substituted by s. 8 (c) of Act 94 of 1983.]

(bA) If after the termination on or after 1 September 1983 by the effluxion of time or otherwise of a lease of property consisting of corporeal movable goods or of any machinery or plant in respect of which the lessor under such lease was entitled to any allowance under the provisions of this Act, the person who was the lessee under such lease (hereinafter referred to as the former lessee) is, with the express or implied

consent or acquiescence of the person who was the lessor under such lease (hereinafter referred to as the former lessor) or of the owner of the property, allowed to use, enjoy or deal with the property as the former lessee may deem fit-

- (i) without the payment of any consideration; or
- (ii) in the case of a lease entered into on or after 1 September 1983, without the payment of any rental or other consideration or subject to the payment of any consideration which is nominal in relation to the fair market value of the property,

[Sub-para. (ii) substituted by s. 5 (1) (c) of Act 121 of 1984.]

the former lessee shall be deemed for the purposes of paragraph (b) to have acquired the property for no consideration and, if the property was owned by the former lessor, the fair market value thereof shall, unless and until that value is otherwise determined to the satisfaction of the Commissioner, be deemed for the said purposes to be the cost to the former lessor of the property (or, where the said lease was a financial lease as defined in section 1 of the Sales Tax Act, 1978 (Act 103 of 1978), the cash value of the property contemplated in paragraph 2 of Schedule 4 to the said Act), less a depreciation allowance calculated in accordance with paragraph (bB) (i) for the period from the commencement to the termination of the lease.

[Para. (bA) inserted by s. 8 (d) of Act 94 of 1983.]

(bB) For the purposes of paragraph (bA)-

- (i) the depreciation allowance shall be calculated as an aggregate of annual allowances for the years in the period for which the depreciation allowance may be made, the allowance for the first year in the said period being calculated at the rate of 20 per cent of the said cost or cash value, as the case may be, of the property in question and the allowance for each succeeding year in that period being calculated at the said rate on the balance of the said cost or cash value, as the case may be, remaining after the deduction therefrom of the allowance or allowances calculated for the year or years preceding such succeeding year;
- (ii) the former lessor of the property in question, or the owner thereof, as the case may be, shall, unless and until the contrary is proved, be deemed to have consented to the former lessee using, enjoying or dealing with the property as contemplated in the said paragraph if, at the end of a period of three months reckoned after the date on which the lease in question terminated, the former lessor has not instituted proceedings to compel the former lessee to return the property to the former lessor or to relinquish possession thereof or to dispose thereof in accordance with the terms of the lease: Provided that if such lease terminated on or before 31 December 1983 the said period of three months shall be reckoned from that date;

[Sub-para. (ii) substituted by s. 5 (1) (d) of Act 121 of 1984.]

- (iii) where any consideration is payable in respect of the property in question for the period after the termination of the lease in question, such consideration shall be deemed to be nominal in relation to the fair market value of the property if that consideration, in relation to the period for which it is payable, amounts to less than 10 per cent per annum of the said fair market value;
- (iv) if after the termination of a lease referred to in the said paragraph (bA) the former lessee is required to pay a consideration in respect of his right to use, enjoy or deal with the property in question but ceases to pay such consideration or, in the case of a lease referred to in subparagraph (ii) of the said paragraph (bA), pays a consideration in respect of such right which is nominal in relation to the fair market value of the property, the said lease shall be deemed to have been terminated on the date from which the former lessee is no longer required to pay such consideration or in the case of a lease referred to in the said subparagraph (ii), whereafter the consideration payable by him becomes nominal as aforesaid;

[Sub-para. (iv) added by s. 5 (1) (e) of Act 121 of 1984.]

- (v) where in the circumstances contemplated in paragraph 3B of Schedule 4 to the Sales Tax Act, 1978, a lease is deemed to be part of a lease which has ceased to exist, the leases shall be deemed to be one lease.

[Sub-para. (v) added by s. 5 (1) (e) of Act 121 of 1984.]

[Para. (bB) inserted by s. 8 (d) of Act 94 of 1983.]

(bC) Any person who, as a former lessor of property referred to in paragraph (bA) or as the owner thereof, has after the termination of the lease of such property consented to the former lessee thereof using,

enjoying or dealing with such property as contemplated in the said paragraph, or is deemed to have so consented under the provisions of paragraph (bB) (ii) shall not later than 14 days after the end of three months after the termination of the relevant lease advise the former lessee of the fair market value of such property as determined in accordance with paragraph (bA), and shall furnish the Commissioner with a copy of such advice.

[Para. (bC) inserted by s. 8 (d) of Act 94 of 1983.]

(c) Any decision of the Commissioner under paragraph (b) or (bA) shall be subject to objection and appeal.

[Para. (c) substituted by s. 8 (e) of Act 94 of 1983.]

## **8A Gains made by directors of companies or by employees in respect of rights to acquire marketable securities**

### **Cases**

(1) (a) There shall be included in the taxpayer's income for the year of assessment the amount of any gain made by the taxpayer after the first day of June, 1969, by the exercise, cession or release during such year of any right to acquire any marketable security (whether such right be exercised, ceded or released in whole or part), if such right was obtained by the taxpayer before 26 October 2004 as a director or former director of any company or in respect of services rendered or to be rendered by him as an employee to an employer.

[Para. (a) substituted by s. 7 of Act 32 of 2004.]

(b) Where the taxpayer has exercised such right but, by reason of a condition imposed by the said company or employer or the grantor of the right, the taxpayer is not entitled to dispose of the marketable security until after the end of the said year of assessment, the gain made by the exercise of the right shall, if the taxpayer makes an election as provided in paragraph (c), not be included in his income for such year of assessment but shall be included in his income for the year of assessment during which he becomes entitled to dispose of the marketable security: Provided that in the event of the taxpayer's death or insolvency before he becomes entitled to dispose of the marketable security the said gain shall be deemed to have been made by him on the day before the date of his death or insolvency, as the case may be, and shall be assessed accordingly.

[Para. (b) substituted by s. 8 (a) of Act 88 of 1971.]

(c) The taxpayer may, in the circumstances contemplated in paragraph (b), elect that the provisions of that paragraph shall apply in respect of the gain referred to in that paragraph, and such election shall be in writing and shall be furnished to the Commissioner not later than the date on which the taxpayer's return of income is furnished for the year of assessment referred to in paragraph (a), or within such further time as the Commissioner may allow.

(2) For the purposes of this section-

- (a) a gain shall be deemed to have been made by the taxpayer by the exercise of a right to acquire any marketable security if the amount by which the market value of such marketable security at the time such right was exercised exceeds the consideration given by the taxpayer for such marketable security and any consideration given by him for such right or the grant of such right: Provided that such market value shall for the purpose of this paragraph be deemed to be the sum which a person having the right freely to dispose of such marketable security might reasonably expect to obtain from a sale of such marketable security in the open market;
- (b) where the taxpayer for a consideration accepts a restriction upon his right to acquire any marketable security such right shall be deemed to be released in part;
- (c) where any gain is made by the exercise, cession or release of a right to acquire any marketable security, such gain shall be deemed to be made at the time when such right is exercised, ceded or released, as the case may be.

(3) The amount to be included in the taxpayer's income in respect of any gain referred to in subsection (1) shall be-

- (a) where such gain is made by the exercise of a right to obtain any marketable security, the amount referred to in subsection (2) (a); or
- (b) where such gain is made by the cession or release of a right to obtain any marketable security, the amount by which the amount or value of the consideration received by or accrued to the taxpayer for the cession or release, exceeds the amount or value of any

consideration given by the taxpayer for such right or the grant of such right.

(4) In determining under subsections (2) (a) and (3) whether any gain has been made by the exercise, cession or release of a right to obtain any marketable security, and in determining the amount of such gain-

- (a) where any consideration was given by the taxpayer for such right or the grant of such right and the right is exercised, ceded or released in part only or the consideration was given for something in addition to the right, only the portion of such consideration which relates to so much of the right as is exercised, ceded or released, as the case may be, shall be deductible and for that purpose a fair apportionment of such consideration shall be made; and
- (b) no deduction shall be made in respect of any consideration in the form of services rendered or to be rendered or anything done or to be done or not to be done.

(5) Where any right (hereinafter referred to as the first right) to acquire any marketable security is ceded or released by the taxpayer in whole or in part for a consideration which consists of or includes another right (hereinafter referred to as the second right) to acquire such marketable security or any other marketable security-

- (a) the second right shall for the purposes of this section not be deemed to be consideration for the cession or release of the first right; and
- (b) any gain made by the taxpayer by the exercise, cession or release of the second right, shall be determined and included in the taxpayer's income as though such gain had been made by the exercise, cession or release of the first right, and for the purpose of determining such gain, the amount to be deducted under subsection (2) (a) or (3) in respect of the amount or value of the consideration given by the taxpayer for the second right shall be deemed to be the consideration given by the taxpayer for the first right or the grant of such right, less so much of the amount or value of that consideration as has been offset by any consideration other than the consideration consisting of the second right.

[Para. (b) substituted by s. 8 (b) of Act 88 of 1971.]

(6) For the purposes of this section, a gain made by any person other than the taxpayer by the exercise, cession or release of a right to acquire any marketable security shall be deemed to be made by the taxpayer and shall be included in the taxpayer's income as though it were a gain referred to in subsection (1)-

- (a) if that right was originally obtained by any person other than the taxpayer by reason of the taxpayer's office or former office as a director of any company or any services rendered or to be rendered by the taxpayer as an employee of any employer; or
- (b) if that right was originally obtained by the taxpayer as a director or former director of any company or in respect of services rendered or to be rendered by him as an employee to an employer, and-
  - (i) the right was ceded by the taxpayer to any person otherwise than by or under a cession made by way of a bargain at arm's length; or
  - (ii) the gain was made by a relative of the taxpayer.

[Sub-s. (6) substituted by s. 8 (c) of Act 88 of 1971.]

(7) The provisions of subsections (2), (3), (4) and (5) shall *mutatis mutandis* apply in relation to the determination of any gain referred to in subsection (6).

(8) Where any gain is made after the first day of June, 1969, by the exercise, cession or release of a right to acquire any marketable security granted to any person on or before that date, the amount required to be included in income under this section in respect of such gain shall be reduced by an amount which bears to the amount of the gain, as determined under the preceding provisions of this section, the same ratio as the exemption period, as determined under subsection (9) in relation to the said gain, bears to the accrual period, as so determined.

[Sub-s. (8) substituted by s. 8 (1) of Act 52 of 1970.]

(9) For the purposes of determining any reduction to be made under subsection (8) in respect of any gain made by the exercise, cession or release or any right to acquire any marketable security-

- (a) the exemption period shall be deemed to be the period commencing on the date on which the person referred to in subsection (8) was granted such right and ending on the first day of June, 1969; and

- (b) the accrual period shall be deemed to be the period commencing on the first day of the exemption period and ending on the date on which such right is exercised, ceded or released, as the case may be.

(10) For the purposes of this section 'marketable security' means any security, stock, debenture, share, option or other interest capable of being sold in a share-market or exchange or otherwise.

[S. 8A inserted by s. 11 of Act 89 of 1969.]

## **8B Taxation of amounts derived from broad-based employee share plan**

### **Cases**

(1) There must be included in the income of an employee for a year of assessment any amount received by or accrued to that employee during that year from the disposal of any qualifying equity share or any right or interest in a qualifying equity share, which-

- (a) was acquired by that employee in terms of a broad-based employee share plan; and  
 (b) is disposed of by that employee within five years from the date of grant of that qualifying equity share, otherwise than in exchange for another qualifying equity share as contemplated in subsection (2).

(2) If an employee as a result of a subdivision, consolidation, conversion or restructuring of the equity share capital of the employer or any company in the same group of companies as that employer disposes of a qualifying equity share in exchange solely for any other equity share in that employer or any company in the same group of companies as the employer, that other equity instrument acquired in exchange is deemed to be a qualifying equity share which was acquired by that employee on the date of grant of the qualifying equity share disposed of in exchange.

(3) For the purposes of this section-

'broad-based employee share plan' of an employer means a plan in terms of which-

- (a) equity shares in that employer, or in a company in the same group of companies as the employer, are acquired by employees of that employer, for consideration which does not exceed the minimum consideration required by the Companies Act, 1973 (Act 61 of 1973);  
 (b) employees who participate in any other equity scheme of that employer or of a company in the same group of companies as that employer are not entitled to participate and where at least 90 per cent of all other employees who are employed by that employer on a permanent basis on the date of grant (and who have continuously been so employed on a full-time basis for at least one year) are entitled to participate;  
 (c) the employees who acquire the equity shares are entitled to all dividends and full voting rights in relation to those equity shares; and  
 (d) no restrictions have been imposed in respect of the disposal of those equity shares, other than-

- (i) a restriction imposed by legislation;  
 (ii) a right of any person to acquire those equity shares from the employee at market value; or  
 (iii) a restriction in terms of which that employee may not dispose of those equity shares for a period, which may not extend beyond five years from the date of grant;

'date of grant' in relation to an equity share means the date on which the granting of that equity share is approved by the directors or some other person or body of persons with comparable authority conferred under or by virtue of the memorandum and articles of association of the employer company;

'market value' in relation to an equity share means the price which could be obtained upon the sale of that equity share between a willing buyer and a willing seller dealing freely at arm's length in an open market and without having regard to any restrictions imposed in respect of that equity share;

'qualifying equity share' in relation to a person means an equity share acquired in a year of assessment in terms of a broad-based employee share plan, where the market value of all equity shares (as determined on the relevant date of grant of each equity share), which were acquired by that person in terms of that plan in that year and the two immediately preceding years of assessment, does not in aggregate exceed R9 000.

(4) The provisions of section 25 do not apply in respect of any amount received or accrued from the disposal of any qualifying equity share after the date of death of the person contemplated in subsection

(1).

[S. 8B inserted by s. 6 (1) of Act 104 of 1980, amended by s. 6 of Act 121 of 1984, repealed by s. 6 (1) of Act 101 of 1990 and inserted by s. 8 (1) of Act 32 of 2004.]

### **8C Taxation of directors and employees on vesting of equity instruments**

(1) (a) Notwithstanding section 9B and section 23 (m), a taxpayer must include in or deduct from his or her income for a year of assessment any gain or loss determined in terms of subsection (2) in respect of the vesting during that year of any equity instrument, if that equity instrument was acquired by that taxpayer by virtue of his or her employment or office of director of any company.

(b) This section does not apply in respect of any equity instrument which-

- (i) was acquired in exchange for the disposal of any other equity instrument which had already vested in terms of this section before that disposal; or
- (ii) constitutes a qualifying equity share contemplated in section 8B.

(2) (a) The gain to be included in the income of a taxpayer is-

- (i) in the case of a disposal contemplated in subsection (5) (c), the amount received or accrued in respect of that disposal which exceeds the sum of any consideration in respect of that equity instrument; or
- (ii) in any other case, the sum of-
  - (aa) the amount by which the market value of the equity instrument determined on the date on which it vests in that taxpayer exceeds the sum of any consideration in respect of that equity instrument; and
  - (bb) the amount (if any) determined in terms of subsection (4) (b).

(b) The loss to be deducted from the income of a taxpayer is-

- (i) in the case of a disposal contemplated in subsection (5) (c), the amount by which the sum of any consideration in respect of that equity instrument exceeds the amount received or accrued in respect of that disposal; or
- (ii) in any other case, the amount by which the consideration in respect of the equity instrument exceeds the market value of that equity instrument determined on the date that it vests in that taxpayer.

(3) An equity instrument acquired by a taxpayer is deemed for the purposes of this section to vest in that taxpayer-

- (a) in the case of the acquisition of an unrestricted equity instrument, at the time of that acquisition; or
- (b) in the case of the acquisition of a restricted equity instrument, at the earliest of-
  - (i) when all the restrictions, which result in that equity instrument being a restricted equity instrument, cease to have effect;
  - (ii) immediately before that taxpayer disposes of that restricted equity instrument, other than a disposal in respect of which subsection (4) or (5) applies;
  - (iii) when that equity instrument, which is an option contemplated in paragraph (a) of the definition of 'equity instrument', terminates; and
  - (iv) immediately before that taxpayer dies.

(4) (a) If a taxpayer disposes of a restricted equity instrument which was acquired in the manner contemplated in subsection (1) for a consideration which consists of or includes any other restricted equity instrument which is acquired from the employer, associated institution or other person by arrangement with the employer, that other restricted equity instrument acquired in exchange is deemed to be acquired by that taxpayer by virtue of his or her employment or office of director of any company.

(b) If the consideration contemplated in paragraph (a) includes an amount other than restricted equity instruments and that amount exceeds the consideration in respect of the restricted equity instrument which is disposed of as contemplated in paragraph (a), the excess amount must be deemed to be a gain which must be included in the income of the taxpayer in the year of assessment during which that restricted equity instrument is so disposed of.

(5) (a) If a restricted equity instrument which was acquired by a taxpayer in the manner contemplated in subsection (1) is disposed of by that taxpayer to any person-

- (i) otherwise than by or under a disposal made in terms of a transaction at arm's length; or
- (ii) who is a connected person in relation to that taxpayer,

the provisions of subsections (2), (3) and (4) apply *mutatis mutandis* in the determination of any gain or loss made by that person as if that person had been the taxpayer, and that gain or loss is for purposes of

subsection (1) deemed to be made by that taxpayer in respect of the vesting of that equity instrument.

(b) If an equity instrument was acquired by any person other than the taxpayer by virtue of the taxpayer's employment or office of director, that equity instrument must, for purposes of this section, be deemed to have been so acquired by that taxpayer and disposed of to that person in the manner contemplated in paragraph (a).

(c) Paragraph (a) does not apply where a taxpayer disposes of any restricted equity instrument to his or her employer, an associated institution or other person by arrangement with the employer in terms of a restriction imposed in relation to that equity instrument for an amount not exceeding the consideration in respect of that restricted equity instrument.

(6) If a person who acquires a restricted equity instrument from the taxpayer as contemplated in subsection (5), disposes of that restricted equity instrument to any other person in the manner contemplated in subsection (5) (a) (i) or to a connected person in relation to the taxpayer, subsection (5) applies in respect of that other person as if he or she had acquired that restricted equity instrument directly from that taxpayer.

(7) For purposes of this section, unless the context otherwise indicates-

'associated institution' means an associated institution as contemplated in paragraph 1 of the Seventh Schedule;

'consideration' in respect of an equity instrument means any amount given or to be given (otherwise than in the form of services rendered or to be rendered or anything done, to be done or not to be done)-

- (a) by the taxpayer in respect of that equity instrument;
- (b) by the taxpayer in respect of any other restricted equity instrument which had been disposed of by that taxpayer in exchange for that equity instrument, reduced by any amount received or accrued in respect of that disposal which consisted of something other than that equity instrument to the extent that it has not been included in the income of the taxpayer in terms of subsection (4) (b); and
- (c) by any person contemplated in subsection (5) in respect of that equity instrument or other equity instrument contemplated in paragraph (b), which would have been taken into account had it been given by the taxpayer in respect of that equity instrument or other equity instrument, but does not include any amount given or to be given by that person to the taxpayer or to any other person contemplated in subsection (5):

Provided that where a taxpayer acquires an equity instrument in exchange for any other equity instrument, as contemplated in subsection (4) (a), the market value of the equity instrument given in exchange must not be taken into account in determining the consideration in respect of the equity instrument so acquired;

'employer' means an employer as contemplated in paragraph 1 of the Seventh Schedule;

'equity instrument' means a share or part thereof in the equity share capital of a company or a member's interest in a company which is a close corporation, and includes-

- (a) an option to acquire such a share, part of a share or member's interest; and
- (b) any other financial instrument that is convertible to a share, part of a share or member's interest;

'market value' in relation to an equity instrument means the price which could be obtained upon the sale of that equity instrument between a willing buyer and a willing seller dealing freely at arm's length in an open market and, in the case of a restricted equity instrument, had the restriction to which that equity instrument is subject not existed;

'restricted equity instrument' in relation to a taxpayer means an equity instrument-

- (a) which is subject to any restriction (other than a restriction imposed by legislation) that prevents the taxpayer from freely disposing of that equity instrument at market value;
- (b) which is subject to any restriction that could result in the taxpayer forfeiting ownership of that equity instrument otherwise than at market value;
- (c) if any person has retained the right to impose a restriction contemplated in paragraph (a) or (b) on the disposal of that equity instrument;
- (d) which is an option contemplated in paragraph (a) of the definition of 'equity instrument' and where the equity instrument which can be acquired in terms of that option will be a restricted equity instrument;
- (e) which is a financial instrument contemplated in paragraph (b) of the definition of 'equity instrument' and where the equity instrument to which that financial instrument can be converted will be a restricted equity instrument; or



- (f) if the employer, associated institution in relation to the employer or other person by arrangement with the employer has at the time of acquisition by the taxpayer of the equity instrument undertaken to-
- (i) cancel the transaction under which that taxpayer acquired the equity instrument; or
  - (ii) repurchase that equity instrument from that taxpayer at a price exceeding its market value on the date of repurchase, if there is a decline in the value of the equity instrument after that acquisition; and

'unrestricted equity instrument' means an equity instrument which is not a restricted equity instrument.

(2) Subsection (1) shall come into operation on 26 October 2004 and applies -

- (a) to the extent it inserts section 8B, in respect of any qualifying equity share acquired in terms of a broad-based employee share plan approved on or after that date by the directors or some other person or body of persons with comparable authority conferred under or by virtue of the memorandum and articles of association of the company; and
- (b) to the extent it inserts section 8C, in respect of any equity instrument acquired on or after that date, otherwise than by way of the exercise of any right granted before that date and in respect of which section 8A applies.

[S. 8C inserted by s. 7 (1) of Act 96 of 1981, amended by s. 7 of Act 121 of 1984, repealed by s. 7 of Act 101 of 1990 and inserted by s. 8 (1) of Act 32 of 2004.]

#### 8D .....

##### Cases

[S. 8D inserted by s. 7 (1) of Act 96 of 1981, amended by s. 8 of Act 121 of 1984 and repealed by s. 8 (1) of Act 101 of 1990.]

#### 8E **Dividends on certain shares deemed to be interest in relation to the recipient thereof**

(1) For the purposes of this section-  
'affected instrument' .....

[Definition of 'affected instrument' amended by s. 19 (1) of Act 45 of 2003 and deleted by s. 9 (1) (a) of Act 32 of 2004.]

'date of issue' in relation to a share in a company means-

- (a) the date on which it is issued by that company;
- (b) the date on which the holder at any time after the share is issued acquires a right of disposal in respect of that share, otherwise than as a result of the acquisition of that share by that holder;
- (c) the date on which the company at any time after the share is issued undertakes the obligation to redeem that share in whole or in part; and
- (d) the date on which the holder at any time after the share is issued obtains the right to require that share to be redeemed in whole or in part, otherwise than as a result of the acquisition of that share by that holder;

[Definition of 'date of issue' inserted by s. 9 (1) (b) of Act 32 of 2004.]

'effective date' means 23 March 1989;

'hybrid equity instrument' means-

- (a) any redeemable preference share which the relevant company is obliged to redeem in whole or in part within a period of three years from the date of issue thereof, or which may at the option of the holder be redeemed in whole or in part within the said period, or in respect of which the holder has a right of disposal which may be exercised within the said period; or
- (b) any other share, if-
  - (i) the holder has a right of disposal in respect of such share which may be exercised within a period of three years from the date of issue thereof or at the time of issue of that share, the existence of the company issuing that share is to be terminated within a period of three years or is likely to be terminated within such period upon a reasonable consideration of all the facts at the time that share is issued; and
  - (ii) such share does not rank *pari passu* as regards its participation in dividends with all other ordinary shares in the capital of the relevant company or, where the

ordinary shares in such company are divided into two or more classes, with the shares of at least one of such classes, or any dividend payable on such share is to be calculated directly or indirectly with reference to-

- (aa) any specified rate of interest;
- (bb) the amount of capital subscribed for such share; or
- (cc) the amount of any loan or advance made directly or indirectly by the shareholder or by any connected person in relation to the shareholder;

[Definition of 'hybrid equity instrument' inserted by s. 9 (1) (c) of Act 32 of 2004.]

'right of disposal' means a right which the holder of an hybrid equity instrument has to require any party-

- (a) to acquire that hybrid equity instrument from that holder; or
- (b) to procure, facilitate or assist with the redemption in whole or in part of that hybrid equity instrument or the repayment in whole or in part of the capital subscribed for that hybrid equity instrument or the conversion of that hybrid equity instrument into any other share which is redeemable in whole or in part within a period of three years from the date of issue thereof.

[Definition of 'right of disposal', previously 'right of acquisition', substituted by s. 9 (1) (d) of Act 32 of 2004.]

(2) Any dividend declared by a company on, a hybrid equity instrument which is declared on or after the date that the share becomes a hybrid equity instrument, shall for the purposes of this Act be deemed in relation to the recipient thereof only to be an amount of interest received by him from a source within the Republic.

[Sub-s. (2) substituted by s. 9 (1) (e) of Act 32 of 2004.]

(3) .....

[Sub-s. (3) deleted by s. 9 (1) (f) of Act 32 of 2004.]

(4) .....

[Sub-s. (4) deleted by s. 9 (1) (f) of Act 32 of 2004.]

[S. 8E inserted by s. 6 of Act 70 of 1989.]

## **8F Limitation of deduction of certain interest payments**

(1) For purposes of this section, unless the context otherwise indicates, any word to which a meaning has been ascribed in section 24J bears the meaning so ascribed, and-

'date of issue' in relation to an instrument means-

- (a) the date on which it is issued; and
- (b) the date on which that instrument becomes convertible into or exchangeable for a share at any time in the future;


'hybrid debt instrument' means an instrument, where-

- (a) that instrument is at the option of the issuer convertible into or exchangeable for any share in that issuer or any connected person in relation to that issuer within three years from the date of issue of that instrument;
- (b) the issuer in relation to that instrument is entitled to repay that instrument in whole or in part within three years from the date of issue of that instrument by the issue of shares by the issuer or any connected person in relation to the issuer to the holder of the instrument;
- (c) the issuer in relation to that instrument is entitled to repay that instrument in whole or in part within three years from the date of issue of that instrument and is entitled at the time of that repayment to require the holder of that instrument to subscribe for or acquire shares in the issuer or any connected person in relation to the issuer; or
- (d) that instrument, other than a listed instrument issued by a listed company, is at the option of the holder convertible into or exchangeable for any share in the issuer or any connected person in relation to the issuer within three years from the date of issue and it is determined on the date of issue that the value of that share at the time of conversion or exchange is likely to exceed the value of the instrument by at least 20 per cent.

(2) No deduction shall be allowed in terms of this Act in respect of any amount paid or payable by an issuer in terms of a hybrid debt instrument, which is paid or becomes payable after that instrument becomes a hybrid debt instrument.

[S. 8F inserted by s. 10 (1) of Act 32 of 2004.]

## **9 Circumstances in which amounts deemed to have accrued from sources within the Republic**

 **Cases**

(1) An amount shall be deemed to have accrued to any person from a source within the Republic if it has been received by or has accrued to or in favour of such person by virtue of-

(a) .....

[Para. (a) deleted by s. 7 (a) of Act 59 of 2000.]

(b) the use or right of use in the Republic of, or the grant of permission to use in the Republic-

- (i) any patent, design, trade mark, copyright, model, pattern, plan, formula or process or any other property or right of a similar nature; or
- (ii) motion picture film, or any film or video tape or disc, any sound recording or advertising matter,  
contemplated in section 35;

[Para. (b) substituted by s. 7 (a) of Act 90 of 1962, amended by s. 12 (a) of Act 89 of 1969, substituted by s. 6 (1) (a) of Act 65 of 1973 and by s. 9 (a) of Act 85 of 1974, amended by s. 7 (1) (a) of Act 85 of 1987, by s. 10 (a) of act 129 of 1991 and by s. 15 (a) of Act 53 of 1999, deleted by s. 7 (a) of Act 59 of 2000 and inserted by s. 12 (1) (a) of Act 74 of 2002.]

(bA) the imparting of or undertaking to impart any scientific, technical, industrial or commercial knowledge or information for use in the Republic or rendering or undertaking to render any assistance or service in connection with the application or utilization of such knowledge or information, as contemplated in section 35;

[Para. (bA) inserted by s. 6 (1) (b) of Act 65 of 1973, deleted by s. 7 (a) of Act 59 of 2000 and inserted by s. 12 (1) (a) of Act 74 of 2002.]

(c) .....

[Para. (c) substituted by s. 9 (b) of Act 85 of 1974 and deleted by s. 7 (a) of Act 59 of 2000.]

(cA) any contract made by such person for the disposal of any mineral (including natural oil) won by him or her in the course of mining operations carried on by him or her under any-

- (i) mining authorization granted under the Minerals Act, 1991 (Act 50 of 1991); or
- (ii) prospecting right, mining right, exploration right or production right or mining permit issued in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002), wheresoever such contract was made or such mining operations were carried on;

[Para. (cA) inserted by s. 9 (1) (a) of Act 95 of 1967 and substituted by s. 7 (a) of Act 141 of 1992 and by s. 11 (1) (a) of Act 32 of 2004.]

(cB) .....

[Para. (cB) inserted by s. 5 (b) of Act 96 of 1985 and deleted by s. 7 (a) of Act 59 of 2000.]

(d) .....

[Para. (d) deleted by s. 7 (a) of Act 59 of 2000.]

(d)bis .....

[Para. (d)bis inserted by s. 7 (b) of Act 90 of 1962 and deleted by s. 7 (a) of Act 59 of 2000.]

(e) (i) any services rendered by such person to or work or labour done by such person for or on behalf of any employer in the national or provincial sphere of government or any local authority in the Republic or any national or provincial public entity if not less than 80 per cent of the expenditure of such entity is defrayed directly or indirectly from funds voted by Parliament, notwithstanding that such services are rendered or that such work or labour is done outside the Republic, provided such services are rendered or such work or labour is done in accordance with a contract of employment entered into with the Government or local authority or national or provincial public entity; or

[Sub-para. (i) substituted by s. 25 (1) (a) of Act 30 of 1998 and by s. 7 (b) of Act 59 of 2000.]

(ii) the holding of a public office to which such person has been appointed or is deemed to have been appointed in terms of an Act of Parliament, notwithstanding that such public office is held outside the Republic:

[Para. (e) amended by s. 6 of Act 72 of 1963, substituted by s. 7 of Act 90 of 1964, amended by s. 12 (b) of Act 89 of 1969 and by s. 9 of Act 121 of 1984, substituted by s. 9 (a) of Act 21 of 1995 and amended by s. 7 (c) of Act 59 of 2000 and by s. 12 (1) (b) of Act 74 of 2002.]

[NB: In terms of s. 36 (2) of the Legal Succession to the South African Transport Services Act 9 of 1989, the reference to 'the Railway Administration' in the above provision shall be construed as including the Company (Transnet Limited) and the Corporation (the South African Rail Commuter Corporation Limited).]

(f) .....

[Para. (f) amended by s. 5 of Act 113 of 1993 and by s. 3 (1) of Act 140 of 1993 and deleted by s. 7 (a) of Act 59 of 2000.]

- (fA) any services rendered by that person to, or work or labour done by that person for, any other person upon, beneath or above the continental shelf referred to in section 8 of the Maritime Zones Act, 1994 (Act 15 of 1994), in the course of any operations connected with operations carried on by any person under any -
- (i) prospecting permit or mining authorization issued or which may be issued under the Minerals Act, 1991 (Act 50 of 1991);
  - (ii) prospecting or mining lease granted under the Mining Rights Act, 1967 (Act 20 of 1967), or under any sublease granted or which may be granted under any such lease; or
  - (iii) prospecting right, mining right, exploration right or production right, mining permit, retention permit or reconnaissance permission issued in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002),

wheresoever payment for such services or work or labour is or is to be made;

[Para. (fA) inserted by s. 9 (1) (b) of Act 95 of 1967 and substituted by s. 10 (b) of Act 129 of 1991, by s. 7 (b) of Act 141 of 1992, by s. 15 (b) of Act 53 of 1999 and by s. 11 (1) (b) of Act 32 of 2004.]

- (g) any pension or annuity granted to such person, wheresoever payment of that pension or annuity is made and wheresoever the funds from which payment is made are situated -
- (i) by the Government, any provincial administration, or by any local authority in the Republic; or
  - (ii) by any person, whether residing or carrying on business in the Republic or not, if the services in respect of which that pension or annuity was granted were performed within the Republic for at least two years during the ten years immediately preceding the date from which the pension or annuity first became due: Provided that if the pension or annuity was granted in respect of services which were rendered partly within and partly outside the Republic, only so much of such pension or annuity as bears to the amount of such pension or annuity the same ratio as the period during which the services were rendered in the Republic bears to the total period during which the services were rendered, shall be deemed to be derived from a source within the Republic: Provided further that any services rendered in the territory of the former Republic of Transkei, Bophuthatswana, Venda or Ciskei shall be deemed to have been rendered within the Republic;

[Sub-para. (ii) amended by s. 9 (b) of Act 21 of 1995.]

[Para. (g) amended by s. 36 (6) of Act 9 of 1989.]

- (h) a judicial order or written agreement of separation or an order of divorce, if the taxable income of such person's spouse or former spouse has been reduced by such amount in terms of section *twenty-one*, wheresoever such judicial order or order of divorce was granted or such agreement was made or such amount is paid or payable and whether such person's spouse or former spouse is resident in or out of the Republic.

[Para. (h) added by s. 7 (c) of Act 90 of 1962.]

(1A) For the purposes of paragraph (g) (ii) the services referred to in paragraph (fA) shall be deemed to have been performed within the Republic.

[Sub-s. (1A) inserted by s. 7 (1) of Act 21 of 1994 and substituted by s. 7 (d) of Act 59 of 2000.]

(2) The capital gain or capital loss from the disposal of an asset of a person shall be deemed to be from a source in the Republic, where -

- (a) in the case of immovable property held by that person or any interest or right of whatever nature of that person to or in immovable property, that property is situated in the Republic;
- (b) in the case of any asset other than immovable property or any interest or right to or in

immovable property-

- (i) that person is a resident and that asset is not attributable to a permanent establishment of that person which is situated outside the Republic; or
- (ii) that person is not a resident, but that asset is attributable to a permanent establishment of that person which is situated in the Republic:

Provided that for the purpose of this subsection, an interest in immovable property held by a person includes any equity shares in a company or other entity, where-

- (aa) 80 per cent or more of the value of the net assets of that company or other entity, determined on the market value basis, is attributable directly or indirectly to immovable property, (other than immovable property held by that company or entity as trading stock); and.

[Para. (aa) substituted by s. 20 of Act 45 of 2003.]

- (bb) that person (whether alone or together with any connected person in relation to that person) holds at least 20 per cent in the equity share capital of that company or other entity.

[Sub-s. (2) added by s. 7 (d) of Act 90 of 1962, amended by s. 12 (c) of Act 89 of 1969, substituted by s. 8 of Act 103 of 1976, by s. 6 of Act 65 of 1986 and by s. 2 (1) of Act 108 of 1986, deleted by s. 7 of Act 28 of 1997 and inserted by s. 12 (1) (c) of Act 74 of 2002.]

(3) .....

[Sub-s. (3) added by s. 7 (d) of Act 90 of 1962, amended by s. 12 (d) of Act 89 of 1969, substituted by s. 9 (c) of Act 85 of 1974 and deleted by s. 7 of Act 28 of 1997.]

(4) .....

[Sub-s. (4) added by s. 7 (1) (b) of Act 85 of 1987 and deleted by s. 7 of Act 28 of 1997.]

(5) .....

[Sub-s. (5) added by s. 7 (1) (b) of Act 85 of 1987 and deleted by s. 7 (e) of Act 59 of 2000.]

(6) Any interest as defined in section 24J shall for the purposes of this Act be deemed to have been received or accrued from a source within the Republic, where such interest was derived from the utilisation or application in the Republic by any person of any funds or credit obtained in terms of any form of interest-bearing arrangement.

[Sub-s. (6) added by s. 25 (1) (b) of Act 30 of 1998.]

(7) For the purposes of subsection (6) the place of utilisation or application shall, until the contrary is proved, be deemed to be, in the case where such funds are or credit is utilised or applied by-

- (a) a natural person, the place where such person is ordinarily resident; or
- (b) a person other than a natural person, its place of effective management.

[Sub-s. (7) added by s. 25 (1) (b) of Act 30 of 1998.]

#### **9A Blocked foreign funds**

Where any amount, or any portion of any amount -

- (a) received by or accrued to any person which is required to be included in the gross income or taxable income of that person; or
- (b) of the net income of a controlled foreign company which is taken into account in determining an amount which is required to be included in the income of any resident in terms of the provisions of section 9D,

during any year of assessment, may not be remitted to the Republic during that year of assessment as a result of currency or other restrictions or limitations imposed in terms of the laws of the country where the amount arose, that amount or any portion thereof shall be deemed not to have been received or accrued to that person, or shall not be included in the income of that resident, as the case may be, during that year and that amount or portion thereof shall be included in the gross income or taxable income of that person or the income of that resident during the year of assessment during which that amount or portion thereof may be so remitted to the Republic.

[S. 9A inserted by s. 8 (1) of Act 85 of 1987, amended by s. 8 (1) of Act 141 of 1992, by s. 8 of Act 21 of 1994 and by s. 8 of Act 28 of 1997, repealed by s. 8 of Act 59 of 2000 and inserted by s. 13 of Act 74 of 2002.]

#### **9B Circumstances in which certain amounts received or accrued in relation to disposal of listed shares are deemed to be of capital nature**

(1) For the purposes of this section 'affected share', in relation to any taxpayer, means a listed share in a company as contemplated in paragraph (a) of the definition of 'listed company', which has been

disposed of by the taxpayer who immediately prior to such disposal had been the owner of such share as a listed share for a continuous period of at least five years: Provided that -

- (a) where the taxpayer is a company which acquired such share from any other company in the same 'group of companies' as defined in section 48 of the Taxation Laws Amendment Act, 1988 (Act 87 of 1988), and such company qualified for an exemption from stamp duty in respect of the registration of transfer of such share in terms of the said section, both such companies shall be deemed to be one and the same company;
- (b) where any other share or shares are issued to such taxpayer by the company in which he holds such share in substitution for any such share by reason of a subdivision of any such share or any similar arrangement, or any capitalization share in relation to such share is issued by such company to such taxpayer, such share and such other share or shares or such capitalization share shall be deemed to be one and the same share if-
  - (i) such taxpayer's participation rights and interests, whatsoever, in such company remain unaltered; and
  - (ii) no consideration whatsoever passes directly or indirectly from such taxpayer to such company in relation to the issue of such other share or shares or such capitalization share;
- (c) the taxpayer shall be deemed to have disposed of a share if the share has been cancelled or redeemed or if the relevant company has been liquidated or deregistered;
- (d) where the taxpayer is a registered insurer in terms of the Insurance Act, 1943 (Act 27 of 1943), and has acquired a share in accordance with a transfer of insurance business as contemplated in section 25A of that Act from another insurer who carried on long-term and short-term insurance business, both such insurers shall be deemed to be one and the same insurer; and  
[Para. (d) added by s. 9 (1) (b) of Act 141 of 1992.]
- (e) where-
  - (i) any share has been lent by a lender to a borrower in terms of a securities lending arrangement, such share shall for the purposes of the lender be deemed not to have been disposed of by the lender; and  
[Sub-para. (i) substituted by s. 21 (1) of Act 45 of 2003.]
  - (ii) any other share of the same kind and of the same or equivalent quantity and quality has been returned by the borrower to the lender, such share and such other share shall be deemed to be one and the same share in the hands of the lender.  
[Para. (e) added by s. 7 (1) (c) of Act 36 of 1996.]

[Sub-s. (1) amended by s. 9 (1) (a) of Act 141 of 1992, by s. 16 (1) (a) of Act 53 of 1999 and by s. 12 (1) of Act 32 of 2004.]

(2) Any taxpayer may elect that any amount received by or accrued to or in favour of him as a result of the disposal on or after 14 March 1990 of an affected share, be deemed to be of a capital nature for the purposes of the definition of 'gross income' in section 1: Provided that where the taxpayer is a natural person who dies or is declared insolvent during his ownership in an affected share or is a company which is liquidated during its ownership in such share, the executor of such person's deceased estate or the curator of such person's insolvent estate or the liquidator of such company may exercise the election in terms of this subsection.

(3) The election referred to in subsection (2) shall be exercised in respect of the first affected share disposed of by any taxpayer on or after 14 March 1990, and such election shall be made by such taxpayer in his return of income in respect of the relevant year of assessment in which he disposed of such affected share.

(3A) (a) Any election made under subsection (2) in respect of an affected share disposed of prior to 18 March 1992, may be withdrawn by the taxpayer or the executor, curator or liquidator referred to in the proviso to the said subsection and be replaced by a new election which shall be exercised in respect of the first affected share disposed of by the taxpayer on or after that date.

(b) The provisions of subsections (2), (3) and (4) shall *mutatis mutandis* apply to a new election made under paragraph (a).

[Sub-s. (3A) inserted by s. 9 (1) (c) of Act 141 of 1992.]

(4) An election made under subsection (2) shall be binding upon the taxpayer in respect of each succeeding disposal of an affected share during the year of assessment in which he exercised his election

and every succeeding year of assessment.

(5) The provisions of this section shall not apply to any affected shares where such shares constitute shares which were deemed to be trading stock of the taxpayer in terms of section 24A (2) (a) of this Act.

[Sub-s. (5) deleted by s. 11 of Act 129 of 1991 and inserted by s. 16 (1) (b) of Act 53 of 1999.]

(6) If any taxpayer has elected that the provisions of this section shall apply to him, there shall in the year of assessment in which any affected share is disposed of by him, be included in his income any expenditure or losses (excluding so much of any such expenditure or losses as may be allowable as a deduction in the determination of the taxable income derived by the taxpayer from dividends) incurred in respect of such affected share and allowed as a deduction from the income of such taxpayer during such or any previous year of assessment, and any amount allowed to be deducted from the cost price of such affected share under the provisions of section 22 (1) in any such year.

(7) Where the taxpayer holds affected shares in any company which were acquired by him on different dates and he has disposed of any of those shares, he shall for the purposes of this section be deemed to have disposed of the affected shares held by him for the longest period of time.

(8) For the purposes of this section any amount included in the income of any company in terms of the provisions of section 22 (8) (b) as a result of the application, disposal or distribution of any affected share as contemplated in that section, shall be deemed to be an amount which has accrued to such company as a result of the disposal of such affected share.

[Sub-s. (8) added by s. 6 of Act 113 of 1993 and substituted by s. 26 of Act 30 of 1998.]

[S. 9B inserted by s. 9 of Act 101 of 1990.]

#### 9C .....

[S. 9C inserted by s. 9 (1) of Act 28 of 1997, amended by s. 27 (1) of Act 30 of 1998 and by s. 18 (1) of Act 30 of 2000 and repealed by s. 9 of Act 59 of 2000.]

#### 9D Net income of controlled foreign companies

(1) For the purposes of this section-

'business establishment', in relation to a controlled foreign company, means-

- (a) a place of business with an office, shop, factory, warehouse or other structure which is used or will continue to be used by the controlled foreign company for a period of not less than one year, whereby the business of such company is carried on, and where-
  - (i) that place of business is suitably equipped with on-site operational management, employees, equipment and other facilities for the purposes of conducting the primary operations of that business; and
  - (ii) that place of business is utilised outside the Republic for a *bona fide* business purpose (other than the avoidance, postponement or reduction of any liability for payment of any tax, duty or levy imposed by this Act or by any other Act administered by the Commissioner);
- (b) a mine, oil or gas well, a quarry or any other place of extraction of natural resources, where that controlled foreign company has a right to directly explore or extract those natural resources, or any area where that controlled foreign company has the right to carry on prospecting operations preliminary to the establishment of a mine, oil or gas well, quarry or other place of extraction, and where that controlled foreign company carries on those exploration, extraction or prospecting operations;
- (c) a site for the construction or installation of buildings, bridges, roads, pipelines, heavy machinery or other projects of comparable magnitude which lasts for a period of not less than six months, where that controlled foreign company carries on those construction or installation activities;
- (d) agricultural land used for *bona fide* farming activities directly carried on by that controlled foreign company; or
- (e) a vessel or an aircraft solely engaged in transportation within a single country, or a fishing vessel or a vessel used for prospecting, exploration or extraction, where that vessels or aircraft is operated directly by that controlled foreign company;

'controlled foreign company' means any foreign company where more than 50 per cent of the total participation rights in that foreign company are held by one or more residents whether directly or indirectly: Provided that a person who holds less than five per cent of the participation rights of a foreign company which is either a listed company or a scheme or arrangement contemplated in paragraph (e) (ii) of

the definition of 'company' in section 1, shall be deemed not to be a resident in determining whether residents directly or indirectly hold more than 50 per cent of the participation rights in-

- (a) that foreign company; or
- (b) any other foreign company in which that person indirectly holds any participation rights as a result of the interest in that listed company or scheme or arrangement,

unless more than 50 per cent of the participation rights of that foreign company or other foreign company are held by persons who are connected persons in relation to each other;

'foreign company' means any association, corporation, company, arrangement or scheme contemplated in paragraph (a), (b) or (e) of the definition of 'company' in section 1, which is not a resident;

[Definition of 'foreign company' substituted by s. 22 (1) (a) of Act 45 of 2003.]

'foreign financial instrument holding company' means a foreign financial instrument holding company as defined in section 41: Provided that in determining whether more than half of the market value or two-thirds of actual cost of the assets of the company and all controlled group companies consist of financial instruments, the following assets must be wholly disregarded-

- (a) any share in any other company in the same group of companies; and
- (b) any financial instrument which constitutes a loan, advance or debt entered into between companies which form part of the same group of companies;

[Definition of 'foreign financial instrument holding company' substituted by s. 22 (1) (b) of Act 45 of 2003.]

'foreign tax year' in relation to a controlled foreign company means the year or period of reporting for foreign income tax purposes or, if that company is not subject to foreign income tax, the annual period of financial reporting by that company;

'participation rights' in relation to a foreign company means the right to participate directly or indirectly in the share capital, share premium, current or accumulated profits or reserves of that foreign company, whether or not of a capital nature.

(2) There shall be included in the income for the year of assessment of any resident who holds any participation rights in a controlled foreign company-

- (a) on the last day of the foreign tax year of that controlled foreign company which ends during that year of assessment, an amount equal to-
  - (i) where that foreign company was a controlled foreign company for the entire foreign tax year, the proportional amount of the net income of that controlled foreign company determined for that foreign tax year, which bears to the total net income of that company during that foreign tax year, the same ratio as the percentage of the participation rights of that resident in relation to that company bears to the total participation rights in relation to that company on that last day; or
  - (ii) where that foreign company became a controlled foreign company at any stage during that foreign tax year, at the option of the resident, either-
    - (aa) an amount which bears to the proportional amount determined in accordance with subparagraph (i), the same ratio as the number of days during that foreign tax year that the foreign company was a controlled foreign company bears to the total number of days in that foreign tax year; or
    - (bb) the proportional amount determined in the manner contemplated in subparagraph (i) (as if the day that foreign company commenced to be a controlled foreign company was the first day of its foreign tax year), of the net income of that company for the period commencing on the day that the foreign company commenced to be a controlled foreign company and ending on the last day of that foreign tax year; or

[Item (bb) substituted by s. 22 (1) (c) of Act 45 of 2003.]

- (b) immediately before that foreign company ceased to be a controlled foreign company at any stage during that year of assessment before the last day of the foreign tax year of that controlled foreign company, an amount which shall be equal to, at the option of the resident, either-
  - (i) an amount determined in accordance with paragraph (a) (ii) (aa); or
  - (ii) the proportional amount determined in the manner contemplated in paragraph (a)



(i) (as if the day that foreign company ceased to be a controlled foreign company was the last day of its foreign tax year), of the net income of that company determined for the period commencing on the first day of that foreign tax year and ending on the date that the company so ceased to be a controlled foreign company:

Provided that this subsection shall not apply-

- (A) where that resident (together with any connected person in relation to that resident)-
  - (i) at the end of the last day of the foreign tax year of the controlled foreign company; or
  - (ii) in the case where that foreign company ceased to be a controlled foreign company during the relevant foreign tax year, immediately before that foreign company so ceased to be a controlled foreign company, in aggregate holds less than 10 per cent of the participation rights in that controlled foreign company; or
- (B) to the extent that the participation rights are held by that resident indirectly through any company which is a resident.

(2A) For the purposes of this section the 'net income' of a controlled foreign company in respect of a foreign tax year is an amount equal to the taxable income of that company determined in accordance with the provisions of this Act as if that controlled foreign company had been a taxpayer, and as if that company had been a resident for purposes of the definition of 'gross income', sections 7 (8), 10 (1) (h), 25B and paragraphs 2 (1) (a), 12, 24, 70, 71, 72 and 80 of the Eighth Schedule: Provided that-

- (a) any deductions or allowances which may be allowed, or any amounts which may be set off against, the income of that foreign company in terms of this Act shall be limited to the amount of that income;
- (b) any amount whereby such deductions or allowances or amounts exceed the amount of such income, shall be carried forward to the immediately succeeding foreign tax year and be deemed to be a balance of assessed loss which may be set off against the income of such company in such succeeding year for the purposes of section 20;
- (c) no deduction shall be allowed in respect of any interest, royalties, rental or income of a similar nature paid or payable or deemed to be paid or payable by that company to any other controlled foreign company in relation to the resident (including any similar amount adjusted in terms of section 31) or any exchange difference determined in terms of section 24I in respect of any exchange item to which that controlled foreign company and other foreign company are parties, as contemplated in subsection (9) (fA), unless that resident has elected in terms of subsection (12) that the provisions of subsection (9) shall not apply in respect of the net income of that other controlled foreign company for the relevant foreign tax year;
 

[Para. (c) substituted by s. 22 (1) (e) of Act 45 of 2003.]
- (d) .....
- (e) where a foreign company becomes a controlled foreign company after 1 October 2001, the valuation date for purposes of the determination of any taxable capital gain or assessed capital loss in terms of the Eighth Schedule, shall be the date that such company becomes a controlled foreign company;
- (f) where the resident contemplated in subsection (2) is a natural person, special trust or an insurer in respect of its individual policyholder fund, the taxable capital gain of the controlled foreign company shall, for the purposes of paragraph 10 of the Eighth Schedule, be 25 per cent of that company's net capital gain for the relevant foreign tax year;
- (h) for the purposes of section 24I, 'local currency' in relation to an exchange item of a controlled foreign company which is not attributable to a permanent establishment of that company, means any currency used by that company for purposes of financial reporting;
- (i) for the purposes of section 31 -
  - (aa) any transaction, operation or scheme between that controlled foreign company and any connected person in relation to that controlled foreign company shall be deemed to be an international agreement as defined in that section; and
  - (bb) that controlled foreign company must for purposes of section 31 (3) (a) (i) and (ii) be deemed to be a resident;

- (j) for the purposes of determining any capital gain or capital loss of that controlled foreign company from the disposal of any interest in any other foreign company (which is a controlled foreign company in relation to the resident contemplated in subsection (2)), the base cost of that interest shall be increased in terms of paragraph 20 (1) (h) (iii) of the Eighth Schedule, by any amount derived by that other foreign company (or any other company in which that foreign company holds a direct or indirect interest which is also a controlled foreign company in relation to that resident), which was taken into account in determining the amount to be included in the income of that resident in terms of this section by virtue of that resident's shareholding in the controlled foreign company, reduced by the amount of any dividend distributed to that controlled foreign company by any such other foreign company from such income so taken into account; and
- (k) for the purposes of paragraph 43 of the Eighth Schedule, 'local currency' of a controlled foreign company otherwise than in relation to a permanent establishment of that controlled foreign company, means the currency used by that company for purposes of financial reporting.

[Sub-s. (2A) amended by s. 22 (1) (d) of Act 45 of 2003 and by s. 13 (1) of Act 32 of 2004.]

(3) and (4) .....

(4A) .....

(5) .....

(6) The net income of a controlled foreign company, shall be determined in the currency used by that controlled foreign company for purposes of financial reporting and shall, for purposes of determining the amount to be included in the income of any resident during any year of assessment under the provisions of this section, be translated to the currency of the Republic by applying the average exchange rate for that year of assessment, as contemplated in section 25D: Provided that-

- (a) any capital gain or capital loss of that controlled foreign company shall, when applying paragraph 43 (4) of the Eighth Schedule, be determined in the currency of the Republic and that capital gain or capital loss shall be translated to the currency used by that controlled foreign company for purposes of financial reporting by applying that average exchange rate; and
- (b) any amount to be taken into account in determining the net income of that controlled foreign company in respect of the disposal of any foreign equity instrument shall, when applying section 9G, be determined in the currency of the Republic and that amount shall be translated to the currency so used by that controlled foreign company by applying that average exchange rate.

(7) and (8) .....

(9) The provisions of subsection (2) shall not apply to the extent that the net income of the controlled foreign company-

(a) .....

[Para. (a) deleted by s. 22 (1) (g) of Act 45 of 2003.]

(b) is attributable to any business establishment of that controlled foreign company in any country other than the Republic: Provided that the provisions of this paragraph shall not apply to any net income that is attributable to-

- (i) any amounts derived from any transaction relating to the supply of goods or services by or to that controlled foreign company with any connected person (in relation to that controlled foreign company), who is a resident, unless the consideration in respect of that transaction reflects an arm's length price that is consistent with the provisions of section 31; or

[Sub-para. (i) substituted by s. 22 (1) (i) of Act 45 of 2003.]

(ii) any amounts derived from-

(aa) any sale of goods by that controlled foreign company to any connected person (in relation to that controlled foreign company) who is a resident, unless-

- (A) that controlled foreign company purchased those goods within the country of residence of that controlled foreign company from any person who is not a connected person in relation to that controlled foreign company;

- (B) the creation, extraction, production, assembly, repair or improvement of goods undertaken by that controlled foreign company amount to more than minor assembly or adjustment, packaging, repackaging and labelling; or
- (C) that controlled foreign company sells a significant quantity of goods of the same or a similar nature to persons who are not connected persons in relation to that controlled foreign company, at comparable prices (after accounting for the level of the market, volume discounts and costs of delivery); or
- (D) that controlled foreign company purchases the same or similar goods mainly within the country of residence of that controlled foreign company from persons who are not connected persons in relation to that controlled foreign company;

[Subitem (D) added by s. 22 (1) (k) of Act 45 of 2003.]

- (bb) any sale of goods by that controlled foreign company to a person, other than a connected person (in relation to that controlled foreign company) who is a resident, where that controlled foreign company initially purchased those goods or any tangible intermediary inputs thereof from one or more connected persons (in relation to that controlled foreign company) who are residents, unless-
  - (A) those goods or tangible intermediary inputs thereof purchased from connected persons (in relation to such controlled foreign company) who are residents amount to an insignificant portion of the total tangible intermediary inputs of those goods;
  - (B) the creation, extraction, production, assembly, repair or improvement of goods undertaken by that controlled foreign company amount to more than minor assembly or adjustment, packaging, repackaging and labelling; or
  - (C) the products are sold by that controlled foreign company to persons who are not connected persons in relation to that controlled foreign company, for delivery within the country of residence of that controlled foreign company; or
  - (D) products of the same or similar nature are sold by that controlled foreign company mainly to persons who are not connected persons in relation to that controlled foreign company for delivery within the country of residence of that controlled foreign company;

[Subitem (D) added by s. 22 (1) (l) of Act 45 of 2003.]

- (cc) any service performed by that controlled foreign company to a connected person (in relation to such controlled foreign company) who is a resident, unless the service is performed outside the Republic and-
  - (A) such service relates directly to the creation, extraction, production, assembly, repair or improvement of goods utilised within one or more countries outside the Republic; or
  - (B) such services relate directly to the sale or marketing of goods of a connected person (in relation to that controlled foreign company) who is a resident and those goods are sold to persons who are not connected persons in relation to that controlled foreign company for delivery within the country of residence of that controlled foreign company;

[Sub-para. (ii) amended by s. 22 (1) (j) of Act 45 of 2003.]

- (iii) any amounts in the form of dividends, interest, royalties, rental, annuities, insurance premiums or income of a similar nature, or any capital gain determined in respect of the disposal of any asset from which any such amounts are or could be earned, or any foreign currency gain determined in respect of any foreign equity instrument or any foreign currency gain determined in terms of section 24I,

except-

- (aa) to the extent that any income and capital gains attributable to those amounts (other than income or capital gains in respect of which any of the provisions contained in paragraphs (e) to (fB) apply) do not in total exceed ten per cent of the income and capital gains of the controlled foreign company attributable to that business establishment other than income or capital gains-
  - (A) attributable to those amounts; or
  - (B) in respect of which any of the provisions contained in paragraphs (e) to (fB) apply; or
- (bb) where those amounts arise from the principal trading activities of any banking or financial services, insurance or rental business, excluding any such amounts derived-
  - (A) by a company which is a foreign financial instrument holding company at the time that the amounts are so derived;
  - (B) from any connected person (in relation to that controlled foreign company) who is a resident or any resident who directly or indirectly holds at least five per cent of the participation rights in-
    - (i) that controlled foreign company; or
    - (ii) any other company in the same group of companies which holds shares in that controlled foreign company; or
  - (C) to the extent that those amounts form part of any transaction, operation or scheme in terms of which any amount received by or accrued to any person is exempt from tax while any corresponding expenditure (other than expenditure for the delivery of any goods including electricity) is deductible by that person or by any connected person in relation to that person in determining the liability for tax of that person or connected person, as the case may be, in terms of this Act;

[Sub-para. (iii) substituted by s. 22 (1) (m) of Act 45 of 2003.]

[Para. (b) amended by s. 22 (1) (h) of Act 45 of 2003.]

(c) and (d) .....

- (e) is included in the taxable income of the company and has not been or will not be exempt or taxed at a reduced rate in the Republic, as a result of the application of any agreement for the avoidance of double taxation;
- (f) is attributable to any foreign dividend declared to that controlled foreign company, by any other controlled foreign company in relation to the resident, to the extent that the foreign dividend does not exceed the aggregate of all amounts which have been or will be included in the income of the resident in terms of this section in any year of assessment, which relate to the net income of-
  - (i) the company declaring the dividend; or
  - (ii) any other company which has been included in the income of that resident by virtue of that resident's participation rights in that other company held indirectly through the company declaring the dividend,
 reduced by-
  - (aa) the amount of any foreign tax payable, in respect of the amounts so included in that resident's income; and
  - (bb) so much of all foreign dividends received by or accrued to that controlled foreign company as was -
    - (A) excluded from the application of this section in terms of this paragraph or section 10 (1) (k) (ii) (dd);
    - (B) previously not included in the income of that resident by virtue of any prior inclusion in terms of section 9D.

[Para. (f) substituted by s. 22 (1) (n) of Act 45 of 2003.]

- (fA) is attributable to any interest, royalties, rental or income of a similar nature, which is paid or payable or deemed to be paid or payable to that company by any other foreign

company (including any similar amount adjusted in terms of section 31), or any exchange difference determined in terms of section 24I in respect of any exchange item to which that controlled foreign company and that other foreign company are parties, where that controlled foreign company and that other foreign company form part of the same group of companies;

- (fB) is attributable to any capital gain of that company, which is determined in respect of the disposal of any asset, as defined in the Eighth Schedule, (other than any financial instrument or intangible asset as defined in paragraph 16 of the Eighth Schedule), where that asset was attributable to any business establishment of that controlled foreign company or any other foreign company, where that controlled foreign company and that other foreign company form part of the same group of companies; or

(h) .....

[Para. (h) deleted by s. 22 (1) (o) of Act 45 of 2003.]

[Sub-s. (9) amended by s. 22 (1) (f) of Act 45 of 2003.]

(10) For the purposes of subsection (9) (b) (ii) the Minister may-

- (a) by notice in the *Gazette* determine that one or more foreign countries be treated as one if such foreign countries comprise a single economic market and such treatment will not lead to an unacceptable erosion of the tax base; or
- (b) in consultation with the Commissioner grant exemption to any person from the application of subsection (9) (b) (ii), to the extent that its application will unreasonably prejudice national economic policies or South African international trade and such exemption will not lead to an unacceptable erosion of the tax base.

(11) .....

[Sub-s. (11) deleted by s. 22 (1) (p) of Act 45 of 2003.]

(12) A resident who, together with any connected person in relation to that resident, holds at least 10 per cent but not more than 25 per cent of the participation rights of a controlled foreign company may elect that all the provisions of subsection (9) shall not apply in respect of the net income determined for a relevant foreign tax year of any controlled foreign company in which that resident holds any participation rights.

[Sub-s. (12) added by s. 22 (1) (q) of Act 45 of 2003.]

(13) Any resident who, together with any connected person in relation to that resident, holds at least 10 per cent but not more than 25 per cent of the participation rights of a foreign company may elect that the foreign company be deemed to be a controlled foreign company in relation to that resident in respect of any foreign tax year of that foreign company.

[Sub-s. (13) added by s. 22 (1) (q) of Act 45 of 2003.]

[S. 9D inserted by s. 9 (1) of Act 28 of 1997, amended by s. 10 (1) (p) of Act 59 of 2000 and substituted by s. 14 (1) of Act 74 of 2002.]

#### **9E** .....

[S. 9E inserted by s. 20 (1) of Act 30 of 2000, amended by s. 11 (1) of Act 59 of 2000, substituted by s. 15 (1) of Act 74 of 2002 and repealed by s. 23 (1) of Act 45 of 2003.]

#### **9F** .....

[S. 9F inserted by s. 12 of Act 59 of 2000, amended by s. 24 (1) of Act 60 of 2001 and by s. 16 of Act 74 of 2002 and repealed by s. 24 (1) of Act 45 of 2003.]

#### **9G Taxable income in respect of foreign equity instruments**

(1) For the purposes of this section 'foreign currency' means any currency other than currency of the Republic.

[Sub-s. (1) substituted by s. 25 (1) (a) of Act 45 of 2003.]

(2) The amount to be included in the gross income of a person in respect of the disposal by that person of any foreign equity instrument which constitutes trading stock, shall be the amount received or accrued in any currency other than currency of the Republic in respect of that disposal translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign equity instrument is disposed of.

[Sub-s. (2) substituted by s. 17 (1) of Act 74 of 2002 and by s. 25 (1) (a) of Act 45 of 2003.]

(3) Any-

- (a) expenditure incurred by a person in any foreign currency in respect of any foreign equity instrument which is allowable as a deduction in terms of the provisions of this Act; or

(b) amount in any foreign currency which is taken into account in the determination of the taxable income of any person in respect of any foreign equity instrument, shall, for the year of assessment in which that foreign equity instrument is disposed of, be translated into the currency of the Republic-

- (i) in the case of a foreign equity instrument acquired before 1 October 2001, at the ruling exchange rate on 1 October 2001; or
- (ii) in any other case, at the average exchange rate for the year of assessment during which-
  - (aa) in the case of paragraph (a), that expenditure was actually incurred by that person; or
  - (bb) in the case of paragraph (b), the expenditure which relates to the amount so taken into account was actually incurred by that person.

[Sub-s. (3) substituted by s. 17 (1) of Act 74 of 2002 and by s. 25 (1) (b) of Act 45 of 2003.]

[S. 9G inserted by s. 25 (1) of Act 60 of 2001.]

## 10 Exemptions

### Cases

(1) There shall be exempt from the tax-

- (a) the receipts and accruals of the Government, any provincial administration or of any other state;

[Para. (a) substituted by s. 13 (1) (a) of Act 89 of 1969, amended by s. 10 (1) (a) of Act 121 of 1984 and by s. 36 (6) of Act 9 of 1989 and substituted by s. 10 (1) (a) of Act 141 of 1992 and by s. 26 (1) (a) of Act 45 of 2003.]

- (b) the receipts and accruals of local authorities;
 

[Para. (b) substituted by s. 26 (1) (a) of Act 45 of 2003.]

- (c) (i) .....

[Sub-para. (i) substituted by s. 8 (1) (a) of Act 96 of 1981, by s. 10 (1) (b) of Act 121 of 1984 and by s. 6 (1) (a) of Act 96 of 1985 and deleted by s. 9 (1) (a) of Act 21 of 1994.]

- (ii) any pension payable to any person or his surviving spouse by reason of such person having occupied the office of State President or Vice State President: Provided that the provisions of this subparagraph shall not apply to any amount payable to any person or his surviving spouse by reason of such person having occupied the office of President as elected in terms of section 77 of the Constitution;

[Sub-para. (ii) substituted by s. 8 (1) (a) of Act 96 of 1975, by s. 8 (1) (b) of Act 96 of 1981 and by s. 6 (1) (a) of Act 96 of 1985 and amended by s. 9 (1) (b) of Act 21 of 1994.]

- (iii) the salary and emoluments payable to any person who holds office in the Republic as an official of any government, other than the Government of the Republic, provided such person is stationed in the Republic for that purpose and is not ordinarily resident in the Republic;

[Sub-para. (iii) substituted by s. 10 (1) (b) of Act 141 of 1992.]

- (iv) any salary and emoluments payable to any domestic or private servant of any person referred to in subparagraph (iii) in respect of domestic or private services rendered or to be rendered by such servant to such person if such servant is not a South African citizen and is not ordinarily resident in the Republic;

- (v) any salary and emoluments payable to any subject of a foreign state who is temporarily employed in the Republic, provided the exemption of such salary and emoluments is authorized by an agreement entered into by the governments of such foreign state and the Republic;

[Para. (c) amended by s. 8 (a) of Act 90 of 1962 and by s. 10 (a) of Act 88 of 1965 and substituted by s. 10 (1) (a) of Act 85 of 1974.]

(cA) the receipts and accruals of-

- (i) any institution, board or body (other than a company registered or deemed to be registered under the Companies Act, 1973 (Act 61 of 1973), or under any law repealed by that Act and any co-operative formed and incorporated or deemed to be formed and incorporated under the Co-operatives Act, 1981 (Act 91 of 1981), and any close corporation and any trust) established by or under any law and

which, in the furtherance of its sole or principal object-

- (aa) conducts scientific, technical or industrial research;
  - (bb) provides necessary or useful commodities, amenities or services to the State (including any provincial administration) or members of the general public; or
  - (cc) carries on activities (including the rendering of financial assistance by way of loans or otherwise) designed to promote commerce, industry or agriculture or any branch thereof;
- (ii) any association, corporation or company contemplated in paragraph (a) of the definition of 'company' in section 1, all the shares of which are held by any such institution, board or body, if the operations of such association, corporation or company are ancillary or complementary to the object of such institution, board or body:

[Sub-para. (ii) substituted by s. 13 (1) (a) of Act 59 of 2000.]

Provided that such institution, board, body or company -

- (a) has been approved by the Commissioner subject to such conditions as he may deem necessary to ensure that the activities of such institution, board, body or company are wholly or mainly directed to the furtherance of its sole or principal object;
- (b) is by law or under its constitution-
  - (i) not permitted to distribute any of its profits or gains to any person, other than, in the case of such company, to its shareholders;
  - (ii) required to utilise its funds solely for investment or the object for which it has been established; and
  - (iii) required on dissolution-
    - (aa) where the institution, board, body or company is established under any law, to transfer its assets to some other institution, board or body which has been granted exemption from tax in terms of this paragraph and which has objects similar to those of such institution, board, body or company; or
    - (bb) where the institution, board or body is established by law, to transfer its assets to-
      - (A) some other institution, board or body which has been granted exemption from tax in terms of this paragraph and which has objects similar to those of such institution, board, body or company; or
      - (B) to the State:

Provided further that -

- (a) where the Commissioner is satisfied that any such institution, board, body or company has during any year of assessment failed to comply with the provisions of this paragraph, he may withdraw his approval of the institution, board, body or company with effect from the commencement of that year of assessment;
- (b) where the institution, board, body or company fails to transfer, or take reasonable steps to transfer, its assets as contemplated in paragraph (b) (iii) of the first proviso, the accumulated net revenue which has not been distributed shall be deemed for the purposes of this Act to be an amount of taxable income which accrued to such institution, board, body or company during the year of assessment contemplated in paragraph (a); and
- (c) any decision of the Commissioner in the exercise of his discretion under this paragraph shall be subject to objection and appeal;

[Para. (cA) inserted by s. 11 (a) of Act 55 of 1966, substituted by s. 13 (1) (b) of Act 89 of 1969 and by s. 10 (1) (b) of Act 85 of 1974, amended s. 9 (1) (a) of Act 94 of 1983, by s 36 (6) of Act 9 of 1989 and by s. 10 (1) (c) of Act 141 of 1992 and substituted by s. 10 (1) (a) of Act 28 of 1997.]

(cB) .....

[Para. (cB) inserted by s. 10 (1) (c) of Act 85 of 1974, amended by s. 9 (1) (b) of Act 94 of 1983, by s. 10 (1) (d) of Act 141 of 1992 and by s. 8 (1) (a) of Act 36 of 1996 and deleted by s. 21 (1) (a) of Act 30 of

2000.]

(cC) .....

[Para. (cC) inserted by s. 10 (1) (c) of Act 85 of 1974, amended by s. 8 (1) (b) of Act 69 of 1975, by s. 7 (a) of Act 65 of 1986, by s. 9 (1) (a) of Act 85 of 1987, by s. 10 (1) (e) of Act 141 of 1992, by s. 7 (1) (a) of Act 113 of 1993 and by s. 9 (1) (c) of Act 21 of 1994 and deleted by s. 21 (1) (a) of Act 30 of 2000.]

(cD) .....

[Para. (cD) inserted by s. 10 (1) (c) of Act 85 of 1974, substituted by s. 7 (1) (b) of Act 113 of 1993 and deleted by s. 21 (1) (a) of Act 30 of 2000.]

(cE) the receipts and accruals of any political party registered under the provisions of section 36 of the Electoral Act, 1979 (Act 45 of 1979);

[Para. (cE) inserted by s. 8 (1) (c) of Act 96 of 1981.]

(cF) .....

[Par. (cF) inserted by s. 9 (1) (b) of Act 85 of 1987, amended by s. 10 (1) (f), (g) and (h) of Act 141 of 1992 and deleted by s. 21 (1) (a) of Act 30 of 2000.]

[ (cG) the receipts and accruals of any person who is not a resident, which are derived by such person from carrying on business as the owner or charterer of any ship or aircraft, if a similar exemption or equivalent relief is granted by the country of which such person is a resident, to any resident in respect of any tax imposed in that country on income which may be derived by such person from carrying on in such country any business as owner or charterer of any ship or aircraft;

[Para. (cG) inserted by s. 9 (1) (c) of Act 85 of 1987 and substituted by s. 10 (1) (i) of Act 141 of 1992 and by s. 13 (1) (b) of Act 59 of 2000.]

(cH) the receipts and accruals of any company, society or other association of persons or any trust, whether or not registered under any law (other than a co-operative formed and incorporated or deemed to be formed and incorporated under the Co-operatives Act, 1981 (Act 91 of 1981)), if-

- (i) the sole object of that company, society, association or trust in terms of-
  - (aa) the constitution of the company, society or association; or
  - (bb) the instrument establishing the trust,
 which has been approved by the Commissioner, is to receive, hold and apply amounts contributed by any taxpayer contemplated in section 11 (hA) to that company, society, association or trust in accordance with that section in order to discharge, at the time of or after discontinuation of operations on a mine or part of a mine, any of the following or like obligations imposed upon any person in terms of any law which regulates mining operations (other than costs which are required in terms of any law to be incurred on an ongoing basis during the life of a mine or part of a mine), namely-
  - (A) the rehabilitation of disturbances of the surface of land and the prevention and combating of pollution of the air, land, sea or other water where such disturbances and pollution are due to mining, prospecting, quarrying or similar operations;
  - (B) the protection of the surface of land and water sources and the making safe of undermined ground and of dangerous excavations, tailings, waste dumps and structures, of whatsoever nature, made in the course of mining, prospecting, quarrying or similar operations; and
  - (C) the demolition or removal of any building, structure or other thing erected or constructed in connection with mining, prospecting, quarrying or similar operations, the removal of any debris or other objects and the restoration, as far as is practicable, of the surface to its natural state;
- (iA) a person designated by the Minister of Minerals and Energy certifies that any distribution by that company, society, association or trust is or was made solely for its object as contemplated in subparagraph (i);
- (ii) that company, society or association is under its constitution, or that trust is under the instrument establishing it not permitted to distribute any of its profits or gains to any person and is required to utilise its funds solely for the object for which it has been established: Provided that such company, society, association or trust



- shall be permitted to invest its funds, until such time as those funds are required-
- (aa) with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act 97 of 1990);
  - (bb) in any financial instrument-
    - (i) of a company contemplated in paragraph (a) of the definition of 'listed company' in section 1 (other than shares in the taxpayer contemplated in subparagraph (i) or any connected person in relation to that taxpayer); or
    - (ii) issued by any sphere of government in the Republic; or
  - (cc) in any other investments which were made by that company, society, association or trust before 18 November 2003;
  - (iii) in terms of the constitution of such company, society or association or the instrument establishing such trust it will upon its winding-up or liquidation be obliged to give or transfer its assets remaining after the satisfaction of its liabilities to some other company, society, association or trust approved by the Commissioner in terms of this paragraph; and
  - (iv) the Commissioner has approved such company, society, association or trust on such conditions as the Commissioner may deem necessary to ensure that the activities of such company, society, association or trust are wholly directed to the furtherance of its sole object:

Provided that-

- (a) where the Commissioner is-
  - (i) satisfied that such company, society, association or trust has during any year of assessment in any material respect; or
  - (ii) during any year of assessment satisfied that such company, society, association or trust has on a continuous or repetitive basis, failed to comply with the provisions of this section, or the constitution or instrument under which it is established to the extent that it relates to the provisions of this section, the Commissioner shall after due notice withdraw approval of that company, society, association or trust with effect from the commencement of that year of assessment, unless corrective steps are taken by that company, society, association or trust within a period stated by the Commissioner in that notice;
- (b) where the Commissioner has withdrawn approval of a company, society, association or trust as contemplated in paragraph (a), that company, society, association or trust must, within three months or such longer period as the Commissioner may allow after the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any other company, society, association or trust which is-
  - (i) approved in terms of this section; and
  - (ii) not a connected person in relation to such company, society, association or trust;
- (c) where a company, society, association or trust during any year of assessment fails to transfer, or to take reasonable steps to transfer, any assets as contemplated in subparagraph (iii) or paragraph (b) of this proviso, the accumulated profits or reserves shall for the purposes of this Act be deemed to be an amount of taxable income which accrued to that company, society, association or trust during that year of assessment.

[Para. (cH) inserted by s. 12 (1) (a) of Act 129 of 1991, amended by s. 10 (1) (j) of Act 141 of 1992 and by s. 10 of Act 28 of 1997 and substituted by s. 26 (1) (b) of Act 45 of 2003.]

(cI) .....

[Para. (cI) inserted by s. 10 (1) (k) of Act 141 of 1992, amended by s. 7 (1) (c) of act 113 of 1993, by s. 9 (1) (a) of Act 21 of 1994, by s. by s. 8 (1) (b) of Act 36 of 1996, by s. 10 (1) (a) of Act 28 of 1997 and by s. 18 (1) (a) of Act 53 of 1999 and deleted by s. 21 (1) (a) of Act 30 of 2000.]

(cJ) .....

[Para. (cJ) inserted by s. 10 (1) (k) of Act 141 of 1992, amended by s. 7 (1) (d) and (e) of Act 113 of 1993

and by s. 18 (1) (b) of Act 53 of 1999 and deleted by s. 21 (1) (a) of Act 30 of 2000.]

(cK) .....

[Para. (cK) inserted by s. 7 (1) (g) of Act 113 of 1993, amended by s. 8 (1) of Act 36 of 1996 and deleted by s. 21 (1) (b) of Act 30 of 2000.]

(cL) .....

[Para. (cL) inserted by s. 7 (1) (g) of Act 113 of 1993 and deleted by s. 8 (1) (e) of Act 36 of 1996.]

(cM) the receipts and accruals of any company formed and incorporated under section 21 of the Companies Act, 1973 (Act 61 of 1973), or deemed by the said section to be so formed and incorporated, which has been approved by the Commissioner, if-

- (i) the sole or principal object of the company is to promote and facilitate the distribution of agricultural and related commodities;
- (ii) such sole or principal object is actively pursued;
- (iii) the company is or was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under this Act or any other Act administered by the Commissioner;
- (iv) the company does not carry on any business other than business which is directly connected with the said sole or principal object;
- (v) the business directly connected with the sole or principal object was previously carried on by a municipal council and the control of the company is exercised by such municipal council; and

[Sub-para. (v) substituted by s. 18 (1) (c) of Act 53 of 1999.]

- (vi) in terms of the memorandum or articles of association of the company, it is upon its deregistration, winding-up or liquidation obliged to give or transfer its assets remaining after the satisfaction of its liabilities to-
  - (aa) some other company which is exempt from tax under this paragraph; or
  - (bb) a local authority to utilize such assets for the same objects as the aforesaid company:

Provided that-

- (a) where the Commissioner is satisfied that any such company has during any year of assessment failed to comply with the provisions of this paragraph, he may withdraw his approval of the company with effect from the commencement of that year of assessment;
- (b) where the Commissioner has withdrawn his approval of such company, it shall, within two months from the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any company which is exempt from tax under this paragraph or to a local authority to utilize such assets for the same objects as the aforesaid company;
- (c) where a company fails to transfer, or take reasonable steps to transfer, its remaining assets as contemplated in paragraph (b) of this proviso, the accumulated net revenue which has not been distributed shall be deemed for the purposes of this Act to be an amount of taxable income which accrued to such company during the year of assessment referred to in paragraph (a) of this proviso; and
- (d) any decision of the Commissioner in the exercise of his discretion under this paragraph shall be subject to objection and appeal;

[Para. (cM) inserted by s. 9 (1) (e) of Act 21 of 1994.]

(cN) the receipts and accruals of any public benefit organisation which has been approved by the Commissioner in terms of section 30 (3);

[Para. (cN) inserted by s. 21 (1) (c) of Act 30 of 2000.]

- (d) the receipts and accruals of any-
  - (i) pension fund, provident fund, retirement annuity fund; or
  - (ii) benefit fund, mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industries (or an association of such chambers), local

publicity association or non-proprietary stock exchange approved by the Commissioner subject to such conditions as the Minister may prescribe by regulation; or

- (iii) company, society or other association of persons established to-
  - (aa) provide social and recreational amenities or facilities for the members of such company, society or other association; or
  - (bb) promote the common interests of persons (being members of such company, society or association of persons) carrying on any particular kind of business, profession or occupation,
 approved by the Commissioner subject to such conditions as the Minister may prescribe by regulation;

[NB: Sub-para. (iii) has been substituted by s. 14 (1) (a) of the Revenue Laws Amendment Act 32 of 2004, a provision which will be put into operation by proclamation. See PENDLEX.]

[Para. (d) substituted by s. 10 (1) (d) of Act 85 of 1974, by s. 10 (1) (l) of Act 141 of 1992 and by s. 21 (1) (d) of Act 30 of 2000.]

(dA) .....

[Para. (dA) inserted by s. 6 (1) (a) of Act 91 of 1982, amended by s. 7 (b) of Act 65 of 1986, substituted by s. 10 (1) (a) of Act 101 of 1990, amended by s. 10 (1) (m) of Act 141 of 1992 and deleted by s. 13 (1) (c) of Act 59 of 2000.]

- (e) any levy received by or accrued to-
  - (i) any body corporate established in terms of the Sectional Titles Act, 1986 (Act 95 of 1986), from its members;
  - (ii) a share block company established in terms of the Share Blocks Control Act, 1980 (Act 59 of 1980), from its shareholders; or
  - (iii) any other association of persons (other than a company registered or deemed to be registered under the Companies Act, 1973 (Act 61 of 1973), and any co-operative formed and incorporated or deemed to be formed and incorporated under the Co-operatives Act, 1981 (Act 91 of 1981), and any close corporation and any trust, but including a company incorporated under section 21 of the Companies Act, 1973), from its members, where the Commissioner is satisfied that, subject to such conditions as he may deem necessary, such association of persons-
    - (aa) has been formed solely for the purposes of managing the collective interests common to all its members, which includes expenditure applicable to the common immovable property of such members and the collection of levies for which such members are liable; and
 [Item (aa) substituted by s. 26 (1) (a) of Act 60 of 2001.]
    - (bb) is not permitted to distribute any of its funds to any person other than a similar association of persons:

Provided that such body, company or association is or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would become payable by any person under this Act or any other law administered by the Commissioner;

[Para. (e) substituted by s. 13 (1) (c) of Act 89 of 1969 and by s. 10 (1) (e) of Act 85 of 1974, amended by s. 8 (1) (c) of Act 69 of 1975 and by s. 9 (1) (c) of Act 94 of 1983 and substituted by s. 18 (1) (d) of Act 53 of 1999.]

(f) .....

[Para. (f) substituted by s. 6 (1) (b) of Act 96 of 1985, by s. 7 (1) (h) of Act 113 of 1993 and by s. 29 (1) (a) of Act 30 of 1998 and deleted by s. 21 (1) (a) of Act 30 of 2000.]

(fA) .....

[Para. (fA) inserted by s. 7 (1) (i) of Act 113 of 1993, amended by s. 8 (1) (f), (g), (h) and (i) of Act 36 of 1996 and by s. 18 (1) (e) of Act 53 of 1999 and deleted by s. 21 (1) (a) of Act 30 of 2000.]

- (g) any amount received as a war pension, or as an award or a benefit under any law relating to the payment of compensation in respect of diseases contracted by persons employed in mining operations;

(gA) any disability pension paid under section 2 of the Social Assistance Act, 1992 (Act 59 of 1992);

[Para. (gA) inserted by s. 7 (1) (a) of Act 104 of 1980 and substituted by s. 29 (1) (b) of Act 30 of 1998.]

(gB) any compensation paid in terms of the Workmen's Compensation Act, 1941 (Act 30 of 1941), or the Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993);

[Para. (gB) inserted by s. 8 (1) (d) of Act 96 of 1981 and substituted by s. 8 (1) (j) of Act 36 of 1996.]

(gC) any-

- (i) amount received by or accrued to any resident under the social security system of any other country; or
- (ii) pension received by or accrued to any resident from a source outside the Republic, which is not deemed to be from a source in the Republic in terms of section 9 (1) (g), in consideration of past employment outside the Republic;  
[Sub-para. (ii) substituted by s. 9 (a) of Act 19 of 2001.]  
[Para. (gC) inserted by s. 13 (1) (d) of Act 59 of 2000.]

(h) interest which is received or accrued during any year of assessment by or to any person who is not a resident, unless that person-

- (i) is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during that year; or
- (ii) at any time during that year carried on business through a permanent establishment in the Republic,

and for purposes of this paragraph, so much of any dividend distributed to that person by a portfolio of a collective investment scheme referred to in paragraph (e) (i) of the definition of 'company' in section 1 out of income derived by that portfolio which is exempt from tax in the hands of that portfolio under paragraph (iA), is deemed to be interest;

[Para. (h) substituted by s. 9 (a) of Act 103 of 1976, amended by s. 10 (1) (c) of Act 121 of 1984, by s. 9 (1) (d) of Act 85 of 1987, by s. 7 (1) (a) of Act 90 of 1988, by s. 7 (1) of Act 70 of 1989, by s. 10 (1) (a) of Act 21 of 1995 and by s. 13 (1) of Act 59 of 2000 and substituted by s. 14 (1) (b) of Act 32 of 2004.]

**[NB: (1)** A further proviso has been added to para. (h) by s. 10 (1) (b) of the Income Tax Act 101 of 1990, a provision which will come into operation on a date to be fixed by the Minister of Finance. See PENDLEX. **(2)** In terms of s. 36 (2) of the Legal Succession to the South African Transport Services Act 9 of 1989, the reference in para. (h) to 'the South African Transport Services' is to be construed as including the Company (Transnet Limited) and the Corporation (the South African Rail Commuter Corporation Limited).]

(hA) .....

[Para. (hA) inserted by s. 10 (1) (n) of Act 141 of 1992, amended by s. 7 (1) (l) of Act 113 of 1993, by s. 10 (1) (d) of Act 21 of 1995, by s. 8 (1) (m) of Act 36 of 1996, by s. 21 (1) (e) of Act 30 of 2000, by s. 13 (1) of Act 59 of 2000 and by s. 18 (1) (a) of Act 74 of 2002 and deleted by s. 14 (1) (c) of Act 32 of 2004.]

(i) .....

(i) .....

[Sub-para. (i) substituted by s. 8 (1) (e) of Act 96 of 1981, amended by s. 6 (1) (b) of Act 91 of 1982 and deleted by s. 8 (1) (n) of Act 36 of 1996.]

(ii) .....

[Sub-para. (ii) substituted by s. 10 (1) (f) of Act 85 of 1974, by s. 9 (b) of Act 103 of 1976, by s. 7 (1) (a) of Act 104 of 1979, by s. 8 (1) (f) of Act 96 of 1981, by s. 6 (1) (c) of Act 91 of 1982, by s. 9 (1) (d) of Act 94 of 1983 and by s. 6 (1) (c) of Act 96 of 1985 and deleted by s. 8 (1) (n) of Act 36 of 1996.]

(iii) so much of the interest on Tax Redemption Certificates held by any one person as does not exceed the sum of fifty rand;

(iv) .....

[Sub-para. (iv) substituted by s. 6 (1) (d) of Act 91 of 1982 and deleted by s. 10 (1) (d) of Act 101 of 1990.]

(v) interest on any loan portion of the normal or super tax imposed under the Income Tax Act, 1953, or any subsequent Act of Parliament;

(vi) .....

[Sub-para. (vi) deleted by s. 7 (1) (b) of Act 104 of 1979, inserted by s. 10 (1) (e) of Act 101 of 1990 and deleted by s. 8 (1) (n) of Act 36 of 1996.]

(vii) to (x) inclusive .....

[Sub-paras. (vii) to (x) inclusive deleted by s. 7 (1) (a) of Act 65 of 1973.]

(xi) .....

[Sub-para. (xi) substituted by s. 13 (1) (d) of Act 89 of 1969 and by s. 9 (1) (a) of Act 52 of 1970 and deleted by s. 7 (1) (c) of Act 104 of 1979.]

(xiA) .....

[Sub-para. (xiA) inserted by s. 9 (a) of Act 88 of 1971 and deleted by s. 10 (1) (f) of Act 101 of 1990.]

(xiB) .....

[Sub-para. (xiB) inserted by s. 7 (1) (b) of Act 65 of 1973 and deleted by s. 7 (1) (d) of Act 104 of 1979.]

(xiC) .....

[Sub-para. (xiC) inserted by s. 10 (1) (g) of Act 85 of 1974 and deleted by s. 10 (1) (f) of Act 101 of 1990.]

(xiD) .....

[Sub-para. (xiD) inserted by s. 4 (1) (a) of Act 101 of 1978 and deleted by s. 10 (1) (f) of Act 101 of 1990.]

(xiDA) .....

[Sub-para. (xiDA) inserted by s. 7 (1) (e) of Act 104 of 1979 and deleted by s. 10 (1) (f) of Act 101 of 1990.]

(xiDB) .....

[Sub-para. (xiDB) inserted by s. 8 (1) (g) of Act 96 of 1981 and deleted by s. 10 (1) (f) of Act 101 of 1990.]

(xiDC) .....

[Sub-para. (xiDC) inserted by s. 8 (1) (g) of Act 96 of 1981 and deleted by s. 10 (1) (f) of Act 101 of 1990.]

(xiE) .....

[Sub-para. (xiE) inserted by s. 4 (1) (a) of Act 101 of 1978 and deleted by s. 10 (1) (f) of Act 101 of 1990.]

(xii) .....

[Sub-para. (xii) substituted by s. 7 (1) (b) of Act 104 of 1980, amended by s. 8 (1) (h) of Act 96 of 1981 and by s. 6 (1) (e) of Act 91 of 1982, substituted by s. 3 (1) (a) of Act 108 of 1986 and deleted by s. 8 (1) (n) of Act 36 of 1996.]

(xiiA) .....

[Sub-para. (xiiA) inserted by s. 7 (1) (a) of Act 90 of 1972, substituted by s. 3 (1) (b) of Act 108 of 1986 and by s. 10 (1) (g) of Act 101 of 1990 and deleted by s. 8 (1) (n) of Act 36 of 1996.]

(xiii) .....

[Sub-para. (xiii) substituted by s. 13 (1) (e) of Act 89 of 1969, by s. 9 (1) (b) of Act 52 of 1970 and by s. 10 (1) (h) of Act 85 of 1974, amended by s. 8 (1) of Act 113 of 1977, substituted by s. 7 (1) (f) of Act 104 of 1979, amended by s. 7 (1) (c) of Act 104 of 1980, substituted by s. 8 (1) (i) of Act 96 of 1981, amended by s. 6 (1) (f) of Act 91 of 1982, substituted by s. 3 (1) (c) of Act 108 of 1986 and deleted by s. 8 (1) (n) of Act 36 of 1996.]

(xiv) .....

[Sub-para. (xiv) added by s. 13 (1) (f) of Act 89 of 1969, amended by s. 4 (1) (b) of Act 101 of 1978 and deleted by s. 8 (1) (n) of Act 36 of 1996.]

(xv) in the case of any taxpayer who is a natural person-

(aa) so much of the aggregate of any foreign dividends and interest received by or accrued to him or her from a source outside the Republic, which are not otherwise exempt from tax, as does not during the year of assessment exceed R1 000: Provided that the amount of the exemption in terms of this paragraph shall-

- (A) first apply in respect of any such foreign dividends; and
- (B) in so far as such amount exceeds the amount of such foreign dividends, apply in respect of any such interest; and

[Item (aa) amended by s. 26 (1) (c) of Act 45 of 2003.]

(bb) so much of the aggregate of any interest received by or accrued to him or her from a source in the Republic and any dividends (other than foreign dividends, which are not otherwise exempt from tax, as does not during the year of assessment exceed-

- (A) in the case of any person who was or, had he or she lived, would have been at least 65 years of age on the last day of the year of assessment, the amount of R16 000; or

[Sub-item (A) substituted by s. 36 of Act 12 of 2003 and by s. 8 of Act 16 of 2004.]

(B) in any other case, the amount of R11 000,  
 [Sub-item (B) substituted by s. 36 of Act 12 of 2003 and by s. 8 of Act 16 of 2004.]  
 reduced by the amount of any exemption allowable in terms of paragraph  
 (aa);

[Item (bb) amended by s. 26 (1) (d) of Act 45 of 2003.]

[Sub-para. (xv) added by s. 6 (1) (g) of Act 91 of 1982, amended by s. 6 (1) (d) of Act 96 of 1985, by s. 7 (c) of Act 65 of 1986, by s. 9 (1) (e) of Act 85 of 1987 and by s. 10 (1) (h) of Act 101 of 1990, substituted by s. 21 (1) (f) of Act 30 of 2000, amended by s. 9 (b) and (c) of Act 19 of 2001 and substituted by s. 13 (1) (a) of Act 30 of 2002.]

(xvi) .....

[Sub-para. (xvi) added by s. 6 (1) (g) of Act 91 of 1982, amended by s. 6 (1) (e) of Act 96 of 1985, by s. 7 (d) of Act 65 of 1986, by s. 9 (1) (f) of Act 85 of 1987 and by s. 10 (1) (i) of Act 101 of 1990 and deleted by s. 21 (1) (g) of Act 30 of 2000.]

[Para. (i) amended by s. 7 (a) of Act 72 of 1963, substituted by s. 8 (a) of Act 90 of 1964, by s. 10 (b) of Act 88 of 1965, by s. 11 (b) of Act 55 of 1966 and by s. 8 (1) (a) of Act 76 of 1968 and amended by s. 10 (1) (c) of Act 101 of 1990 and by s. 8 (1) (n) of Act 36 of 1996.]

(iA) in the case of any portfolio of a collective investment scheme referred to in paragraph (e) (i) of the definition of 'company' in section 1, so much of the income received by or accrued to such portfolio as has been distributed, or as the Commissioner is satisfied will be distributed, by way of a dividend or a portion of a dividend, to persons who have become entitled to such dividend by virtue of their being holders of participatory interest in such portfolio;

[Para. (iA) inserted by s. 7 (1) (b) of Act 90 of 1972 and substituted by s. 21 (1) (h) of Act 30 of 2000, by s. 13 (1) (j) of Act 59 of 2000 and by s. 18 (1) (b) of Act 74 of 2002.]

(j) the receipts and accruals of any bank, if the Commissioner is satisfied that such bank is not resident in the Republic and is entrusted by the Government of a territory outside the Republic with the custody of the principal foreign exchange reserves of that territory, and the Minister of Finance decides to apply the provisions of this paragraph to that bank in respect of the year of assessment under charge;

(k) (i) dividends (other than foreign dividends) received by or accrued to or in favour of any person: Provided that this exemption shall not apply-

(aa) to dividends (other than those distributed out of profits of a capital nature and those received by or accrued to or in favour of any person who is neither a resident, nor carrying on business in the Republic) distributed by a company the shares of which are 'property shares' as defined in section 47 of the Collective Investment Schemes Control Act, 2002, on shares included in a portfolio comprised in any collective investment scheme in property managed or carried on by any company registered as a manager under section 42 of that Act for purposes of Part V of that Act; or

[Para. (aa) substituted by s. 12 (1) (b) of Act 129 of 1991, by s. 13 (1) (k) of Act 59 of 2000 and by s. 18 (1) (c) of Act 74 of 2002.]

(bb) to so much of any dividend as has been distributed by any portfolio of any collective investment scheme constituting a company in terms of paragraph (e) (i) of the definition of 'company' in section 1-

(A) out of income derived by such portfolio which is exempt from tax in the hands of such portfolio under the provision of paragraph (iA); and

(B) out of amounts received by or accrued to such portfolio by way of dividends referred to in section 11 (s); or

[Para. (bb) amended by s. 13 (1) (l) of Act 59 of 2000 and substituted by s. 7 (1) (m) of Act 113 of 1993 and by s. 18 (1) (c) of Act 74 of 2002.]

(cc) to any dividend received by or accrued to or in favour of any person where such dividend constitutes or forms part of any consideration paid or payable to such person in respect of the disposal of shares (other than affected shares in respect of which the taxpayer has, in terms of the provisions of section 9B, elected the amount received or accrued on

disposal to be deemed to be of a capital nature), which were held as trading stock by such person in a company and such shares were acquired by such company in terms of section 85 of the Companies Act, 1973 (Act 61 of 1973);

[Para. (cc) added by s. 18 (1) (g) of Act 53 of 1999.]

(dd) .....

[Para. (dd) added by s. 21 (1) (j) of Act 30 of 2000, substituted by s. 13 (1) (n) of Act 59 of 2000 and by s. 26 (1) (b) of Act 60 of 2001 and deleted by s. 26 (1) (g) of Act 45 of 2003.]

[Sub-para. (i) substituted by s. 13 (1) (g) of Act 89 of 1969, by s. 9 (b) of Act 88 of 1971 and by s. 7 (1) (c) of Act 90 of 1972, amended by s. 8 (1) (j) of Act 96 of 1981, by s. 9 (1) (e) of Act 94 of 1983 and by s. 10 (1) (d) of Act 121 of 1984, substituted by s. 10 (1) (j) of Act 101 of 1990 and amended by s. 26 (1) (e) of Act 45 of 2003.]

(iA) .....

[Sub-para. (iA) inserted by s. 7 (1) (d) of Act 90 of 1972 and deleted by s. 18 (1) (d) of Act 74 of 2002.]

(ii) any foreign dividend received by or accrued to a person-

(aa) to the extent that the profits from which the foreign dividend is distributed-

(A) relate to any amount which has been or will be subject to tax in the Republic in terms of this Act, unless those profits have been or will be exempt or taxed at a reduced rate in the Republic as a result of the application of any agreement for the avoidance of double taxation; or

(B) arose directly or indirectly from any dividends declared by any company which is a resident;

(bb) to the extent that the foreign dividend relates to any amount which was declared by a listed company which complies with paragraphs (a) and (b) of the definition of 'listed company' in section 1 and more than 10 per cent of the equity share capital in that listed company is at the time of the declaration of that foreign dividend held collectively by residents;

(cc) who is a resident to the extent that the foreign dividend does not exceed the aggregate of all amounts which have been or will be included in the income of that resident in terms of section 9D in any year of assessment, which relate to the net income of-

(A) the company declaring the dividend; or

(B) any other company which has been included in the income of that resident in terms of section 9D by virtue of that resident's participation rights in that other company held indirectly through the company declaring the dividend,

reduced by-

(AA) the amount of any foreign tax payable in respect of the amounts so included in that resident's income; and

(BB) so much of all foreign dividends received by or accrued to that resident at any time from any company contemplated in subitems (A) or (B), as was-

(AAA) exempt from tax in terms of this item or item (dd); or

(BBB) was previously not included in the income of that resident by virtue of any prior inclusion in terms of section 9D;

(dd) where that person (in the case of a company, together with any other company in the same group of companies as that person) holds more than 25 per cent of the total equity share capital in the company declaring the dividend: Provided that-

(A) in determining the total equity share capital of a company, there shall not be taken into account any share which would have constituted an affected instrument, as contemplated in section 8E, but for the three year period requirement contained in that section; and

- (B) this exemption does not apply in respect of any foreign dividend which forms part of any transaction, operation or scheme in terms of which any amount received by or accrued to any person is exempt from tax while any corresponding expenditure (other than expenditure for the delivery of any goods, including electricity) is deductible by that person or by any connected person in relation to that person in determining the liability for tax of that person or connected person, as the case may be, in terms of this Act;

[Sub-paras. (ii) deleted by s. 10 (1) (k) of Act 101 of 1990 and inserted by s. 26 (1) (h) of Act 45 of 2003.]

(iii) .....

[Sub-paras. (iii) deleted by s. 10 (1) (k) of Act 101 of 1990.]

(iv) .....

[Sub-para. (iv) deleted by s. 13 (1) (h) of Act 89 of 1969.]

(v) .....

[Sub-para. (v) amended by s. 10 (1) (i) and (j) of Act 85 of 1974 and by s. 9 (c) and (d) of Act 103 of 1976 and deleted by s. 10 (1) (k) of Act 101 of 1990.]

(vi) .....

[Sub-para. (vi) deleted by s. 13 (1) (i) of Act 89 of 1969.]

(kA) .....

[Para. (kA) inserted by s. 10 (1) (e) of Act 121 of 1984, deleted by s. 10 (1) (l) of Act 101 of 1990, inserted by s. 13 (1) (o) of Act 59 of 2000 and deleted by s. 26 (1) (i) of Act 45 of 2003.]

(l) any amount received by or accrued to any person which amount has been subject to withholding tax in terms of the provisions of section 35;

[Para. (l) deleted by s. 10 (1) (m) of Act 101 of 1990 and inserted by s. 13 (1) (o) of Act 59 of 2000.]

(m) any amount received by or accrued to an author of a work in respect of the assignment of or grant of an interest in a copyright in such work, if such amount is chargeable with income tax in a country other than the Republic: Provided that this exemption shall not apply to any person who is not the first owner of a copyright under the Copyright Act, 1978 (Act 98 of 1978), or to a company;

[Para. (m) substituted by s. 13 (1) (j) of Act 89 of 1969 and amended by s. 12 (1) (c) of Act 129 of 1991.]

(mA) .....

[Para. (mA) inserted by s. 9 (e) of Act 103 of 1976 and deleted by s. 10 (1) (e) of Act 28 of 1997.]

(mB) any benefit or allowance payable in terms of the Unemployment Insurance Act, 2001 (Act 63 of 2001).

[Para. (mB) inserted by s. 7 (1) (b) of Act 90 of 1988 and substituted by s. 13 (1) (b) of Act 30 of 2002.]

(n) .....

[Para. (n) substituted by s. 9 (f) of Act 103 of 1976 and deleted by s. 12 (1) (d) of Act 129 of 1991.]

(nA) where an employee is as a condition of his employment required while on duty to wear a special uniform which is clearly distinguishable from ordinary clothing, the value of any such uniform given to the employee by his employer, or so much of any allowance made by the employer to the employee in lieu of any such uniform as is reasonable;

[Para. (nA) inserted by s. 13 (1) (k) of Act 89 of 1969 and substituted by s. 10 (1) (o) of Act 141 of 1992.]

(nB) any benefit or advantage accruing to any employee (as defined in paragraph 1 of the Seventh Schedule) by reason of the fact that his employer (as defined in the said paragraph), has, in consequence of the transfer of the employee from one place of employment to another place of employment or the appointment of the employee as an employee of the employer or the termination of the employee's employment, borne the expense-

- (i) of transporting such employee, members of his household and the personal goods and possessions of himself and the members of his household from his previous place of residence to his new place of residence; or
- (ii) of such costs as the Commissioner may allow which have been incurred by the employee in respect of the sale of his previous residence and in settling in permanent residential accommodation at his new place of residence; or  
[Sub-para. (ii) substituted by s. 7 (e) of Act 65 of 1986.]
- (iii) of hiring residential accommodation in an hotel or elsewhere for the employee or



members of his household during the period ending 183 days after his transfer took effect or after he took up his appointment, as the case may be, if such residential accommodation was occupied temporarily pending the obtaining of permanent residential accommodation;

[Para. (nB) inserted by s. 10 (1) (f) of Act 121 of 1984.]

(nC) any amount received by or accrued to that person in the form of a qualifying equity share contemplated in section 8B;

[Para. (nC) inserted by s. 10 (1) (f) of Act 121 of 1984, deleted by s.12 (1) (e) of Act 129 of 1991 and inserted by s. 14 (1) (d) of Act 32 of 2004.]

(nD) any amount received by or accrued to that person which constitutes -

- (i) an equity instrument contemplated in section 8C acquired by that person and in respect of which that section applies; or
- (ii) consideration for the disposal of an equity instrument contemplated in subparagraph (i),

which had not yet vested as contemplated in that section at the time of that acquisition or disposal;

[Para. (nD) inserted by s. 10 (1) (f) of Act 121 of 1984, amended by s. 6 (1) (f) of Act 96 of 1985, deleted by s. 12 (1) (f) of Act 129 of 1991 and inserted by s. 14 (1) (e) of Act 32 of 2004.]

(nE) any amount (including any taxable benefit determined under the provisions of the Seventh Schedule) received by or accrued to an employee, as so defined, under a share incentive scheme operated for the benefit of employees of the taxpayer's employer, as so defined, which was derived-

- (i) upon the cancellation of a transaction under which the taxpayer purchased shares under such scheme, and in respect of which section 8A applies; or

[Sub-para. (i) substituted by s. 14 (1) (f) of Act 32 of 2004.]

- (ii) upon the repurchase from the taxpayer, at a price not exceeding the selling price to him, of shares purchased by him under such scheme, and in respect of which section 8A applies,

[Sub-para. (ii) substituted by s. 14 (1) (f) of Act 32 of 2004.]

if in consequence of such cancellation or repurchase the taxpayer has not received or become entitled to receive any compensation or consideration other than the repayment of any portion of the purchase price actually paid by him;

[Para. (nE) inserted by s. 10 (1) (f) of Act 121 of 1984.]

(nF) .....

[Para. (nF) inserted by s. 6 (1) (g) of Act 96 of 1985 and deleted by s. 12 (1) (g) of Act 129 of 1991.]

(nG) the value of any benefit or advantage contemplated in paragraph 2 of the Seventh Schedule derived by an employee who, after having retired from full-time service with the employer by whom such benefit or advantage was granted, has been re-employed by such employer on a part-time basis, if-

- (i) the cash remuneration received by or accrued to the employee in respect of such part-time employment was payable at a rate not exceeding R5 000 per annum;
- (ii) the employee retired from such full-time service on or after attaining the age of 60 years or as a result of ill-health or other infirmity; and
- (iii) such benefit or advantage was granted before the employee so retired:

Provided that the provisions of this paragraph shall not apply to any benefit or advantage granted to an employee who is re-employed on or after 1 March 1992;

[Para. (nG) inserted by s. 7 (f) of Act 65 of 1986 and amended by s. 12 (1) (h) of Act 129 of 1991.]

(nH) 50 per cent of so much of any taxable benefit derived by the taxpayer during any year of assessment ending not later than 28 February 1995 in consequence of the granting of any loan in the circumstances contemplated in paragraph 2 (f) of the Seventh Schedule as-

- (i) was determined in relation to any portion of such loan which was before 15 March 1990 utilized by the taxpayer for the purpose of acquiring shares under a share incentive scheme operated by his employer and which relates to so many of such shares as the taxpayer was or is, under the conditions of such scheme as they applied immediately before the said date, prohibited from disposing of; and
- (ii) relates to a period in the year of assessment during which the taxpayer was so prohibited from disposing of the relevant shares;

[Para. (nH) inserted by s. 10 (1) (n) of Act 101 of 1990.]

- (o) any remuneration as defined in paragraph 1 of the Fourth Schedule-
- (i) derived by any person as an officer or crew member of a ship engaged-
  - (aa) in the international transportation for reward of passengers or goods; or
  - (bb) in the prospecting (including surveys and other exploratory work) for, or the mining of, any minerals (including natural oils) from the seabed outside the continental shelf of the Republic as contemplated in section 8 of the Maritime Zones Act, 1994 (Act 15 of 1994), where such officer or crew member is employed on board such ship solely for the purposes of the 'passage' of such ship, as defined in the Marine Traffic Act, 1981 (Act 2 of 1981),

if such person was outside the Republic for a period or periods exceeding 183 full days in aggregate during the year of assessment; or

[Sub-para. (i) amended by s. 18 (1) (f) of Act 74 of 2002.]

- (ii) received by or accrued to any person during any year of assessment in respect of services rendered outside the Republic by that person for or on behalf of any employer, if that person was outside the Republic-

- (aa) for a period or periods exceeding 183 full days in aggregate during any 12 months period commencing or ending during that year of assessment; and
- (bb) for a continuous period exceeding 60 full days during that period of 12 months,

and those services were rendered during that period or periods: Provided that-

- (A) for purposes of this subparagraph, a person who is in transit through the Republic between two places outside the Republic and who does not formally enter the Republic through a port of entry as contemplated in section 9 (1) of the Immigration Act, 2002 (Act 13 of 2002), or at any other place in the case of a person authorised by the Minister in terms of section 31 (2) (c) of that Act, shall be deemed to be outside the Republic;

[Para. (A) substituted by s. 26 (1) (j) of Act 45 of 2003.]

- (B) the provisions of this subparagraph shall not apply in respect of any remuneration derived in respect of the holding of any office or from services rendered for or on behalf of any employer, as contemplated in section 9 (1) (e);

[Sub-para. (ii) amended by s. 18 (1) (g) of Act 74 of 2002.]

[Para. (o) substituted by s. 13 (1) (l) of Act 89 of 1969, deleted by s. 7 (1) (c) of Act 65 of 1973, inserted by s. 4 (1) of Act 140 of 1993, substituted by s. 18 (1) (h) of Act 53 of 1999 and by s. 13 (1) (p) of Act 59 of 2000 and amended by s. 18 (1) (e) of Act 74 of 2002.]

- (p) any amount received by or accrued to any person who is not a resident, for services rendered or work or labour done by him outside the Republic for or on behalf of any employer in the national or provincial sphere of government or any local authority in the Republic or any national or provincial public entity if not less than 80 per cent of the expenditure of such entity is defrayed directly or indirectly from funds voted by Parliament, if such amount is chargeable with income tax in the country in which he is ordinarily resident and the income tax so chargeable is borne by himself and is not paid on his behalf by the Government, the local authority concerned or such public entity;

[Para. (p) amended by s. 7 (b) of Act 72 of 1963 and substituted by s. 13 (1) (q) of Act 59 of 2000.]

- (q) any *bona fide* scholarship or bursary granted to enable or assist any person to study at a recognized educational or research institution: Provided that if any such scholarship or bursary has been so granted by an employer or an associated institution (as respectively defined in paragraph 1 of the Seventh Schedule) to an employee (as defined in the said paragraph) or to a relative of such employee in circumstances indicating that the scholarship or bursary concerned would not have been granted had that employee not been an employee of that employer, the exemption under this paragraph shall not apply-

- (i) if any remuneration to which the employee was entitled or might in the future have become entitled was in any manner whatsoever reduced or forfeited as a result of the grant of such scholarship or bursary;

- (ii) in the case of a scholarship or bursary granted to enable or assist any such relative of an employee so to study, if the remuneration derived by the employee during the year of assessment exceeded R60 000; and

[Sub-para. (ii) amended by s. 10 (1) (f) of Act 28 of 1997 and by s. 13 (1) (c) of Act 30 of 2002.]

- (iii) to so much of any scholarship or bursary contemplated in paragraph (ii) as in the case of any such relative exceeds R2 000 during the year of assessment;

[Sub-para. (ii) amended by s. 10 (1) (f) of Act 28 of 1997 and by s. 13 (1) (d) of Act 30 of 2002.]

[Para. (q) deleted by s. 12 (1) (i) of Act 129 of 1991 and inserted by s. 10 (1) (p) of Act 141 of 1992.]

(qA) .....

[Para. (qA) inserted by s. 11 (c) Act 55 of 1966, substituted by s.10(1)(g) of Act 121 of 1984 and deleted by s. 12 (1) (j) of Act 129 of 1991.]

- (r) any gratuity (other than a leave gratuity) received by or accrued to any person from public funds upon his retirement from any office or employment under the Government, including the Railway Administration and any provincial administration, or from the funds of the Land and Agricultural Bank of South Africa upon his retirement as a member of the board of the said Bank, which the Treasury declares to be free of tax;

[Para. (r) substituted by s. 8 (1) (b) of Act 76 of 1968.]

[NB: In terms of s. 36 (2) of the Legal Succession to the South African Transport Services Act 9 of 1989, the reference in para. (r) to 'the Railway Administration' is to be construed as including the Company (Transnet Limited) and the Corporation (the South African Rail Commuter Corporation Limited).]

(s) .....

[Para. (s) deleted by s. 26 (1) (k) of Act 45 of 2003.]

- (t) the receipts and accruals-

- (i) of the Council for Scientific and Industrial Research;
- (ii) of the South African Inventions Development Corporation;
- (iii) of the South African National Roads Agency Limited incorporated in terms of section 3 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act 7 of 1998);

[Sub-para. (iii) deleted by s. 29 (1) (c) of Act 30 of 1998 and inserted by s. 26 (1) (l) of Act 45 of 2003.]

(iv) .....

[Sub-para. (iv) added by s. 13 (1) (m) of Act 89 of 1969 and deleted by s. 10 (1) (g) of Act 28 of 1997.]

- (v) of the Armaments Development and Production Corporation of South Africa Limited, established under section 2 of the Armaments Development and Production Act, 1968 (Act 57 of 1968);

[Sub-para. (v) added by s. 9 (c) of Act 88 of 1971.]

- (vi) of any company during any period during which all the issued shares of such company are held by the Corporation referred to in subparagraph (v), if the operations of such company are conducted in pursuance of, or are ancillary or complementary to, the objects of the said Corporation;

[Sub-para. (vi) added by s. 9 (c) of Act 88 of 1971 and substituted by s. 10 (1) (q) of Act 141 of 1992.]

(vii) .....

[Sub-para. (vii) added by s. 10 (1) (k) of Act 85 of 1974 and deleted by s. 1 of Act 49 of 1996.]

(viii) .....

[Sub-para. (viii) added by s. 10 (1) (l) of Act 85 of 1974 and deleted by s. 9 (1) (a) of Act 46 of 1996.]

(ix) .....

[Sub-para. (ix) added by s. 7 (1) (g) of Act 104 of 1979 and deleted by s. 9 (1) (b) of Act 46 of 1996.]

- (x) of the Development Bank of Southern Africa established on 30 June 1983;

[Sub-para. (x) added by s. 10 (1) (h) of Act 121 of 1984.]

(xi) .....

[Sub-para. (xi) added by s. 7 (1) (c) of Act 90 of 1988 and deleted by s. 18 (1) (i) of Act 53 of 1999.]

(xii) .....

[Sub-para. (xii) added by s. 12 (1) (k) of Act 129 of 1991 and deleted by s. 21 (1) (k) of Act 30 of 2000.]

(xiii) .....

[Sub-para. (xiii) added by s. 10 (1) (r) of Act 141 of 1992 and deleted by s. 9 (1) (f) of Act 21 of 1994.]

(xiv) .....

[Sub-para. (xiv) added by s. 10 (1) (r) of Act 141 of 1992 and deleted by s. 8 (1) (o) of Act 36 of 1996.]

- (xv) .....
- [Sub-para. (xv) added by s. 7 (1) (n) of Act 113 of 1993 and deleted by s. 18 (1) (h) of Act 74 of 2002.]
- [Para. (t) amended by s. 8 (b) of Act 90 of 1964 and substituted by s. 8 (1) (c) of Act 76 of 1968.]
- (tA) the receipts and accruals of any company which qualifies for exemption under section 2 of the Company Tax Amendment Decree, 1994 (Decree 2 of 1994 of Ciskei), which are derived from a source within the territory of the former Republic of Ciskei;  
[Para. (tA) inserted by s. 29 (1) (d) of Act 30 of 1998.]
- (u) any amount received by or accrued to any person from such person's spouse or former spouse by way of alimony or allowance or maintenance of such person or any children under an order of judicial separation or divorce granted in consequence of proceedings instituted after the twenty-first day of March, 1962, or under any agreement of separation entered into after that date;  
[Para. (u) added by s. 8 (b) of Act 90 of 1962.]
- (v) .....
- [Para. (v) added by s. 8 (b) of Act 90 of 1962, substituted by s. 13 (1) (n) of Act 89 of 1969 and by s. 3 (1) (d) of Act 108 of 1986 and deleted by s. 10 (1) (s) of Act 141 of 1992.]
- (vA) .....
- [Para. (vA) inserted by s. 7 (1) (e) of Act 90 of 1972, substituted by s. 3 (1) (e) of Act 108 of 1986 and deleted by s. 10 (1) (s) of Act 141 of 1992.]
- (w) .....
- [Para. (w) added by s. 8 (b) of Act 90 of 1962, amended by s. 10 of Act 95 of 1967, by s. 13 (1) (o) of Act 89 of 1969 and by s. 10 (1) (m) of Act 85 of 1974, substituted by s. 10 (1) (t) of Act 141 of 1992, amended by s. 7 (1) (o) of Act 113 of 1993 and deleted by s. 29 (1) (e) of Act 30 of 1998.]
- (x) so much of any amount (being a lump sum) referred to in paragraph (d) of the definition of 'gross income' in section 1 or in section 7A (4A) as does not exceed R30 000 less the sum of any other amounts which have been excluded from the taxpayer's income by virtue of the exemption conferred by this paragraph, whether in the current or any previous year of assessment: Provided that the exemption under this paragraph shall not apply in respect of any amount received by or accrued to any person upon or because of the termination or because of the impending termination of the services required to be rendered by him as the holder of any office or employment or in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of his office or employment or in respect of his appointment (or right or claim to be appointed) to any office or employment, unless-
- (i) such person has attained the age of 55 years; or  
[Para. (i) substituted by s. 10 (1) (e) of Act 21 of 1995.]
- (ii) the termination or impending termination of such person's services or the relinquishment, termination, loss, repudiation, cancellation or variation of his office or employment or of his appointment (or right or claim to be appointed) to any office or employment is due to superannuation, ill-health or other infirmity; or  
[Sub-para. (ii) substituted by s. 12 (1) (l) of Act 129 of 1991.]
- (iii) .....
- [Sub-para. (iii) substituted by s. 12 (1) (l) of Act 129 of 1991 and deleted by s. 10 (1) (f) of Act 21 of 1995.]
- (iv) the termination or impending termination of such person's services is due to his employer having ceased to carry on or intending to cease carrying on the trade in respect of which such person was employed or to such person having become redundant in consequence of his employer having effected a general reduction in personnel or a reduction in personnel of a particular class and, where such person's employer is a company, such person was not at any time a director of such company and did not at any time hold more than five per cent of the issued share capital or members' interest in such company:  
[Sub-para. (iv) added by s. 7 (1) (q) of Act 113 of 1993.]
- Provided further that, notwithstanding the provisions of section 37D, any such amount which was received by or accrued to a married woman and which was in whole or in part excluded from her husband's taxable income under the provisions of this paragraph, shall for the purposes of determining the exemption under this paragraph in respect of any such

amount subsequently received by or accrued to either spouse be deemed to be an amount which was received by or accrued to the husband;

[Para. (x) added by s. 8 (b) of Act 90 of 1962, substituted by s. 10 (c) of Act 88 of 1965, by s. 11 (d) of Act 55 of 1966 and by s. 8 (1) (d) of Act 76 of 1968, amended by s. 9 (d) of Act 88 of 1971, substituted by s. 8 (1) (d) of Act 69 of 1975 and amended by s. 7 (1) (h) of Act 104 of 1979, by s. 8 (1) (k) of Act 96 of 1981, by s. 9 (1) (f) of Act 94 of 1983, by s. 10 (1) (o) of Act 101 of 1990, by s. 10 (1) (u) of Act 141 of 1992 and by s. 26 (1) (m) of Act 45 of 2003.]

(y) .....

[Para. (y) added by s. 8 (1) (e) of Act 76 of 1968 and deleted by s. 10 (1) (p) of Act 101 of 1990.]

(z) any amount received by or accrued to or in favour of any person from the State by way of a subsidy on interest payable by him on any amount owing by him on any loan or advance utilised by him for the purposes of pastoral, agricultural or other farming operations carried on by him;

[Para. (z) added by s. 9 (e) of Act 88 of 1971.]

(zA) any amount by way of rebate or other assistance received by or accrued to or in favour of any person under any scheme for the promotion or financing of exports which is for the purposes of this paragraph approved by the Minister of Trade and Industry with the concurrence of the Minister of Finance: Provided that where the person entitled to claim such amount from the State has, under an agreement directly connected with the export trade carried on by him, agreed to pay the whole or any portion of such amount to any other person, the exemption under this paragraph shall also apply to the whole or such portion of such amount received by or accrued to such other person under the said agreement;

[Para. (zA) added by s. 7 (1) (f) of Act 90 of 1972, substituted by s. 10 (1) (n) of Act 85 of 1974 and by s. 10 (1) (q) of Act 101 of 1990, amended by s. 12 (1) (m) of Act 129 of 1991, substituted by s. 9 (1) (g) of Act 21 of 1994 and amended by s. 18 (1) (i) of Act 74 of 2002.]

(zB) any amount received by or accrued to any employer from a fund which has under an industrial council agreement been established as contemplated in section 48 (1) (d) of the Labour Relations Act, 1956 (Act 28 of 1956) or section 39 (4) of the Manpower Training Act, 1981 (Act 56 of 1981), for the training of employees for skilled work, if such employer has undertaken such training in respect of his employees;

[Para. (zB) added by s. 7 (1) (d) of Act 65 of 1973 and substituted by s. 10 (1) (o) of Act 85 of 1974 and by s. 6 (1) (h) of Act 91 of 1982.]

(zC) any amount received by or accrued to or in favour of any person from the State by way of a subsidy under any scheme designed to encourage the establishment, expansion or carrying on of industrial or commercial undertakings in an economic development area, if such subsidy was granted in respect of-

- (i) wages paid by such person in carrying on any such undertaking; or
- (ii) the expenses incurred by such person in training employees employed by him in such undertaking;

[Para. (zC) added by s. 6 (1) (i) of Act 91 of 1982.]

(zD) any amount received by or accrued to or in favour of any person by way of a reimbursement by the State of expenditure incurred by him in relocating in an economic development area any industrial or commercial undertaking, or part of such an undertaking, carried on by him elsewhere than in such area, except to the extent that the said amount relates to any expenditure claimed by and allowed to such person as a deduction from his income under the provisions of this Act or has been taken into account in the determination under this Act of the value of any machinery or plant for the purposes of determining any allowance in respect of such machinery or plant;

[Para. (zD) added by s. 6 (1) (i) of Act 91 of 1982.]

(zE) any amount received by or accrued to the Small Business Development Corporation, Limited, by way of any subsidy or assistance payable by the State;

[Para. (zE) added by s. 9 (1) (g) of Act 94 of 1983.]

(zF) .....

[Para. (zF) added by s. 6 (1) (h) of Act 96 of 1985 and deleted by s. 18 (1) (j) of Act 74 of 2002.]

(zG) any amount which on or after 15 May 1989 was received by or accrued to a film owner

(as defined in section 24F) by way of a subsidy payable by the State under any scheme designed to promote the production of films (as defined in the said section);

[Para. (zG) added by s. 10 (1) (r) of Act 101 of 1990.]

(zH) any amount received by or accrued to or in favour of any person from the State in terms of-

- (i) the Regional Industrial Development Programme, which came into operation on 1 May 1991;
- (ii) the Simplified Regional Industrial Development Programme, which came into operation on 1 October 1993 by way of a grant;
- (iii) the Small/Medium Manufacturing Development Programme, which came into operation on 1 October 1996 by way of a grant;
- (iv) the Tax Holiday Scheme contemplated in section 37H, which came into operation on 1 October 1996 by way of a grant;
- (v) the Small, Medium Enterprise Development Programme, which came into operation on 1 September 2000; and
- (vi) the Critical Infrastructure Programme, which came into operation on 1 September 2000.

[Sub-para. (v) added by s. 13 (1) (s) of Act 59 of 2000.]

[Para. (zH) added by s. 10 (1) (v) of Act 141 of 1992 and substituted by s. 10 (1) (h) of Act 28 of 1997.]

(zI) any amount received by or accrued to or in favour of any person from the Government, where-

- (i) that amount is granted for the performance by that person of its obligations pursuant to a Public Private Partnership;
- (ii) that person is required in terms of that Public Private Partnership to expend an amount at least equal to that amount in respect of any improvements on land or buildings owned by any sphere of government; and
- (iii) .....

[Para. (zI) added by s. 26 (1) (n) of Act 45 of 2003 and deleted by s. 14 (1) (h) of Act 32 of 2004.]

(2) Notwithstanding the exemptions provided for in paragraphs (h) and (k) of subsection (1)-

- (a) all amounts falling within the scope of the said paragraphs shall be set out by the taxpayer in the return rendered by him; and
  - (b) the said exemptions shall not apply in respect of any portion of an annuity.
- (3) The exemptions from tax provided by any paragraph of subsection (1) shall not extend to-
- (a) any payments out of the receipts, accruals, amounts or profits mentioned in such paragraph; or
  - (b) any tax leviable under this Act in respect of any taxable capital gain determined in accordance with the Eighth Schedule.

[Sub-s. (3) substituted by s. 26 (1) (o) of Act 45 of 2003.]

(4) .....

[Sub-s. (4) substituted by s. 13 (1) (p) of Act 89 of 1969, amended by s. 9 (1) (c) and (d) of Act 52 of 1970, deleted by s. 9 (f) of Act 88 of 1971, added by s. 10 (1) (s) of Act 101 of 1990 and deleted by s. 8 (1) (p) of Act 36 of 1996.]

#### **10A Exemption of capital element of purchased annuities**

(1) For the purposes of this section-

'annuity amount' means an amount payable by way of annuity under an annuity contract and any amount payable in consequence of the commutation or termination of any such annuity contract;

[Definition of 'annuity amount' substituted by s. 8 (a) of Act 113 of 1993.]

'annuity contract' means an agreement concluded between an insurer in the course of his insurance business and a purchaser, in terms of which-

- (a) the insurer agrees to pay to the purchaser or the purchaser's spouse or surviving spouse an annuity or annuities (whether to one such person or to each of them) until the death of the annuitant or the expiry of a specified term;
- (b) the purchaser agrees to pay to the insurer a lump sum cash consideration for such annuity

- or annuities; and
- (c) no amounts are or will be payable by the insurer to the purchaser or any other person other than amounts payable by way of such annuity or annuities or, where an annuity is payable for a minimum term and such annuity is in the event of the death of the annuitant before the end of such term to continue to be payable to some third person for the balance of that term, amounts which may be so payable to such third person by way of such annuity,

but does not include any agreement for the payment by any insurer of any annuity which is under the rules of a pension fund or of a provident fund or of a retirement annuity fund payable to a member of such fund or to any other person;

[Definition of 'annuity contract' substituted by s. 11 (1) (a) of Act 85 of 1974 and amended by s. 11 (1) (a) of Act 21 of 1995 and by s. 19 (1) (a) of Act 53 of 1999.]

'commencement', in relation to an annuity contract, means the date on which the annuity contract is concluded;

[Definition of 'commencement' substituted by s. 11 (1) (b) of any Act 85 of 1974.]

'expected return', in relation to an annuity under an annuity contract, means an amount determined in a manner contemplated in this section as representing the sum of all the annuity amounts which may, as at the commencement of the annuity contract, be expected to become payable by way of the annuity from the said commencement;

[Definition of 'expected return' substituted by s. 11 (1) (c) of Act 85 of 1974.]

'purchaser', in relation to an annuity contract means-

- (a) any natural person and includes such person's deceased or insolvent estate; or
- (b) a curator bonis of, or a trust created solely for the benefit of, any natural person where the High Court has declared such person to be of unsound mind and incapable of managing his own affairs and such Court has ordered the appointment of such curator or creation of such trust, as the case may be;

[Definition of 'purchaser' inserted by s. 19 (1) (b) of Act 53 of 1999.]

'statutory actuary' means an actuary appointed in accordance with section 20 (1) or 21 (1) (b) of the Long-Term Insurance Act, 1998 (Act 52 of 1998);

[Definition of 'statutory actuary' inserted by s. 19 (1) (b) of Act 53 of 1999.]

'valuator' .....

[Definition of 'valuator' substituted by s. 11 (1) (a) of Act 28 of 1997 and deleted by s. 19 (1) (c) of Act 53 of 1999.]

(2) There shall be exempt from normal tax so much of any annuity amount payable to a purchaser or his spouse or surviving spouse (as contemplated in paragraph (a) of the definition of 'annuity contract' in subsection (1)), or to the deceased or insolvent estate of such spouse or surviving spouse as is determined in accordance with subsection (3) to represent the capital element of such amount.

[Sub-s. (2) substituted by s. 11 (1) (b) of Act 21 of 1995, by s. 11 (1) (b) of Act 28 of 1997 and by s. 19 (1) (d) of Act 53 of 1999.]

(3) The capital element of an annuity amount shall be-

- (a) a sum determined in accordance with the formula

$$Y = \frac{A}{N} \times C$$

in which formula-

- (i) 'Y' represents the sum to be determined;
- (ii) 'A' represents the amount of the total cash consideration given by the purchaser under the annuity contract in question as contemplated in paragraph (b) of the definition of 'annuity contract' in subsection (1);
- (iii) 'B' represents the total expected returns of all the annuities provided for in the annuity contract in question; and
- (iv) 'C' represents the aforesaid annuity amount; or
- (b) where, by reason of any unpredictable contingency (other than the death or survival of any person), any amount payable by way of any annuity under the annuity contract in

question is uncertain at the date on which the first payment by way of an annuity becomes due under that contract, such sum as may on the basis of a fair and reasonable calculation be taken to be the capital element of the aforesaid annuity amount: Provided that the said sum shall be determined in such manner that the capital element of all the annuity amounts becoming due during any year of assessment in respect of all the annuities under the said contract does not in total exceed an amount determined in accordance with the formula

$$Z = \frac{1}{N} \times A$$

in which formula-

- (i) 'Z' represents the amount to be determined;
  - (ii) 'N' represents the probable number of years during which annuity amounts will be payable under the said annuity contract from the date on which the first of such amounts becomes due, due regard being had to the manner in which and the frequency with which such amounts are payable; and
  - (iii) 'A' represents the amount of the total cash consideration given by the purchaser under the said annuity contract as contemplated in paragraph (b) of the definition of 'annuity contract' in subsection (1); or
- (c) where such annuity amount is payable in consequence of the commutation or termination of the annuity contract concerned, an amount determined in accordance with the formula
- $$X = A - D$$

in which formula-

- (i) 'X' represents the amount to be determined;
- (ii) 'A' represents the amount of the total cash consideration given by the purchaser under the annuity contract concerned as contemplated in paragraph (b) of the definition of 'annuity contract' in subsection (1); and
- (iii) 'D' represents the sum of the amounts determined in accordance with paragraphs (a) and (b) as representing the capital element of all annuity amounts payable under the annuity contract prior to the commutation or termination thereof.

[Para. (c) added by s. 8 (c) of Act 113 of 1993.]

(4) The statutory actuary of an insurer who is a party to an annuity contract shall, before payment of the first annuity amount is made under such contract, or within such period as the Commissioner may allow, make a calculation (with due regard to the provisions of subsection (5)) in the manner prescribed in paragraph (a) of subsection (3) or, if the provisions of paragraph (b) of that subsection are applicable, in accordance with that paragraph, of the capital element of all the annuity amounts to be paid under the said contract: Provided that-

- (i) where the capital element is calculated under the said paragraph (a), it shall be sufficient if the capital element is calculated as a percentage to be applied to each of the said annuity amounts; or
- (ii) where the capital element is calculated under the said paragraph (b), it shall be sufficient if a calculation is made of the amount to be determined in accordance with the formula in the proviso to that paragraph.

[Sub-s. (4) amended by s. 11 (1) (c) of Act 28 of 1997, by s. 19 (1) (e) of Act 53 of 1999 and by s. 14 of Act 59 of 2000.]

(5) A statutory actuary who makes any calculation as provided in subsection (4) or any recalculation as provided in subsection (6) (b), shall do so in accordance with generally accepted actuarial principles or practice, and where a determination has to be made of the life expectancy of any person for the purpose of a calculation of the expected return of any annuity or the probable number of years during which annuity amounts will be paid under any annuity contract, the mortality tables to be used for such determination shall be the select tables in the volume of tables published in 1953 at the University Press, Cambridge, for the Institute of Actuaries and the Faculty of Actuaries, entitled 'The a (55) Tables for Annuitants', and the age of the person concerned shall for the purposes of such determination be taken to be his age on his birthday immediately preceding the commencement of the annuity contract in question.



[Sub-s. (5) substituted by s. 11 (1) (d) of Act 85 of 1974 and amended by s. 19 (1) (e) of Act 53 of 1999.]

(6) (a) Where any annuity contract is varied so that it no longer conforms with the requirements prescribed in the definition of 'annuity contract' in subsection (1), the exemption conferred by subsection (2) in respect of the capital element of annuity amounts under that contract shall not apply in respect of such amounts under that contract which become due on or after the date of such variation.

(b) Subject to the provisions of paragraph (a), where any annuity contract is varied as to the payment of any annuity or consideration payable thereunder, the capital element of annuity amounts becoming due thereunder after such variation is effected shall, with due regard to the provisions of subsection (5), be re-calculated by the statutory actuary of the insurer concerned.

[Para. (b) amended by s. 19 (1) (e) of Act 53 of 1999.]

(7) (a) Where the capital element of annuity amounts has been calculated as provided in subsection (4) or has been recalculated as provided in subsection (6) (b), the insurer concerned shall furnish each annuitant under the annuity contract in question, within one month after the date on which the calculation or recalculation is made, as the case may be, or within such further period as the Commissioner may allow, with two copies of such calculation or recalculation, as the case may be.

[Para. (a) substituted by s. 11 (1) (e) of Act 85 of 1974.]

(b) An annuitant who has received the two copies referred to in paragraph (a) shall submit one of them to the Commissioner as and when required by the Commissioner.

(8) The Commissioner shall, when making an assessment upon the taxpayer concerned for the year of assessment during which there has become payable the first annuity amount affected by a calculation referred to in subsection (4) or a re-calculation referred to in subsection (6) (b), determine the capital element of annuity amounts received or accrued during such year and affected by such calculation or re-calculation, as the case may be, in accordance with such calculation or re-calculation or, if the Commissioner is dissatisfied with such calculation or re-calculation or is in doubt as to the correctness thereof, or if no such calculation or re-calculation has been made, he may, having regard to any calculation or re-calculation of the capital element made by a practising actuary at his request or at the request of the taxpayer, calculate or re-calculate the capital element and determine the capital element of the said annuity amounts accordingly.

(9) Any decision of the Commissioner in the exercise of his discretion under the provisions of subsection (8) shall, in respect of a year of assessment referred to in that subsection, be subject to objection and appeal.

(10) Subject to the provisions of section 79, the final calculation or re-calculation of the capital element as made in relation to the year of assessment referred to in subsection (8) shall, subject to the provisions of subsection (6) (b), be final and conclusive and shall apply in respect of all relevant annuity amounts which become due to any person under the annuity contract in question in any succeeding years of assessment.

(11) Any cash consideration given by the purchaser under the annuity contract shall be converted to the currency of the Republic by applying the average exchange rate for the year of assessment during which the consideration is actually paid.

[Sub-s. (11) added by s. 11 of Act 5 of 2001 and substituted by s. 15 of Act 32 of 2004.]

[S. 10A inserted by s. 8 (1) of Act 65 of 1973.]

## **11 General deductions allowed in determination of taxable income**

### **■ Cases**

For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall be allowed as deductions from the income of such person so derived-

(a) expenditure and losses actually incurred in the production of the income, provided such expenditure and losses are not of a capital nature;

[Para. (a) substituted by s. 15 (a) of Act 59 of 2000.]

(b) .....

[Para. (b) substituted by s. 13 (a) of Act 129 of 1991 and deleted by s. 15 (b) of Act 59 of 2000.]

(bA) any interest (including related finance charges) which is not otherwise allowable as a deduction under this Act, which has been actually incurred by the taxpayer on any loan, advance or credit utilized by him for the acquisition, installation, erection or construction of any machinery, plant, building, or any improvements to a building, or any pipeline, transmission line or cable or railway line as contemplated in section 12D, or any aircraft

hangar, apron, runway or taxiway as contemplated in section 12F, to be used by him for the purposes of his trade, and which has been so incurred in respect of a period prior to such machinery, plant, building, improvements, pipeline, transmission line or cable, railway line, aircraft hangar, apron, runway or taxiway, being brought into use for the purposes of the taxpayer's trade, such deduction to be allowed in the year of assessment during which such machinery, plant, building, improvements, pipeline, transmission line or cable, railway line, aircraft hangar, apron, runway or taxiway is or are brought into use for the said purposes;

[Para. (bA) inserted by s. 9 (1) (a) of Act 96 of 1981 and substituted by s. 10 (1) (a) of Act 19 of 2001.]

(bB) any finance charge incurred by the taxpayer in respect of the purchase or contract price owing under an agreement for the acquisition, installation, erection or construction of any machinery, plant, aircraft, implement, utensil, article or livestock used by him for the purposes of his trade, including (but not limited to) mining, shipping or farming, which deduction shall be in lieu of any deduction or allowance in respect of such finance charge which may be allowable under any other provision of this Act: Provided that any such finance charge (other than a finance charge which falls to be dealt with in terms of the provisions of section 24J) which is calculated or payable in respect of a period of more than 12 months extending beyond the end of the year of assessment shall for the purposes of this paragraph be deemed to have been incurred from day to day during the said period;

[Para. (bB) inserted by s. 11 (1) (a) of Act 121 of 1984 and amended by s 8 (1) (a) of Act 90 of 1988, by s. 8 (1) (a) of Act 70 of 1989 and by s. 12 (1) (a) of Act 21 of 1995.]

(bC) .....

[Para. (bC) inserted by s. 27 (1) (a) of Act 45 of 2003 and deleted by s. 16 (1) (a) of Act 32 of 2004.]

(c) any legal expenses (being fees for the services of legal practitioners, expenses incurred in procuring evidence or expert advice, court fees, witness fees and expenses, taxing fees, the fees and expenses of sheriffs or messengers of court and other expenses of litigation which are of an essentially similar nature to any of the said fees or expenses) actually incurred by the taxpayer during the year of assessment in respect of any claim, dispute or action at law arising in the course of or by reason of the ordinary operations undertaken by him in the carrying on of his trade: Provided that the amount to be allowed under this paragraph in respect of any such expenses shall be limited to so much thereof as -

- (i) is not of a capital nature; and
- (ii) is not incurred in respect of any claim made against the taxpayer for the payment of damages or compensation if by reason of the nature of the claim or the circumstances any payment which is or might be made in satisfaction or settlement of the claim does not or would not rank for deduction from his income under paragraph (a) or (b); and
- (iii) is not incurred in respect of any claim made by the taxpayer for the payment to him of any amount which does not or would not constitute income of the taxpayer; and
- (iv) is not incurred in respect of any dispute or action at law relating to any such claim as is referred to in paragraph (ii) or (iii) of this proviso;

[Para. (c) substituted by s. 10 (1) (a) of Act 88 of 1971.]

(cA) an allowance in respect of any amount actually incurred by such person in the course of the carrying on of his trade, as compensation in respect of any restraint of trade imposed on any other person who-

- (i) is a natural person;
- (ii) is or was a labour broker as defined in the Fourth Schedule (other than a labour broker in respect of which a certificate of exemption has been issued in terms of such Schedule);
- (iii) is or was a personal service company as defined in the Fourth Schedule; or
- (iv) is or was a personal service trust as defined in the Fourth Schedule,

to the extent that such amount constitutes or will constitute income of the person to whom it is paid: Provided that the amount allowed to be deducted under this paragraph shall not exceed for any one year the lesser of-

- (aa) so much of such amount so incurred as is equal to such amount divided by the number of years, or part thereof, during which the restraint of trade shall apply; or
- (bb) one-third of such amount so incurred;  
[Para. (cA) inserted by s. 22 (1) (a) of Act 30 of 2000.]
- (d) expenditure actually incurred during the year of assessment on repairs of property occupied for the purpose of trade or in respect of which income is receivable, including any expenditure so incurred on the treatment against attack by beetles of any timber forming part of such property and sums expended for the repair of machinery, implements, utensils and other articles employed by the taxpayer for the purposes of his trade;
- (e) save as provided in paragraph 12 (2) of the First Schedule, such sum as the Commissioner may think just and reasonable as representing the amount by which the value of any machinery, plant, implements, utensils and articles (other than machinery, plant, implements, utensils and articles in respect of which a deduction may be granted under section 12B or 12C) used by the taxpayer for the purpose of his trade has been diminished by reason of wear and tear or depreciation during the year of assessment: Provided that-
  - (i) where a deduction has been allowed under paragraph (d), the Commissioner shall take into consideration the sum allowed under that paragraph in determining the sum to be allowed under this paragraph;
  - (ii) in no case shall any allowance be made for the depreciation of buildings or other structures or works of a permanent nature;
  - (iiA) where any machinery, implement, utensil or article qualifying for an allowance under this paragraph is mounted on or affixed to any concrete or other foundation or supporting structure and the Commissioner is satisfied-
    - (aa) that the foundation or supporting structure is designed for such machinery, implement, utensil or article and constructed in such manner that it is or should be regarded as being integrated with the machinery, implement, utensil or article;
    - (bb) that the useful life of the foundation or supporting structure is or will be limited to the useful life of the machinery, implement, utensil or article mounted thereon or affixed thereto,
 the said foundation or supporting structure shall for the purposes of this paragraph not be deemed to be a structure or work of a permanent nature but shall for the purposes of this Act be deemed to be a part of the machinery, implement, utensil or article mounted thereon or affixed thereto;  
[Para. (iiA) inserted by s. 12 (1) (a) of Act 85 of 1974.]
  - (iii) no allowance shall be made under this paragraph in respect of any ship to which the provisions of section 14 (1) (a) or (b) apply or in respect of any aircraft to which the provisions of section 14bis (1) (a), (b) or (c) apply;  
[Para. (iii) substituted by s. 12 (1) (a) of Act 55 of 1966 and by s. 10 (a) of Act 21 of 1994.]
  - (iiiA) no allowance shall be made under this paragraph in respect of any machinery, implement, utensil or article of which the cost has been allowed as a deduction from the taxpayer's income under the provisions of section 24D;  
[Para. (iiiA) inserted by s. 9 (1) (b) of Act 96 of 1981.]
  - (iv) the value of new or unused machinery, implements, utensils or articles which-
    - (aa) were used by the taxpayer directly in a process of manufacture or, if brought into use on or after 15 March 1961, in any other process which in the opinion of the Commissioner is of a similar nature or, where the taxpayer is an agricultural co-operative (as defined in section 27 (9)), for storing or packing pastoral, agricultural or other farm products or for subjecting such products to a primary process as defined in the said section 27 (9); and
    - (bb) were acquired to replace machinery, implements, utensils or articles which were damaged or destroyed,
 shall be reduced by any amount which has been recovered or recouped as

contemplated in paragraph (a) of subsection (4) of section 8 or the corresponding provisions of any previous Income Tax Act in respect of the damaged or destroyed machinery, implements, utensils or articles and has been excluded from the taxpayer's income in terms of paragraph (e) of the said subsection or the corresponding provisions of any previous Income Tax Act, and not included in the taxpayer's income in terms of the proviso to the said paragraph or the corresponding provisions of any previous Income Tax Act in the current or any previous year of assessment;

[Para. (iv) substituted by s. 9 (1) (a) of Act 113 of 1977.]

- (v) the value of any machinery, implements, utensils or articles used by the taxpayer for the purposes of his trade shall be increased by the amount of any expenditure (other than expenditure referred to in paragraph (a)) which is proved to the satisfaction of the Commissioner to have been incurred by the taxpayer in moving such machinery, implements, utensils or articles from one location to another;
- (vi) the value of any machinery, implements, utensils or articles used by the taxpayer for the purposes of his trade shall be reduced by the amount of any deduction which may be made under subsection (1) of section 12 or under that subsection as applied by subsection (3) of the said section, or under the corresponding provisions of any previous Income Tax Act or under section 12A (2) or under section 27 (2) (d);

[Para. (vi) substituted by s. 12 (1) (b) of Act 55 of 1966, by s. 9 (1) (b) of Act 113 of 1977 and by s. 11 (1) (b) of Act 121 of 1984.]

- (vii) where the value of any such machinery, implements, utensils and articles acquired by the taxpayer on or after 15 March 1984 is for the purposes of this paragraph to be determined having regard to the cost of such machinery, implements, utensils and articles, such cost shall be deemed to be the cost which, in the opinion of the Commissioner, a person would, if he had acquired such machinery, implements, utensils and articles under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of such machinery, implements, utensils and articles was in fact concluded, have incurred in respect of the direct cost of the acquisition of such machinery, implements, utensils and articles, including the direct cost of the installation or erection thereof;

[Para. (vii) added by s. 11 (1) (c) of Act 121 of 1984.]

- (viii) where in respect of any machinery, implement, utensil or article acquired by the taxpayer on or after 21 June 1993, a deduction or allowance was previously granted to a connected person in relation to the taxpayer under this paragraph or section 12B (1) or 12C (1), or under section 27 (2) (d) prior to the deletion thereof by section 28 (b) of the Income Tax Act, 1991 (Act 129 of 1991), the allowance under this paragraph shall be calculated on an amount not exceeding the lesser of the cost of such machinery, implement, utensil or article to such connected person or the market value thereof as determined on the date upon which it was acquired by the taxpayer;

[Para. (viii) added by s. 9 (1) (a) of Act 113 of 1993 and substituted by s. 5 (1) (a) of Act 140 of 1993.]

- (ix) where any such machinery, plant, implement, utensil or article was used by the taxpayer during any previous financial year or years for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year or years, the Commissioner shall take into account the period of use of such asset during such previous year or years in determining the amount by which the value of such machinery, plant, implement, utensil or article has been diminished;

[Sub-para. (ix) added by s. 15 (c) of Act 59 of 2000.]

[Para. (e) amended by s. 9 (a) of Act 90 of 1962 and by s. 9 (a) of Act 90 of 1964, substituted by s. 11 (1) (a) of Act 88 of 1965 and amended by s. 8 (1) (b) of Act 90 of 1988 and by s. 11 (1) (a) of Act 101 of 1990.]

- (f) an allowance in respect of any premium or consideration in the nature of a premium paid by a taxpayer for-

- (i) the right of use or occupation of land or buildings used or occupied for the production of income or from which income is derived; or
- (ii) the right of use of any plant or machinery used for the production of income or from which income is derived; or
- (ii) *bis* the right of use of any motion picture film or any sound recording or advertising matter connected with such film, if such film, sound recording or advertising matter is used for the production of income or income is derived therefrom; or  
[Sub-para. (ii) *bis* inserted by s. 9 (b) of Act 90 of 1962.]
- (iii) the right of use of any patent as defined in the Patents Act, 1978 (Act 57 of 1978), or any design as defined in the Designs Act, 1993 (Act 195 of 1993), or any trade mark as defined in the Trade Marks Act, 1993 (Act 194 of 1993), or any copyright as defined in the Copyright Act, 1978 (Act 98 of 1978), or of any other property which is of a similar nature, if such patent, design, trade mark, copyright or other property is used for the production of income or income is derived therefrom; or  
[Sub-para. (iii) substituted by s. 14 (1) (a) of Act 89 of 1969, by s. 13 (b) of Act 129 of 1991 and by s. 20 (a) of Act 53 of 1999.]

- (iv) the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use of such film, sound recording, advertising matter, patent, design, trade mark, copyright or other property as aforesaid:  
[Sub-para. (iv) amended by s. 9 (c) of Act 90 of 1962.]

Provided that-

- (aa) the allowance under subparagraph (i), (ii), (ii) *bis* or (iii) shall not exceed for any one year such portion of the amount of the premium or consideration so paid as is equal to the said amount divided by the number of years for which the taxpayer is entitled to the use or occupation, or one twenty-fifth of the said amount, whichever is the greater;  
[Para. (aa) amended by s. 9 (d) of Act 90 of 1962.]
- (bb) if the taxpayer is entitled to such use or occupation for an indefinite period, or if, in the case of any such right of use or occupation granted under an agreement concluded on or after 1 July 1983, the taxpayer or the person by whom such right of use or occupation was granted holds a right or option to extend or renew the original period of such use or occupation, he shall be deemed, for the purposes of this paragraph, to be entitled to such use or occupation for such period as in the opinion of the Commissioner represents the probable duration of such use or occupation; and  
[Para. (bb) substituted by s. 10 (1) (a) of Act 94 of 1983.]
- (cc) the allowance under subparagraph (iv) shall not exceed for any one year such portion (not being less than one twenty-fifth) of the amount of the premium or consideration so paid as the Commissioner may allow having regard to the period during which the taxpayer will enjoy the right to use such film, sound recording, advertising matter, patent, design, trade mark, copyright or other property as aforesaid and any other circumstances which in the opinion of the Commissioner are relevant;  
[Para. (cc) amended by s. 9 (e) of Act 90 of 1962.]
- (dd) the provisions of this paragraph shall not apply in relation to any such premium or consideration paid by the taxpayer which does not for the purposes of this Act constitute income of the person to whom it is paid, unless such premium or consideration is paid under a written agreement formally and finally signed before 10 April 1984 by every party to the agreement;  
[Para. (dd) added by s. 11 (1) (d) of Act 121 of 1984.]
- (g) an allowance in respect of any expenditure actually incurred by the taxpayer, in pursuance of an obligation to effect improvements on land or to buildings, incurred under an agreement whereby the right of use or occupation of the land or buildings is granted by any other person, where the land or buildings are used or occupied for the production of income or income is derived therefrom: Provided that-
  - (i) the aggregate of the allowances under this paragraph shall not exceed the amount

stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements or, if no amount is so stipulated, an amount representing in the opinion of the Commissioner the fair and reasonable value of the improvements;

- (ii) any such allowance shall not exceed for any one year such portion of the aggregate of the allowances under this paragraph as is equal to the said aggregate divided by the number of years (calculated from the date on which the improvements are completed, but not more than 25 years) for which the taxpayer is entitled to the use or occupation;

[Para. (ii) substituted by s. 10 (1) (b) of Act 94 of 1983.]

- (iii) if the taxpayer is entitled to such use or occupation for an indefinite period, he shall for the purposes of this paragraph be deemed to be entitled to such use or occupation for such period as in the opinion of the Commissioner represents the probable duration of such use or occupation;

- (iv) the aggregate of the allowances under this paragraph in respect of any building or improvements referred to in section 13 (1) or (4) or 27 (2) (b) shall not exceed the cost (after the deduction of any amount which has been set off against the cost of such building or improvements under section 13 (3) or section 27 (4)) to the taxpayer of such building or improvements less the aggregate of the allowances in respect of such building or improvements made to the taxpayer under the said section 13 (1) or (4) or 27 (2) (b) or the corresponding provisions of any previous Income Tax Act;

[Para. (iv) added by s. 9 (f) of Act 90 of 1962 and substituted by s. 9 (1) (c) of Act 113 of 1977.]

- (v) where expenditure has been incurred by the taxpayer in respect of the cost of any improvements to land or buildings (other than improvements consisting of any building or improvements referred to in paragraph (iv) of this proviso or in section 13bis and other than any residential unit referred to in section 13ter) and such expenditure or a portion thereof has qualified or will qualify for deduction from the taxpayer's income by way of a deduction of expenditure or an allowance in respect of expenditure under any other provision of this Act, the aggregate of the allowances under this paragraph in respect of such improvements shall not exceed the amount or value referred to in paragraph (i) of this proviso less an amount equal to the aggregate of the amounts which have so qualified or will so qualify for deduction from the taxpayer's income under the said other provision, whether in the current or any preceding or subsequent year of assessment;

[Para. (v) added by s. 7 (1) (a) of Act 91 of 1982.]

- (vi) the provisions of this paragraph shall not apply in relation to any such expenditure incurred under an agreement concluded on or after 1 July 1983, if the value of such improvements or the amount to be expended on such improvements, as contemplated in paragraph (h) of the definition of 'gross income' in section 1, does not for the purposes of this Act constitute income of the person to whom the right to have such improvements effected has accrued, unless the expenditure was incurred pursuant to an obligation to effect improvements in terms of a Public Private Partnership;

[Para. (vi) added by s. 10 (1) (c) of Act 94 of 1983 and substituted by s. 16 (1) (b) of Act 32 of 2004.]

- (vii) if during any year of assessment the agreement whereby the right of use or occupation of the land or buildings is granted is terminated before expiry of the period to which that taxpayer was initially entitled to the use or occupation, as contemplated in paragraph (ii), so much of the allowance which may be allowed under this paragraph, which has not yet been allowed in that year or any previous year of assessment, shall be allowable as a deduction in that year of assessment.

[Para. (vii) added by s. 16 (1) (c) of Act 32 of 2004.]

- (gA) an allowance in respect of any expenditure (other than expenditure which has qualified in whole or part for deduction or allowance under any of the other provisions of this section or the corresponding provisions of any previous Income Tax Act) actually incurred by the taxpayer-

- (i) in devising or developing any invention as defined in the Patents Act, 1978 (Act 57 of 1978), or in creating or producing any design as defined in the Designs Act, 1993 (Act 195 of 1993), or any trade mark as defined in the Trade Marks Act, 1993 (Act 194 of 1993), or any copyright as defined in the Copyright Act, 1978 (Act 98 of 1978), or any other property which is of a similar nature; or

[Sub-para. (i) substituted by s. 13 (c) of Act 129 of 1991 and by s. 20 (b) of Act 53 of 1999.]

- (ii) in obtaining any patent or the restoration of any patent under the Patents Act, 1978, or the registration of any design under the Designs Act, 1993, or the registration of any trade mark under the Trade Marks Act, 1993, or under similar laws of any other country; or

[Sub-para. (ii) substituted by s. 20 (b) of Act 53 of 1999 and by s. 15 (d) of Act 59 of 2000.]

- (iii) in acquiring by assignment from any other person any such patent, design, trade mark or copyright or in acquiring any other property of a similar nature or any knowledge connected with the use of such patent, design, trade mark, copyright or other property or the right to have such knowledge imparted,

[Sub-para. (iii) substituted by s. 9 (1) (b) of Act 113 of 1993.]

if such invention, patent, design, trade mark, copyright, other property or knowledge, as the case may be, is used by the taxpayer in the production of his income or income is derived by him therefrom: Provided that-

- (aa) where such expenditure exceeds R5 000, and was incurred-
  - (A) before 29 October 1999, the allowance shall not exceed for any one year such portion of the amount of the expenditure as is equal to such amount divided by the number of years, which in the opinion of the Commissioner, represents the probable duration of use of the invention, patent, design, trade mark, copyright, other property or knowledge, or four per cent of the said amount, whichever is the greater;
  - (B) on or after 29 October 1999, the allowance shall not for any one year exceed an amount equal to-
    - (AA) five per cent of the amount of the expenditure in the case of any invention, patent, trade mark, copyright or other property of a similar nature or any knowledge connected with the use of such invention, patent, trade mark, copyright or other property or the right to have such knowledge imparted; or
    - (BB) 10 per cent of the amount of the expenditure in the case of any design or other property of a similar nature or any knowledge connected with the use of such design or other property or the right to have such knowledge imparted;

[Para. (aa) amended by s. 9 (1) of Act 36 of 1996, substituted by s. 20 (c) of Act 53 of 1999 and amended by s. 14 (1) (a) of Act 30 of 2002.]

- (bb) where such expenditure was incurred before the commencement of the year of assessment in question the allowance shall be calculated on the amount of such expenditure, less an amount equivalent to the sum of the allowances to which the taxpayer was entitled under this paragraph and the allowances to which, in the opinion of the Commissioner, the taxpayer would have been entitled under this paragraph if this paragraph had been applicable, in respect of such expenditure in respect of previous years of assessment, including any year of assessment under any previous Income Tax Act;

[Para. (bb) substituted by s. 10 (1) (e) of Act 94 of 1983.]

- (cc) no allowance shall be made in respect of any such invention, patent, design, trade mark, copyright or other property or knowledge so acquired or obtained by the taxpayer on or after 24 June 1988, but prior to 1 July 1993 from any other person who is a resident of the Republic or who is ordinarily resident in a neighbouring country (or, in the case of a company, is incorporated or has its place of effective management in a neighbouring country), if-
  - (A) the taxpayer or such other person is a company and such other person or the taxpayer, as the case may be, is interested in more than 50 per cent of

any class of shares issued by such company, whether directly as a shareholder in that company or indirectly as a shareholder in any other company; or

- (B) both the taxpayer and such other person are companies and any third person is interested in more than 50 per cent of any class of shares issued by one of those companies and in more than 50 per cent of any class of shares issued by the other company, whether directly as a shareholder in the company by which the shares in question were issued or indirectly as a shareholder in any other company;

[Para. (cc) added by s. 8 (1) (c) of Act 90 of 1988 and amended by s. 9 (1) (c) of Act 113 of 1993 and by s. 15 (e) of Act 59 of 2000.]

- (dd) where any such invention, patent, design, trade mark, copyright or other property or knowledge was so acquired or obtained by the taxpayer on or after 1 July 1993 from any other person who is a resident of the Republic or who is ordinarily resident in a neighbouring country (or, in the case of a company, is incorporated or has its place of effective management in a neighbouring country), and who is a connected person in relation to the taxpayer, the allowance under this paragraph shall be calculated on an amount not exceeding the lesser of the cost of such invention, patent, design, trade mark, copyright or other property or knowledge to such connected person or the market value thereof as determined on the date upon which such invention, patent, design, trade mark, copyright or other property or knowledge was acquired or obtained by the taxpayer;

[Para. (dd) added by s. 9 (1) (d) of Act 113 of 1993 and substituted by s. 5 (1) (b) of Act 140 of 1993 and by s. 15 (f) of Act 59 of 2000.]

- (ee) no allowance shall be made in respect of any expenditure incurred by such taxpayer on or after 29 October 1999, in respect of the acquisition from any other person of any trade mark or other property of a similar nature or any knowledge connected with the use of such trade mark or the right to have such knowledge imparted;

[Para. (ee) added by s. 20 (d) of Act 53 of 1999.]

- (ff) no deduction shall be allowed under this paragraph in respect of any expenditure incurred by the taxpayer during any year of assessment commencing on or after 1 January 2004;

[Para. (ff) added by s. 27 (1) (b) of Act 45 of 2003.]

[Para. (gA) inserted by s. 12 (1) (c) of Act 55 of 1966, substituted by s. 14 (1) (b) of Act 89 of 1969 and amended by s. 10 (1) (d) of Act 94 of 1983.]

- (gB) expenditure (other than expenditure which has qualified in whole or part for deduction or allowance under any of the other provisions of this section) actually incurred by the taxpayer during the year of assessment in obtaining the extension of the term of any patent under the Patents Act, 1978 (Act 57 of 1978), or the extension of the registration period of any design under the Designs Act, 1993 (Act 195 of 1993), or the renewal of the registration of any trade mark under the Trade Marks Act, 1993 (Act 194 of 1993), or under similar laws of any other country, if such patent, design or trade mark is used by the taxpayer in the production of his income or income is derived by him therefrom: Provided that no deduction shall be allowed under this paragraph in respect of any expenditure incurred during any year of assessment commencing on or after 1 January 2004;

[Para. (gB) inserted by s. 12 (1) (c) of Act 55 of 1966, amended by s. 14 (1) (c) of Act 89 of 1969, substituted by s. 13 (d) of Act 129 of 1991, by s. 20 (e) of Act 53 of 1999 and by s. 15 (g) of Act 59 of 2000 and amended by s. 27 (1) (c) of Act 45 of 2003.]

- (gC) an allowance in respect of any expenditure actually incurred by the taxpayer during any year of assessment commencing on or after 1 January 2004 to acquire (otherwise than by way of devising, developing or creating) any -
- (i) invention or patent as defined in the Patents Act, 1978 (Act 57 of 1978);
  - (ii) design as defined in the Designs Act, 1993 (Act 195 of 1993);
  - (iii) copyright as defined in the Copyright Act, 1978 (Act 98 of 1978);



- (iv) other property which is of a similar nature (other than Trade Marks as defined in the Trade Marks Act, 1993 (Act 194 of 1993); or
- (v) knowledge connected with the use of such patent, design, copyright or other property or the right to have such knowledge imparted,

which shall be allowed during the year of assessment in which that invention, patent, design, copyright, other property or knowledge is brought into use for the first time by the taxpayer for the purposes of the taxpayer's trade: Provided that-

- (aa) where that expenditure actually incurred by the taxpayer exceeds R5 000, that allowance shall not exceed in any year of assessment-
  - (A) five per cent of the amount of the expenditure in respect of any invention, patent, copyright or other property of a similar nature or any knowledge connected with the use of such invention, patent, copyright or other property or the right to have such knowledge imparted; or
  - (B) 10 per cent of the amount of the expenditure in respect of any design or other property of a similar nature or any knowledge connected with the use of such design or other property or the right to have such knowledge imparted;

[Para. (aa) substituted by s. 16 (1) (e) of Act 32 of 2004.]

- (bb) where any such invention, patent, design, copyright or other property or knowledge was acquired from any person who is a connected person in relation to the taxpayer, the allowance under this paragraph shall be calculated on an amount not exceeding the lesser of the cost to that connected person of acquiring, devising, developing or creating that invention, patent, design, copyright or other property or knowledge or the market value of that invention, patent, design, copyright or other property or knowledge as determined on the date upon which it was acquired by the taxpayer;

[Para. (bb) substituted by s. 16 (1) (e) of Act 32 of 2004.]

[Para. (gC) inserted by s. 9 (1) (d) of Act 113 of 1977, deleted by s. 15 (h) of Act 59 of 2000, inserted by s. 27 (1) (d) of Act 45 of 2003 and amended by s. 16 (1) (d) of Act 32 of 2004.]

- (h) such allowance in respect of amounts included in the taxpayer's gross income under paragraph (g) or paragraph (h) of the definition of 'gross income' in section 1 as the Commissioner may deem reasonable having regard to any special circumstances of the case and, in the case of an amount so included under the said paragraph (h), to the original period for which the right of use or occupation was granted or, in the case of any amount so included under the said paragraph (h) in consequence of an agreement concluded on or after 1 July 1983, to the number of years taken into account in the determination of the relevant allowance granted to any other person under the provisions of paragraph (g) of this section: Provided that where there has on or after the twenty-ninth day of March, 1972, accrued to the taxpayer the right to have improvements effected on land or to buildings by any other person and an amount is required to be included in the taxpayer's gross income under the said paragraph (h) with respect to such improvements, no allowance shall be made to the taxpayer under this paragraph in respect of such amount, if-
  - (i) the taxpayer or such other person is a company and such other person or the taxpayer, as the case may be, is interested in more than fifty per cent of any class of shares issued by such company, whether directly as a shareholder in that company or indirectly as a shareholder in any other company; or
  - (ii) both the taxpayer and such other person are companies and any third person is interested in more than fifty per cent of any class of shares issued by one of those companies and in more than fifty per cent of any class of shares issued by the other company, whether directly as a shareholder in the company by which the shares in question were issued or indirectly as a shareholder in any other company;

[Para. (h) substituted by s. 8 (1) (a) of Act 90 of 1972 and amended by s. 10 (1) (f) of Act 94 of 1983.]

- (hA) so much of any amount (other than an amount in respect of which any deduction or allowance has been or will be granted under any other provision of this Act) paid in cash

during any year of assessment by a taxpayer engaged in mining, prospecting, quarrying or similar operations to a company, society, association of persons or trust referred to in section 10 (1) (cH) to be used for the purposes contemplated in that section as does not exceed an amount determined in accordance with the formula:

$$\frac{A - B + C}{D},$$

D,

in which formula in respect of each mine-

- 'A' represents the amount determined by a person designated by the Minister of Minerals and Energy of the estimated costs to be incurred at the time that or after operations on the mine or part of the mine are discontinued in order to discharge the obligations imposed in terms of any law which regulates mining operations (other than costs which were required in terms of any law to be incurred on an ongoing basis during the life of that mine or part of that mine;
- 'B' means the market value of the assets held by the company, society, association or trust in respect of that mine on the date of the determination of the estimated costs in symbol 'A';
- 'C' means the amount paid in cash by that taxpayer to such company, such association company, society or trust at any time before the date contemplated in symbol 'B' which has not been allowed as a deduction in terms of this paragraph in any year of assesment; and
- 'D' represents the estimated remaining life of that mine in number of years as determined by a person contemplated in symbol 'A':

Provided that so much of the amount so paid in cash by that taxpayer as exceeds the deduction allowable in terms of this paragraph shall, for the purposes of this paragraph, be deemed to be an amount paid by the taxpayer in cash to that company, society, association or trust in the immediately succeeding year of assessment to be used for the purpose contemplated in section 10 (1) (cH);

[Para. (hA) inserted by s. 13 (e) of Act 129 of 1991 and substituted by s. 12 (a) of Act 28 of 1997 and by s. 27 (1) (e) of Act 45 of 2003.]

- (i) the amount of any debts due to the taxpayer which have during the year of assessment become bad, provided such amount is included in the current year of assessment or was included in previous years of assessment in the taxpayer's income;

[Para. (i) substituted by s. 14 (1) (d) of Act 89 of 1969, by s. 10 (1) (g) of Act 94 of 1983 and by s. 9 (1) (e) of Act 113 of 1993.]

- (j) such an allowance as may be made each year by the Commissioner in respect of such debts due to the taxpayer as he considers to be doubtful: Provided that such allowance shall be included in the income of the taxpayer in the following year of assessment;

[Para. (j) substituted by s. 14 (1) (e) of Act 89 of 1969 and amended by s. 10 (1) (h) of Act 94 of 1983.]

- (k) (i) any sum contributed during the year of assessment to any pension fund by way of current contribution by any person who holds any office or employment, where such contribution is made by reason of the holding of such office or employment, or by any person who is a partner referred to in paragraph (ii) (ee) of the proviso to paragraph (c) of the definition of 'pension fund' in section 1: Provided that the total deduction to be allowed in respect of the total contributions by such person to any one or more pension fund or funds shall not in the year of assessment exceed the greater of R1 750 or 7,5 per cent of the remuneration (being the income or part thereof referred to in the definition of 'retirement-funding employment' in section 1) derived by such person during such year in respect of his retirement-funding employment;

[Sub-para. (i) substituted by s. 5 (a) of Act 101 of 1978, amended by s. 8 (1) (a) of Act 104 of 1979 and by s. 9 (1) (c) of Act 96 of 1981, substituted by s. 10 (1) (i) of Act 94 of 1983 and amended by s. 30 (1) of Act 30 of 1998.]

- (ii) any sum paid during the year of assessment to any pension fund by any person who, as a member of such fund, has in terms of the rules governing such fund undertaken to pay such sum in respect of any past period which is to be reckoned as pensionable service of that member:

Provided that-

(aa) the deduction to be allowed in respect of any sums so paid shall not in the year of assessment exceed the sum of R1 800;

[Para. (aa) amended by s. 11 (1) (e) of Act 121 of 1984.]

(bb) any amount, being a portion of a sum so paid, which has been disallowed solely by reason of the fact that it exceeds the amount of the deduction allowable in respect of the year of assessment shall be carried forward and be deemed for the purposes of this paragraph to be a sum so paid in the next succeeding year of assessment;

[Para. (bb) added by s. 9 (1) (e) of Act 96 of 1981.]

(cc) the provisions of this subparagraph shall apply for the purpose of determining the taxpayer's total taxable income for any year of assessment ended or ending on or after 28 February 1981 whether such taxable income is derived from the carrying on of any trade or otherwise;

[Para. (cc) added by s. 10 (1) (j) of Act 94 of 1983.]

(dd) no deduction shall be made under this paragraph in respect of so much of any amount carried forward in terms of paragraph (bb) of this proviso as has been accounted for under paragraph (d) of the definition of 'formula B' in paragraph 1 of the Second Schedule or the first proviso to paragraph 6 of that Schedule;

[Para. (dd) added by s. 10 (1) (j) of Act 94 of 1983.]

[Para. (k) amended by s. 8 (a) of Act 72 of 1963 and substituted by s. 12 (1) (d) of Act 55 of 1966, by s. 9 (a) of Act 65 of 1973, by s. 9 (a) of Act 69 of 1975 and by s. 9 (1) (e) of Act 113 of 1977 and amended by s. 9 (1) (d) of Act 96 of 1981.]

- (l) any sum contributed by an employer during the year of assessment for the benefit of his employees to any pension fund, provident fund or benefit fund (other than a fund contemplated in paragraph (a) of the definition of 'benefit fund'): Provided that-
- (i) in respect of any lump sum contribution, the Commissioner may determine that the said sum shall be deducted in a series of annual instalments, so that only a portion thereof is deducted in the year of assessment in which it is contributed, and the residue in such subsequent years of assessment and in such proportions as the Commissioner may determine, until the contribution is extinguished;
  - (ii) if the contributions (including any lump sum payments) made by the employer in respect of any employee during any year of assessment to such funds exceed an amount equal to ten per cent of the approved remuneration of such employee for such year of assessment, and the Commissioner is satisfied that the aggregate of such contributions and the total remuneration accrued during such year of assessment to such employee in respect of his employment by the employer is excessive or unjustifiable in relation to the value of the services rendered by such employee to the employer, and having regard to other benefits, if any, derived by him from his employment by the employer, only so much of such contribution as appears to the Commissioner to be reasonable, but not less than an amount equal to ten per cent of the approved remuneration of such employee for such year of assessment, shall be allowed to be deducted under this paragraph;
  - (iii) for the purposes of paragraph (ii) of this proviso 'approved remuneration', in relation to any employee for any year of assessment, means so much of the total remuneration accrued to such employee during such year of assessment in respect of his employment by the employer concerned as the Commissioner considers to be fair and reasonable in relation to the value of the services rendered by such employee during such year of assessment to the employer and having regard to other benefits, if any, derived by him from his employment by the employer;
  - (iv) where any contributions are made to any such fund by the members of a partnership in their capacity as employers, the references in paragraph (ii) of this proviso to an employer shall be construed as applying to the partnership as though its members were one person;
  - (v) the references in this paragraph to employees or any employee shall, where the employer is a partnership and contributions are made by the employer to a pension

fund, be construed as including references to any member of such partnership who was previously an employee in the undertaking carried on by the partnership and who has been permitted to retain his membership of such pension fund as contemplated in paragraph (ii) (*ee*) of the proviso to paragraph (c) of the definition of 'pension fund' in section 1, and, for the purposes of paragraphs (ii) and (iii) of this proviso 'approved remuneration', in relation to such member, shall be construed as including the amount of his pensionable emoluments referred to in the said paragraph (ii) (*ee*);

[Para. (v) substituted by s. 10 (1) (*k*) of Act 94 of 1983.]

- (vi) any decision of the Commissioner under this paragraph, not being a decision under paragraph (i) of this proviso, shall be subject to objection and appeal;

[Para. (l) substituted by s. 8 (1) (*b*) of Act 104 of 1979 and amended by s. 30 (1) (*b*) of Act 30 of 1998.]

- (lA) an amount equal to the market value of any qualifying equity share granted to an employee of that person as contemplated in section 8B, as determined on the date of grant as defined in that section, which applies in lieu of any other deduction which may otherwise be allowed to that person or any other person in respect of the granting of that share: Provided that the deduction under this paragraph may not during any year of assessment in aggregate exceed R3 000 in respect of all qualifying equity shares granted to a single employee and so much as exceeds R3 000 may be carried forward to the immediately succeeding year of assessment and that excess is deemed to be the market value of qualifying equity shares granted to the relevant employee during that immediately succeeding year for purposes of this paragraph;

[Para. (lA) inserted by s. 16 (1) (*f*) of Act 32 of 2004.]

- (m) any amount paid by way of annuity during the year of assessment by any taxpayer-
- (i) to a former employee who has retired from the taxpayer's employ on grounds of old age, ill health or infirmity; or
  - (ii) to a person who was for a period of at least five years a partner in an undertaking carried on by the taxpayer and who retired from the partnership in respect of that undertaking on grounds of old age, ill health or infirmity, provided that the amount so paid to such person is reasonable, having regard to the services rendered by such person as a partner in such undertaking prior to his retirement and the profits made in such undertaking, and that the said amount does not represent consideration payable to such person in respect of his interest in the partnership; or

[Sub-para. (ii) substituted by s. 9 (1) (*f*) of Act 113 of 1993.]

- (iii) to any person who is dependent for his maintenance upon a former employee or a former partner in an undertaking carried on by the taxpayer or (where such former employee or former partner is deceased) was so dependent immediately prior to his death:

Provided that the deduction under subparagraph (iii) shall not exceed in respect of the persons so dependent on any one retired or deceased employee or former partner, the sum of R2 500;

[Para. (m) substituted by s. 14 (1) (*f*) of Act 89 of 1969 and by s. 5 (*b*) of Act 101 of 1978 and amended by s. 9 (1) (*f*) of Act 96 of 1981 and by s. 11 (1) (*f*) of Act 121 of 1984.]

- (n) (aa) so much of the total current contributions to any retirement annuity fund or funds made during the year of assessment by any person as a member of such fund or funds as does not in the case of the taxpayer exceed the greatest of-
- (A) 15 per cent of an amount equal to the amount remaining after deducting from, or setting off against, the income derived by the taxpayer during the year of assessment (excluding income derived from any retirement-funding employment (being the income or part thereof referred to in the definition of 'retirement-funding employment' in section 1)) the deductions or assessed losses admissible against such income under this Act (excluding this paragraph, sections 17A, 18, 18A and 19 (3) of this Act and paragraph 12 (1) (*c*) to (*i*), inclusive, of the First Schedule); or

[Item (A) substituted by s. 8 (1) (*d*) of Act 90 of 1988, by s. 11 (1) (*b*) of Act 101 of 1990, by s. 9 (1) (*g*) of

Act 113 of 1993 and by s. 20 (f) of Act 53 of 1999.]

- (B) the amount, if any, by which the amount of R3 500 exceeds the amount of any deduction to which the taxpayer is entitled under paragraph (k) (i) in respect of the said year; or
- (C) the amount of R1 750;

[Sub-para. (aa) amended by s. 5 (c) of Act 101 of 1978, substituted by s. 8 (1) (c) of Act 104 of 1979 and amended by s. 10 (1) (l) and (m) of Act 94 of 1983.]

- (bb) so much of the total of any contributions to any retirement annuity fund or funds made during the year of assessment by any person as a member of such fund or funds as does not exceed R1 800 in the case of the taxpayer, where such contributions are made under conditions prescribed in the rules of the fund whereby a member who has discontinued his contributions prematurely is entitled to be reinstated as a full member thereof and the current contributions to the fund have been paid in full:

[Sub-para. (bb) substituted by s. 5 (d) of Act 101 of 1978 and amended by s. 7 (1) (b) and (c) of Act 91 of 1982, by s. 10 (1) (n) and (o) of Act 94 of 1983 and by s. 11 (1) (g) of Act 121 of 1984.]

Provided that-

- (i) no deduction shall be made under subparagraph (aa) in respect of any amount paid into a retirement annuity fund for the benefit of a member of such fund where such amount is a lump sum benefit derived by the member from a pension fund, a provident fund or a retirement annuity fund and that amount has under the provisions of paragraph 6 (a), (b) or (c) of the Second Schedule qualified for deduction from any amount to be included in the member's gross income;
- (ii) the deductions in terms of subparagraph (aa) shall not exceed an amount equal to the amount remaining after deducting from or setting off against the income derived by the taxpayer during the year of assessment the deductions and assessed losses admissible against such income under this Act (excluding the said subparagraph, sections 17A and 19 (3) of this Act and paragraph 12 (1) (c) to (i), inclusive, of the First Schedule);

[Para. (ii) substituted by s. 9 (1) (h) of Act 113 of 1993 and by s. 20 (g) of Act 53 of 1999.]

- (iii) any current contributions (excluding any amount referred to in paragraph (i) of this proviso) to any retirement annuity fund or funds which are made by such person as a member of such fund or funds during a year of assessment and do not qualify for deduction from his income for that year under subparagraph (aa) shall be carried forward and, except to the extent that such contributions have been accounted for under paragraph (d) of the definition of 'formula B' in paragraph 1 of the Second Schedule or the first proviso to paragraph 6 of that Schedule, be deemed for the purposes of the said subparagraph to be current contributions made to the fund or funds in question during the next succeeding year of assessment;
- (iv) no deduction shall be made under subparagraph (bb) in respect of any contribution relating to any year of assessment which, if such contribution had been made during that year, would not have qualified for deduction under this paragraph, as applicable in relation to the said year;
- (v) any amount being a portion of a contribution made as contemplated in subparagraph (bb) and which has been disallowed solely by reason of the fact that it exceeds the amount of the deduction allowable in respect of the year of assessment, shall be carried forward and be deemed for the purposes of the said paragraph to be a contribution so made in the next succeeding year of assessment;
- (vi) the provisions of this paragraph shall apply for the purpose of determining the taxpayer's total taxable income whether derived from the carrying on of any trade or otherwise;
- (vii) .....

[Para. (vii) added by s. 8 (1) (e) of Act 90 of 1988, substituted by s. 8 (1) (b) of Act 70 of 1989 and deleted by s. 12 (1) (b) of Act 21 of 1995.]

- (viii) where any such contribution was allowed as a deduction to a person, no deduction in respect of such contribution shall be allowed to such person's spouse;

[Para. (viii) added by s. 11 (1) (d) of Act 101 of 1990 and substituted by s. 12 (1) (c) of Act 21 of 1995.]

- (ix) any such contribution which has been made by a married woman to any such fund of which she became a member before 1 March 1992 shall, at the option of such married woman, be deemed for the purposes of this paragraph as applicable in any year of assessment ending not later than 28 February 1997 to be a contribution made by such married woman's husband as a member of such fund;

[Para. (ix) added by s. 11 (1) of Act 141 of 1992.]

[Para. (n) amended by s. 8 (b) of Act 72 of 1963, substituted by s. 12 (1) (e) of Act 55 of 1966 and by s. 9 (a) of Act 76 of 1968, amended by s. 9 (b) of Act 65 of 1973 and by s. 9 (b) of Act 69 of 1975, substituted by s. 9 (1) (f) of Act 113 of 1977 and amended by s. 10 (1) (p) of Act 94 of 1983.]

- (o) at the election of the taxpayer, an amount by which the cost to that taxpayer of any depreciable asset-
  - (i) which qualified for a capital allowance or deduction in terms of section 11 (e), 12B, 12C, 12E, 14 or 14bis; and
  - (ii) the expected useful life of which for tax purposes did not exceed ten years as determined on the date of original acquisition, exceeds the sum of the amount received or accrued from the alienation, loss or destruction, of that asset and the amount of any such capital allowance or deduction allowed in respect of that asset in that year or any previous year of assessment: Provided that for the purposes of this paragraph-
    - (aa) the cost of any plant, machinery, implements, utensils or articles shall be deemed to be the actual cost plus the amount by which the value of such plant, machinery, implements, utensils or articles has been increased in terms of paragraph (v) of the proviso to paragraph (e) less the amount by which such value has been reduced in terms of paragraph (iv) of that proviso;
 

[Para. (aa) substituted by s. 9 (1) (a) of Act 16 of 2004.]
    - (bb) the actual cost of any plant, machinery, implement, utensil or article acquired by the taxpayer on or after 15 March 1984 shall be deemed to be the cost of that plant, machinery, implement, utensil or article as determined under paragraph (vii) of the proviso to paragraph (e);
 

[Para. (bb) substituted by s. 9 (1) (a) of Act 16 of 2004.]
    - (cc) the cost of any aircraft in respect of which any allowance has been made to the taxpayer under section 14bis shall be deemed to be the actual cost less any amount (not being an amount which has been included in the income of the taxpayer for any year of assessment in terms of section 8 (4) (i)) by which the cost or estimated cost price of such aircraft has in the calculation of such allowance been reduced in terms of section 14bis (2) (a);
    - (dd) the cost of any ship in respect of which any allowance has been made to the taxpayer under the provisions of section 14 shall be deemed to be the actual cost less any amount (not being an amount which has been included in the income of the taxpayer for any year of assessment in terms of section 8 (4) (d)) by which the cost or estimated cost price of such ship has in the calculation of such allowance been reduced in terms of the definition of 'adjustable cost' or 'adjustable cost price' in section 14 (2);

[Para. (o) substituted by s. 11 (1) (b) of Act 88 of 1965, by s. 12 (1) (f) of Act 55 of 1966 and by s. 14 (1) (g) of Act 89 of 1969 and amended by s. 12 (1) (b) of Act 85 of 1974, by s. 9 (1) (g) of Act 113 of 1977, by s. 9 (1) (g) of act 96 of 1981, by s. 7 (1) (d) of Act 91 of 1982, by s. 10 (1) (q) of Act 94 of 1983, by s. 11 (1) (h) of Act 121 of 1984, by s. 10 of Act 85 of 1987, by s. 8 (1) (f) of Act 90 of 1988, by s. 11 (1) (e) of Act 101 of 1990, by s. 10 (b) of Act 21 of 1994, by s. 22 (1) (b) and (c) of Act 30 of 2000, by s. 15 (i) of Act 59 of 2000, by s. 10 (1) (b), (c), (d) and (e) of Act 19 of 2001 and by s. 27 (1) of Act 60 of 2001 and substituted by s. 27 (1) (f) of Act 45 of 2003.]

- (p) expenditure (other than expenditure in respect of which any deduction or allowance has been or will be granted under any other provision of this Act) incurred during the year of assessment by any taxpayer-
  - (i) for the purpose of scientific research undertaken by him for the development of his business, if such expenditure is not of a capital nature; or

- (ii) by way of contributions to any association, institute, college or university, to be used in scientific research relating to the taxpayer's own business, if the Council for Scientific and Industrial Research certifies to the Commissioner that it approves the proposals of such association, institute, college or university in regard to such research and that it is satisfied that such contributions will be used in such research:

Provided that no deduction shall be allowed under this paragraph in respect of any expenditure incurred during any year of assessment commencing on or after 1 January 2004;

[Para. (p) amended by s. 8 (1) (g) of Act 90 of 1988 and by s. 27 (1) (g) of Act 45 of 2003.]

- (q) save as provided in paragraph 12 (2) of the First Schedule, if expenditure of a capital nature (other than expenditure in respect of which any deduction or allowance has been or will be granted under any other provision of this Act) has been incurred by a taxpayer for the purpose of scientific research undertaken by him for the development of his business, and the Council for Scientific and Industrial Research certifies to the Commissioner that during the year of assessment in question such research was carried on and was financed by such expenditure, an amount in respect of the year of assessment in which such research commenced and of any succeeding year of assessment calculated at the rate of 25 per cent of such expenditure: Provided that-
- (i) the total deduction under this paragraph shall not exceed the amount of such expenditure; and
- (ii) if in any year of assessment the taxpayer discontinues such research or if the Council for Scientific and Industrial Research is unable, in respect of any year of assessment, to certify as provided in the foregoing provisions of this paragraph, there shall be included in the taxpayer's income for that year of assessment the total of the deductions under this paragraph or the corresponding provisions of any previous Income Tax Act, whether in the current or any previous year of assessment, less one-tenth of the amount of such expenditure in respect of each completed period of one year, not exceeding ten, contained in the period during which such research was carried on;
- (iii) no deduction shall be allowed under this paragraph in respect of any expenditure incurred during any year of assessment commencing on or after 1 January 2004;

[Sub-para. (iii) added by s. 27 (1) (h) of Act 45 of 2003.]

[Para. (q) amended by s. 10 (1) (r) of Act 94 of 1983 and by s. 9 (1) (i) of Act 113 of 1993.]

(r) .....

[Para. (r) amended by s. 9 (g) of Act 90 of 1962 and by s. 8 (c) of Act 72 of 1963, substituted by s. 11 (a) of Act 95 of 1967, deleted by s. 10 (a) of Act 52 of 1970, inserted by s. 27 (1) (i) of Act 45 of 2003 and deleted by s. 16 (1) (a) of Act 32 of 2004.]

(r)bis .....

[Para. (r)bis inserted by s. 9 (b) of Act 90 of 1964 and deleted by s. 11 (b) of Act 95 of 1967.]

- (s) in the case of a company the shares of which are 'property shares' as defined in section 47 of the Collective Investment Schemes Control Act, 2002, the dividends (other than those distributed out of profits of a capital nature) distributed by such company during the year of assessment on shares included in a portfolio comprised in any collective investment scheme in property managed or carried on by any company registered as a manager under section 42 of that Act for the purposes of Part V of that Act;

[Para. (s) substituted by s. 14 (1) (h) of Act 89 of 1969, by s. 12 (b) of Act 28 of 1997 and by s. 19 (1) (a) of Act 74 of 2002.]

- (t) in the case of any taxpayer (excluding any taxpayer who derives income from the sale of immovable property to persons who are not employed by him) who during any year of assessment incurs expenditure in connection with the erection of any dwelling or who, for the purpose of financing in whole or in part the erection by any person during the said period of any dwelling, advances or donates to any person any amount during any such year of assessment, and who satisfies the Commissioner that that dwelling will be occupied exclusively by persons or the households of persons who are his employees and are employed by him for the purposes of his trade (other than mining or farming), an

allowance in respect of the said year of assessment equal to 50 per cent of the expenditure so incurred or of the amount so advanced or donated: Provided that -

- (i) where any company is mainly engaged in the provision of housing facilities for the employees of its sole or principal shareholder or for the employees of any other company the shares in which are held wholly by the sole or principal shareholder in such firstmentioned company, the employees of such shareholder or such other company, as the case may be, shall for the purposes of this paragraph be deemed to be the employees also of such firstmentioned company;  
[Para. (i) substituted by s. 10 (1) (s) of Act 94 of 1983.]

- (ii) the aggregate of all the allowances made under this paragraph or the corresponding provisions of any previous Income Tax Act in respect of the erection of any one dwelling shall not exceed the sum of R6 000;

[Para. (ii) substituted by s. 9 (c) of Act 69 of 1975 and by s. 9 (1) (h) of Act 113 of 1977 and amended by s. 8 of Act 104 of 1980 and by s. 7 (1) (e) of Act 91 of 1982.]

- (iii) if in any year of assessment any dwelling in relation to the erection of which an allowance has been made to any taxpayer under this paragraph or the corresponding provisions of any previous Income Tax Act, whether in the current or any previous year of assessment, is occupied by any person or by the household of any person who is not an employee of that taxpayer, there shall be included in the income of the said taxpayer for the current year of assessment the amount of such allowance less an amount equal to one-tenth of the said allowance in respect of each completed period of one year, but not exceeding ten years, during which such dwelling was occupied by an employee or the household of an employee of that taxpayer,

and for the purposes of this paragraph 'employee' in relation to any taxpayer does not include any person who is a relative of that taxpayer or who, if the taxpayer is a company, is a shareholder (or a relative of a shareholder) in that company or in any company which is associated with that company by virtue of shareholding, not being a shareholder who holds all his shares in that company solely because he is employed by that company and who will, in terms of the articles of association of that company, not be entitled to continue to hold those shares after he ceases to be so employed;

[Para. (t) amended by s. 8 (d) of Act 72 of 1963, substituted by s. 9 (b) of Act 76 of 1968 and amended by s. 8 (1) (b) of Act 90 of 1972, by s. 12 (1) (c) of Act 85 of 1974 and by s. 8 of Act 104 of 1980.]

(u) .....

[Para. (ii) amended by s. 9 (1) (j) of Act 113 of 1993 and substituted by s. 14 (1) (b) of Act 30 of 2002.]

[Paras. (iii) and (iv) deleted by s. 14 (1) (c) of Act 30 of 2002.]

[Para. (u) substituted by s. 10 (1) (b) of Act 88 of 1971 and by s. 11 (1) (i) of Act 121 of 1984, amended by s. 9 (1) (j) of Act 113 of 1993 and by s. 14 (1) (b) and (c) of Act 30 of 2002 and deleted by s. 9 (1) (b) of Act 45 of 2003.]

(uA) .....

[Para. (uA) inserted by s. 11 (1) (j) of Act 121 of 1984 and deleted by s. 10 (c) of Act 21 of 1994.]

(v) .....

[Para. (v) substituted by s. 12 (1) (g) of Act 55 of 1966 and by s. 10 (1) (c) of Act 88 of 1971 and deleted by s. 9 (c) of Act 65 of 1973.]

- (w) an allowance in respect of any premium which was actually paid by the taxpayer under any policy of insurance taken out upon the life of an employee of the taxpayer or, in the case of a company, upon the life of a director or an employee of that company, the amount of such allowance to be as follows, namely -

- (i) where the life of the employee or director is insured for a period of not more than one year or where the only premiums payable under the said policy are premiums of equal amount payable at regular intervals of not more than one year until benefits (other than interim or temporary benefits) become payable or commence to become payable under that policy, an amount equal to the amount of the premium which became payable under such policy during the year of assessment; or
- (ii) in any other case, an amount equal to such portion of the premium paid under the



said policy as, in the opinion of the Commissioner (having regard *inter alia* to the terms of the policy and, in the appropriate circumstances, to the expectation of life of the employee or director) should be regarded as relating to the year of assessment; or

- (iii) if, during the year of assessment, any sum (being a lump sum included in the taxpayer's gross income under paragraph (m) of the definition of 'gross income' in section 1) has been received by or has accrued to the taxpayer under or upon the surrender or disposal of the said policy, an amount (not exceeding such lump sum) equal to so much of the premiums paid by the taxpayer under the said policy as has not qualified for deduction (whether by way of an allowance under this paragraph or otherwise) from the taxpayer's income in the said year of assessment and preceding years of assessment under this Act and any previous Income Tax Act:

Provided that-

- (aa) no allowance shall be made under this paragraph in respect of any premium under any policy which was at the time of the payment of such premium the property of any person other than the taxpayer;
- (bb) no allowance in respect of any premium under any policy of insurance shall be made under this paragraph (except, in the appropriate circumstances, an allowance under subparagraph (iii)) in respect of any year of assessment-
- (A) if during such year any person other than the taxpayer was entitled, or would have been entitled, to any benefits that were or could have become payable under the said policy; or
- (B) if any loan or advance (other than a loan or advance referred to in paragraph (m) of the definition of 'gross income' in section 1) was made to any person on the security or strength of such policy and any amount was during the said year owing in respect of such loan or advance or in respect of interest or other charges relating thereto, unless the Commissioner is satisfied that the loan or advance was obtained in order to obtain funds required by the taxpayer for the purposes of his trade in consequence of the employee's or director's ill-health, infirmity, incapacity, retirement or cessation of services occurring after the said policy was acquired by the taxpayer; or

[Sub-para. (B) substituted by s. 10 (1) (d) of Act 88 of 1971 and by s. 7 (1) (f) of Act 91 of 1982.]

- (C) if the said premium fell due before the commencement of the year of assessment ending the twenty-eighth day of February, 1971;
- (cc) the sum of the allowances made under this paragraph in respect of any insurance premium shall not exceed the amount of such premium;
- (dd) no allowance shall be made under this paragraph in respect of any premium paid under any insurance policy unless-
- (A) such policy was effected in terms of a written proposal accepted by the insurer before 1 June 1982 or the proposal for such policy was made before 25 May 1982 and accepted by the insurer not later than 21 June 1982; or

[Sub-para. (A) substituted by s. 10 (1) (t) of Act 94 of 1983.]

- (B) the only benefit payable under the policy is a benefit payable within a period fixed in such policy upon or by reason of the death or disablement of the employee or director whose life is insured under the policy or the policy is a disability policy as defined in section 1 of the Long-term Insurance Act, 1998 (Act 52 of 1998); or

[Sub-para. (B) substituted by s. 10 (1) (t) of Act 94 of 1983 and by s. 22 (1) (d) of Act 30 of 2000.]

- (C) the Minister of Finance has by regulation prescribed requirements in regard to terms and conditions with which insurance policies shall conform for the purposes of this subparagraph and the policy conforms with such requirements;

[Sub-para. (C) amended by s. 46 of Act 97 of 1986.]

[Para. (dd) added by s. 7 (1) (g) of Act 91 of 1982.]

- (*ee*) the allowance under this paragraph in respect of premiums paid by the taxpayer during any year of assessment shall, except as provided in subparagraph (iii), be limited-
- (A) in the case of premiums paid under a policy referred to in subparagraph (A) of paragraph (*dd*) of this proviso, to so much of such premiums as were payable in terms of the conditions contained in that policy on 31 May 1982; or
  - (B) in the case of premiums paid under one or more policies referred to in subparagraph (*c*) of the said paragraph (*dd*) upon the life of a particular employee or director, to an amount equal to 10 per cent of the remuneration (as defined in the definition of 'remuneration' in paragraph 1 of the Fourth Schedule) derived by such employee or director from the taxpayer during the said year of assessment;

[Sub-para. (B) substituted by s. 19 (1) (*b*) of Act 74 of 2002.]

[Para. (*ee*) added by s. 7 (1) (*g*) of Act 91 of 1982.]

- (*ff*) no deduction shall be made from the income of any taxpayer in respect of premiums paid by him under any policy of insurance of which he is the owner on the life of an employee of that taxpayer or, where the taxpayer is a company, of a director or employee of that company, except in so far as an allowance may be made under this paragraph or, in the case of a policy which is not a life policy or a disability policy as defined in section 1 of the Long-term Insurance Act, 1998, a deduction which may, in appropriate circumstances, be made under paragraph (*a*) or (*b*) of this section;

[Para. (*ff*) added by s. 7 (1) (*g*) of Act 91 of 1982 and substituted by s. 10 (1) (*u*) of Act 94 of 1983 and by s. 22 (1) (*e*) of Act 30 of 2000.]

[Para. (*w*) substituted by s. 14 (1) (*i*) of Act 89 of 1969 and by s. 10 (*b*) of Act 52 of 1970.]

- (*x*) any amounts which in terms of any other provision in this Part, are allowed to be deducted from the income of the taxpayer.

[S. 11 amended by s. 15 (*a*) of Act 59 of 2000.]

#### **11A Deductions in respect of expenditure and losses incurred prior to commencement of trade**

(1) For purposes of determining the taxable income derived during any year of assessment by a person from carrying on any trade, there shall be allowed as a deduction from the income so derived, any expenditure and losses-

- (*a*) actually incurred by that person prior to the commencement of and in preparation for carrying on that trade;
- (*b*) which would have been allowed as a deduction in terms of section 11 (other than section 11 (*x*)) or section 11B, had the expenditure or losses been incurred after that person commenced carrying on that trade; and
- (*c*) which were not allowed as a deduction in that year or any previous year of assessment.

(2) So much of the expenditure and losses contemplated in subsection (1) as exceeds the income derived during the year of assessment from carrying on that trade after deduction of any amounts allowable in that year of assessment in terms of any other provision of this Act, shall not be set off against any income of that person which is derived otherwise than from carrying on that trade, notwithstanding section 20 (1) (*b*).

[S. 11A inserted by s. 28 (1) of Act 45 of 2003.]

#### **11B Deductions in respect of research and development**

(1) For purposes of this section-

'cost' in relation to any building, machinery, plant, implement, utensil or article means the lesser of-

- (*a*) the actual cost to the taxpayer of the erection, addition, improvement to or acquisition of any building or actual cost of that machinery, plant, implement, utensil or article; or
- (*b*) the cost which a taxpayer would have incurred in respect of the direct cost of acquisition of that building, machinery, plant, implement, utensil or article (including the direct cost of the installation or erection thereof), if that taxpayer had acquired that building, machinery, plant, implement, utensil or article under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition was in fact

- concluded; or
- (c) where that building, machinery, plant, implement, utensil or article was acquired from any person who is a connected person in relation to the taxpayer, the cost to that connected person of that building, machinery, plant, implement, utensil or article.

[Para. (c) added by s. 17 (1) (b) of Act 32 of 2004.]

'copyright' means copyright as defined in the Copyright Act, 1978 (Act 98 of 1978);

'design' means a design as defined in the Designs Act, 1993 (Act 195 of 1993);

'invention' means an invention as defined in the Patents Act, 1978 (Act 57 of 1978);

'patent' means a patent as defined in the Patents Act, 1978 (Act 57 of 1978);

'research and development' means research and development conducted in the Republic that will result or potentially may result in an identifiable intangible asset as contemplated under generally accepted accounting practice, but does not include research and development relating to-

- (a) the social sciences, arts, humanities or management; or
- (b) market research, sales or marketing promotion;

'trade mark' means trade mark as defined in the Trade Marks Act, 1993 (Act 194 of 1993), and any other property of a similar nature.

[Definition of 'trade mark' substituted by s. 17 (1) (c) of Act 32 of 2004.]

(2) There shall be allowed as a deduction during any year of assessment commencing on or after 1 January 2004-

- (a) any expenditure actually incurred by a taxpayer in that year of assessment (other than costs contemplated in subsection (3))-
- (i) in respect of research and development undertaken directly by that taxpayer; or
- (ii) by way of payment to any other person for research and development undertaken by that other person on behalf of that taxpayer,
- for purposes of devising, developing or creating any invention, patent, design, copyright or other property which is of a similar nature (other than any trade mark);
- (b) any expenditure actually incurred by a taxpayer in that year of assessment (other than costs contemplated in subsection (3)), for purposes of-
- (i) registration of any invention, patent, design, copyright or other property; and
- (ii) obtaining the extension of the period of legal protection, the extension of the registration period, or the renewal of the registration of any such invention, patent, design, copyright or other property.

(3) There shall be allowed as a deduction by a taxpayer in respect of any building, machinery, plant, implement, utensil and article of a capital nature used by that taxpayer for purposes of research and development, an allowance equal to 40 per cent of the cost of that building, machinery, plant, implement, utensil and article in the year of assessment that it is brought into use for the first time by that taxpayer and 20 per cent in each of the three immediately succeeding years of assessment: Provided that where any building was used partly for research and development and partly for other purposes in the same year of assessment, the allowance for that year of assessment shall be limited to an amount which bears to the full amount of the allowance for that year, the same ratio as the use of that building for research and development bears to the total use of that building in that year of assessment.

(4) No deduction shall be allowed under subsection (2) (a) (ii) in respect of any expenditure, unless-

- (a) that expenditure relates to the devising, developing or creating of any such invention, patent, design, copyright or other property;
- (b) the payments are for discovery of new information; and
- (c) full ownership and control by the taxpayer exists over the results of such research and development including any such invention, patent, design, copyright or other property.

(5) No allowance shall be allowed in terms of this section in respect of any machinery, plant, implement, utensil and article of a person which was used during the year of assessment for purposes other than research and development.

(6) The allowance contemplated in this section shall apply in lieu of any other deduction or allowance granted under any other provision of this Act, unless the taxpayer elects in the year of assessment that the building, machinery, plant, implement, utensil or article is brought into use for the first time by that taxpayer that the deduction or allowance granted under that other provision shall apply, in which case subsection (3) shall not apply in respect of that building, machinery, plant, implement, utensil

or article, as the case may be.

[S. 11B inserted by s. 29 of Act 45 of 2003.]

### **11C Deductions in respect of foreign dividends**

(1) In determining the taxable income of a person for a year of assessment which is derived from any foreign dividends received by or accrued to that person during that year, there shall be allowed as a deduction any interest actually incurred by that person during that year in the production of income in the form of foreign dividends.

(2) The amount of the deduction under subsection (1) is limited to the amount of foreign dividends which are included in the income of the person during the year of assessment.

(3) The amount by which the interest referred to in subsection (1) exceeds the amount of the foreign dividends referred to in subsection (2) (if any), must be reduced by the amount of any foreign dividends received by or accrued to that person during the year of assessment which are exempt from tax and the balance must-

- (a) be carried forward to the immediately succeeding year of assessment; and
- (b) be deemed to be an amount of interest actually incurred by that person during that succeeding year of assessment in the production of income in the form of foreign dividends.

(4) Notwithstanding section 23 (g), a person may elect that there shall be allowed to be deducted from any income of that person in the form of foreign dividends, the amount of withholding tax on dividends proved to be payable in respect of any foreign dividend which is included in the income of that person.

(5) An election made by a person in terms of subsection (4) applies in respect of all foreign dividends received by or accrued to that person during the year of assessment for which the election was made.

[S. 11C inserted by s. 18 (1) of Act 32 of 2004.]

### **11bis .....**

#### **Cases**

[S. 11bis inserted by s. 10 (1) of Act 90 of 1962 and repealed by s. 20 of Act 74 of 2002.]

### **11ter .....**

[S. 11ter inserted by s. 10 of Act 90 of 1964, substituted by s. 12 of Act 88 of 1965 and by s. 14 of Act 55 of 1966 and repealed by s. 12 of Act 141 of 1992.]

### **11quat .....**

[S. 11quat inserted by s. 10 of Act 90 of 1964, substituted by s. 12 of Act 88 of 1965 and repealed by s. 13 of Act 141 of 1992.]

### **11quin .....**

[S. 11quin inserted by s. 10 of Act 90 of 1964, substituted by s. 12 of Act 88 of 1965, amended by s. 11 of Act 113 of 1977 and repealed by s. 14 of Act 141 of 1992.]

### **11sex Deduction of compensation for railway operating losses**

For the purpose of determining the taxable income derived by any taxpayer from carrying on any trade within the Republic, there shall be allowed as a deduction from the income of the taxpayer so derived the amount of any compensation due to Transnet Limited and paid by the taxpayer (whether directly or through any trade association of which the taxpayer is a member) in respect of any loss incurred by Transnet Limited in operating any railway line, if-

- (a) such railway line was constructed under or in pursuance of a written agreement with Transnet Limited in terms of which Transnet Limited undertook to operate the railway line;  
[Para. (a) substituted by s. 11 (1) of Act 65 of 1973 and by s. 31 of Act 30 of 1998.]
- (b) the compensation so paid was paid in order to discharge an obligation under the said agreement to pay such compensation; and
- (c) the taxpayer's liability to pay such compensation was incurred in connection with his trade.

[S. 11sex inserted by s. 10 of Act 90 of 1972 and amended by s. 31 of Act 30 of 1998.]

### **11sept .....**

[S. 11sept inserted by s. 14 (1) of Act 85 of 1974, amended by s. 11 (1) of Act 103 of 1976 and by s. 12 (1) of Act 113 of 1977, substituted by s. 9 (1) of Act 104 of 1979, amended by s. 11 (1) of Act 96 of 1981, by

s. 9 (1) of Act 91 of 1982, by s. 13 (1) of Act 121 of 1984, by s. 8 (1) of Act 96 of 1985 and by s. 12 of Act 101 of 1990 and repealed by s. 15 of Act 129 of 1991.]

### 11oct .....

[S. 11oct inserted by s. 10 (1) of Act 91 of 1982 and repealed by s. 21 (1) of Act 53 of 1999.]

### 12 .....

#### Cases

[S. 12 amended by s. 11 of Act 90 of 1962, by s. 4 of Act 6 of 1963 and by s. 10 (1) of Act 72 of 1963, substituted by s. 11 (1) of Act 90 of 1964, amended by s. 13 (1) of Act 88 of 1965, substituted by s. 15 (1) of Act 55 of 1966, amended by s. 12 (1) of Act 52 of 1970, by s. 11 (1) of Act 88 of 1971, by s. 11 of Act 90 of 1972, by s. 12 (1) of Act 65 of 1973, by s. 15 (1) of Act 85 of 1974, by s. 11 (1) of Act 69 of 1975, by s. 13 of Act 113 of 1977, by s. 6 (1) of Act 101 of 1978, by s. 10 of Act 104 of 1979, by s. 9 of Act 104 of 1980, by s. 12 (1) of Act 96 of 1981, by s. 11 (1) of Act 91 of 1982, by s. 14 (1) of Act 121 of 1984, by s. 9 (1) of Act 96 of 1985, by s. 8 (1) of Act 65 of 1986 and by s. 11 of Act 85 of 1987 and repealed by s. 16 of Act 129 of 1991.]

### 12A .....

[S. 12A inserted by s. 16 of Act 55 of 1966, amended by s. 13 (1) of Act 95 of 1967, by s. 12 (1) of Act 88 of 1971, by s. 12 of Act 69 of 1975, by s. 13 (1) of Act 96 of 1981, by s. 12 (1) of Act 91 of 1982, by s. 12 (1) of Act 94 of 1983, by s. 9 (1) of Act 65 of 1986 and by s. 10 of Act 90 of 1988 and repealed by s. 17 of Act 129 of 1991.]

### 12B Deduction in respect of certain machinery, plant, implements, utensils and articles

#### Cases

(1) In respect of any -

- (a) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (b)) which is on or after 1 January 1989 brought into use for the first time by the taxpayer for the purposes of his trade (other than mining or farming) and is used by him directly in a process of manufacture carried on by him or any other process carried on by him which in the opinion of the Commissioner is of a similar nature; or
- (b) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (a)) which is let by any taxpayer and is on or after 1 January 1989 brought into use for the first time by the lessee for the purposes of the lessee's trade (other than mining or farming) and is used by the lessee directly in a process of manufacture carried on by him or any other process carried on by him which in the opinion of the Commissioner is of a similar nature; or
- (c) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (a)) which is on or after 1 January 1989 brought into use for the first time by any agricultural co-operative incorporated or deemed to be incorporated under the Co-operatives Act, 1981 (Act 91 of 1981), and is used by it directly for storing or packing pastoral, agricultural or other farm products of its members (including any person who is a member of another agricultural co-operative which is itself a member of such agricultural co-operative) or for subjecting such products to a primary process as defined in section 27 (9); or
- (d) machinery, implement, utensil or article (other than any machinery, implement, utensil or article in respect of which an allowance has been granted to the taxpayer under item (e)) which was or is on or after 4 June 1988 brought into use for the first time by any taxpayer for the purposes of his trade as hotelkeeper and used by him in a hotel, except any vehicle or equipment for offices or managers' or servants' rooms; or
- (e) machinery, implement, utensil or article (other than any machinery, implement, utensil or article in respect of which an allowance has been granted to the taxpayer under paragraph (d)) which was or is let by any taxpayer and was or is on or after 4 June 1988 brought into use for the first time by the lessee for the purposes of the lessee's trade as hotelkeeper and used by him in a hotel, except any vehicle or equipment for offices or managers' or servants' rooms; or
- (f) machinery, implement, utensil or article (other than livestock) which is on or after 1 July 1988 brought into use for the first time by any taxpayer and used by him in the carrying

on of his farming operations, except any motor vehicle the sole or primary function of which is the conveyance of persons or any caravan or any aircraft (other than an aircraft used solely or mainly for the purpose of crop-spraying) or any office furniture or equipment; or

[Para. (f) substituted by s. 13 of Act 28 of 1997.]

- (g) machinery, plant, implement, utensil or article which was or is brought into use for the first time by the taxpayer for the purpose of his or her trade to be used for the production of bio-diesel or bio-ethanol,

[Para. (g) added by s. 11 (1) of Act 16 of 2004.]

a deduction calculated in terms of subsection (2) shall be allowed in respect of the year of assessment during which such machinery, plant, implement, utensil or article (hereinafter referred to as an asset) is so brought into use and each of the two succeeding years of assessment, such succeeding years of assessment hereinafter in this section referred to as the second and third years, in chronological order.

(2) The deduction contemplated in subsection (1) shall be calculated on the cost to the taxpayer of the asset, as referred to in subsection (3), and the rate of the allowance shall be-

- (a) in respect of the year of assessment during which the asset is so brought into use, 50 per cent of such cost;
- (b) in respect of the second year, 30 per cent of such cost; and
- (c) in respect of the third year, 20 per cent of such cost.

(3) For the purposes of this section the cost to a taxpayer of any asset shall be deemed to be the cost which a person would, if he had acquired the asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of the asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the installation or erection thereof or, where the asset has been acquired to replace an asset which has been damaged or destroyed, such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed asset and has been excluded from the taxpayer's income in terms of section 8 (4) (e), whether in the current or any previous year of assessment.

(4) No deduction shall be allowed under this section in respect of-

- (a) any asset which has been let by the taxpayer under a lease other than an operating lease as defined in section 23A (1), unless-
- (i) the lessee under such lease derives in the carrying on of his trade amounts constituting income for the purposes of this Act; and
- (ii) the period for which the asset is let under such lease is at least 5 years or such shorter period as is shown by the taxpayer to be the useful life of the asset;
- (b) any asset contained in or forming part of any ship, if the cost of such asset has been included in the adjustable cost of such ship as defined in section 14 (2);
- (c) any asset brought into use by any company during any year of assessment if such asset was previously brought into use by any other company during such year and both such companies are managed, controlled or owned by substantially the same persons, and a deduction under this section, section 12 (1) or section 27 (2) (d) was previously granted to such other company;
- (d) any asset which has been disposed of by the taxpayer during any previous year of assessment; and
- (e) any asset referred to in subsection (1) (a) to (e), inclusive, which is brought into use after 15 December 1989, except such an asset acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement on or before that date.

[Para. (e) added by s. 13 (1) (a) of Act 101 of 1990.]

(4A) Where-

- (a) any asset was brought into use by any person as contemplated in subsection (1) during any year of assessment;
- (b) such asset was previously brought into use by any connected person in relation to such person; and

[Para. (b) substituted by s. 10 (1) of Act 113 of 1993.]

- (c) a deduction under this section, section 12 (1) or section 27 (2) (d) was previously granted to such connected person, whether in the current or any previous year of assessment,

the deduction in terms of this section shall be calculated on an amount not exceeding the lesser of the cost

of such asset to such connected person or the market value thereof as determined on the date upon which the asset was brought into use by such person.

[Sub-s. (4A) inserted by s. 13 (1) (b) of Act 101 of 1990 and amended by s. 6 (1) of Act 140 of 1993.]

(4B) Where any asset in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such previous year or any subsequent year that such asset was used by such taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

[Sub-s. (4B) inserted by s. 17 of Act 59 of 2000.]

(5) The deductions which may be allowed in terms of this section in respect of any asset shall not in the aggregate exceed the cost to the taxpayer of such asset.

(6) Where a lessor of any asset under a lease contemplated in paragraph (a) of subsection (4) has within the period contemplated in subparagraph (ii) of that paragraph, reckoned from the commencement of the period for which the asset is let under such lease, disposed of the whole or a portion of his interest in the lease or of his right to receive rent under the lease, there shall be included in his income for the year of assessment during which the disposal is made a sum equal to the aggregate of any deductions allowed to him under this section, section 12 (1) or section 27 (2) (d), less such amount as the Commissioner may allow in respect of the expired portion of the lease or any portion of such interest or right which has not been disposed of by the lessor.

[S. 12B inserted by s. 11 of Act 90 of 1988.]

## 12C Deduction in respect of certain machinery, plant, implements, utensils and articles

### Cases

(1) In respect of any -

(a) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (b) or section 12E) which was or is brought into use for the first time by the taxpayer for the purposes of his trade (other than mining or farming) and is used by him directly in a process of manufacture carried on by him or any other process carried on by him which in the opinion of the Commissioner is of a similar nature; or

[Para. (a) substituted by s. 11 (1) of Act 19 of 2001.]

(b) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (a)) which was or is let by any taxpayer and was or is brought into use for the first time by the lessee for the purposes of the lessee's trade (other than mining or farming) and is used by the lessee directly in a process of manufacture carried on by him or any other process carried on by him which in the opinion of the Commissioner is of a similar nature; or

(c) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (a)) which was or is brought into use for the first time by any agricultural co-operative incorporated or deemed to be incorporated under the Co-operatives Act, 1981 (Act 91 of 1981), and is used by it directly for storing or packing pastoral, agricultural or other farm products of its members (including any person who is a member of another agricultural co-operative which is itself a member of such agricultural co-operative) or for subjecting such products to a primary process as defined in section 27 (9); or

(d) machinery, implement, utensil or article (other than any machinery, implement, utensil or article in respect of which an allowance has been granted to the taxpayer under paragraph (e)) which was or is brought into use for the first time by any taxpayer for the purposes of his trade as hotelkeeper and is used by him in a hotel, except any vehicle or equipment for offices or managers' or servants' rooms; or

(e) machinery, implement, utensil or article (other than any machinery, implement, utensil or article in respect of which an allowance has been granted to the taxpayer under paragraph (d)) which was or is let by any taxpayer and was or is brought into use for the first time by the lessee for the purposes of the lessee's trade as hotelkeeper and used by him in a

- (f) hotel, except any vehicle or equipment for offices or managers' or servants' rooms; or aircraft which was or is brought into use on or after 1 April 1995 for the first time by the taxpayer for the purposes of his trade (other than an aircraft in respect of which an allowance has been granted to the taxpayer under section 12B or 14*bis*); or  
[Para. (f) added by s. 13 (1) (b) of Act 21 of 1995.]
- (g) ship which was or is brought into use on or after 1 April 1995 for the first time by the taxpayer for the purposes of his trade (other than a ship in respect of which an allowance has been granted to the taxpayer in terms of section 14 (1) (a) or (b)),  
[Para. (g) added by s. 13 (1) (b) of Act 21 of 1995.]

a deduction equal to 20 per cent of the cost of such machinery, plant, implement, utensil, article, ship or aircraft (hereinafter referred to as an asset) shall, subject to the provisions of subsection (4), be allowed in the year of assessment during which the asset is so brought into use and in each of the four succeeding years of assessment: Provided that where-

- (a) such asset is a ship or aircraft, the deduction shall be calculated on the adjustable cost as determined in terms of section 14 or 14*bis*, as the case may be; and
- (b) any new or unused machinery or plant referred to in paragraph (a) or (b), as the case may be, of this subsection was or is -
- (i) (aa) acquired by the taxpayer under an agreement (whether conditional or not) concluded during the period commencing on 1 July 1996 and ending on 30 September 1999; and  
(bb) brought into use by the taxpayer or the lessee, as the case may be, during such period; or
- (ii) (aa) acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement during the period commencing on 1 July 1996 and ending on 30 September 1999; and  
(bb) brought into use by the taxpayer or the lessee, as the case may be, during the period commencing on 1 October 1999 and ending on 31 March 2000;
- (c) any new or unused machinery or plant referred to in paragraph (a) of this subsection, is or was-
- (i) acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement on or after 1 March 2002; and  
[Sub-para. (i) substituted by s. 30 of Act 45 of 2003.]
- (ii) brought into use by the taxpayer on or after that date in a process of manufacture or process which in the opinion of the Commissioner is of a similar nature, carried on by that taxpayer in the course of its business (other than banking, financial services, insurance or rental business),  
[Sub-para. (ii) substituted by s. 30 of Act 45 of 2003.]

the deduction under this subsection shall be increased to 40 per cent of the cost of such machinery or plant in respect of the year of assessment during which the plant or machinery was or is so brought into use for the first time and shall be 20 per cent in each of the three subsequent years of assessment.

[Para. (c) substituted by s. 15 of Act 30 of 2002.]

[Sub-s. (1) amended by s. 13 (1) (c) of Act 21 of 1995 and by s. 10 (1) of Act 46 of 1996.]

(2) For the purposes of this section the cost to a taxpayer of any asset shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if he had acquired the said asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of the said asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the installation or erection thereof or, where the asset has been acquired to replace an asset which has been damaged or destroyed, such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed asset and has been excluded from the taxpayer's income in terms of section 8 (4) (e), whether in the current or any previous year of assessment.

(3) No deduction shall be allowed under this section in respect of-

- (a) any asset which has been let by the taxpayer under a lease other than an operating lease as defined in section 23A (1), unless the lessee under such lease derives in the carrying on of his trade amounts constituting income for the purposes of this Act;
- (b) any asset contained in, or forming part of, any ship, if the cost of such asset has been



- included in the adjustable cost of such ship as defined in section 14 (2);
- (c) any asset which has been disposed of by the taxpayer during any previous year of assessment.

(4) Where-

- (a) any asset was brought into use by any person as contemplated in subsection (1) during any year of assessment;
- (b) such asset was previously brought into use by any connected person in relation to such person; and
- (c) a deduction under this section, section 12 (1), section 12B, section 14 (1) (a) or (b), section 14bis or section 27 (2) (d) was previously granted to such connected person, whether in the current or any previous year of assessment,

[Para. (c) substituted by s. 13 (1) (d) of Act 21 of 1995.]

the deduction in terms of this section shall be calculated on an amount not exceeding the lesser of the cost of such asset to such connected person or the market value thereof as determined on the date upon which the asset was brought into use by such person.

[Sub-s. (4) amended by s. 7 (1) of Act 140 of 1993.]

(4A) Where any asset in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such previous year or any subsequent year that such asset was used by such taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

[Sub-s. (4A) inserted by s. 18 (a) of Act 59 of 2000.]

(5) The deductions which may be allowed or deemed to have been allowed in terms of this section and section 11 (o) in respect of any asset shall not in the aggregate exceed the cost to the taxpayer of such asset.

[Sub-s. (5) substituted by s. 18 (b) of Act 59 of 2000.]

(6) Any expenditure (other than expenditure referred to in section 11 (a)) incurred by a taxpayer during any year of assessment in moving an asset in respect of which a deduction was allowed or is allowable under this section or section 12B from one location to another shall-

- (a) where the taxpayer is entitled to a deduction in respect of such asset under subsection (1) in that year and one or more succeeding years, be allowed to be deducted from his income in equal instalments in each year in which such a deduction is allowable; or
- (b) in any other case, be allowed to be deducted from his income in that year.

[Sub-s. (6) deleted by s. 11 (1) of Act 113 of 1993 and added by s. 11 of Act 21 of 1994.]

[S. 12C inserted by s. 14 (1) of Act 101 of 1990.]

## **12D Deduction in respect of certain pipelines, transmission lines and railway lines**

(1) For the purposes of this section-

'affected asset' means any-

- (a) pipeline used for the transportation of natural oil;
- (b) line or cable used for the transmission of electricity;
- (c) telephone line or cable used for the transmission of any signal for the purposes of telecommunication; and
- (d) railway line used for the transportation of persons, goods or things,

contracted for on or after the effective date, and the construction, erection or installation of which commenced on or after such date, and includes any earthworks or supporting structures forming part of such pipeline, transmission line or cable or railway line;

'effective date' means 23 February 2000; and

'natural oil' means any liquid or solid hydrocarbon or combustible gas existing in a natural condition in the earth's crust and includes any refined by-products of such liquid or solid hydrocarbon or combustible gas.

(2) There shall be allowed to be deducted an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition of any new and unused affected asset which-

- (a) is owned by the taxpayer and is brought into use for the first time by such taxpayer on or after the effective date; and

- (b) is used directly by such taxpayer for-
  - (i) the transportation of persons, goods, things or natural oil; or
  - (ii) the transmission of electricity or any telecommunication signal,

to the extent that such affected asset is used in the production of his income: Provided that such transportation or transmission is not carried on by that taxpayer in the course of carrying on any banking, financial services, insurance or rental business.

[Sub-s. (2) substituted by s. 19 (1) (a) of Act 59 of 2000 and by s. 28 (1) of Act 60 of 2001 and amended by s. 16 (1) of Act 30 of 2002.]

- (3) The allowance contemplated in subsection (2) shall not for any one year exceed-
  - (a) 10 per cent of the cost incurred in respect of any asset contemplated in paragraph (a) of the definition of 'affected asset'; or
  - (b) 5 per cent of the cost incurred in respect of any asset contemplated in paragraph (b), (c) or (d) of the definition of 'affected asset'.

(3A) Where any affected asset in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such previous year or any subsequent year in which such asset was used by such taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

[Sub-s. (3A) inserted by s. 19 (b) of Act 59 of 2000.]

(4) For the purposes of this section the cost to a taxpayer of any affected asset shall be deemed to be-

- (a) where such asset has been acquired to replace any asset which has been damaged or destroyed, the actual cost of such asset, less any amount which has been recovered or recouped in respect of the damaged or destroyed asset which has been excluded from the taxpayer's income in terms of section 8 (4) (e), whether in the current or any previous year of assessment; or
- (b) in any other case, the lesser of-
  - (i) the actual cost of acquisition of the asset incurred by the taxpayer; or
  - (ii) the cost which a person would, if he had acquired the said asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of the said asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset (including the direct cost of the installation or erection thereof).

(5) No deduction shall be allowed under this section in respect of any affected asset which has been disposed of by the taxpayer during any previous year of assessment.

(6) The deductions which may be allowed or deemed to have been allowed in terms of this section and any other provision of this Act in respect of the cost of any affected asset shall not in the aggregate exceed the amount of such cost.

[Sub-s. (6) substituted by s. 19 (c) of Act 59 of 2000.]

[S. 12D inserted by s. 23 (1) of Act 30 of 2000.]

## **12E Deductions in respect of small business corporations**

(1) Where any plant or machinery (hereinafter referred to as an asset) of a taxpayer which qualifies as a small business corporation-

- (a) is brought into use for the first time by that taxpayer on or after 1 April 2001 for the purpose of that taxpayer's trade (other than mining or farming); and
- (b) is used by that taxpayer directly in a process of manufacture (or any other process which in the opinion of the Commissioner is of a similar nature) carried on by that taxpayer,

a deduction equal to the cost of such asset shall be allowed in the year that such asset is so brought into use.

(2) For the purposes of this section the cost to a taxpayer of any asset shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if he had acquired the said asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of the said asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the installation or erection thereof or, where the asset has been acquired to replace an asset which has been damaged or destroyed, such cost less any amount which has been

recovered or recouped in respect of the damaged or destroyed asset and has been excluded from the taxpayer's income in terms of section 8 (4) (e), whether in the current or any previous year of assessment.

(3) Any expenditure (other than expenditure referred to in section 11 (a)) incurred by a taxpayer during any year of assessment in moving an asset in respect of which a deduction was allowed or is allowable under this section from one location to another shall be allowed to be deducted from that taxpayer's income in that year.

(3A) Any expenditure and losses actually incurred by a small business corporation in the year of assessment during which that small business corporation commences trading shall be increased by an amount equal to such expenditure and losses, but limited to R20 000.

[Sub-s. (3A) inserted by s. 31 (1) (d) of Act 45 of 2003.]

(4) For the purposes of this section-

- (a) 'small business corporation' means any close corporation or any company registered as a private company in terms of the Companies Act, 1973 (Act 61 of 1973), the entire shareholding of which is at all times during the year of assessment held by shareholders or members that are natural persons, where-
- (i) the gross income for the year of assessment does not exceed R5 million: Provided that where the close corporation or company during the relevant year of assessment carries on any trade, for purposes of which any asset contemplated in this section is used, for a period which is less than 12 months, the amount of R5 million shall be reduced to an amount which bears to R5 million, the same ratio as the number of months (in the determination of which a part of a month shall be reckoned as a full month), during which that company or close corporation carried on that trade bears to 12 months;

[Sub-para. (i) amended by s. 17 (1) of Act 30 of 2002 and by s. 37 (1) of Act 12 of 2003.]

- (ii) none of the shareholders or members at any time during the year of assessment of the company or close corporation holds any shares or has any interest in the equity of any other company as defined in section 1, other than-
- (aa) a company contemplated in paragraph (a) of the definition of 'listed company';
- (bb) any portfolio in a collective investment scheme contemplated in paragraph (e) of the definition of 'company'; or
- (cc) a company contemplated in section 10 (1) (e) (i), (ii) or (iii);

[Sub-para. (ii) substituted by s. 21 of Act 74 of 2002 and by s. 31 (1) (b) of Act 45 of 2003.]

- (iii) not more than 20 per cent of the total of all receipts and accruals (other than those of a capital nature) and all the capital gains of the company or close corporation consists collectively of investment income and income from the rendering of a personal service; and

[Sub-para. (iii) substituted by s. 31 (1) (c) of Act 45 of 2003.]

- (iv) such company is not an employment company;
- (b) 'employment company' means any company-
- (i) which is a labour broker as defined in the Fourth Schedule to the Act, other than a labour broker in respect of which a certificate of exemption has been issued in terms of paragraph 2 (5) of the said Schedule; or
- (ii) which is a personal service company as defined in the Fourth Schedule;
- (c) 'investment income' means-
- (i) any income in the form of dividends, royalties, rental, annuities or income of a similar nature;
- (ii) any interest as contemplated in section 24J, any amount contemplated in section 24K and any other income which, by the laws of the Republic administered by the Commissioner, is subject to the same treatment as income from money lent; and
- (iii) any proceeds derived from investment or trading in financial instruments (including futures, options and other derivatives), marketable securities or immovable property;
- (d) 'personal service' means any service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, broking, commercial arts, consulting,

draftsmanship, education, engineering, entertainment, health, information technology, journalism, law, management, performing arts, real estate, research, secretarial services, sport, surveying, translation, valuation or veterinary science, which is performed personally by any person who holds an interest in the company or close corporation.

[S. 12E inserted by s. 12 of Act 19 of 2001 and amended by s. 31 (1) (a) of Act 45 of 2003.]

**12F Deduction in respect of certain aircraft hangars, aprons, runways and taxiways**

(1) For the purposes of this section-

'affected asset' means any new and unused aircraft hangar, apron, runway or taxiway on any designated airport, contracted for on or after the effective date, and the construction, erection or installation of which commenced on or after such date, and includes any earthworks or supporting structures forming part of such hangar, apron, runway or taxiway;

'designated airport' means an airport approved by the Minister, in consultation with the Minister of Transport, as a designated airport by notice in the *Gazette* for purposes of this section; and

'effective date' means 1 April 2001.

(2) In respect of any affected asset which-

(a) is brought into use for the first time by such taxpayer on or after the effective date; and

(b) is used directly by such taxpayer in carrying on his sole business as airport operator,

there shall be allowed to be deducted an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition (including the construction, erection or installation) of such asset to the extent that such affected asset is used in the production of the taxpayer's income.

(3) The allowance contemplated in subsection (2) in respect of an affected asset shall, in respect of any one year of assessment, be five per cent of the cost incurred in respect of that asset.

(4) For the purposes of this section the cost to a taxpayer of any asset shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if he had acquired the said asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of the said asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the installation or erection thereof or, where the asset has been acquired to replace an asset which has been damaged or destroyed, such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed asset and has been excluded from the taxpayer's income in terms of section 8 (4) (e), whether in the current or any previous year of assessment.

(5) No deduction shall be allowed under this section in respect of any affected asset which has been disposed of by the taxpayer during any previous year of assessment.

(6) The deductions which may be allowed or deemed to have been allowed in terms of this section and any other provision of this Act in respect of the cost of any affected asset shall not in the aggregate exceed the amount of such cost.

[S. 12F inserted by s. 12 of Act 19 of 2001.]

**12G Additional industrial investment allowance in respect of industrial assets used for qualifying strategic industrial projects**

(1) For the purposes of this section-

'cost of an industrial asset' means the direct expenditure actually incurred by a company to acquire, erect, construct or install an industrial asset, excluding-

(a) so much of the expenditure-

(i) as exceeds the fair market value of that asset; or

(ii) paid to any connected person in relation to that company, as exceeds the lesser of-

(aa) the fair market value of that asset; or

(bb) the costs incurred by that connected person (or any other connected person in relation to the company) in respect of that asset;

(b) any borrowing or finance costs, including interest as contemplated in section 24J or raising fees; and

(c) any amount of the expenditure which is or was directly or indirectly received in the form of any subsidy, rebate, refund or other assistance granted by the national sphere of government pursuant to any investment incentive;

'industrial asset' means-

(a) any plant or machinery acquired, contracted for or brought into the Republic by a company after the date of approval in terms of subsection (5), which-

(i) has not been used before by any person;

- (ii) will be brought into use for the first time by that company within four years from the date of approval in terms of subsection (5);  
[Sub-para. (ii) substituted by s. 22 (1) (b) of Act 74 of 2002.]
- (iii) will be used by that company in the Republic for purposes of carrying on an industrial project of that company; and
- (iv) will qualify for a deduction in terms of section 11 (e) or 12 C (1) (a); or  
[Para. (a) amended by s. 22 (1) (a) of Act 74 of 2002.]
- (b) any building or any improvements effected to a building situated in the Republic, acquired or contracted for by a company after the date of approval in terms of subsection (5), where such building or such improvements-
  - (i) have not been used before by any person;
  - (ii) will be brought into use by that company within four years from the date of approval in terms of subsection (5);  
[Sub-para. (ii) substituted by s. 22 (1) (c) of Act 74 of 2002.]
  - (iii) will be wholly or mainly used for the purposes of carrying on therein any process requiring plant and machinery contemplated in paragraph (a); and
  - (iv) will qualify for a deduction in terms of section 13 (1) (b), (dA) or (f), other than where the company would qualify for such deduction as a lessor;

'industrial project' means-

- (a) any manufacturing of products, goods, articles or other things (excluding any tobacco and tobacco related products) within the Republic that-
  - (i) is classified under 'Major Division 3: Manufacturing' in the most recent Standard Industrial Classification issued by Statistics South Africa; or
  - (ii) in the case of products, goods, articles or things which are not yet classified, the adjudication committee is of the view will be classified as contemplated in subparagraph (i);  
[Para. (a) substituted by s. 22 (1) (d) of Act 74 of 2002.]
- (b) any computer and computer related activities; or
- (c) any research and development activities.

(2) In addition to any other deductions allowable in terms of this Act, a company may, subject to subsection (3), deduct an amount (hereinafter referred to as an additional industrial investment allowance) equal to-

- (a) 100 per cent of the cost of any industrial asset used in a qualifying strategic industrial project determined to have preferred status; or
- (b) 50 per cent of the cost of any industrial asset used in any other qualifying strategic industrial project,

in the year of assessment during which that asset is first brought into use by the company as owner thereof for such project carried on by that company.

(3) The additional industrial investment allowance contemplated in subsection (2)-

- (a) will be allowed only against income received by or accrued to the company from carrying on any industrial project: Provided that the amount whereby such allowance exceeds such income, shall be carried forward to the immediately succeeding year of assessment and be deemed to be a deduction or allowance which may be allowed in terms of subsection (2) in that succeeding year; and
- (b) may not exceed the lesser of the amount reflected in the application for approval as being the cost of the industrial assets to be acquired by the company, as contemplated in subsection (4) (a), or-
  - (i) R600 million in the case of any qualifying strategic industrial project with preferred status; or
  - (ii) R300 million in the case of any other qualifying strategic industrial project.

(4) An industrial project of a company constitutes a strategic industrial project where, the Minister of Trade and Industry, after taking into account the recommendations of the adjudication committee, is satisfied that-

- (a) the cost of all industrial assets to be acquired by the company, which will be brought into use for that industrial project within four years after the date of approval in terms of subsection (5), will exceed R50 million;

[Para. (a) substituted by s. 22 (1) (f) of Act 74 of 2002.]

- (b) the industrial project will increase production of, and employment in, the relevant industrial sector within the Republic, after taking into account the displacement within that sector;
  - [Para. (b) substituted by s. 29 (1) (a) of Act 60 of 2001.]
- (c) in the case of an industrial project that represents an expansion of an existing industrial project, the expansion will significantly increase production in respect of that existing project;
- (d) the company will not receive any concurrent benefit in terms of section 37E or section 37H of this Act;
- (e) the industrial project will not constitute an industrial participation project as contemplated in subsection (7) (e) and will not receive any concurrent investment incentive provided by any national sphere of government;
- (f) the industrial project will have long-term commercial viability after the deduction provided by this section has been allowed and has been set off against the income of that company;
- (g) the company and any person which is a connected person in relation to that company in terms of-
  - (i) paragraph (d) (i), (ii) or (iii) of the definition of 'connected person' in section 1; or
  - (ii) paragraph (d) (iv) or (v) of that definition, taking into account only holdings of 50 per cent or more,
 are taxpayers in good standing and must in this regard submit-
  - (aa) a declaration of good standing stating that all their tax affairs are in order and that they have complied with all the relevant provisions of the laws administered by the Commissioner; and
  - (bb) a certificate obtained from the Commissioner confirming that the company and all connected persons are registered for tax purposes, that all returns required to be rendered by that company and connected persons in terms of this Act, or any other Act administered by the Commissioner, have been timeously rendered and that any tax, duties or levies due to the Commissioner have been paid, or that arrangements acceptable to the Commissioner have been made for the submission of any outstanding returns or the payment of any outstanding taxes, duties or levies: Provided that where the company submits a request to the Commissioner for a certificate and the Commissioner fails to respond within 60 days, the company shall, in the absence of any proof to the contrary, be deemed to have complied with the provisions of this subparagraph; and
- (h) the application for approval of the project by the company is received by the Minister of Trade and Industry after 31 July 2001, but not later than 31 July 2005, in such form and containing such information as the Minister of Trade and Industry may prescribe.

(5) The Minister of Trade and Industry must, after taking into account the recommendations of the adjudication committee, approve a strategic industrial project as a qualifying strategic industrial project, either with or without preferred status, where that Minister is satisfied that the strategic industrial project will significantly increase growth or employment within the Republic having regard to-

- (a) the extent to which the strategic industrial project will upgrade an industry within the Republic by-
  - (i) utilising processes or supplying products that are new to the Republic;
  - (ii) acting as a key component to related existing industrial projects within the Republic so as to improve their competitiveness as a whole; or
  - (iii) engaging in any value-added process;
- (b) the extent to which the strategic industrial project will provide general business linkages within the Republic by-
  - (i) acquiring goods or services from small, medium and micro enterprises; or
  - (ii) adding to the physical infrastructure of the Republic that will be available to the general public; and
- (c) the extent to which the strategic industrial project will create either direct or indirect employment within the Republic.

(6) Notwithstanding subsection (5), the Minister of Trade and Industry may not approve any project where the potential additional industrial investment allowances in respect of that project and all other approved qualifying strategic industrial projects (other than those projects where the approval thereof has been withdrawn under subsection (9)), will in the aggregate exceed R10 billion.

(7) The Minister of Finance, in consultation with the Minister of Trade and Industry, must make regulations-

- (a) prescribing the types of projects that will constitute computer activities, computer related activities and research and development for purposes of paragraphs (b) and (c) of the definition of 'industrial project' in subsection (1);
- (b) prescribing the criteria for determining the extent of the increase of production of, and employment in, an industrial sector required and the extent of the displacement to be taken into account for purposes of subsection (4) (b);  
[Para. (b) substituted by s. 29 (1) (b) of Act 60 of 2001.]
- (c) prescribing the criteria for purposes of determining whether there is an increase in production in respect of an existing industrial project and the extent of the increase required for purposes of subsection (4) (c);
- (d) prescribing to what extent a company may have benefited from section 37E or section 37H of this Act for purposes of subsection (4) (d);
- (e) prescribing what constitutes an industrial participation project and a concurrent investment incentive for the purposes of subsection (4) (e);  
[Para. (e) substituted by s. 29 (1) (c) of Act 60 of 2001.]
- (f) prescribing the factors to be taken into account in determining whether the industrial project will have long-term commercial viability for the purposes of subsection (4) (f);
- (g) prescribing what factors need to be taken into account for purposes of subsection (5) (a) in determining whether-
  - (i) a process or product will be new to the Republic;
  - (ii) a company will be acting as a key component to related existing industrial projects within the Republic; or
  - (iii) a process will constitute a value-added process;
- (h) prescribing what factors need to be taken into account for purposes of subsection (5) (b) in determining whether-
  - (i) goods or services will be acquired from small, medium and micro enterprises; or
  - (ii) the project will add to the physical infrastructure of the Republic; and
- (i) prescribing the extent to which the strategic industrial project must create either direct or indirect employment within the Republic for purposes of subsection (5) (c).

(8) Within six months after the close of each year of assessment (or such longer period as the Minister of Trade and Industry may allow) starting with the year in which approval is granted in terms of subsection (5), a company with a qualifying strategic industrial project must annually report to that Minister with respect to the progress of the project in terms of the requirements of subsections (4) and (5) in such form and in such manner as that Minister may prescribe.

(9) Where-

- (a) in respect of any company carrying on a qualifying strategic industrial project, any material fact changes during any year of assessment or the company during any year fails to comply with any requirement contemplated in subsection (4) or (5), which would have had the effect that approval in terms of subsection (5) would not have been granted had such change in fact or such failure been known to the Minister of Trade and Industry at the time of granting approval; or
- (b) any company carrying on a qualifying strategic industrial project during any year of assessments fails to submit a report to the Minister of Trade and Industry, as required in terms of subsection (8); or
- (c) the approval granted in terms of this section to a company carrying on a qualifying strategic industrial project, was based on any fraudulent information, material misrepresentation or material omission,

the Minister of Trade and Industry must, after taking into account the recommendations of the adjudication committee, withdraw the approval granted in respect of that project with immediate effect and direct that the Commissioner must disallow all additional industrial investment allowances (including any additional

industrial investment allowance allowed during that year or any previous year of assessment) in respect of any asset used in that project: Provided that where the change in material facts or failure to meet any requirement, as contemplated in paragraph (a), takes place as a result of any event which is outside the control of the company, that Minister may, taking into account the circumstances of that event,-

- (i) disregard that change in material facts; or
  - (ii) withdraw the approval granted in terms of this section with immediate effect and may direct that the Commissioner must disallow any additional industrial investment allowance in respect of that year of assessment or any subsequent year of assessment.
- (10) The Commissioner must-
- (a) promptly notify the Minister of Trade and Industry whenever the Commissioner discovers information that may cause a full or part withdrawal of deductions in terms of subsection (9);
  - (b) disallow all deductions otherwise provided under this section starting with the date of approval in terms of subsection (5) where the company has provided any fraudulent information, material misrepresentation or material omission with respect to any tax, duty or levy administered by the Commissioner and must notify the Minister of Trade and Industry accordingly; and
  - (c) inform the Minister of Trade and Industry where any company has requested the Commissioner to issue a certificate contemplated in subsection (4) (g) (bb) and that certificate was denied.

(11) For purposes of subsections (9) and (10), the Commissioner may, notwithstanding the provisions of sections 79, 81 (5) and 83 (18), raise an additional assessment for any year of assessment where an additional industrial investment allowance which has been allowed in any previous year must be disallowed in terms of subsection (9) or (10).

(12) Where the approval of a project has been withdrawn as contemplated in subsection (9), a company shall in addition to any normal tax, be liable for an amount of additional tax not exceeding twice the difference between the tax as calculated in respect of its taxable income returned by it and the tax properly chargeable in respect of its taxable income as determined after disallowing the additional industrial investment allowance provided by this section.

(13) There shall for the purposes of this section be an adjudication committee which must consist of at least-

- (a) three persons employed by the Department of Trade and Industry, appointed by the Minister of Trade and Industry; and
- (b) three persons employed by either the National Treasury or the South African Revenue Service, appointed by the Minister of Finance;

Provided that the Minister of Trade and Industry or the Minister of Finance, as the case may be, may appoint alternative persons so employed if any person appointed in terms of paragraph (a) of (b) is not available to perform any function as a member of the committee.

(14) The adjudication committee contemplated in subsection (13) is an independent committee which performs its functions impartially and without fear, favour or prejudice and for the purpose of this section, the committee may-

- (a) evaluate any application and make recommendations to the Minister of Trade and Industry for purposes of the approval of any strategic industrial project in terms of subsection (5);
- (b) investigate or cause to be investigated any project for the purposes of this section;
- (c) monitor all qualifying strategic industrial projects-
  - (i) to determine whether the objectives of this section are being achieved; and
  - (ii) to advise the Minister of Finance and the Minister of Trade and Industry on any future proposed amendment or adjustment thereof;
- (d) require any company applying for approval of any project as a qualifying strategic industrial project in terms of this section, to furnish such information or documents as are necessary for the committee and Minister of Trade and Industry to perform their functions in terms of this section;
- (e) for a specific purpose and on such conditions and for such period as it may determine obtain the assistance of any person to advise the committee relating to any function assigned to the committee in terms of this section; and



- (f) appoint its own chairperson and determine the procedures for its meetings provided that all procedures must be properly recorded and minuted.

(15) The adjudication committee and any person whose assistance has been obtained by that committee may not-

- (a) act in any way that is inconsistent with the provisions of subsection (14) or expose themselves to any situation involving the risk of a conflict between their responsibilities and private interests; or
- (b) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

(16) The Minister of Trade and Industry -

- (a) may, after taking into account the recommendations of the adjudication committee, extend the four year period contemplated in the definition of 'industrial asset' in subsection (1) by a period not exceeding one year, where an industrial project consists of industrial assets exceeding R1 billion;  
[Para. (a) substituted by s. 22 (1) (g) of Act 74 of 2002.]
- (b) must provide written reasons for any decision to grant or deny any application for approval of a strategic industrial project as a qualifying strategic industrial project in terms of subsection (5), or any withdrawal of approval as contemplated in subsection (9);
- (c) must inform the Commissioner of the approval of any project in terms of subsection (5) as a qualifying strategic industrial project, setting out such particulars required by the Commissioner to determine the amount of the additional industrial investment allowance allowable in terms of this section;
- (d) must publish the particulars of any application received from a company for approval of a qualifying strategic industrial project in the *Gazette* not later than 30 days after providing to that company the written reasons for any decision as contemplated in paragraph (b);
- (e) must submit an annual report to Parliament, and must provide a copy of that report to the Auditor-General, setting out the following information in respect of each company that received approval in terms of subsection (5)-
  - (i) the name of each company;
  - (ii) the description of each project;
  - (iii) the potential national revenue forgone by virtue of the deductions allowable in respect of that project in terms of this section;
  - (iv) the annual progress relating to the direct benefits of the project in terms of economic growth or employment, setting out the details of the factors contemplated in subsections (4) and (5) on which approval for the strategic industrial project was granted;
  - (v) any decision to withdraw the approval of a project in terms of subsection (9); and
  - (vi) any decisions not to withdraw the approval of a project, despite any material change in facts, as contemplated in paragraph (i) of the proviso to subsection (9).

(17) The Commissioner must submit an annual report to the Auditor-General containing a list of all-

- (a) certificates issued under subsection (4) (g); and
- (b) failures to respond within 60 days as provided in subsection (4) (g).

(18) Notwithstanding the provisions of section 4, the Commissioner must disclose to the Minister of Trade and Industry and the adjudication committee, including any person whose assistance has been obtained by that committee, such information relating to the affairs of any company carrying on a qualifying strategic industrial project as is necessary to enable the Minister of Trade and Industry and the adjudication committee to perform its functions in terms of this section.

(19) Every employee of the Department of Trade and Industry and every member of the adjudication committee, including any person whose assistance has been obtained by that committee, must preserve and aid in preserving secrecy with regard to all matters that may come to their knowledge in the performance of their functions in terms of this section, and may not communicate any such matter to any person whatsoever other than to the company concerned or its legal representative, nor allow any such person to have access to any records in the possession or custody of that Department or committee, except in terms of the law or an order of court.

(20) Any person who contravenes the provisions of subsections (15) and (19), shall be guilty of an

offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

[S. 12G inserted by s. 12 of Act 19 of 2001.]

## **12H Deduction in respect of learnership agreements**

(1) Notwithstanding section 23B, but subject to subsection (3), there shall be allowed to be deducted from the income derived by any employer during any year of assessment, an allowance determined in accordance with subsection (2), where-

- (a) that employer during that year of assessment entered into a registered learnership agreement with a learner in the course of any trade carried on by that employer; or
- (b) a learner during that year of assessment completed any registered learnership agreement entered into by that employer with that learner during that year or any previous year of assessment in the course of any trade carried on by that employer.

[Sub-s. (1) amended by s. 32 (1) (a) of Act 45 of 2003.]

(2) For purposes of subsection (1), the amount of the allowance in respect of-

- (a) a registered learnership agreement entered into by that employer, as contemplated in subsection (1) (a), with a learner who at the time of entering into that agreement-
  - (i) was employed by that employer or associated institution in relation to that employer, is an amount equal to the lesser of-
    - (aa) 70 per cent of the annual equivalent of the remuneration of that learner stipulated in the agreement of employment between that learner and employer; or
    - (bb) R17 500; or
  - (ii) was not employed by that employer or any associated institution in relation to that employer, is an amount equal to the lesser of-
    - (aa) the annual equivalent of the remuneration of that learner stipulated in the agreement of employment between that learner and employer; or
    - (bb) R25 000; and
- (b) the completion of any registered learnership agreement as contemplated in subsection (1) (b), is an amount equal to the lesser of-
  - (i) the annual equivalent of the remuneration of that learner stipulated in the agreement of employment between that learner and employer; or
  - (ii) R25 000.

(3) No deduction shall made by an employer under this section, unless that employer has provided to the Commissioner-

- (a) the name of the SETA with which the learnership agreement is registered;
- (b) the title and code of the learnership allocated and issued by the Director-General: Department of Labour in terms of regulation 2 (3) of the Learnership Regulations, 2001;
- (c) the full names and identification number of the learner contemplated in the registered learnership agreement; and
- (d) proof that the employer has complied with all the requirements of the Skills Development Levies Act, 1999 (Act 9 of 1999).

(4) The provisions of this section shall not apply-

- (a) in respect of the substitution of any employer which is party to an existing registered learnership agreement by any other employer, as contemplated in regulation 5 (1) of the Learnership Regulations, 2001;
- (b) where an employer enters into a registered learnership agreement with a learner as a result of the substitution of an existing registered learnership agreement, as contemplated in regulation 5 (2) of the Learnership Regulations, 2001; or
- (c) where an employer enters into a registered learnership agreement with a learner, and a deduction is or was allowable to that employer during any year of assessment in respect of any other registered learnership agreement entered into by that employer with that learner in respect of the same learnership registered by the Director General of Labour, as contemplated in regulation 3 (3) of the Learnership Regulations.

(5) Where-

- (a) in the determination of the taxable income of an employer for any year of assessment an amount is or was allowed as a deduction in respect of any registered learnership agreement entered into by that employer with any learner, as contemplated in subsection

- (1) (a); and  
 (b) that registered learnership agreement is terminated prior to the completion thereof for any reason other than the death of that learner or the dismissal of that learner due to his or her incapacity as a result of ill-health or injury,

that amount so allowed as a deduction shall, for the purposes of section 8 (4) (a), be deemed to have been recovered or recouped by that employer.

(6) For purposes of this section-

'associated institution' in relation to an employer means an associated institution as defined in paragraph 1 of the Seventh Schedule;

'employer' means-

- (a) in the case where a group of employers is party to a registered learnership agreement, the employer which is identified in that agreement as the lead employer; or  
 (b) in any other case, the employer which is party to a registered learnership agreement;

'learner' means-

- (a) a learner who is party to a registered learnership agreement; or  
 (b) an apprentice in a contract of apprenticeship contemplated in paragraph (b) of the definition of 'registered learnership agreement';

'Learnership Regulations, 2001' means the Regulations concerning the Registration of Intended Learnerships and Learnership Agreements (Government Notice R330 published in *Gazette* 22197 of 3 April 2001), made by the Minister of Labour in terms of section 36, read with sections 16 (d) and 17 (3) and (6) of the Skills Development Act, 1998;

'registered learnership agreement' means-

- (a) a learnership agreement entered into between a learner and an employer before 1 October 2006, which has been registered with a SETA, as contemplated in section 17 (3) of the Skills Development Act, 1998; or  
 (b) a contract of apprenticeship registered with the Department of Labour in terms of section 18 of the Manpower Training Act, 1981 (Act 56 of 1981);

'remuneration' means remuneration as defined in the Fourth Schedule;

'SETA' means a sector education and training authority established in terms of the Skills Development Act, 1998;

'Skills Development Act, 1998' means the Skills Development Act, 1998 (Act 97 of 1998).

[S. 12H inserted by s. 18 (1) of Act 30 of 2002.]

### **13 Deductions in respect of buildings used in a process of manufacture**

#### **■ Cases**

(1) Notwithstanding anything to the contrary contained in paragraph (ii) of the proviso to section 11 (e), there shall be allowed to be deducted from the income of the taxpayer an allowance equal to two per cent of the cost (after the deduction of any amount referred to in subsection (3) or (7) or the corresponding provisions of any previous Income Tax Act) to the taxpayer of-

- (a) any building the erection of which was commenced by the taxpayer on or after the twenty-fifth day of March, 1959, but not later than the fourteenth day of March, 1961, if such building was wholly or mainly used by him during the year of assessment for the purpose of carrying on therein any process of manufacture in the course of his trade (other than mining or farming); or  
 (b) any building the erection of which was commenced by the taxpayer on or after the fifteenth day of March, 1961, if such building was wholly or mainly used by the taxpayer during the year of assessment for the purpose of carrying on therein in the course of his trade (other than mining or farming) any process of manufacture or any other process which in the opinion of the Commissioner is of a similar nature, or such building was let by the taxpayer and was wholly or mainly used by a tenant or subtenant for the purpose of carrying on therein any process as aforesaid in the course of any trade (other than mining or farming); or  
 (c) any building the erection of which was commenced on or after the twenty-fifth day of March, 1959, but not later than the fourteenth day of March, 1961, if such building has been acquired by the taxpayer by purchase from any other person who was entitled to an allowance in respect thereof under paragraph (a) or this paragraph or the corresponding

- provisions of any previous Income Tax Act, and such building was wholly or mainly used during the year of assessment by the taxpayer for the purpose of carrying on therein any process of manufacture in the course of his trade (other than mining or farming); or
- (d) any building the erection of which was commenced on or after the fifteenth day of March, 1961, if such building has been acquired by the taxpayer by purchase from any other person who was entitled to an allowance in respect thereof under paragraph (b) or this paragraph or the corresponding provisions of any previous Income Tax Act, and such building was wholly or mainly used during the year of assessment by the taxpayer for the purpose of carrying on therein in the course of his trade (other than mining or farming) a process of manufacture or any other process which in the opinion of the Commissioner is of a similar nature, or such building was let by the taxpayer and was wholly or mainly used by a tenant or subtenant for the purpose of carrying on therein in the course of any trade (other than mining or farming) any process as aforesaid; or
- (dA) any building that has never been used, if such building has been acquired by the taxpayer by purchase from any other person and such building was wholly or mainly used during the year of assessment by the taxpayer for the purpose of carrying on therein in the course of his trade (other than mining or farming) a process of manufacture or any other process which in the opinion of the Commissioner is of a similar nature, or such building was let by the taxpayer and was wholly or mainly used by a tenant or subtenant for the purpose of carrying on therein in the course of any trade (other than mining or farming) any process as aforesaid; or
- [Para. (dA) inserted by s. 13 of Act 19 of 2001.]
- (e) any improvements (other than repairs) to any building referred to in paragraph (a), (b), (c) or (d) which is during the year of assessment used as contemplated in that paragraph, if such improvements were commenced not later than the thirty-first day of March, 1971; or
- (f) any improvements (other than repairs) to any building, if such improvements were commenced on or after the first day of April, 1971, and such building was wholly or mainly used by the taxpayer during the year of assessment for the purpose of carrying on therein in the course of his trade (other than mining or farming) any process of manufacture or any other process which in the opinion of the Commissioner is of a similar nature, or such building was let by the taxpayer and was wholly or mainly used by a tenant or subtenant for the purpose of carrying on therein any process as aforesaid in the course of any trade (other than mining or farming):

Provided that-

- (a) no allowance shall be made under this subsection in respect of such portion of the cost of any building the erection of which was commenced on or after 1 July 1961, or any improvements effected thereto as has been taken into account in the calculation of any allowance to the taxpayer under section 11 (g) whether in the current or any previous year of assessment;
- (b) in the case of any such building the erection of which has or is commenced on or after 1 January 1989 and any such improvements which have or are commenced on or after that date, other than any building or improvements in respect of which the increased allowance contemplated in paragraph (c) of this proviso applies, the allowance under this subsection shall be increased to 5 per cent of the cost (after the deduction of any amount as provided in subsection (3)) to the taxpayer of such building or improvements; and
- [Para. (b) substituted by s. 22 (a) of Act 53 of 1999.]
- (c) in the case of any such-
- (i) building the erection of which has or is commenced during the period commencing on 1 July 1996 and ending on 30 September 1999; or
- (ii) improvements which have or are commenced during such period; and, where such building has or is or such improvements have been or are brought into use by the taxpayer on or before 31 March 2000, the allowance under this subsection shall be increased to 10 per cent of the cost (after the deduction of any amount as provided for in subsection (3)) to the taxpayer of such building or improvements.

[Sub-s. (1) amended by s. 12 (a) of Act 90 of 1962 and by s. 17 (1) (a) of Act 55 of 1966, substituted by s.

13 (1) (a) of Act 88 of 1971 and amended by s. 10 (1) (a) of Act 96 of 1985, by s. 12 of Act 90 of 1988, by s. 11 (1) of Act 46 of 1996 and by s. 22 (b) of Act 53 of 1999.]

(1A) Where any building in respect of which any deduction of an allowance is claimed in terms of this section was during any previous financial year or years used by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year or years, any deduction which could have been allowed during such previous year or years in terms of this section shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

[Sub-s. (1A) inserted by s. 20 (a) of Act 59 of 2000.]

(2) The aggregate of the allowances allowed under subsection (1) or the corresponding provisions of any previous Income Tax Act, or deemed to have been allowed in terms of subsection (1A), in respect of any building or improvements shall not exceed the cost (after the deduction of any amount referred to in subsection (3) or the corresponding provisions of any previous Income Tax Act) of such building or improvements, as the case may be, less the aggregate of any allowances made to the taxpayer in respect of such building or improvements, as the case may be, under subsection (7) or section 11 (g) or the corresponding provisions of any previous Income Tax Act.

[Sub-s. (2) amended by s. 12 (b) of Act 90 of 1962 and substituted by s. 13 (1) (a) of Act 88 of 1971, by s. 10 (1) (b) of Act 96 of 1985 and by s. 20 (b) of Act 59 of 2000.]

(3) If in any year of assessment there falls to be included in a taxpayer's income in terms of paragraph (a) of section 8 (4) an amount which has been recovered or recouped in respect of any allowance made under subsection (1) or the corresponding provisions of any previous Income Tax Act in respect of any building or improvements, such portion of the amount so recovered or recouped as is set off against the cost of a further building as hereinafter provided shall, notwithstanding the provisions of the said paragraph, at the option of the taxpayer to be notified by him in writing to the Commissioner when submitting his return of income for the year of assessment during which the recovery or recoupment occurred, and provided he purchases or erects within twelve months or such further period as the Commissioner may allow from the date on which the event giving rise to the recovery or recoupment occurred, any other building to which the provisions of subsection (1) apply, not be included in his income for such year of assessment, but shall be set off against so much of the cost to him of such further building purchased or erected by him as remains after the deduction of any portion of such cost in respect of which an allowance has been granted to the taxpayer under section 11 (g), whether in the current or any previous year of assessment.

[Sub-s. (3) amended by s. 12 (c) and (d) of Act 90 of 1962 and substituted by s. 17 (1) (b) of Act 55 of 1966 and by s. 13 (1) (a) of Act 88 of 1971.]

(4) .....

[Sub-s. (4) deleted by s. 12 of Act 113 of 1993.]

(4)bis .....

[Sub-s. (4)bis inserted by s. 14 (1) (a) of Act 88 of 1965 and deleted by s. 12 of Act 113 of 1993.]

(5) .....

[Sub-s. (5) amended by s. 12 of Act 90 of 1962 and by s. 11 of Act 72 of 1963, substituted by s. 14 (1) of Act 88 of 1965, by s. 17 (1) of Act 55 of 1966 and by s. 13 (1) of Act 52 of 1970, amended by s. 12 of Act 90 of 1972, by s. 13 (1) of Act 65 of 1973, by s. 16 of Act 85 of 1974, by s. 13 (1) of Act 69 of 1975, by s. 7 of Act 101 of 1978, by s. 10 of Act 104 of 1980 and by s. 14 of Act 96 of 1981 and deleted by s. 12 of Act 113 of 1993.]

(6) .....

[Sub-s. (6) amended by s. 12 of Act 90 of 1962 and by s. 5 of Act 6 of 1963, substituted by s. 12 of Act 90 of 1964, by s. 14 (1) of Act 88 of 1965, by s. 17 (1) of Act 55 of 1966 and by s. 13 (1) of Act 52 of 1970, amended by s. 12 of Act 90 of 1972, by s. 13 (1) of Act 65 of 1973, by s. 16 of Act 85 of 1974, by s. 13 (1) of Act 69 of 1975, by s. 7 of Act 101 of 1978, by s. 10 of Act 104 of 1980, by s. 14 of Act 96 of 1981 and by s. 10 (1) of Act 96 of 1985 and deleted by s. 12 of Act 113 of 1993.]

(6A) .....

[Sub-s. (6A) inserted by s. 17 (1) of Act 55 of 1966, substituted by s. 13 (1) of Act 52 of 1970, amended by s. 13 (1) of Act 88 of 1971, by s. 13 (1) of Act 65 of 1973, by s. 16 of Act 85 of 1974, by s. 13 (1) of Act 69 of 1975, by s. 7 of Act 101 of 1978, by s. 10 of Act 104 of 1980 and by s. 14 of Act 96 of 1981 and deleted by s. 12 of Act 113 of 1993.]

(7) .....

[Sub-s. (7) added by s. 14 (1) of Act 88 of 1965, deleted by s. 17 (1) of Act 55 of 1966, inserted by s. 10 (1) of Act 96 of 1985, amended by s. 12 of Act 85 of 1987 and deleted by s. 12 of Act 113 of 1993.]

(7A) .....

[Sub-s. (7A) inserted by s. 10 (1) (d) of Act 96 of 1985 and deleted by s. 12 of Act 113 of 1993.]

(8) The provisions of this section shall *mutatis mutandis* apply with reference to any permanent shipbuilding structure the erection of which was commenced by the taxpayer on or after the first day of January, 1966, and the cost of improvements (other than repairs) effected thereto if such structure was wholly or mainly used during the year of assessment for the purposes of the shipbuilding trade, and for the purposes of this subsection any reference in the said provisions to a building shall be construed as a reference to a shipbuilding structure and any reference therein to improvements to a building shall be construed as a reference to improvements to a shipbuilding structure.

[Sub-s. (8) added by s. 17 (1) (f) of Act 55 of 1966.]

(9) For the purposes of this section-

'improvements', in relation to any improvements commenced on or after the first day of April, 1971, means any extension, addition or improvements (other than repairs) to a building which is or are effected for the purpose of increasing or improving the industrial capacity of the building;

'shipbuilding structure' means any launching way, fitting-out quay or craneway which is not part of a building.

[Sub-s. (9) added by s. 17 (1) (f) of Act 55 of 1966 and substituted by s. 13 (1) (c) of Act 88 of 1971.]

[S. 13 amended by s. 30 of Act 60 of 2001.]

### **13bis Deductions in respect of buildings used by hotel keepers**

#### **■ Cases**

(1) Notwithstanding anything to the contrary contained in paragraph (ii) of the proviso to paragraph (e) of section *eleven*, there shall be allowed to be deducted from the income of any taxpayer for any year of assessment ending on or after the first day of January, 1964, an allowance equal to two per cent, of the cost (after the set-off of any amount as provided in subsection (6)) to the taxpayer-

- (a) of any building the erection of which was commenced by the taxpayer on or after the second day of March, 1960, but not later than the thirty-first day of December, 1963, and of any improvements (other than repairs) thereto commenced not later than the thirty-first day of December, 1963, if such building was wholly or mainly used by him during the year of assessment for the purpose of carrying on therein his trade of hotel keeper; or
- (b) of any building the erection of which was commenced by the taxpayer on or after the fifteenth day of March, 1961, but not later than the thirty-first day of December, 1963, and of any improvements (other than repairs) thereto commenced not later than the thirty-first day of December, 1963, if such building was during the year of assessment let by the taxpayer and wholly or mainly used for the purpose of carrying on therein the trade of hotel keeper; or
- (c) of any building the erection of which was commenced by the taxpayer on or after the first day of January, 1964, and of any improvements (other than repairs) thereto commenced not later than the thirtieth day of June, 1965, if such building-
  - (i) was brought into use not later than the thirtieth day of June, 1965; and
  - (ii) was during the year of assessment wholly or mainly used by the taxpayer for the purpose of carrying on therein his trade of hotel keeper or was during such year let by the taxpayer and wholly or mainly used by the lessee for the purpose of carrying on therein the lessee's trade of hotel keeper; or
- (d) of such portion-
  - (i) of any building (other than a building in respect of the cost of which an allowance under the preceding provisions of this subsection is or was deductible from the income of the taxpayer for the current or any previous year of assessment) the erection of which was commenced by the taxpayer on or after the first day of January, 1964; or
  - (ii) of any improvements (other than repairs) to any building referred to in this paragraph or paragraph (a) or (b), if such improvements were commenced on or after the first day of January, 1964; or

- (iii) of any improvements (other than repairs) to any building referred to in paragraph (c), if such improvements were commenced on or after the first day of July, 1965, as-
  - (aa) was during the year of assessment used by the taxpayer for the purpose of carrying on therein his trade of hotel keeper; or
  - (bb) was during such year let by the taxpayer and used by the lessee for the purpose of carrying on therein the lessee's trade of hotel keeper; or  
[Para. (d) amended by s. 13 (1) (a) of Act 113 of 1993.]
- (e) of such portion of any building improvements (other than repairs and other than improvements in respect of the cost of which, or of any portion thereof, an allowance under the preceding provisions of this subsection is or was deductible from the income of the taxpayer for the current or any previous year of assessment) commenced on or after 1 January 1964, as was during the year of assessment in question used by the taxpayer for the purposes of his trade of hotelkeeper or was during the year of assessment in question let by the taxpayer and used by the lessee for the purposes of the lessee's trade of hotelkeeper:

[Para. (e) substituted by s. 13 (1) (b) of Act 113 of 1993 and by s. 12 (a) of Act 21 of 1994.]

Provided that no allowance shall be made under this subsection in respect of such portion of the cost of any building the erection of which was commenced on or after the first day of July, 1961, or any improvements effected thereto, as has been taken into account in the calculation of any allowance to the taxpayer under paragraph (g) of section *eleven*, whether in the current or any previous year of assessment: Provided further that in the case of any such building the erection of which has or is commenced on or after 4 June 1988 and any such improvements which have or are commenced on or after that date the allowance under this subsection shall be increased to 5% of the cost (after the set-off of any amount as provided in subsection (6)) to the taxpayer of such building or improvements: Provided further that to the extent to which any portion of any such improvements which have or are commenced on or after 17 March 1993 does not extend the existing exterior framework of the building, the allowance under this subsection shall be increased to 20 per cent of the cost of such portion.

[Sub-s. (1) amended by s. 13 (a) of Act 90 of 1988 and by s. 13 (1) (c) of Act 113 of 1993.]

(2) In addition to any allowance under subsection (1), there shall be allowed to be deducted from the income of the taxpayer an allowance in respect of the cost (after the set-off of any amount as provided in subsection (6)) of any building or improvements referred to in paragraph (c) of subsection (1) or of any portion of any building or improvements referred to in paragraph (d) or (e) of subsection (1), provided such building (or a portion thereof), or the building (or a portion thereof) to which such improvements were effected, as the case may be, was during the year of assessment in question registered as an hotel under the Hotels Act, 1965, and such hotel was on the last day of such year graded by the board established under that Act: Provided that no allowance shall be made under this subsection in respect of such portion of the cost of any building or any improvements as has been taken into account in the calculation of any allowance to the taxpayer under paragraph (g) of section *eleven*, whether in the current or any previous year of assessment.

(3) The allowance under subsection (2) in respect of the cost (as reduced in terms of that subsection) of any building (or portion thereof) or of any improvements (or a portion thereof) shall be such percentage of such cost as may be fixed by the Minister of Finance by regulation under subsection (4) for the grade of hotel which is, in terms of a determination of the board referred to in subsection (2), applicable in respect of the hotel in question on the last day of the year of assessment: Provided that where such hotel is graded by the said board for the first time during any year of assessment (hereinafter referred to as the subsequent year) subsequent to any year of assessment (hereinafter referred to as the earlier year) during which such building (or the relevant portion thereof) or such improvements (or the relevant portion thereof) was or were used in carrying on the trade of hotelkeeper, and the taxpayer is entitled to the said allowance in respect of the subsequent year, the allowance for the subsequent year (as determined in accordance with the said regulation) shall, if-

- (a) such building (or the relevant portion thereof) or such improvements (or the relevant portion thereof), as the case may be, is or are completed not later than the thirty-first day of December, 1969; and
- (b) where such hotel was not during the earlier year registered under the Hotels Act, 1965, it became so registered during the period ending on the thirty-first day of December, 1969,

or the period of twelve months reckoned from the date of completion of such building (or the relevant portion thereof) or of such improvements (or the relevant portion thereof), as the case may be, whatever period ends later,

be increased by an amount equal to the allowance to which the taxpayer would have been entitled under the said regulation in respect of the said cost if such regulation had at all relevant times been in force and the grading of such hotel by the said board which was applicable on the last day of the subsequent year had also applied on the last day of the earlier year.

[Sub-s. (3) amended by s. 18 (1) (a) of Act 55 of 1966, substituted by s. 14 (1) of Act 95 of 1967 and amended by s. 46 of Act 97 of 1986.]

(3A) Where any building in respect of which any deduction of an allowance is claimed in terms of this section was during any previous financial year or years used by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year or years, any deduction which could have been allowed during such previous year or years in terms of this section shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

[Sub-s. (3A) inserted by s. 21 (a) of Act 59 of 2000.]

(4) The Minister of Finance may make regulations prescribing the rates of the allowances under subsection (2) in respect of the various grades of hotels determined under the provisions of subsection (1) of section *fifteen* of the Hotels Act, 1965, and may in such regulations prescribe rates which vary according to the grade of hotel or the year of assessment for which any such allowance may be made: Provided that any rate so prescribed in respect of any year of assessment in respect of any grade of hotel shall not exceed eight per cent, of the cost or portion thereof on which the relevant allowance is to be calculated.

[Sub-s. (4) amended by s. 46 of Act 97 of 1986.]

(5) The aggregate of the allowances under the preceding provisions of this section and subsection (1) of section *thirteen*, as applied by subsection (4) of that section, and the corresponding provisions of any previous Income Tax Act, or any amount deemed to have been allowed in terms of subsection (3A), in respect of the cost of any building or portion thereof or any improvements or portion thereof shall not exceed such cost or, if such allowances have been calculated on a portion of such cost, such portion.

[Sub-s. (5) substituted by s. 21 (b) of Act 59 of 2000.]

(6) (a) If in any year of assessment there falls to be included in a taxpayer's income in terms of paragraph (a) of subsection (4) of subsection *eight* an amount which has been recovered or recouped in respect of any allowance made under the preceding provisions of this section or the provisions of subsection (1) of section *thirteen*, as applied by subsection (4) of that section, or the corresponding provisions of any previous Income Tax Act, in respect of any building or portion thereof or any improvements or portion thereof, so much of the amount so recovered or recouped as is set off against the cost of a further building as hereinafter provided shall, notwithstanding the provisions of the said paragraph, at the option of the taxpayer to be notified by him in writing to the Commissioner when submitting his return of income for the year of assessment during which the recovery or recoupment occurred, and provided he erects within twelve months or such further period as the Commissioner may allow from the date on which the event giving rise to the recovery or recoupment occurred, any other building in respect of the cost of which an allowance is made under the preceding provisions of this section, not be included in his income for such year of assessment, but shall be set off against so much of the cost to him of such further building erected by him as remains after the deduction of any portion of such cost in respect of which an allowance has been granted to the taxpayer under paragraph (g) of section *eleven*, whether in the current or any previous year of assessment.

(b) Where any allowance has been made under the provisions of subsection (1) of section *thirteen*, as applied by subsection (4) of that section, in respect of the cost of any building, any amount which has in terms of subsection (3) of that section been set off against such cost, shall be set off against such cost in the calculation of any allowance made in respect thereof under the preceding provisions of this section.

(7) .....

[Sub-s. (7) substituted by s. 18 (1) (b) of Act 55 of 1966 and deleted by s. 12 (b) of Act 21 of 1994.]

(7A) and (7B) .....

[Sub-ss. (7A) and (7B) inserted by s. 18 (1) (c) of Act 55 of 1966 and deleted by s. 12 (b) of Act 21 of 1994.]

(8) .....



[Sub-s. (8) substituted by s. 18 (1) (d) of Act 55 of 1966 and deleted by s. 12 (b) of Act 21 of 1994.]

(9) The allowance under subsection (2) shall not be granted in respect of-

- (a) any building the erection of which has or is commenced on or after 4 June 1988; and
- (b) any improvements which have or are commenced on or after that date.

[Sub-s. (9) added by s. 14 (1) of Act 88 of 1971, amended by s. 14 (a) of Act 69 of 1975, deleted by s. 13 of Act 94 of 1983, added by s. 13 (b) of Act 90 of 1988 and amended by s. 12 (c) of Act 21 of 1994.]

(10) .....

[Sub-s (10) added by s. 14 (1) of Act 88 of 1971, amended by s. 14 (b) of Act 69 of 1975 and deleted by s. 13 of Act 94 of 1983.]

(11) .....

[Sub-s. (11) added by s. 14 (1) of Act 88 of 1971, amended by s. 14 (c) of Act 69 of 1975 and deleted by s. 13 of Act 94 of 1983.]

[S. 13*bis* inserted by s. 15 (1) of Act 88 of 1965.]

### **13ter Deductions in respect of residential buildings**

(1) For the purposes of this section-

'housing project' means any project for the erection of a building or buildings in the Republic consisting of or including at least five residential units;

'residential unit' means any self-contained residential accommodation consisting of more than one room (but excluding any hostel, hotel or similar accommodation), the erection of which was commenced by the taxpayer on or after 1 April 1982 and which was erected under a housing project of the taxpayer-

- (a) in order to be let to a tenant for the purpose of deriving a profit for the taxpayer; or
- (b) in order to be occupied by a *bona fide* full-time employee of the taxpayer.

(2) Notwithstanding anything to the contrary contained in paragraph (ii) of the proviso to section 11 (e), there shall, subject to the provisions of this section, be allowed to be deducted from the income of the taxpayer for the year of assessment referred to in subsection (6) of this section and each succeeding year of assessment, an allowance, to be known as the residential building annual allowance, equal to two per cent of the cost to the taxpayer of any residential unit erected by the taxpayer under a housing project of the taxpayer.

(3) In addition to the deduction provided for in subsection (2), there shall, subject to the provisions of this section, be allowed to be deducted from the income of the taxpayer for the year of assessment referred to in subsection (5), an allowance, to be known as the residential building initial allowance, equal to ten per cent of the cost to the taxpayer of the residential unit referred to in subsection (2).

(4) The allowances under this section shall not be made in respect of any portion of the cost of any residential unit on any premises not owned by the taxpayer, unless the taxpayer, at the date on which the erection of such residential unit is commenced, is entitled to the occupation of such premises for a period ending not less than ten years after such date.

(5) The residential building initial allowance in relation to any residential unit shall be made for the year of assessment during which such residential unit is for the first time let or occupied as contemplated in the definition of 'residential unit' in subsection (1): Provided that if at the end of such year of assessment less than five of the residential units of the relevant housing project have for the first time been let or occupied as contemplated in the definition of 'residential unit' in subsection (1), the residential building initial allowance relating to such residential unit shall not be made for that year of assessment but shall be made for the first succeeding year of assessment in which at least five of the residential units in that housing project have been so let or occupied for the first time.

(6) The residential building annual allowance relating to any residential unit shall be made for the first time for the year of assessment in which the residential building initial allowance is made in respect of that residential unit.

(6A) Where any building in respect of which any deduction of an allowance is claimed in terms of this section was during any previous financial year or years used by the taxpayer for the purposes of any trade carried on by him the receipts and accruals of which were not included in the income of such taxpayer during such year or years, any deduction which could have been allowed during such previous year or years in terms of this section shall for the purposes of this section (excluding the provisions of subsection (7) (a)) be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

[Sub-s. (6A) inserted by s. 22 (a) of Act 59 of 2000.]

(7) If in any year of assessment any residential unit in respect of the cost of which any allowance

has been made to the taxpayer under the provisions of this section, whether in the current or any previous year of assessment, is so used or dealt with by the taxpayer that it ceases to be available either for letting to a tenant or for occupation by an employee as contemplated in the definition of 'residential unit' in subsection (1)-

- (a) there shall be included in the income of the taxpayer for the year of assessment in which such residential unit is so used or dealt with, the amount of the residential building initial allowance made to him in respect of the cost of such residential unit, less one-tenth of such amount for each completed period of one year, but not exceeding ten years, from the date on which such residential unit was first let or occupied as contemplated in the definition of 'residential unit' in subsection (1) until the date on which such residential unit was used or dealt with as aforesaid; and
- (b) the residential building annual allowance shall not be made in respect of the cost of the said residential unit for the year of assessment during which such residential unit was used or dealt with as aforesaid nor in respect of any succeeding year of assessment during which it continued to be unavailable for the letting or occupation contemplated in the definition of 'residential unit' in subsection (1).

(8) The provisions of sections 8 (4) (a) and 11 (o) shall not apply to so much of the amount of any residential building initial allowance as has been included in the taxpayer's income under the provisions of subsection (7) (a) of this section, whether in the current or any previous year of assessment.

(9) No allowance shall be made under this section in respect of so much of the cost of any residential unit as has qualified or will qualify for deduction from the taxpayer's income by way of a deduction of expenditure or an allowance in respect of expenditure under any other provision of this Act, whether for the current or any preceding or subsequent year of assessment.

(10) The aggregate of the allowances allowed or deemed to have been allowed under the preceding provisions of this section in respect of the cost of any residential unit shall not exceed such cost or, if such allowances have been calculated on a portion of such cost, such portion.

[Sub-s. (10) substituted by s. 22 (b) of Act 59 of 2000.]

(11) Where any company is mainly engaged in the provision of housing facilities for the employees of its sole or principal shareholder or for the employees of any other company the shares in which are held wholly by the sole or principal shareholder in such firstmentioned company, the employees of such shareholder or such other company, as the case may be, shall for the purposes of this section be deemed to be the employees also of such firstmentioned company.

[Sub-s. (11) added by s. 14 of Act 94 of 1983.]

[S. 13<sup>ter</sup> inserted by s. 13 (1) of Act 91 of 1982.]

### **13quat Deductions in respect of erection or improvement of buildings in urban development zones**

(1) For the purposes of this section-

'certificate of occupancy' means a certificate contemplated in section 14 (1) of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977);

'cost' means the costs (other than borrowing or finance costs) actually incurred in erecting or extending, adding to or improving a building and includes any costs incurred-

- (a) in demolishing any existing building or part thereof;
- (b) in excavating the land for purposes of that erection, extension, addition or improvement; and
- (c) in respect of structures or works directly adjoining the building so erected, extended, added to or improved, for purposes of providing-
  - (i) water, power or parking with respect to that building;
  - (ii) drainage or security for that building;
  - (iii) means of waste disposal for that building; or
  - (iv) access to that building, including the frontage thereof;

'urban development zone' means an area demarcated by a municipality in terms of subsection (6), the particulars of which were published in the *Gazette* in terms of subsection (8).

(2) There shall be allowed to be deducted from the income of the taxpayer an allowance determined in terms of subsection (3), in respect of the cost of the erection, extension, addition or improvement of any commercial or residential building within an urban development zone to be used solely for purposes of that taxpayer's trade-

- (a) which was commenced by the taxpayer on or after the date of publication of the notice

contemplated in subsection (8) in respect of that urban development zone, in terms of a contract formally and finally signed by all parties thereto on or after that date; and  
 (b) in respect of which a certificate of occupancy has been granted.

(3) The amount of the allowance contemplated in subsection (2)-

- (a) in the case of the erection of any new building or the extension of or addition to any building (other than a building in respect of which paragraph (b) applies), is equal to-
  - (i) 20 per cent of the cost to the taxpayer of the erection or extension of or addition to that building, which is deductible in the year of assessment during which that building is brought into use by that taxpayer solely for the purposes of that taxpayer's trade; and
  - (ii) five per cent of that cost in each of the 16 succeeding years of assessment; or
- (b) in the case of the improvement of any existing building or part of a building (including any extension or addition which is incidental to that improvement) where the existing structural or exterior framework thereof is preserved, is equal to-
  - (i) 20 per cent of the cost to the taxpayer of the improvement, extension or addition which is deductible in the year of assessment during which the part of the building so improved, extended or added is brought into use by the taxpayer solely for the purposes of that taxpayer's trade; and
  - (ii) 20 per cent of that cost in each of the four succeeding years of assessment.

(4) No deduction shall be allowed under this section, unless the taxpayer has together with the tax return for the year of assessment in which the deduction is claimed under subsection (3) (a) (i) or (b) (i), provided to the Commissioner-

- (a) a certificate from the municipality confirming that the building is located within an urban development zone within that municipality;
- (b) the total amount of the costs to the taxpayer of the erection, extension, addition or improvement and the extent that those costs relate to any portion of the building in respect of which a certificate of occupancy has been granted; and
- (c) particulars as to whether the costs were incurred in respect of the erection of a building as contemplated in subsection (3) (a) or the extension, addition or improvement of a building as contemplated in subsection (3) (b).

(5) No deduction shall be allowed under this section in respect of any building-

- (a) where that taxpayer ceased to use that building solely for purposes of that taxpayer's trade during any previous year of assessment; or
- (b) which has been disposed of by the taxpayer during any previous year of assessment.

(6) For the purposes of this section, one area may be demarcated by a municipality where-

- (a) that area is a developed urban location with the municipality of Buffalo City, Cape Town, Ekurhuleni, Emalahleni, Emfuleni, eThekweni, Johannesburg, Mafikeng, Mangaung, Matjhabeng, Mbombela, Msunduzi, Nelson Mandela, Polokwane, Sol Plaatje or Tshwane;
- (b) that area is demarcated through formal resolution by the relevant municipal council;  
[Para. (b) substituted by s. 12 of Act 16 of 2004.]
- (c) that area is prioritised in that municipality's integrated development plan adopted and undertaken in terms of Chapter 5 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) as a priority area for further investments to promote business or industrial activity or residential settlements to support such activity;  
[Para. (c) substituted by s. 19 (1) (a) of Act 32 of 2004.]
- (d) that area proportionately contributes or previously contributed a significant portion of the total revenue collections for all areas located within the current boundaries of that municipality, as measured in the form of-
  - (i) property rates; or
  - (ii) assessed property values,

and where the contribution from that area is undergoing a sustained real or nominal decline;

[Para. (d) substituted by s. 19 (1) (b) of Act 32 of 2004.]

- (e) significant fiscal measures have been implemented by that municipality to support the regeneration of that area, including-
  - (i) the appropriation of significant funds for developing the area in the annual budget

- of the municipality;
- (ii) special tariffs for categories of residential, commercial or industrial users; or
- (iii) partnership arrangements with the business community for the promotion of urban development within that area; and

(f) .....

[Para. (f) deleted by s. 19 (1) (c) of Act 32 of 2004.]

- (7) (a) Subject to paragraph (d), the area demarcated in terms of subsection (6) may not exceed-
- (i) where that municipality has a population of not more than 500 000 persons, a total area of 150 hectares; or
  - (ii) where that municipality has a population of more than 500 000 persons, 150 hectares plus 20 hectares for each additional 100 000 persons included in that population.

(b) Where that municipality has a population of 2 million persons or more, the municipal council may demarcate two areas in lieu of the one area demarcated in terms of subsection (6) provided that-

- (i) the two areas do not in total exceed the one area contemplated in paragraph (a) (ii); and
- (ii) each area otherwise satisfies the requirements of subsection (6).

(c) For purposes of this subsection, the population of a municipality shall be the population figures as determined by Statistics South Africa in the Census for 2001 and the total population of that municipality must be rounded to the nearest multiple of 100 000.

(d) The area demarcated in terms of subsection (6) may exceed the limits contemplated in paragraph (a) where-

- (i) the municipality proves to the Minister that the excess area is integrally related to the area within the limitation contemplated in paragraph (a);
- (ii) the municipality can prove to the Minister that sound economic reasons exist for demarcating a larger area;
- (iii) the municipality has not demarcated two areas as contemplated in subparagraph (b); and
- (iv) the Minister is satisfied that the demarcation of the excess area would fall within Government's affordability constraints.

(8) The Minister must publish by notice in the *Gazette* particulars of an area demarcated by a municipality after that municipality has proved to the Minister that the area so demarcated complies with the provisions of subsection (6).

(9) Every municipality must provide a report annually to the Commissioner and the Minister for each urban development zone located within that municipality within such time as is prescribed by the Minister, listing-

- (a) each taxpayer to which a certificate contemplated in subsection 4 (a) has been issued;
- (b) the location of each building for which that certificate was issued;
- (c) the estimated costs incurred by the taxpayer in respect of each building;
- (d) the estimated total jobs created as a result of this section;
- (e) the additional property rates collected as a result of this section; and
- (f) the total applications for a certificate contemplated in subsection 4 (a);
- (g) the average turnover time for all planning and building approvals.

[Para. (g) added by s. 19 (1) (f) of Act 32 of 2004.]

[Sub-s. (9) amended by s. 19 (1) (d) of Act 32 of 2004.]

(10) Where-

- (a) a municipality does not provide an annual report as contemplated in subsection (9) or a quarterly report as contemplated in subsection (6) (f) or the Commissioner reports to the Minister that the municipality has issued a certificate contemplated in subsection (4) (a) in respect of a building that is located outside an urban development zone; and
- (b) corrective steps are not taken by that municipality within a period specified by the Minister,

the Minister may withdraw the notice contemplated in subsection (8) for that municipality in respect of contracts formally and finally signed by all parties thereto on or after the date of withdrawal.

(11) The Commissioner must on an annual basis submit a report to the Minister containing information relating to-

- (a) the number of taxpayers which have during the relevant year claimed an allowance in

- terms of this section;
- (b) the total amount of the deductions by taxpayers allowed in that year in terms of this section; and
- (c) the total amount of the costs to those taxpayers which are or will be allowable as a deduction in terms of this section.

[S. 13<sup>quat</sup> inserted by s. 33 of Act 45 of 2003.]

#### **14 Deductions in respect of ships**

(1) There shall be allowed to be deducted from the income of any resident who carries on any business as owner or charterer of any ship-

- (a) in respect of any ship used by such person for the purposes of his trade during the year of assessment an allowance equal to ten per cent of the adjustable cost to him of such ship: Provided that-
  - (i) where an allowance under paragraph (b) or the corresponding provisions of any previous Income Tax Act has been made to any person in respect of any ship, no allowance shall be made under this paragraph to such person in respect of that ship for the year of assessment in which the ship is for the first time used by him for the purposes of his trade; and
  - (ii) the aggregate of all the allowances made to any person in respect of any ship under this paragraph, (b) of this subsection and section 11 (e) or the corresponding provisions of any previous Income Tax Act shall not exceed the cost to such person of such ship or, if such ship was acquired by such person to replace a ship and the cost of the ship so acquired has in terms of the definition of 'adjustable cost' or 'adjustable cost price' in subsection (2) been reduced by an amount which has not in terms of section 8 (4) (d) been included in the income of the taxpayer for the current or any previous year of assessment, the adjustable cost to such person of the ship so acquired;

[Para. (ii) amended by s. 12 (b) of Act 103 of 1976.]

- (b) in the case of a person who during any year of assessment concludes a contract for the acquisition by him of a new ship (whether built or still to be built), or of a ship which is not new and is proved to the satisfaction of the Secretary for Transport at all times since its construction to have been maintained in the highest class applicable to a ship of its type, and who satisfies the Commissioner that the ship in question is or will be a South African ship and is or will be used by him for the purposes of his trade for prospecting for minerals (including natural oil) or for mining operations or as a foreign-going ship, an allowance in respect of that year of assessment equal to forty per cent of the adjustable cost to the said person of that ship, or, if at the time at which the allowance under this paragraph has to be made, the cost price of the ship has not yet been determined, of the adjustable estimated cost price of that ship, provided the said person satisfies the Commissioner that not less than forty per cent of the cost price or of the estimated cost price, as the case may be, of the ship will be paid by him within a period of two years or, if the Commissioner agrees, three years after the end of that year of assessment, or, if the said person does not so satisfy the Commissioner, an allowance in respect of any year of assessment equal to forty per cent of the portion, if any, of the adjustable cost price or the adjustable estimated cost price of the ship paid by him during that year of assessment: Provided that-

- (i) the provisions of this paragraph shall not apply in respect of any ship in respect of which an allowance has in any year of assessment under this Act or any previous Income Tax Act been granted to any other person under this subsection or the corresponding provisions of any previous Income Tax Act;
- (ii) if any taxpayer to whom an allowance equal to forty per cent of the adjustable cost price or adjustable estimated cost price, as the case may be, of any ship has been made under this paragraph or the corresponding provisions of any previous Income Tax Act, fails to pay at least forty per cent of such cost price or estimated cost price, as the case may be, within the said period of two or (as the case may be) three years after the end of the year of assessment in respect of which the said allowance has been made, the said allowance shall be included in the income of

the said taxpayer for the year of assessment ending on the same day as the said period, and there shall be deducted from the income of the said taxpayer for that year of assessment an allowance equal to forty per cent of the portion, if any, of the adjustable cost price of such ship paid by him during the said period, and from the income of the said taxpayer for any year of assessment thereafter an allowance equal to forty per cent of the portion, if any, of the adjustable cost price of such ship paid by him during that year of assessment; and

- (iii) if in respect of any year of assessment the Commissioner is no longer satisfied that a ship in respect of which an allowance has been made under the preceding provisions of this paragraph or the corresponding provisions of any previous Income Tax Act (whether in the current or any previous year of assessment) will be a South African ship or will be used by the taxpayer as aforesaid, or if in any year of assessment any such ship which has become a South African ship or has been used by the taxpayer as aforesaid, ceases to be a South African ship or to be used by the taxpayer as aforesaid or if in any year of assessment the taxpayer ceases to be a person referred to in section 9 (1) (c), so much of the amount of the said allowance as is not in terms of section 8 (4) required to be included in the taxpayer's income for the current or any other year of assessment and is not in terms of 'adjustable cost' or 'adjustable cost price' in subsection (2) of this section required to be deducted from the cost or estimated cost price of a further ship acquired to replace such ship, less such amount as would, if this paragraph had not been enacted, have been allowed to the taxpayer by way of deductions (in addition to those actually allowed) under paragraph (a) of this subsection or section 11 (o) or the corresponding provisions of any previous Income Tax Act, either in the current or any previous year of assessment, shall in terms of this proviso be included in the income of the taxpayer for the current year of assessment;

[Para. (b) substituted by s. 17 (a) of Act 85 of 1974 and amended by s. 12 (a) of Act 103 of 1976. Para. (iii) amended by s. 12 (c) of Act 103 of 1976.]

- (c) in respect of any expenditure which such person satisfies the Commissioner he is likely to incur within five years from the end of the year of assessment in question on repairs to any ship used by him for the purposes of his trade, such an allowance as, notwithstanding the provisions of section 23 (e), the Commissioner, having regard to the estimated cost of such repairs and the date on which they are likely to be incurred, may make each year: Provided that any such allowance in respect of any year of assessment shall be included in the income of the taxpayer for the following year of assessment.

[Para. (c) amended by s. 14 (a) of Act 21 of 1995.]

[Sub-s. (1) amended by s. 23 (a) of Act 59 of 2000.]

(1A) Where during any year of assessment a subsidiary company referred to in paragraph (b) of the definition of 'South African ship' in subsection (2) has carried on business as the owner of one or more ships which are by virtue of the said paragraph South African ships and has not ceased to carry on such business, there shall be deducted from the income derived during that year of assessment by the parent company (being a parent company referred to in the said paragraph) of the subsidiary company an allowance equal to so much of any assessed loss which is in terms of section 20 available to be carried forward by the subsidiary company to the following year of assessment, as is attributable to any assessed loss (as determined under section 20) incurred by the subsidiary company in carrying on the aforesaid business:

Provided that the allowance granted under this subsection to the parent company in respect of any year of assessment shall be included in the income of that company for the following year of assessment.

[Sub-s. (1A) inserted by s. 17 (b) of Act 85 of 1974 and amended by s. 14 (b) of Act 21 of 1995.]

(1B) Where a subsidiary company referred to in paragraph (b) of the definition of 'South African ship' in subsection (2) has on or after 1 January 1974 purchased from its parent company (being a parent company referred to in the said paragraph), a ship (being a South African ship by virtue of the provisions of the said paragraph and not being a ship acquired to replace a ship) which is used by the subsidiary company for the purposes of its trade for prospecting for minerals (including natural oil) or for mining operations or as a foreign-going ship and in respect of which any allowance has in respect of any year of assessment been granted to the parent company under subsection (1) (a) or (b) or section 12C-

- (a) any allowances in respect of such ship granted to the subsidiary company under the provisions of subsection (1) (a) or section 12C, as the case may be, shall be equal in amount to the allowances to which the parent company would have been entitled under those provisions if the parent company had continued to use the ship for the purposes of its trade;
- (b) an allowance in respect of such ship shall not be granted to the subsidiary company under the provisions of subsection (1) (a) or section 12C in respect of the year of assessment during which the ship was purchased by the subsidiary company if any allowance in respect of the ship has been granted to the parent company under the provisions of subsection (1) (a) or (b) or section 12C in respect of the same year of assessment;
- (c) the cost to the subsidiary company of such ship shall, for the purposes of this section, 8 (4), section 11 (o) and section 12C, be deemed to be the adjustable cost to the parent company of the ship;
- (d) the allowances in respect of such ship granted to the parent company under subsection (1) (a) or (b) of this section or section 12C shall, for the purposes of this section, section 8 (4), section 11 (o) and section 12C, be deemed to be allowances granted to the subsidiary company in respect of such ship and the provisions of paragraph (iii) of the proviso to subsection (1) (b) of this section or the proviso to section 8 (4) (e), as the case may be, shall, as respects such ship apply to the subsidiary company as though it were the taxpayer referred to in those provisions;
- (e) the parent company shall, for the purposes of section 8 (4), not be deemed to have recovered or recouped out of the purchase consideration payable by the subsidiary company any of the allowances granted in respect of such ship to the parent company under subsection (1) (a) or (b) of this section or section 12C and no allowance shall be made to the parent company under section 11 (o) in respect of such ship and, for the purposes of paragraph (iii) of the proviso to subsection (1) (b) of this section as applicable to the parent company, the parent company shall not by reason of the sale of the ship to the subsidiary company be deemed to have ceased to use the ship; and
- (f) in the event of such ship ceasing to be a South African ship or to be used by the subsidiary as aforesaid, the Commissioner may direct that any amount falling to be included in the income of the subsidiary company for any year of assessment under paragraph (iii) of the proviso to subsection (1) (b) or the proviso to section 8 (4) (e), as the case may be, be included in the income of the parent company for such year of assessment and not in the income of the subsidiary company.

[Sub-s. (1B) inserted by s. 17 (b) of Act 85 of 1974 and substituted by s. 14 (c) of Act 21 of 1995.]

(1C) Where on or after 1 January 1974 any association, corporation or company contemplated in paragraph (a) of the definition of 'company' in section 1 (being a resident who carries on any business as owner or charterer of any ship) has concluded a contract for the acquisition by it of a ship and such company (hereinafter referred to as the taxpayer company) satisfies the Commissioner that -

- (a) the ship will be sold by the taxpayer company to a subsidiary company of the taxpayer company for a consideration not exceeding the cost to the taxpayer company of such ship;
- (b) the subsidiary company will qualify for an allowance in respect of the ship under the provisions of subsection (1) (b); and
- (c) not less than forty per cent of the cost price or, if at the time the allowance under this subsection has to be made, the cost price has not yet been determined, of the estimated cost price which is payable by the taxpayer company in respect of its acquisition of the ship will be paid by the taxpayer company within a period of two years or, if the Commissioner agrees, three years after the end of the year of assessment during which the said contract was concluded,

there shall be deducted from the income of the taxpayer company for the said year of assessment an allowance equal to forty per cent of the said cost price or estimated cost price, as the case may be: Provided that the allowance granted to the taxpayer company under this subsection shall be included in the income of that company for the year of assessment during which the subsidiary company has qualified for an allowance in respect of the ship under the provisions of subsection (1) (b) or, if in respect of any earlier year of assessment the Commissioner is no longer satisfied as to any of the matters in respect of which he is

required to be satisfied under this subsection, such earlier year of assessment.

[Sub-s. (1C) inserted by s. 17 (b) of Act 85 of 1974 and amended by s. 23 (b) of Act 59 of 2000.]

(1D) (a) Where any subsidiary company (as contemplated in paragraph (b) of the definition of 'South African ship' in subsection (2)) carries on business as the owner of any South African ship and does not carry on any other type of business, the parent company (as contemplated in the said paragraph) in relation to such subsidiary company may elect that such parent company and such subsidiary company shall for the purposes of this Act be deemed to be and to have been one and the same company.

(b) Any election made under paragraph (a) shall, unless the Commissioner otherwise directs, be binding upon the companies concerned in the year of assessment in respect of which it is made and in all subsequent years of assessment.

(c) The provisions of subsections (1A) and (1B) shall not apply in any year of assessment in which the provisions of this subsection are applicable.

[Sub-s. (1D) inserted by s. 10 of Act 65 of 1986.]

(2) For the purposes of this section-

'adjustable cost' or 'adjustable cost price', in relation to any ship, means the cost to the taxpayer of such ship, or, if such ship was acquired by the taxpayer to replace a ship and the ship so acquired is a ship in relation to which the Commissioner is satisfied in regard to the matters in regard to which he is required to be satisfied in terms of section 8 (4) (b), the cost to the taxpayer of the ship so acquired, less so much of any amount referred to in section 8 (4) (a) which has on or after 17 August 1966 been recovered or recouped in respect of the ship so replaced as does not exceed such cost, and 'adjustable estimated cost price' shall be construed accordingly;

'foreign-going ship' means -

- (a) a ship plying between a port in one country and a port in another country; or
- (b) a ship of not less than two hundred gross register tons plying between ports in the same country; or
- (c) a ship of not less than two hundred gross register tons exclusively employed in sea fishing or seal catching; or

[Para. (c) substituted by s. 11 of Act 104 of 1979.]

- (d) a whaling boat other than a shore-based whaling boat of less than two hundred gross register tons;

'South African ship' means-

- (a) a ship which is owned by a resident who carries on any business as owner or charterer of any ship, if such ship is a South African ship as defined in section 2 of the Merchant Shipping Act, 1951 (Act 57 of 1951); or
- (b) if the Minister, having regard to the circumstances of the case, so directs, a ship which is owned by a company (in this section referred to as a subsidiary company) which is managed and controlled in the Republic if the sole beneficial shareholder in that company is an association, corporation or company contemplated in paragraph (a) of the definition of 'company' in section 1 (in this section referred to as a parent company) which is managed and controlled in the Republic.

[Definition of 'South African' ship substituted by s. 23 (c) of Act 59 of 2000.]

[Sub-s. (2) substituted by s. 17 (c) of Act 85 of 1974.]

(3) Where any allowance under this section is determinable on a portion of the adjustable cost price paid in respect of any ship, such portion shall for the purposes of this section be deemed to be an amount which bears to the portion of the cost price paid the same ratio as the adjustable cost price bears to the full cost price, or, if at the time at which the allowance has to be made the cost price of the ship has not yet been determined, the estimated cost price payable in respect of such ship.

[Sub-s. (3) added by s. 17 (c) of Act 85 of 1974.]

(4) Where any person is entitled to an allowance under this section in respect of any ship acquired by him on or after 21 June 1993 from a connected person, and a deduction under this section was previously granted to such connected person in respect of the ship concerned, whether in the current or any previous year of assessment, the deduction under this section shall be calculated on an amount not exceeding the lesser of the adjustable cost of the ship concerned to such connected person or the market value thereof as determined on the date upon which the ship was acquired by such person.

[Sub-s. (4) added by s. 14 (1) of Act 113 of 1993 and substituted by s. 8 (1) of Act 140 of 1993.]

(5) The provisions of subsections (1) (a) and (b) and (1C) shall not apply to any ship acquired on



or after 1 April 1995 unless such ship was acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement before that date.

[Sub-s. (5) added by s. 14 (d) of Act 21 of 1995.]

(6) (a) The provisions of subsection (1A) shall only apply to any parent company as contemplated in that subsection in relation to any allowance arising from any assessed loss incurred by the subsidiary company as contemplated in that subsection in so far as such assessed loss arises from the business carried on by such subsidiary company as the owner of any ship acquired in terms of an agreement formally and finally signed by all parties to the agreement on or before 12 March 1997.

(b) Where a parent company as contemplated in subsection (1D) made an election as contemplated in that subsection, such parent company and a subsidiary company as contemplated in that subsection in relation to such parent company, shall, notwithstanding the provisions of that subsection, for the purposes of this Act only be deemed to be or to have been one and the same company in so far as it relates to any business carried on by such subsidiary company as the owner of any ship acquired in terms of an agreement formally and finally signed by all parties to the agreement on or before 12 March 1997.

[Sub-s. (6) added by s. 14 of Act 28 of 1997.]

[S. 14 amended by s. 13 of Act 90 of 1962 and substituted by s. 19 (1) of Act 55 of 1966.]

#### **14bis Deductions in respect of aircraft**

(1) There shall, subject to the provisions of subsection (2), be allowed to be deducted from the income of any person-

(a) in respect of any aircraft acquired by such person on or after the first day of April, 1965, and used by him for the purposes of his trade during the year of assessment, an allowance equal to twenty-five per cent of the adjustable cost to him of such aircraft: Provided that -

(i) where an allowance under paragraph (b) or (c) has been made to any person in respect of any aircraft, no allowance shall be made to such person under this paragraph in respect of that aircraft for the year of assessment in which the aircraft is for the first time used by him for the purposes of his trade;

[Sub-para. (i) amended by s. 15 (a) of Act 141 of 1992.]

(ii) the aggregate of all the allowances made to any person in respect of any aircraft under this paragraph and paragraph (b) or (c) shall not exceed the cost to such person of such aircraft or, if such aircraft was acquired by such person to replace an aircraft and the cost of the aircraft so acquired has in terms of paragraph (a) of subsection (2) been reduced by an amount which has not in terms of paragraph (i) of subsection (4) of section *eight* been included in the income of the taxpayer for the current or any previous year of assessment, the adjustable cost to such person of the aircraft so acquired;

[Sub-para. (ii) amended by s. 15 (a) of Act 141 of 1992.]

(b) if such person is a resident who carries on any business as owner or charterer of any aircraft and such resident on or after the first day of April, 1965, concludes a contract for the acquisition by him of a new aircraft (whether built or still to be built), or of an aircraft which is not new and is proved to the satisfaction of the Secretary for Transport at all times since its construction to have been maintained in the highest class applicable to an aircraft of its type, and such resident satisfies the Commissioner that the aircraft in question is or will be registered by him in the Republic and is or will be used by him in his business of transporting by air and for reward persons, livestock, goods or mail, an allowance in respect of the year of assessment during which such contract is concluded equal to forty per cent of the adjustable cost to such resident of that aircraft, or, if at the time at which the allowance under this paragraph has to be made, the cost price of the aircraft has not yet been determined, of the adjustable estimated cost price of that aircraft, provided the said resident satisfies the Commissioner that not less than forty per cent of the cost price or of the estimated cost price, as the case may be, of the aircraft will be paid by him within a period of two years, or, if the Commissioner agrees, three years after the end of that year of assessment or, if the said resident does not so satisfy the Commissioner, an allowance in respect of any year of assessment equal to forty per cent of the portion, if any, of the adjustable cost price of the aircraft paid by him during that year of assessment: Provided that-

(i) the provisions of this paragraph shall not apply in respect of any aircraft the

- registration of which in the Republic in the name of the taxpayer concerned does not or will not constitute its first registration in the Republic;
- (ii) if any taxpayer to whom an allowance equal to forty per cent of the adjustable cost price or adjustable estimated cost price, as the case may be, of any aircraft has been made under this paragraph, fails to pay at least forty per cent of the cost price or estimated cost price, as the case may be, of such aircraft within the said period of two or (as the case may be) three years after the end of the year of assessment in respect of which the said allowance has been made, the said allowance shall be included in the income of the said taxpayer for the year of assessment ending on the same day as the said period, and there shall be deducted from the income of the said taxpayer for that year of assessment an allowance equal to forty per cent of the portion, if any, of the adjustable cost price of such aircraft paid by him during the said period, and from the income of the said taxpayer for any year of assessment thereafter an allowance equal to forty per cent of the portion, if any, of the adjustable cost price of such aircraft paid by him during that year of assessment;
- (iii) if in respect of any year of assessment the Commissioner is no longer satisfied that an aircraft in respect of which an allowance has been made under the preceding provisions of this paragraph (whether in the current or any previous year of assessment) will be registered in the Republic or will be used by the taxpayer as aforesaid, or if in any year of assessment any such aircraft which has been registered in the Republic or has been used by the taxpayer as aforesaid, ceases to be so registered or used, or if in any year of assessment the taxpayer ceases to be a resident, so much of the amount of the said allowance as is not in terms of subsection (4) of section *eight* required to be included in the taxpayer's income for the current or any other year of assessment and is not in terms of paragraph (a) of subsection (2) of this section required to be deducted from the cost or estimated cost price of a further aircraft acquired to replace such aircraft, less such amount as would, if this paragraph had not been enacted, have been allowed to the taxpayer by way of deductions (in addition to those actually allowed) under paragraph (a) of this section or paragraph (o) of section *eleven*, either in the current or any previous year of assessment, shall in terms of this proviso be included in the income of the taxpayer for the current year of assessment;  
[Para. (iii) substituted by s. 24 (b) of Act 59 of 2000.]
- (iv) the provisions of this paragraph shall not apply in any case where such contract for the acquisition of an aircraft is concluded by the taxpayer on or after 1 August 1992;  
[Para. (iv) added by s. 15 (b) of Act 141 of 1992.]  
[Para. (b) amended by s. 24 (a) of Act 59 of 2000.]
- (c) if-
- (i) the person is a resident who carries on any business as owner or charterer of any aircraft, who has acquired a new or used aircraft under a contract concluded by him on or after 1 August 1992;  
[Sub-para. (i) substituted by s. 24 (c) of Act 59 of 2000.]
- (ii) such aircraft was registered by him in the Republic and such registration constituted the first registration of the aircraft in the Republic; and
- (iii) such aircraft was for the first time brought into use by him in his business of transporting by air and for reward persons, livestock, goods or mail,  
an allowance, in respect of the year of assessment during which such aircraft was so brought into use by him, equal to 40 per cent of the adjustable cost to him of such aircraft.  
[Para. (c) added by s. 15 (c) of Act 141 of 1992.]
- (2) For the purposes of this section-
- (a) 'adjustable cost' or 'adjustable cost price', in relation to any aircraft, means the cost to the taxpayer of such aircraft or, if such aircraft was acquired by the taxpayer to replace an aircraft and the aircraft so acquired is an aircraft in relation to which the Commissioner is

satisfied in regard to the matters in regard to which he is required to be satisfied in terms of paragraph (g) of subsection (4) of section *eight*, the cost to the taxpayer of the aircraft so acquired, less so much of any amount referred to in paragraph (a) of that subsection which has been recovered or recouped in respect of the aircraft so replaced as does not exceed such cost, and 'adjustable estimated cost price' shall be construed accordingly;

- (b) where any allowance under this section is determinable on a portion of the adjustable cost price paid in respect of any aircraft, such portion shall be deemed to be an amount which bears to the portion of the cost price paid the same ratio as the adjustable cost price bears to the full cost price or, if at the time at which the allowance has to be made the cost price of the aircraft has not yet been determined, the estimated cost price payable in respect of such aircraft.

(3) If during any year of assessment any aircraft in respect of which an allowance has been granted to the taxpayer under subsection (1) (c) (whether in the current or any previous year of assessment) ceases to be registered by him in the Republic or ceases to be used by him in his business of transporting by air and for reward persons, livestock, goods or mail, or if the taxpayer to whom such allowance was granted ceases to be a resident, there shall be included in the taxpayer's income in such first-mentioned year of assessment the amount (if any) by which the said allowance exceeds the sum of-

- (a) so much of such allowance as is required to be included in the taxpayer's income under section 8 (4) (a); and  
 (b) such amount as would, had subsection (1) (c) not been enacted, have been allowed to the taxpayer as deductions (in addition to the deductions actually allowed) under subsection (1) (a) or section 11 (o), either in the current or any previous year of assessment.

[Sub-s. (3) added by s. 15 (d) of Act 141 of 1992 and amended by s. 24 (d) of Act 59 of 2000.]

(4) For the purposes of this section the cost to a person of any aircraft shall be deemed to be the lesser of the actual cost to such person or the cost which a person would have incurred in respect of the direct cost of acquisition of the aircraft if he had acquired the aircraft under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of the aircraft concerned was in fact concluded.

[Sub-s. (4) added by s. 15 (d) of Act 141 of 1992.]

(5) Where any person is entitled to an allowance under this section in respect of any aircraft acquired by him from a connected person, and a deduction under this section was previously granted to such connected person in respect of such aircraft, whether in the current or any previous year of assessment, the deduction under this section shall be calculated on an amount not exceeding the lesser of the cost of the aircraft concerned to such connected person or the market value thereof as determined on the date upon which the aircraft was brought into use by such person.

[Sub-s. (5) added by s. 15 (d) of Act 141 of 1992 and substituted by s. 15 (1) of Act 113 of 1993 and by s. 9 (1) of Act 140 of 1993.]

(6) The provisions of this section shall not apply to any aircraft acquired on or after 1 April 1995 unless such aircraft was acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement before that date.

[Sub-s. (6) added by s. 15 of Act 21 of 1995.]

[S. 14*bis* inserted by s. 16 (1) of Act 88 of 1965.]

## 15 Deductions from income derived from mining operations

### Cases

There shall be allowed to be deducted from the income derived by the taxpayer from mining operations-

- (a) an amount to be ascertained under the provisions of section 36, in lieu of the allowances in section 11 (e), (f), (gA) and (o);

[Para. (a) substituted by s. 20 of Act 55 of 1966 and by s. 18 of Act 129 of 1991.]

- (b) any expenditure incurred by the taxpayer during the year of assessment on prospecting operations (including surveys, boreholes, trenches, pits and other exploratory work preliminary to the establishment of a mine) in respect of any area within the Republic together with any other expenditure which is incidental to such operations: Provided that-
- (i) except in the case of any person who derives income from mining for diamonds in the Republic, the Commissioner may determine that any expenditure referred to in

this paragraph shall be deducted in a series of annual instalments, so that only a portion of such expenditure is deducted in the year of assessment in which it is incurred, and the residue in such subsequent years of assessment and in such proportions as the Commissioner may determine, until the expenditure is extinguished;

- (ii) in the case of any company which derives income from different classes of mining operations, the deduction under this paragraph shall be made from the income derived from such class or classes of mining operations and in such proportions as the Commissioner may determine;
- (iii) any expenditure which has been allowed to be deducted from the income of any person in terms of this paragraph shall not be included in such person's capital expenditure as defined in subsection (11) of section *thirty-six*.

[Para. (b) amended by s. 16 of Act 141 of 1992.]

#### **15A** .....

[S. 15A inserted by s. 15 (1) of Act 69 of 1975, amended by s. 11 of Act 104 of 1980 and repealed by s. 15 of Act 101 of 1990.]

#### **16** .....

[S. 16 substituted by s. 16 (1) of Act 89 of 1969, amended by s. 15 of Act 94 of 1983 and repealed by s. 13 of Act 21 of 1994.]

#### **16A** .....

[S. 16A inserted by s. 10 of Act 70 of 1989, amended by s. 10 of Act 37 of 1996 and repealed by s. 32 (1) of Act 30 of 1998.]

#### **17** .....

[S. 17 substituted by s. 14 of Act 90 of 1962 and by s. 14 (1) of Act 113 of 1977 and repealed by s. 25 of Act 59 of 2000.]

#### **17A Expenditure incurred by a lessor of land let for farming purposes, in respect of soil erosion works**

(1) Subject to the provisions of subsection (2), there shall be allowed to be deducted from the income derived by any taxpayer from letting any land on which *bona fide* pastoral, agricultural or other farming operations were carried on during the year of assessment, the expenditure incurred by him during such year in respect of the construction of soil erosion works, provided a certificate by the Executive Officer designated under section 4 of the Conservation of Agricultural Resources Act, 1983 (Act 43 of 1983), or his assignee is produced to the effect that such works have been approved under the provisions of the said Act.

[Sub-s. (1) amended by s. 13 of Act 103 of 1976 and substituted by s. 17 of Act 141 of 1992.]

(2) Where expenditure incurred by the taxpayer during any year of assessment and ranking for deduction from income under subsection (1) exceeds the taxable income (as calculated before allowing any deduction under that subsection) derived by the taxpayer from letting land on which *bona fide* pastoral, agricultural or other farming operations were carried on during such year, the amount allowed to be deducted under subsection (1) in respect of the said year shall be limited to an amount equal to such taxable income (calculated as aforesaid), and the excess shall be carried forward and be deemed for the purposes of this section to be expenditure incurred by the taxpayer during the next succeeding year of assessment in respect of the construction of soil erosion works.

[S. 17A inserted by s. 11 of Act 76 of 1968.]

#### **18 Deduction in respect of medical and dental expenses**

(1) Notwithstanding the provisions of section 23, there shall be allowed to be deducted from the income of any taxpayer who is a natural person an allowance in respect of-

- (a) any contributions made by him during the year of assessment to any medical scheme registered under the provisions of the Medical Schemes Act, 1998 (Act 131 of 1998), or any fund which is registered under any similar provision contained in the laws of any other country where the medical scheme is registered; and

[Para. (a) substituted by s. 23 of Act 53 of 1999 and by s. 26 of Act 59 of 2000.]

- (b) any amounts (other than amounts recoverable by the taxpayer or his spouse) which were paid by the taxpayer during the year of assessment to any duly registered-
  - (i) medical practitioner, dentist, optometrist, homeopath, naturopath, osteopath, herbalist, physiotherapist, chiropractor or orthoptist for professional services

rendered or medicines supplied to; or

[Sub-para. (i) substituted by s. 15 (a) of Act 96 of 1981 and by s. 19 (a) of Act 129 of 1991.]

- (ii) nursing home or hospital or any duly registered or enrolled nurse, midwife or nursing assistant (or to any nursing agency in respect of the services of such a nurse, midwife or nursing assistant) in respect of the illness or confinement of; or
- (iii) pharmacist for medicines supplied on the prescription of any person mentioned in subparagraph (i) for,

[Sub-para. (iii) substituted by s. 19 (b) of Act 129 of 1991.]

the taxpayer or his spouse or his children or stepchildren; and

[Para. (b) amended by s. 19 (a) and (b) of Act 129 of 1991 and by s. 16 (a) of Act 21 of 1995.]

- (c) any amounts (other than amounts recoverable by the taxpayer or his spouse) which were paid by the taxpayer during the year of assessment in respect of expenditure incurred outside the Republic on services rendered or medicines supplied to the taxpayer or his spouse or his children or stepchildren and which are substantially similar to the services and medicines in respect of which a deduction may be made under paragraph (b) of this subsection; and

[Para. (c) inserted by s. 15 (b) of Act 96 of 1981 and substituted by s. 19 (c) of Act 129 of 1991 and by s. 16 (b) of Act 21 of 1995.]

- (d) any expenditure (other than expenditure recoverable by the taxpayer or his spouse) necessarily incurred and paid by the taxpayer in consequence of any physical disability suffered by the taxpayer, his spouse or child or stepchild:

[Para. (d) inserted by s. 14 (b) of Act 90 of 1988 and substituted by s. 19 (c) of Act 129 of 1991 and by s. 16 (b) of Act 21 of 1995.]

Provided that any amount paid by the estate of a deceased taxpayer which would, if it had been paid by the taxpayer, have been taken into account for a deduction under this section, shall for the purposes of this section be deemed to have been paid by the taxpayer on the day before his death.

[Sub-s. (1) amended by s. 14 (c) of Act 90 of 1988, by s. 11 of Act 70 of 1989, by s. 16 (a) of Act 101 of 1990 and by s. 19 (d) of Act 129 of 1991.]

(2) The allowance under subsection (1) shall be-

- (a) where the taxpayer is entitled to a rebate under section 6 (2) (b), the sum of the amounts referred to in that subsection; or
- (b) where the taxpayer or his spouse, child or stepchild referred to in subsection (1) (d) is a handicapped person and the taxpayer is not entitled to a rebate under section 6 (2) (b), so much of the sum of the amounts referred to in subsection (1) as exceeds R500; or
- (c) in any other case, so much of the sum of such amounts as exceeds 5 per cent of the taxpayer's taxable income as determined before granting an allowance under this section;

[Para. (c) substituted by s. 19 of Act 30 of 2002.]

[Sub-s. (2) amended by s. 15 of Act 121 of 1984, by s. 11 of Act 96 of 1985, by s. 14 of Act 90 of 1988, by s. 16 of Act 101 of 1990, by s. 18 (a) of Act 141 of 1992 and by s. 16 (c) of Act 21 of 1995.]

(3) For the purposes of this section 'handicapped person' means-

- (a) a blind person as contemplated in the Blind Persons Act, 1968 (Act 26 of 1968);
- (b) a deaf person, being a person whose hearing is impaired to such an extent that he cannot use it as a primary means of communication;
- (c) a person who as a result of a permanent disability requires a wheelchair, calliper or crutch to assist him to move from one place to another;
- (d) a person who requires an artificial limb; or
- (e) a person who suffers from a mental illness as defined in section 1 of the Mental Health Act, 1973 (Act 18 of 1973).

[Para. (e) added by s. 16 (f) of Act 21 of 1995.]

[Sub-s. (3) added by s. 18 (b) of Act 141 of 1992.]

(4) For the purposes of this section the expression 'child or stepchild' means the taxpayer's child or stepchild who was alive during any portion of the year of assessment, and who on the last day of the year of assessment-

- (a) was unmarried and was not or would not, had he lived, have been-
  - (i) over the age of 18 years;
  - (ii) over the age of 21 years and was wholly or partially dependent for his

- maintenance upon the taxpayer and has not become liable for the payment of normal tax in respect of such year; or
- (iii) over the age of 26 years and was wholly or partially dependent for his maintenance upon the taxpayer and has not become liable for the payment of normal tax in respect of such year and was a full-time student at an educational institution of a public character; or
  - (b) in the case of any other child or stepchild, was incapacitated by physical or mental infirmity from maintaining himself and was wholly or partially dependent for his maintenance upon the taxpayer and has not become liable for the payment of normal tax in respect of the year of assessment:

Provided that any child or stepchild of the taxpayer who has become liable for the payment of normal tax in respect of any year of assessment solely by reason of the provisions of section 5 (1A) shall be deemed for the purposes of this section not to have become liable for the payment of normal tax in respect of such year.

[Sub-s. (4) added by s. 16 (g) of Act 21 of 1995.]

[S. 18 substituted by s. 15 of Act 95 of 1967, by s. 12 of Act 76 of 1968, by s. 17 (1) of Act 89 of 1969 and by s. 14 (1) of Act 52 of 1970, repealed by s. 15 of Act 88 of 1971 and inserted by s. 12 of Act 104 of 1980.]

### 18A Deduction of donations to certain public benefit organisations

(1) Notwithstanding the provisions of section 23, there shall be allowed to be deducted from the taxable income of any taxpayer so much of the sum of any *bona fide* donations by that taxpayer in cash or of property made in kind, which was actually paid or transferred during the year of assessment to-

- (a) any-
  - (i) public benefit organisation approved by the Commissioner under section 30; or
  - (ii) institution, board or body contemplated in section 10 (1) (cA) (i), which-
    - (aa) carries on in the Republic any public benefit activity contemplated in Part II of the Ninth Schedule, or any other activity determined from time to time by the Minister by notice in the *Gazette* for the purposes of this section; and
    - (bb) complies with the requirements contemplated in subsection (1C), if applicable, and any additional requirements prescribed by the Minister in terms of subsection (1A);

[Subitem (bb) substituted by s. 34 (1) (c) of Act 45 of 2003.]

[Para. (a) amended by s. 20 (b) of Act 30 of 2002.]

- (b) any public benefit organisation approved by the Commissioner under section 30, which-
  - (i) provides funds or assets to any public benefit organisation, institution, board or body contemplated in paragraph (a);

[Sub-para. (i) substituted by s. 20 (c) of Act 30 of 2002 and by s. 34 (1) (d) of Act 45 of 2003.]

- (ii) during the year of assessment preceding the year of assessment of such public benefit organisation during which the donation is received, distributed or incurred the obligation to so distribute at least 75 per cent of the funds received by such organisation by way of donations which qualified for a deduction in terms of this section: Provided that the Commissioner may, upon good cause shown and subject to such conditions as he or she may determine, either generally or in a particular instance, waive, defer or reduce the obligation to distribute any funds, having regard to the public interest and the purpose for which the relevant organisation wishes to accumulate those funds,

[Sub-para. (ii) substituted by s. 34 (1) (e) of Act 45 of 2003.]

as does not exceed five per cent of the taxable income of the taxpayer as calculated before allowing any deduction under this section or section 18;

[Para. (b) amended by s. 34 (1) (e) of Act 45 of 2003.]

- (c) the Government, any provincial administration or local authority as contemplated in section 10 (1) (a) or (b) to be used for purposes of any activity contemplated in Part II of the Ninth Schedule;

[Para. (c) inserted by s. 34 (1) (b) of Act 45 of 2003.]

[Sub-s. (1) amended by s. 20 (a) and (d) of Act 30 of 2002 and by s. 34 (1) (a) of Act 45 of 2003.]

(1A) The Minister may, by regulation, prescribe additional requirements with which a public

benefit organisation, institution, board or body or the government, provincial administration or local authority carrying on any specific public benefit activity identified by the Minister in the regulations, must comply before any donation made to that public benefit organisation, institution, board or body or the government, provincial administration or local authority shall be allowed as a deduction under subsection (1).

[Sub-s. (1A) inserted by s. 20 (e) of Act 30 of 2002 and substituted by s. 34 (1) (f) of Act 45 of 2003.]

(1B) Any activity determined by the Minister in terms of subsection (1) (a) or any requirements prescribed by the Minister in terms of subsection (1A), must be tabled in Parliament within a period of 12 months after the date of publication by the Minister of that activity or those requirements, as the case may be, in the *Gazette*, for incorporation into this Act.

[Sub-s. (1B) inserted by s. 20 (e) of Act 30 of 2002.]

(1C) The constitution or founding document of a public benefit organisation carrying on the activity contemplated in paragraph 4 of Part II of the Ninth Schedule, must expressly provide that the organisation-

- (a) may not issue any receipt contemplated in subsection (2) in respect of any donation made by a person to that public benefit organisation, unless-
  - (i) that donation is made by that person on or after 1 August 2002, but before 1 August 2005; and
  - (ii) that person (in the case of a company, together with any other company in the same group of companies as that company) has during the relevant year of assessment of that person donated an amount of at least R1 million to that organisation;
- (b) must ensure that every donation contemplated in paragraph (a), in respect of which such a receipt has been issued, will be matched by a donation to that organisation of the same amount made by a person who is not a resident and which is made from funds generated and held outside the Republic; and
- (c) must utilise the amount of-
  - (i) all donations contemplated in paragraph (a), in respect of which such a receipt has been issued, and all income derived therefrom, in the Republic in carrying on that activity; and
  - (ii) all donations contemplated in paragraph (b), either in the Republic in carrying on that activity, or in respect of a transfrontier conservation area of which the Republic forms part.

[Sub-s. (1C) inserted by s. 34 (1) (g) of Act 45 of 2003.]

(2) Any claim for a deduction in respect of any donation under subsection (1) shall not be allowed unless supported by a receipt issued by the public benefit organisation, institution, board or body or the government, provincial administration or local authority concerned, on which the following details are given, namely-

- (a) the reference number of the public benefit organisation, institution, board or body issued by the Commissioner for the purposes of this section;
- (b) the date of the receipt of the donation;
- (c) the name of the public benefit organisation, institution, board or body or the government, provincial administration or local authority which received the donation, together with an address to which enquiries may be directed in connection therewith;

[Para. (c) substituted by s. 34 (1) (i) of Act 45 of 2003.]

- (d) the name and address of the donor;
- (e) the amount of the donation or the nature of the donation (if not made in cash);
- (f) a certification to the effect that the receipt is issued for the purposes of section 18A of the Income Tax Act, 1962, and that the donation has been or will be used exclusively for the object of the public benefit organisation, institution, board or body concerned or, in the case of the government, provincial administration or local authority in carrying on the relevant public benefit activity.

[Para. (f) substituted by s. 34 (1) (j) of Act 45 of 2003.]

[Sub-s. (2) amended by s. 34 (1) (h) of Act 45 of 2003.]

(2A) A public benefit organisation, institution, board, body, government, provincial administration or local authority may only issue a receipt contemplated in subsection (2) in respect of any donation to the

extent that-

- (a) in the case of a public benefit organisation, institution, board or body contemplated in subsection (1) (a) which carries on activities contemplated in Part I of the Ninth Schedule, that donation will be utilised solely in carrying on activities contemplated in Part II of the Ninth Schedule;
- (b) in the case of a public benefit organisation contemplated in subsection (1) (b) which provides funds to public benefit organisations, institutions, boards or bodies that carry on public benefit activities contemplated in Part II of the Ninth Schedule and to other entities, that donation will be utilised solely to provide funds to a public benefit organisation, institution, board or body contemplated in subsection (1) (a), which will utilise those funds solely in carrying on activities contemplated in Part II of the Ninth Schedule; or
- (c) in the case of the government, provincial administration or local authority, that donation will be utilised solely in carrying on activities contemplated in Part II of the Ninth Schedule.

[Sub-s. (2A) inserted by s. 34 (1) (k) of Act 45 of 2003.]

(2B) A public benefit organisation, institution, board or body contemplated in subsection (2A), must together with its annual return for a year of assessment submit to the Commissioner an audit certificate confirming that all donations received or accrued in that year in respect of which receipts were issued in terms of subsection (2), were utilised in the manner contemplated in subsection (2A).

[Sub-s. (2B) inserted by s. 34 (1) (k) of Act 45 of 2003.]

(2C) The Accounting Authority contemplated in the Public Finance Management Act, 1997 (Act 1 of 1999) for the government, provincial administration or local authority which issued any receipts in terms of subsection (2), must on an annual basis submit an audit certificate to the Commissioner confirming that all donations received or accrued in the year in respect of which receipts were so issued were utilised in the manner contemplated in subsection (2A).

[Sub-s. (2C) inserted by s. 34 (1) (k) of Act 45 of 2003.]

(3) If any deduction is claimed by any taxpayer under the provisions of subsection (1) in respect of any donation of property in kind, the amount of such deduction shall be deemed to be an amount equal to-

- (a) where such property constitutes -
  - (i) a financial instrument which is trading stock of the taxpayer, the lower of fair market value of that financial instrument on the date of that donation or the amount which has been taken into account for the purposes of section 22 (8); or
  - (ii) any other trading stock of the taxpayer (including any livestock or produce in respect of which the provisions of paragraph 11 of the First Schedule are applicable), the amount which has been taken into account for the purposes of section 22 (8) or, in the case of such livestock or produce, the said paragraph 11, in relation to the donation of such property; or

[Para. (a) substituted by s. 34 (1) (l) of Act 45 of 2003.]

- (b) where such property (other than trading stock) constitutes an asset used by the taxpayer for the purposes of his trade, the lower of-
  - (i) the fair market value of that property on the date of that donation; or
  - (ii) the cost to the taxpayer of such property less any allowance (other than any investment allowance) allowed to be deducted from the income of the taxpayer under the provisions of this Act in respect of that asset; or

[Para. (b) substituted by s. 34 (1) (l) of Act 45 of 2003.]

- (c) where such property does not constitute trading stock of the taxpayer or an asset used by him for the purposes of his trade, the lower of-
  - (i) the fair market value of that property on the date of that donation; or
  - (ii) the cost to the taxpayer of such asset, less, in the case of a movable asset which has deteriorated in condition by reason of use or other causes, a depreciation allowance calculated in the manner contemplated in section 8 (5) (bB) (i); or

[Para. (c) substituted by s. 34 (1) (l) of Act 45 of 2003.]

- (d) where such property is purchased, manufactured, erected, assembled, installed or constructed by or on behalf of the taxpayer in order to form the subject of the said donation, the lower of-



- (i) the fair market value of that property on the date of that donation; or
- (ii) the cost to the taxpayer of such property.

[Para. (d) substituted by s. 34 (1) (l) of Act 45 of 2003.]

(3A) No deduction shall be allowed under this section in respect of the donation of any property in kind which constitutes, or is subject to any fiduciary right, usufruct or other similar right, or which constitutes an intangible asset or financial instrument, unless that financial instrument is -

- (a) a share in a listed company; or
- (b) issued by a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act 97 of 1990).

[Sub-s. (3A) inserted by s. 34 (1) (m) of Act 45 of 2003.]

(4) The provisions of subsections (9) and (10) of section 30 shall apply *mutatis mutandis* in respect of any institution, board or body contemplated in subsection (1) (a).

(5) If the Commissioner has reasonable grounds for believing that any person who is in a fiduciary capacity responsible for the management or control of the income or assets of any public benefit organisation, institution, board or body has with intent -

- (a) in any material way failed to ensure that the objects for which the public benefit organisation, institution, board or body was established are carried out or has expended moneys belonging to the public benefit organisation, institution, board or body for the purposes not covered by such objects; or
- (b) issued or allowed a receipt to be issued to any taxpayer for the purposes of this section in respect of any fees or other emoluments payable to such organisation, institution, board or body by such taxpayer,

the Commissioner may by notice in writing addressed to that person direct that donations to such fund shall not qualify for deduction under the provisions of this section in respect of any year of assessment specified in such notice, and any claim by any taxpayer for such deduction shall accordingly be disallowed.

(5A) If the Commissioner has reasonable grounds for believing that any regulating or co-ordinating body of a group of public benefit organisations, contemplated in section 30 (3A) or subsection (6)-

- (a) with intent or negligently fails to take any steps contemplated in that section or subsection, to exercise control over any public benefit organisation in that group; or
- (b) fails to notify the Commissioner where it becomes aware of any material failure by any public benefit organisation over which it exercises control to comply with any provision of this section,

the Commissioner may by notice in writing addressed to that regulating or co-ordinating body direct that donations to public benefit organisations, institutions, boards or bodies in that group shall not qualify for deduction under the provisions of this section in respect of any year of assessment specified in such notice and any claim by any taxpayer for such deduction shall accordingly be disallowed.

[Sub-s. (5A) added by s. 20 (f) of Act 30 of 2002.]

(6) The Commissioner may, for the purposes of this section, approve a group of institutions, boards or bodies contemplated in subsection (1) (a) (ii), sharing a common purpose which carry on any public benefit activity under the direction or supervision of a regulating or co-ordinating body, where that body takes such steps, as prescribed by the Commissioner, to exercise control over those institutions, boards or bodies in order to ensure that they comply with the provisions of this section.

[Sub-s. (6) added by s. 20 (f) of Act 30 of 2002.]

[S. 18A inserted by s. 15 of Act 52 of 1970, amended by s. 16 (1) of Act 88 of 1971, by s. 13 of Act 90 of 1972, by s. 14 of Act 65 of 1973, by s. 16 of Act 69 of 1975 and by s. 13 (1) of Act 104 of 1980, substituted by s. 16 (1) of Act 96 of 1981, amended by s. 14 (1) of Act 91 of 1982, by s. 16 (1) of Act 94 of 1983 by s. 16 (1) of Act 121 of 1984, by s. 15 of Act 90 of 1998, by s. 17 of Act 101 of 1990, by s. 20 of Act 129 of 1991 and by s. 11 (1) of Act 36 of 1996 and substituted by s. 24 (1) of Act 30 of 2000.]

## 18B .....

[S. 18B inserted by s. 11 (1) of Act 65 of 1986, amended by s. 19 of Act 141 of 1992 and repealed by s. 14 of Act 21 of 1994.]

## 19 .....

### Cases

[S. 19 amended by s. 15 of Act 90 of 1962, by s. 6 of Act 6 of 1963, by s. 17 of Act 88 of 1965, by s. 17 (1)

of Act 88 of 1971, by s. 14 (1) of Act 90 of 1972, by s. 18 of Act 85 of 1974, by s. 14 of Act 104 of 1980, by s. 17 of Act 96 of 1981, by s. 15 (1) of Act 91 of 1982, by s. 17 (1) of Act 94 of 1983, by s. 17 of Act 121 of 1984, by s. 12 (1) of Act 96 of 1985, by s. 12 of Act 65 of 1986, by s. 4 (1) of Act 108 of 1986, by s. 13 of Act 85 of 1987, by s. 18 (1) of Act 101 of 1990, by s. 21 of Act 129 of 1991 and by s. 33 of Act 30 of 1998 and repealed by s. 25 (1) of Act 30 of 2000.]

## 20 Set-off of assessed losses

### ▣ Cases

(1) For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall, subject to section 20A, be set off against the income so derived by such person-

- (a) any balance of assessed loss incurred by the taxpayer in any previous year which has been carried forward from the preceding year of assessment: Provided that-
  - (i) no person whose estate has been voluntarily or compulsorily sequestrated shall be entitled to carry forward any assessed loss incurred prior to the date of sequestration, unless the order of sequestration has been set aside, in which case the amount to be so carried forward shall be reduced by an amount which was allowed to be set off against the income of the insolvent estate of such person from the carrying on of any trade in the Republic;
 

[Sub-para. (i) substituted by s. 15 of Act 28 of 1997.]
  - (ii) the balance of assessed loss shall be reduced by the amount or value of any benefit received by or accruing to a person resulting from a concession granted by or a compromise made with his creditors whereby his liabilities to them have been reduced or extinguished, provided such liabilities arose in the ordinary course of trade;
  - (iii) .....

[Para. (iii) added by s. 19 (a) of Act 101 of 1990 and deleted by s. 17 of Act 21 of 1995.]

- (b) any assessed loss incurred by the taxpayer during the same year of assessment in carrying on any other trade either alone or in partnership with others, otherwise than as a member of a company the capital whereof is divided into shares:

[Para. (b) substituted by s. 20 (b) of Act 59 of 2000.]

Provided that there shall not be set off against any amount-

- (a) distributed to such person by any pension fund or provident fund which is included in the gross income of such person in terms of paragraph (eB) of the definition of 'gross income' in section 1, any-
  - (i) balance of assessed loss; or
  - (ii) 'assessed loss' as defined in subsection (2) incurred in such year before taking into account any amount of such distribution; or
- (b) derived by any person from the carrying on within the Republic of any trade, any-
  - (i) assessed loss incurred by such person during such year; or
  - (ii) any balance of assessed loss incurred in any previous year of assessment,

[Para. (b) substituted by s. 35 (1) (b) of Act 45 of 2003.]

in carrying on any trade outside the Republic.

[Sub-s. (1) amended by s. 26 of Act 30 of 2000, by s. 20 (a) and (c) of Act 59 of 2000 and by s. 35 (1) (a) and (b) of Act 45 of 2003.]

(1)bis .....

[Sub-s. (1)bis inserted by s. 13 of Act 90 of 1964 and deleted by s. 18 of Act 88 of 1965.]

(2) For the purposes of this section 'assessed loss' means any amount by which the deductions admissible under sections 11 to 19, inclusive, exceeded the income in respect of which they are so admissible.

[Sub-s. (2) substituted by s. 16 of Act 113 of 1993 and by s. 23 of Act 74 of 2002.]

(2A) In the case of any taxpayer other than a company-

- (a) the provisions of subsections (1) and (2) shall *mutatis mutandis* apply for the purpose of determining the taxable income derived by such taxpayer otherwise than from carrying on any trade, the reference in subsection (1) to 'taxable income derived by any person from carrying on any trade in the Republic' and the reference in that subsection to 'the income so derived' being respectively construed as including a reference to taxable

income derived by the taxpayer otherwise than from carrying on any trade and a reference to income so derived; and

- (b) the said taxpayer shall, subject to the provisos to subsection (1), not be prevented from carrying forward a balance of assessed loss merely by reason of the fact that he has not derived any income during any year of assessment.

[Sub-s. (2A) inserted by s. 15 (1) of Act 65 of 1973.]

(3) .....

[Sub-s. (3) added by s. 13 (1) of Act 76 of 1968 and deleted by s. 19 (b) of Act 101 of 1990.]

(4) .....

[Sub-s. (4) added by s. 18 of Act 89 of 1969 and deleted by s. 18 of Act 94 of 1983.]

(5) .....

[Sub-s. (5) added by s. 18 of Act 89 of 1969, amended by s. 8 (1) of Act 101 of 1978 and deleted by s. 18 of Act 94 of 1983.]

## **20A Ring-fencing of assessed losses of certain trades**

(1) Subject to subsection (3), where the circumstances in subsection (2) apply during any year of assessment in respect of any trade carried on by a natural person, any assessed loss incurred during that year in carrying on that trade may not be set off against any income of that person derived during that year otherwise than from carrying on that trade, notwithstanding section 20 (1) (b).

(2) Subsection (1) applies where the taxable income of a person for a year of assessment (before taking into account the set-off of any assessed losses incurred in carrying on any trade during that year and the balance of assessed loss carried forward from the preceding year) equals or exceeds the amount at which the maximum marginal rate of tax chargeable in respect of the taxable income of individuals becomes applicable, and where-

- (a) that person has, during the five year period ending on the last day of that year of assessment, incurred an assessed loss in at least three years of assessment in carrying on the trade contemplated in subsection (1) (before taking into account any balance of assessed loss carried forward); or
- (b) the trade contemplated in subsection (1), in respect of which the assessed loss was incurred constitutes-
- (i) any sport practised by that person or any relative;
  - (ii) any dealing in collectibles by that person or any relative;
  - (iii) the rental of residential accommodation, unless at least 80 per cent of the residential accommodation is used by persons who are not relatives of that person for at least half of the year of assessment;
  - (iv) the rental of vehicles, aircraft or boats as defined in the Eighth Schedule, unless at least 80 per cent of the vehicles, aircraft or boats are used by persons who are not relatives of that person for at least half of the year of assessment;
  - (v) animal showing by that person or any relative;
  - (vi) farming or animal breeding, unless that person carries on farming, animal breeding or activities of a similar nature on a full-time basis;
  - (vii) any form of performing or creative arts practised by that person or any relative; or
  - (viii) any form of gambling or betting practised by that person or any relative.

(3) The provisions of subsection (1) do not apply in respect of an assessed loss incurred by a person during any year of assessment from carrying on any trade contemplated in subsection (2) (a) or (b), where that trade constitutes a business in respect of which there is a reasonable prospect of deriving taxable income (other than taxable capital gain) within a reasonable period having special regard to-

- (a) the proportion of the gross income derived from that trade in that year of assessment in relation to the amount of the allowable deductions incurred in carrying on that trade during that year;
- (b) the level of activities carried on by that person or the amount of expenses incurred by that person in respect of advertising, promoting or selling in carrying on that trade;
- (c) whether that trade is carried on in a commercial manner, taking into account -
- (i) the number of full-time employees appointed for purposes of that trade (other than persons partly or wholly employed to provide services of a domestic or private nature);
  - (ii) the commercial setting of the premises where the trade is carried on;

- (iii) the extent of the equipment used exclusively for purposes of carrying on that trade; and
- (iv) the time that the person spends at the premises conducting that business;
- (d) the number of years of assessment during which assessed losses were incurred in carrying on that trade in relation to the period from the date when that person commenced carrying on that trade and taking into account-
  - (i) any unexpected events giving rise to any of those assessed losses; and
  - (ii) the nature of the business involved;
- (e) the business plans of that person and any changes thereto to ensure that taxable income is derived in future from carrying on that trade; and
- (f) the extent to which any asset attributable to that trade is used, or is available for use, by that person or any relative of that person for recreational purposes or personal consumption.

(4) Subsection (3) does not apply in respect of a trade contemplated in subsection (2) (b) (other than farming) carried on by a person during any year of assessment where that person has, during the ten year period ending on the last day of that year of the assessment, incurred an assessed loss in at least six years of assessment in carrying on that trade (before taking into account any balance of assessed loss carried forward).

(5) Notwithstanding section 20 (1) (a), any balance of assessed loss carried forward from the preceding year of assessment, which is attributable to an assessed loss in respect of which subsection (1) applied in that preceding year or any prior year of assessment, may not be set off against any income derived by that person otherwise than from carrying on the trade contemplated in subsection (1).

(6) For the purposes of this section and section 20, the income derived from any trade referred to in subsections (1) or (5), includes any amount-

- (a) which is included in the income of that person in terms of section 8 (4) in respect of an amount deducted in any year of assessment in carrying on that trade; or
- (b) derived from the disposal after cessation of that trade of any assets used in carrying on that trade.

(7) Notwithstanding anything to the contrary contained in this Act, all farming activities carried on by a person shall be deemed to constitute a single trade carried on by that person for the purposes of this section.

(8) Where the provisions of subsection (2) apply during any year of assessment in respect of any trade carried on by a person, that person must indicate the nature of the business in his or her return contemplated in section 66 for that year of assessment.

(9) For the purposes of subsections (2) (a) and (4), any assessed loss incurred in any year of assessment ending on or before 29 February 2004 shall not be taken into account.

(10) For the purposes of this section-

- (a) 'assessed loss' means 'assessed loss' as defined in section 20 (2); and
- (b) 'relative' in relation to a person means a spouse, parent, child, stepchild, brother, sister, grandchild or grandparent of that person.

[S. 20A inserted by s. 19 of Act 89 of 1969, amended by s. 16 (1) of Act 52 of 1970, by s. 15 of Act 90 of 1972, by s. 19 (1) of Act 85 of 1974, by s. 17 of Act 69 of 1975, by s. 15 of Act 113 of 1977, by s. 12 of Act 104 of 1979, by s. 15 of Act 104 of 1980, by s. 18 of Act 96 of 1981, by s. 16 of Act 91 of 1982, by s. 13 of Act 65 of 1986, by s. 14 of Act 85 of 1987 and by s. 16 (1) of Act 90 of 1988, repealed by s. 20 of Act 101 of 1990 and inserted by s. 36 (1) of Act 45 of 2003.]

## **20B Limitation of losses from disposal of certain assets**

(1) Any deduction which is allowable during any year of assessment under section 11 (o) in respect of the disposal by a person during that year of any asset the full consideration of which will not accrue to that person during that year, must be disregarded in that year.

(2) So much of any amount disregarded in terms of subsection (1), which has not otherwise been allowed as a deduction, may be deducted from the income of that person in any subsequent year of assessment to the extent that any consideration which is received by or accrued to that person in that subsequent year from that disposal is included in the income of that person.

(3) If during any year of assessment a person contemplated in subsection (1) proves that no further consideration will accrue to him or her in that year and any subsequent year as contemplated in subsection (2), so much of the amount which was disregarded in terms of subsection (1) as has not been allowed as a

deduction in any year, must be allowed as a deduction from the income of that person in that year of assessment.

[S. 20B inserted by s. 20 (1) of Act 32 of 2004.]

## **21 Deduction of alimony, allowance or maintenance**

The taxpayer shall have his taxable income reduced by so much of any amount payable by him to or on behalf of his spouse or former spouse under any order of divorce or judicial separation granted in consequence of proceedings instituted not later than the twenty-first day of March, 1962, or under any written agreement of separation entered into not later than that date, by way of alimony or allowance or maintenance of his spouse or former spouse and any children, as the Commissioner is satisfied has been or will in respect of the year or period of assessment in question be paid out of the taxable income of the taxpayer: Provided that for the purposes of this section any order of divorce or judicial separation (hereinafter referred to as the subsequent order) which in effect supersedes any such first-mentioned order of judicial separation or written agreement of separation and does not vary the amount of alimony, allowance or maintenance payable thereunder, shall not affect the rights which any person may have under this section, and in the case of any such person and the spouse or former spouse of such person the subsequent order shall, for the purposes of this section and the provisions of section 10 (1) (*u*), be deemed to have been granted in consequence of proceedings instituted on or before the said date.

[S. 21 substituted by s. 16 of Act 90 of 1962 and by s. 16 (1) of Act 90 of 1972 and amended by s. 16 of Act 104 of 1980 and by s. 18 of Act 21 of 1995.]

### **21bis .....**

#### **Cases**

[S. 21bis inserted by s. 7 of Act 6 of 1963, substituted by s. 20(1) of Act 85 of 1974, amended by s. 18 of Act 69 of 1975 and repealed by s. 19 of Act 94 of 1983.]

### **21ter .....**

[S. 21ter inserted by s. 20 (1) of Act 89 of 1969, amended by s. 17 of Act 52 of 1970, by s. 18 (1) of Act 88 of 1971 and amended by s. 18 (1) of Act 88 of 1971, by s. 17 of Act 90 of 1972, by s. 16 (1) of Act 65 of 1973, by s. 21 (1) of Act 85 of 1974, by s. 19 of Act 69 of 1975, by s. 14 (1) of Act 103 of 1976, by s. 16 (1) of Act 113 of 1977, by s. 17 (1) of Act 91 of 1982 and by s. 1 of Act 49 of 1996 and repealed by s. 24 (1) of Act 53 of 1999.]

### **21quat .....**

[S. 21quat inserted by s. 17 of Act 65 of 1973, amended by s. 22 (1) of Act 85 of 1974, by s. 17 of Act 104 of 1980, by s. 19 of Act 96 of 1981 and by s. 18 of Act 121 of 1984 and repealed by s. 17 of Act 90 of 1988.]

## **22 Amounts to be taken into account in respect of values of trading stocks**

#### **Cases**

(1) The amount which shall, in the determination of the taxable income derived by any person during any year of assessment from carrying on any trade (other than farming), be taken into account in respect of the value of any trading stock held and not disposed of by him at the end of such year of assessment, shall be-

- (a) in the case of trading stock other than trading stock contemplated in paragraph (b), the cost price to such person of such trading stock, less such amount as the Commissioner may think just and reasonable as representing the amount by which the value of such trading stock, not being shares held by any company in any other company, has been diminished by reason of damage, deterioration, change in fashion, decrease in the market value or for any other reason satisfactory to the Commissioner; and
- (b) in the case of any trading stock which consists of any instrument, interest rate agreement or option contract in respect of which a company has made an election which has taken effect as contemplated in section 24J (9), the market value of such trading stock as contemplated in such section; and

[Para. (b) substituted by s. 25 (1) (a) of Act 53 of 1999.]

[Sub-s. (1) substituted by s. 19 (1) (a) of Act 21 of 1995.]

(1A) Where in respect of any year of assessment ending after the commencement date defined in section 1 of the Value-Added Tax Act, 1991, any amount of sales tax referred to in section 23C (2) which was included in the cost price to the taxpayer of any trading stock is deemed by that section to have been recovered or recouped for the purposes of section 8 (4) (a), the cost of such trading stock held and not

disposed of by the taxpayer at the end of such year shall be deemed to have been reduced by the said amount.

[Sub-s. (1A) inserted by s. 22 of Act 129 of 1991.]

(2) The amounts which shall in the determination of the taxable income derived by any person during any year of assessment from carrying on any trade (other than farming), be taken into account in respect of the value of any trading stock held and not disposed of by him at the beginning of any year of assessment, shall-

- (a) if such trading stock formed part of the trading stock of such person at the end of the immediately preceding year of assessment be the amount which was, in the determination of the taxable income of such person for such preceding year of assessment, taken into account in respect of the value of such trading stock at the end of such preceding year of assessment; or
- (b) if such trading stock did not form part of the trading stock of such person at the end of the immediately preceding year of assessment, be the cost price to such person of such trading stock.

(2A) (a) Where any person carries on any construction, building, engineering or other trade in the course of which improvements are effected by him to fixed property owned by any other person, any such improvements effected by him and any materials delivered by him to such fixed property which are no longer owned by him shall, until the contract under which such improvements are effected has been completed, be deemed for the purposes of this section to be trading stock held and not disposed of by him.

(b) For the purposes of paragraph (a), a contract shall be deemed to have been completed when the taxpayer has carried out all the obligations imposed upon him under the contract and has become entitled to claim payment of all amounts due to him under the contract.

[Sub-s. (2A) inserted by s. 21 (a) of Act 101 of 1990.]

(3) (a) For the purposes of this section the cost price at any date of any trading stock in relation to any person shall-

- (i) subject to subparagraph (ii), be the cost incurred by such person, whether in the current or any previous year of assessment in acquiring such trading stock plus, subject to the provisions of paragraph (b), any further costs incurred by him up to and including the said date in getting such trading stock into its then existing condition and location, but excluding any exchange difference as defined in section 24I (1) relating to the acquisition of such trading stock; or
- (ii) in the case of any trading stock which is in terms of paragraph 12 (2) (c) of the Eighth Schedule treated as having been acquired at a cost equal to the market value, be that market value.

[Para. (a) substituted by s. 17 (1) (a) of Act 113 of 1993 and by s. 12 (a) of Act 5 of 2001.]

(b) The further costs which in terms of paragraph (a) (i) are required to be included in the cost price of any trading stock shall be such costs as in terms of any generally accepted accounting practice approved by the Commissioner should be included in the valuation of such trading stock.

[Para. (b) substituted by s. 12 (a) of Act 5 of 2001.]

(c) .....

[Para. (c) deleted by s. 17 (1) (b) of Act 113 of 1993.]

(d) .....

[Para. (d) amended by s. 14 (1) (a) of Act 65 of 1986 and deleted by s. 17 (1) (b) of Act 113 of 1993.]

[Sub-s. (3) substituted by s. 19 (1) (a) of Act 121 of 1984.]

(3A) For the purposes of this section the cost price of trading stock referred to in subsection (2A) shall be the sum of the cost to the taxpayer of material used by him in effecting the relevant improvements, and such further costs incurred by him as in accordance with generally accepted accounting practice are to be regarded as having been incurred directly in connection with the relevant contract, and such portion of any other costs incurred by him in connection with the relevant contract and other contracts as in accordance with generally accepted accounting practice are to be regarded as having been incurred in connection with the relevant contract, less a deduction of so much of-

- (a) any income received by or accrued to the taxpayer in respect of the relevant contract;
- (b) any portion of an amount payable to the taxpayer under the relevant contract (but not exceeding 15 per cent of the total amount payable to him under such contract) the payment of which has been withheld as a retention; and

(c) any of the said costs included under this subsection as exceed that portion of the contract price which relates to the improvements actually effected by him, as does not exceed the said sum.

[Sub-s. (3A) inserted by s. 20 (a) of Act 94 of 1983, deleted by s. 19 (1) (b) of Act 121 of 1984 and inserted by s. 21 (b) of Act 101 of 1990.]

(3B) Where in consequence of the amendment effected to the definition of 'trading stock' in section 1 of this Act by section 2 (1) (a) of the Income Tax Act, 1990, or the insertion of subsection (2A) in this section by section 21 (a) of that Act, the value of trading stock held and not disposed of by any person at the end of his first year of assessment ending on or after 1 January 1991, includes the value of any trading stock (hereinafter referred to as new trading stock) of any class of trading stock which was not included by such person in the trading stock held and not disposed of by him at the end of the latest year of assessment in respect of which he had not later than the date of promulgation of the said Act submitted a return of income to the Commissioner, there shall, at the option of such person, be deducted from the value of the trading stock held and not disposed of by him at the end of the said first year and at the end of the eight succeeding years of assessment (hereinafter referred to as the second to ninth years, in chronological order), an amount (not exceeding the value of the trading stock held and not disposed of by such person at the end of the year of assessment in question) equal to-

- (a) as respects trading stock held and not disposed of at the end of the said first year, 97,5 per cent of the value of such new trading stock;
- (b) as respects trading stock held and not disposed of at the end of the second year, 95 per cent of the value of such new trading stock;
- (c) as respects trading stock held and not disposed of at the end of the third year, 90 per cent of the value of such new trading stock;
- (d) as respects trading stock held and not disposed of at the end of the fourth year, 85 per cent of the value of such new trading stock;
- (e) as respects trading stock held and not disposed of at the end of the fifth year, 75 per cent of the value of such new trading stock;
- (f) as respects trading stock held and not disposed of at the end of the sixth year, 65 per cent of the value of such new trading stock;
- (g) as respects trading stock held and not disposed of at the end of the seventh year, 50 per cent of the value of such new trading stock;
- (h) as respects trading stock held and not disposed of at the end of the eighth year, 35 per cent of the value of such new trading stock; and
- (i) as respects trading stock held and not disposed of at the end of the ninth year, 20 per cent of the value of such new trading stock:

Provided that no deduction shall be made under this subsection in respect of trading stock held on any date on which such person has ceased to carry on the trade in relation to which such trading stock was held.

[Sub-s. (3B) inserted by s. 21 (b) of Act 101 of 1990.]

(4) If any trading stock has been acquired by any person for no consideration or for a consideration which is not measurable in terms of money, such person shall for the purposes of subsection (3) be deemed to have acquired such trading stock at a cost equal to the current market price of such trading stock on the date on which it was acquired by such person: Provided that any capitalization shares awarded by any company to shareholders of that company on or after 1 July 1957 shall have no value as trading stock in the hands of such shareholders: Provided further that options or any other rights to acquire shares in any company which have been acquired as aforesaid shall have no value.

[Sub-s. (4) amended by s. 14 of Act 90 of 1964, by s. 23 of Act 85 of 1974 and by s. 17 (1) (c) of Act 113 of 1993.]

(4A) For the purposes of subsection (4), where-

- (a) any security has been lent by a lender to a borrower in terms of a securities lending arrangement, such security shall be deemed not have been acquired by such borrower; or
- (b) another security of the same kind and of the same or equivalent quantity or quality has been returned by such borrower to such lender, such other security shall be deemed not to have been acquired by such lender.

[Para. (b) substituted by s. 37 (1) (a) of Act 45 of 2003.]

[Sub-s. (4A) inserted by s. 12 (1) (a) of Act 36 of 1996.]

(5) No person may for the purpose of determining the cost price of any trading stock, adopt the basis of trading stock valuation whereunder the last item of any class of trading stock acquired by him on any date is deemed to be the first item of that class of trading stock disposed of by him on or after that date.

[Sub-s. (5) amended by s. 19 (1) of Act 121 of 1984, by s. 14 (1) of Act 65 of 1986, by s. 5 (1) of Act 108 of 1986, by s. 1 (1) of Act 168 of 1993 and by s. 19 (1) of Act 21 of 1995 and substituted by s. 27 (1) (a) of Act 30 of 2000.]

(5A) Where-

- (a) any commercial or industrial undertaking has been acquired by one company from another company;
- (b) both such companies are managed, controlled or owned by substantially the same persons; and
- (c) the last-mentioned company contemplated in paragraph (a) is entitled to a deduction as contemplated in subsection (3B),

[Para. (c) substituted by s. 27 (1) (b) of Act 30 of 2000.]

the Commissioner may direct that, subject to such conditions as he may impose, the said two companies shall for the purposes of subsection (3B) be regarded as being one company.

[Sub-s. (5A) inserted by s. 1 (1) (b) of Act 168 of 1993 and amended by s. 27 (1) (c) of Act 30 of 2000.]

(6) Any reference in this section to the beginning or end of a year of assessment includes -

- (a) where the period assessed is less than twelve months, a reference to the beginning or end, as the case may be, of the period assessed;
- (b) where accounts are accepted under section 66 (13A) to a date agreed to by the Commissioner, a reference to the beginning or end, as the case may be, of the period covered by the accounts.

[Sub-s. (6) substituted by s. 24 (1) (a) of Act 74 of 2002.]

(7) .....

[Sub-s. (7) substituted by s. 21 of Act 89 of 1969 and deleted by s. 20 (b) of Act 94 of 1983.]

(8) If during any year of assessment-

- (a) any taxpayer has applied trading stock to his private or domestic use or consumption; or
- (b) any-
  - (i) taxpayer has applied trading stock for the purpose of making any donation thereof;
  - (ii) taxpayer has disposed of trading stock, other than in the ordinary course of his trade, for a consideration less than the market value thereof;
  - (iii) trading stock of any company has on or after 21 June 1993 been distributed *in specie* (whether such distribution occurred by means of a dividend, including a liquidation dividend, a total or partial reduction of capital (including any share premium), a redemption of redeemable preference shares or an acquisition of shares in terms of section 85 of the Companies Act, 1973 (Act 61 of 1973)), to any shareholder of that company;

[Sub-para. (iii) substituted by s. 25 (1) (b) of Act 53 of 1999.]

- (iv) taxpayer has applied any trading stock for any other purpose other than the disposal thereof in the ordinary course of his trade and under circumstances other than those contemplated in paragraph (a) or subparagraph (i), (ii) or (iii) of this paragraph; or
- (v) assets which were held as trading stock by any taxpayer cease to be held as trading stock by such taxpayer, and

[Sub-para. (v) added by s. 12 (d) of Act 5 of 2001.]

and the cost price of such trading stock has been taken into account in the determination of the taxable income of the taxpayer for any year of assessment, the taxpayer shall be deemed to have recovered or recouped-

- (A) where such trading stock has been applied in a manner contemplated in paragraph (a), an amount equal to the cost price to him of such trading stock (less any sum which has been deducted therefrom under the provisions of subsection (1)) or where the cost price cannot be readily determined, the market value of such trading stock; or
- (B) where such trading stock has been applied, disposed of or distributed in a manner contemplated in paragraph (b) (otherwise than in the manner contemplated in item



(C) or ceases to be held as trading stock, an amount equal to the market value of such trading stock;

[Item (B) substituted by s. 12 (e) of Act 5 of 2001 and by s. 37 (1) (b) of Act 45 of 2003.]

- (C) where such trading stock has been applied for the purpose of making a donation in respect of which the provisions of section 18A apply, an amount equal to the amount which was taken into account for that year of assessment in respect of the value of that trading stock,

[Item (C) added by s. 37 (1) (c) of Act 45 of 2003.]

and such amount shall be included in the income of the taxpayer for the year of assessment during which such trading stock was so applied, disposed of, distributed or ceased to be held as trading stock: Provided that where-

- (a) an asset consisting of trading stock so applied is used or consumed by the taxpayer in carrying on his trade, the amount included in his income under this subsection shall for the purposes of this Act be deemed to be expenditure incurred in respect of the acquisition by him of such asset;
- (b) the provisions of paragraph (b) (ii) apply and any consideration contemplated in that paragraph has been received by or accrued to the taxpayer, the amount included in his income in terms of this subsection shall be reduced by such consideration;
- (c) such trading stock consists of livestock or produce in respect of which the provisions of paragraph 11 of the First Schedule are applicable, the provisions of this subsection shall not apply; or
- (d) such trading stock consists of assets in respect of which any amount received or accrued from the disposal thereof is or will be included in the gross income of the taxpayer in terms of paragraph (jA) of the definition of 'gross income', the provisions of paragraph (b) (iv) shall not apply.

[Para. (d) added by s. 24 (1) (d) of Act 74 of 2002.]

[Sub-s. (8) added by s. 20 (c) of Act 94 of 1983, amended by s. 21 (d) of Act 101 of 1990, by s. 17 (1) (d) of Act 113 of 1993 and by s. 19 (1) (c) of Act 21 of 1995 and substituted by s. 12 (1) (b) of Act 36 of 1996.]

(9) Where-

- (a) (i) the trading stock of any person during any year of assessment includes any security;
- (ii) such person has, during such year of assessment, lent such security to a borrower in terms of a securities lending arrangement; and
- (iii) a security of the same kind and of the same or equivalent quantity and quality has not been returned by the borrower to such person at the end of such year of assessment,
- such security shall, for the purposes of this section, be deemed to be trading stock held and not disposed of by such person at the end of such year of assessment; or
- (b) (i) the trading stock of any other person during any year of assessment includes any security;
- (ii) such other person has during such year of assessment, borrowed such security from a lender in terms of a securities lending arrangement; and
- (iii) a security of the same kind and of the same or equivalent quantity and quality has not been returned by such other person to such lender at the end of such year of assessment,

such security shall, for the purposes of this section, be deemed not to be trading stock held and not disposed of, by such other person at the end of such year of assessment.

[Sub-s. (9) added by s. 12 (1) (c) of Act 36 of 1996 and substituted by s. 37 (1) (d) of Act 45 of 2003.]

## **22A Schemes of arrangement involving trading stock**

(1) If, under any scheme of arrangement or reconstruction of any company or its affairs (including any scheme for the amalgamation of two or more companies and any other scheme) which is sanctioned by any order of court on or after the first day of April, 1971, any company (hereinafter referred to as the transferee company) has before 1 October 2001, acquired from any other company (hereinafter referred to as the transferor company) any asset which was trading stock of the transferor company, and in respect of

such acquisition-

- (a) no consideration measurable in terms of money accrued from the transferee company to the transferor company; or
- (b) a consideration accrued from the transferee company to the transferor company the money value of which was less than the market value of such asset on the date on which the transferee company acquired such asset,

such asset shall for the purposes of this Act be deemed to be trading stock of the transferee company, and, where paragraph (a) is applicable-

- (i) the transferee company shall be deemed to have acquired such asset at a price equal to the cost price thereof to the transferor company; and
- (ii) notwithstanding the provisions of section 22 (2), no deduction shall, in the determination of the taxable income of the transferor company for the year of assessment of that company during which the transferee company acquired such asset, be made in respect of the value of such asset as trading stock.

[Sub-s. (1) amended by s. 31 of Act 60 of 2001.]

(2) Any amount which is received by or accrues to the transferee company from the disposal of the said asset (or of any interest therein) shall be included in that company's income, whether such amount is derived in carrying on any trade or otherwise or is derived from a source within or outside the Republic.

[S. 22A inserted by s. 19 (1) of Act 88 of 1971.]

### 23 Deductions not allowed in determination of taxable income

#### Cases

No deductions shall in any case be made in respect of the following matters, namely-

- (a) the cost incurred in the maintenance of any taxpayer, his family or establishment;
- (b) domestic or private expenses, including the rent of or cost of repairs of or expenses in connection with any premises not occupied for the purposes of trade or of any dwelling-house or domestic premises except in respect of such part as may be occupied for the purposes of trade: Provided that-
  - (a) such part shall not be deemed to have been occupied for the purposes of trade, unless such part is specifically equipped for purposes of the taxpayer's trade and regularly and exclusively used for such purposes; and
  - (b) no deduction shall in any event be granted where the taxpayer's trade constitutes any employment or office unless-
    - (i) his income from such employment or office is derived mainly from commission or other variable payments which are based on the taxpayer's work performance and his duties are mainly performed otherwise than in an office which is provided to him by his employer; or
    - (ii) his duties are mainly performed in such part;

[Sub-para. (i) substituted by s. 15 (a) of Act 21 of 1994.]

[Sub-para. (ii) substituted by s. 15 (a) of Act 21 of 1994.]

[Para. (b) amended by s. 23 of Act 129 of 1991 and by s. 18 (1) (a) of Act 113 of 1993.]

- (c) any loss or expense, the deduction of which would otherwise be allowable, to the extent to which it is recoverable under any contract of insurance, guarantee, security or indemnity;
- (d) any tax, duty, levy, interest or penalty imposed under this Act, any additional tax imposed under section 60 of the Value-Added Tax Act, 1991 (Act 89 of 1991), and any interest or penalty payable in consequence of the late payment of any tax, duty, levy or contribution payable under any Act administered by the Commissioner, the Regional Services Councils Act, 1985 (Act 109 of 1985), the KwaZulu and Natal Joint Services Act, 1990 (Act 84 of 1990), the Skills Development Levies Act, 1999 (Act 9 of 1999), and the Unemployment Insurance Contributions Act, 2002 (Act 4 of 2002);

[Para. (d) substituted by s. 20 (a) of Act 121 of 1984, by s. 20 (a) of Act 141 of 1992, by s. 28 (1) (a) of Act 30 of 2000 and by s. 13 of Act 16 of 2004.]

- (e) income carried to any reserve fund or capitalized in any way;
- (f) any expenses incurred in respect of any amounts received or accrued which do not constitute income as defined in section *one*;

(g) any moneys claimed as a deduction from income derived from trade, to the extent to which such moneys were not laid out or expended for the purposes of trade;

[Para. (g) substituted by s. 20 (b) of Act 141 of 1992.]

(h) interest which might have been made on any capital employed in trade;

(i) .....

[Para. (i) deleted by s. 18 of Act 65 of 1973, inserted by s. 20 (b) of Act 121 of 1984, amended by s. 18 (1) (b) of Act 113 of 1993 and by s. 15 (b) of Act 21 of 1994 and deleted by s. 21 (1) (a) of Act 30 of 2002.]

(j) where the taxpayer is an employer or associated institution (as respectively defined in paragraph 1 of the Seventh Schedule), the cost to the taxpayer of any scholarship or bursary granted to any employee (as so defined) of the taxpayer or of any employer in relation to whom the taxpayer is an associated institution, or to any relative of any such employee, if in consequence of the grant of such scholarship or bursary any remuneration to which the employee was entitled or might in the future have become entitled was in any manner reduced or forfeited;

[Para. (j) added by s. 20 (c) of Act 141 of 1992.]

(k) any expense incurred by-

(i) a labour broker as defined in the Fourth Schedule, other than a labour broker in respect of which a certificate of exemption has been issued in terms of paragraph 2 (5) of the said Schedule;

(ii) a personal service company as defined in the said Schedule; or

(iii) a personal service trust as defined in the said Schedule, other than any expense which constitutes an amount paid or payable to any employee of such labour broker, company or trust for services rendered by such employee, which is or will be taken into account in the determination of the taxable income of such employee;

[Para. (k) added by s. 28 (1) (b) of Act 30 of 2000.]

(l) any expense incurred in respect of the payment of any restraint of trade, except as provided for in section 11 (cA).

[Para. (l) added by s. 28 (1) (b) of Act 30 of 2000.]

(m) subject to paragraph (k), any expenditure, loss or allowance, contemplated in section 11, which relates to any employment of, or office held by, any person (other than an agent or representative whose remuneration is normally derived mainly in the form of commissions based on his or her sales or the turnover attributable to him or her) in respect of which he or she derives any remuneration, as defined in paragraph 1 of the Fourth Schedule, other than-

(i) any contributions to a pension or retirement annuity fund as may be deducted from the income of that person in terms of sections 11 (k) or (n);

(ii) any allowance or expense which may be deducted from the income of that person in terms of section 11 (c), (e), (i) or (j); and

(iii) any deduction which is allowable under section 11 (a) in respect of any premium paid by that person in terms of an insurance policy -

(aa) to the extent that it covers that person against the loss of income as a result of illness, injury, disability or unemployment; and

[Item (aa) substituted by s. 38 (1) (a) of Act 45 of 2003.]

(bb) in respect of which all amounts payable in terms of that policy constitutes or will constitute income as defined;

[Para. (m) added by s. 21 (1) (b) of Act 30 of 2002.]

(n) any deduction or allowance in respect of any asset to the extent that an amount is granted to the taxpayer by the Government, which-

(i) is exempt from tax; and

(ii) is granted for purposes of the acquisition of that asset;

[Para. (n) added by s. 38 (1) (b) of Act 45 of 2003.]

### **23A Limitation of allowances granted to lessors of certain assets**

(1) For the purposes of this section-

'affected asset' means-

(a) any machinery, plant or aircraft which has been let and in respect of which the lessor is or was entitled to an allowance under section 12 or 14bis, whether in the current or a

previous year of assessment, other than any such machinery, plant or aircraft let by him under an agreement of lease formally and finally signed by every party to the agreement before 15 March 1984; or

- (b) any machinery, plant, implement, utensil, article, aircraft or ship which has been let and in respect of which the lessor is or was entitled to an allowance under section 11 (e), 12B or 12C, whether in the current or a previous year of assessment, other than any such machinery, plant, implement, utensil, article, aircraft or ship let by him under an agreement of lease formally and finally signed by every party to the agreement before 19 November 1988,

[Para. (b) substituted by s. 22 (1) (a) of Act 101 of 1990, by s. 34 of Act 30 of 1998 and by s. 32 (1) (a) of Act 60 of 2001.]

but excluding any such asset let by the lessor under an operating lease or any such asset which was during the year of assessment mainly used by him in the course of any trade carried on by him, other than the letting of any such asset;

'operating lease' means a lease of movable property concluded by a lessor in the ordinary course of a business (not being the business of a banker or financier) of letting such property, if-

- (a) such property may be hired by members of the general public directly from that lessor in terms of such a lease, for a period of less than one month;

[Para. (a) substituted by s. 32 (1) (b) of Act 60 of 2001.]

- (b) the cost of maintaining such property and of carrying out repairs thereto required in consequence of normal wear and tear, is borne by the lessor; and
- (c) subject to any claim that the lessor may have against the lessee by reason of the lessee's failure to take proper care of the property, the risk of destruction or loss of or other disadvantage to such property is not assumed by the lessee;

'rental income' means income derived by way of rent from the letting of movable property or any machinery or plant in respect of which an allowance has been granted to the lessor under section 11 (e), 12, 12B or 12C, whether in the current or any previous year of assessment.

[Definition of 'rental income' substituted by s. 22 (1) (b) of Act 101 of 1990 and by s. 32 (1) (c) of Act 60 of 2001.]

(2) Notwithstanding the provisions of sections 11 (e) and (o), 12B, 12C and 14 *bis*, the sum of the deductions which may be allowed to any taxpayer in any year of assessment under those provisions in respect of any affected assets let by him shall not exceed the taxable income (as determined before making the said deductions) derived by him during such year from rental income.

[Sub-s. (2) substituted by s. 22 (1) (c) of Act 101 of 1990 and by s. 24 of Act 129 of 1991.]

(3) For the purposes of subsection (2), where the taxpayer is entitled to any deduction which relates to rental income and other income derived by him, an appropriate portion of such deduction shall be taken into account in the determination of the taxable income derived by him from rental income.

(4) Any deduction which is disallowed under the provisions of subsection (2) shall be carried forward to the succeeding year of assessment and shall, subject to the provisions of this section as applicable in relation to that year, be deemed to be a deduction to which the taxpayer is entitled in that year. [S. 23A inserted by s. 21 (1) of Act 121 of 1984, amended by s. 13 (1) of Act 96 of 1985 and by s. 15 (1) of Act 65 of 1986 and substituted by s. 12 of Act 70 of 1989.]

### **23B Prohibition of double deductions**

#### **Cases**

(1) Where, but for the provisions of this subsection, an amount-

(a) qualifies or has qualified for a deduction or an allowance; or

(b) is otherwise taken into account in determining the taxable income of any person,

under more than one provision of this Act, such amount or any portion thereof, shall not be allowed or taken into account more than once as a deduction or allowance in the determination of the taxable income of any person.

[Sub-s. (1) substituted by s. 16 (1) (a) of Act 21 of 1994 and by s. 29 of Act 30 of 2000.]

(2) The provisions of subsection (1) shall not apply to expenditure in respect of which a deduction or an allowance has been determined, if any section under which such deduction or allowance is allowed, expressly requires such expenditure to be deductible under any other section as a prerequisite for a deduction under such section.

(3) No deduction shall be allowed under section 11 (*a*) in respect of any expenditure or loss of a type for which a deduction or allowance may be granted under any other provision of this Act, notwithstanding that such other provision may impose any limitation on the amount of such deduction or allowance.

[Sub-s. (3) added by s. 16 (1) (*b*) of Act 21 of 1994 and substituted by s. 39 of Act 45 of 2003.]

[S. 23B inserted by s. 25 (1) of Act 129 of 1991.]

### **23C Reduction of cost or market value of certain assets**

(1) Where for the purposes of applying any provision of this Act regard is to be had to the cost to the taxpayer or the market value of any asset acquired by him or to the amount of any expenditure incurred by him, and-

- (a) the taxpayer is a vendor as defined in section 1 of the Value-Added Tax Act, 1991 (Act 89 of 1991); and
- (b) the taxpayer is or was in any previous year of assessment entitled under section 16 (3) of the last-mentioned Act to a deduction of input tax as defined in section 1 of that Act,

the amount of such input tax shall be excluded from the cost or the market value of such asset or the amount of such expenditure: Provided that in the case of any lease as contemplated in paragraph (*b*) of the definition of 'instalment credit agreement' in section 1 of the Act, there shall be excluded by the lessee from each rental payment made by him in respect of such lease, an amount which bears to such input tax the same ratio as such rental payment bears to the sum of all rental payments in connection with such lease.

[Sub-s. (1) substituted by s. 21 of Act 141 of 1992 and amended by s. 33 (1) (*b*) and (*c*) of Act 60 of 2001.]

(2) Where a taxpayer (being a vendor as defined in section 1 of the Value-Added Tax Act, 1991) has in respect of any tax period applicable to him under that Act which has ended during his year of assessment, included in input tax deducted by him under section 16 (3) of that Act an amount of sales tax, as permitted by section 78 of that Act so to be included-

- (a) that amount shall, if it was included in capital expenditure taken into account for the purposes of any deduction in respect of any mine under section 15 (*a*) of this Act, be deemed for the purposes of paragraph (*j*) of the definition of 'gross income' in section 1 of this Act to be an amount received by or accrued to the taxpayer during the said year of assessment in respect of a disposal of assets referred to in the said paragraph; or
- (b) that amount (not being an amount accounted for under paragraph (*a*)), shall for the purposes of section 8 (4) (*a*) of this Act be deemed to be an amount which has been recovered or recouped by the taxpayer during the said year of assessment.

[S. 23C inserted by s. 25 (1) of Act 129 of 1991 and amended by s. 33 (1) (*a*) of Act 60 of 2001.]

### **23D Limitation of allowances granted in respect of certain assets**

(1) For the purposes of this section, 'asset' means-

- (a) any machinery, plant, implements, utensils or articles contemplated in section 11 (*e*);
- (aA) any invention, patent, design, trade mark, copyright, or any other property which is of a similar nature, contemplated in section 11 (*gA*);

[Para. (*aA*) inserted by s. 20 (1) (*a*) of Act 21 of 1995.]

- (b) any building or improvements contemplated in section 13;
- (c) any ship contemplated in section 14; or
- (d) any aircraft contemplated in section 14*bis*.

(2) Where any asset which has been let by a taxpayer to a lessee was acquired by the taxpayer, whether directly or indirectly from-

- (a) such lessee;
- (b) a person who is a connected person in relation to such lessee;
- (c) a sublessee in relation to such asset (being a person to whom the right of use of such asset has been granted by a lessee or by any person to whom the right of use of such asset has previously been granted); or
- (d) a person who is a connected person in relation to such sublessee,

and a deduction was previously granted to such lessee, such connected person or such sublessee under section 11 (*e*), 11 (*gA*), 12B, 12C, 13, 14 or 14*bis* or section 12 prior to the repeal thereof by section 16 of the Income Tax Act, 1991 (Act 129 of 1991), or section 27 (2) (*d*) prior to the deletion thereof by section 28 (*b*) of that Act, whether in the current or any previous year of assessment, any deduction or allowance claimed by such lessor in respect of such asset in terms of section 11 (*e*), (*gA*) or (*o*), 12C, 13, 14 or 14*bis* shall be calculated on an amount not exceeding the lesser of the cost or adjustable cost, as the case may be,

of such asset to such lessee, such connected person or such sublessee or the market value thereof as determined on the date upon which the asset was acquired by the taxpayer.

[Sub-s. (2) substituted by s. 10 (1) of Act 140 of 1993 and by s. 20 (1) (b) of Act 21 of 1995.]

(3) The provisions of subsection (2) shall apply to-

- (a) any asset, excluding an asset contemplated in subsection (1) (aA), acquired from a lessee or a connected person in relation to such lessee on or after 21 June 1993;
- (b) any asset contemplated in subsection (1) (aA), acquired from a lessee or a connected person in relation to such lessee on or after 1 July 1995; and
- (c) any asset acquired from a sublessee or a connected person in relation to such sublessee on or after 1 July 1995.

[Sub-s. (3) added by s. 20 (1) (c) of Act 21 of 1995.]

[S. 23D inserted by s. 19 (1) of Act 113 of 1993.]

### **23E Provisions relating to leave pay**

(1) For the purposes of this section-

'employee' includes the holder of any office;

'leave pay' means any amount which a taxpayer has during any year of assessment become liable to pay to his employee in consequence of the employee having during such year become entitled to any period of leave which had not been taken by him during that year;

'leave pay provision' means an amount equal to the lesser of-

- (a) the amount included in the taxpayer's income in terms of the provisions of subsection (5); and
- (b) an amount determined in relation to all periods of leave to which the taxpayer's employees were entitled as at the end of the last year of assessment of the taxpayer ending before 1 January 1994, and calculated by applying, in the case of each such employee, the employee's rate of earnings as at the end of such year to the period of leave to which such employee was so entitled.

(2) For the purposes of this Act, where in consequence of any leave to which an employee of the taxpayer became entitled during any year of assessment of the taxpayer ending on or after 1 January 1994, the taxpayer has become liable to pay any amount of leave pay -

- (a) the taxpayer shall be deemed not to have incurred expenditure in respect of such leave pay until it is actually paid by him or becomes due and payable by him; and
- (b) such leave pay shall be deemed to accrue to the employee concerned on the date upon which such expenditure is deemed to have been incurred by the taxpayer.

(3) Where any taxpayer has in any return of income submitted by him to the Commissioner before 1 March 1993 claimed a deduction of an amount determined in accordance with a practice consistently applied by him and in the *bonafide* belief that such amount constituted leave pay which was lawfully allowable as a deduction in the determination of his taxable income (whether such amount exceeds or is less than the amount which was lawfully deductible), there shall be allowed as a deduction in the determination of his taxable income for such year and for each subsequent year of assessment ending before 1 January 1994 an amount determined in accordance with the said practice: Provided that where in his return of income for any year of assessment ending before 1 January 1994 the taxpayer has amended such practice and the deduction determined in accordance with such amended practice is less than the deduction which would have been determined in accordance with his previous practice, the amount to be allowed as a deduction under this subsection in that year of assessment and in each subsequent year of assessment ending before 1 January 1994 shall be determined in accordance with such amended practice.

(4) Where in respect of any year of assessment of a taxpayer ending before 1 January 1994, the Commissioner has not prior to the date of commencement of the Income Tax Act, 1993, issued an assessment, a deduction in respect of leave pay shall not be granted for such year otherwise than as may be permitted under the provisions of subsection (3).

(5) There shall be included in the income of any taxpayer in his first year of assessment ending on or after 1 January 1994 the sum of all amounts allowed to be deducted in the determination of his taxable income in all years of assessment ending before that date in respect of leave pay relating to all periods of leave to which his employees were entitled at the end of the last year of assessment ending before the said date.

(6) Where an amount has under the provisions of subsection (5) been included in the income of any taxpayer, any amount of leave pay which becomes due and payable by him to an employee in respect

of any period of leave taken into account in the determination of such amount shall, notwithstanding the provisions of subsection (3), be allowed to be deducted from his income in the year of assessment during which such leave pay becomes due and payable.

(7) There shall in the case of any taxpayer to whom the provisions of subsection (5) are applicable, be allowed to be deducted in the determination of his taxable income for his first year of assessment ending on or after 1 January 1994 and for each of the four succeeding years of assessment (such succeeding years of assessment hereinafter being referred to as the second to fifth years, in chronological order) a deduction equal to-

- (a) in the said first year, 100 per cent;
- (b) in the second year, 85 per cent;
- (c) in the third year, 70 per cent;
- (d) in the fourth year, 50 per cent; and
- (e) in the fifth year, 25 per cent,

of the amount of the leave pay provision determined in relation to the taxpayer: Provided that-

- (i) the deduction so allowed in any year of assessment shall be included in the taxpayer's taxable income in the following year of assessment; and
- (ii) no deduction shall be allowed under this subsection if the taxpayer has during the current or any previous year of assessment commencing on or after 1 January 1994 ceased to carry on trade.

(8) Where-

- (a) any commercial or industrial undertaking has been acquired by one company from another company;
- (b) both such companies are managed, controlled or owned by substantially the same persons; and
- (c) the last-mentioned company contemplated in paragraph (a) is entitled to a deduction as contemplated in subsection (7),

the Commissioner may direct that, subject to such conditions as he may impose, the said two companies shall for the purposes of subsections (1), (3), (4), (5), (6) and (7) be regarded as being one company.

[Sub-s. (8) added by s. 2 (1) of Act 168 of 1993.]

[S. 23E inserted by s. 19 (1) of Act 113 of 1993.]

[Date of commencement of s. 23E: 20 July 1993.]

### **23F Acquisition or disposal of trading stock**

(1) Where any taxpayer has during any year of assessment incurred expenditure for the acquisition of trading stock which was neither disposed of by him during such year nor held by him at the end of such year, any deduction which may be allowed to him under the provisions of section 11 (a) in respect of such expenditure shall not be allowed in such year, but such expenditure shall for the purposes of such provisions be deemed to have been incurred by him in the first subsequent year of assessment in which-

- (a) such trading stock is disposed of by him;
- (b) the value of such trading stock falls to be included in his income under the provisions of section 22 (1); or
- (c) it is shown by him that by reason of the loss or destruction of such trading stock or the termination of the agreement in terms of which such trading stock was acquired by him or for any other reason, such trading stock will neither be disposed of nor held by him, to the extent that such expenditure was actually paid.

[Para. (c) substituted by s. 28 (1) (a) of Act 59 of 2000.]

[Sub-s. (1) amended by s. 28 (1) (b) of Act 59 of 2000 and by s. 40 (a) of Act 45 of 2003.]

(2) Where a taxpayer has during any year of assessment disposed of any trading stock in the ordinary course of his or her trade for any consideration the full amount of which will not accrue to him or her during that year of assessment and any expenditure incurred in respect of the acquisition of that trading stock was allowed as a deduction under the provisions of section 11 (a) during that year or any previous year of assessment, any amount which would otherwise be deducted must, to the extent that it exceeds any amount received or accrued from the disposal of that trading stock be disregarded during that year of assessment.

[Sub-s. (2) amended by s. 40 (b) of Act 45 of 2003 and substituted by s. 21 (1) (a) of Act 32 of 2004.]

(2A) So much of any amount disregarded in terms of subsection (2) may be deducted from the income of that person in any subsequent year of assessment to the extent that any amount which is received

by or accrued to that person in that subsequent year from that disposal is included in the income of that person.

[Sub-s. (2A) inserted by s. 21 (1) (b) of Act 32 of 2004.]

(2B) If during any year of assessment a person contemplated in subsection (2) proves that no further amounts will accrue to him or her in that year and any subsequent year as contemplated in subsection (2A), so much of the amount which was disregarded in terms of subsection (2) as has not been allowed as a deduction in any year, must be allowed as a deduction from the income of that person in that year of assessment.

[Sub-s. (2B) inserted by s. 21 (1) (b) of Act 32 of 2004.]

(3) Where-

- (a) any taxpayer has during any year of assessment in the ordinary course of his trade disposed of any right or interest in any asset which constitutes trading stock which has the effect that the remaining right or interest in such asset held and not disposed of will not be included in trading stock at the end of such year; and
- (b) any expenditure incurred in respect of the acquisition of such asset was allowed as a deduction under the provisions of section 11 (a) or was otherwise taken into account during such year or any previous year of assessment,

[Para. (b) substituted by s. 40 (c) of Act 45 of 2003.]

there shall be deemed to have been recovered or recouped by such taxpayer and be included in the income of such taxpayer for such year of assessment, so much of such expenditure as relates to the remaining right or interest contemplated in paragraph (a).

[S. 23F inserted by s. 17 of Act 21 of 1994 and substituted by s. 30 (1) of Act 30 of 2000.]

### **23G Sale and leaseback arrangements**

(1) For the purposes of this section-

'asset' means any asset, whether movable or immovable, or corporeal or incorporeal;

'sale and leaseback arrangement' means any arrangement whereby-

- (a) any person disposes of any asset (whether directly or indirectly) to any other person; and
- (b) such person or any connected person in relation to such person leases (whether directly or indirectly) such asset from such other person.

(2) Where the receipts or accruals of any person, who is a lessee or sublessee in relation to a sale and leaseback arrangement, do not for the purposes of this Act constitute income of such person-

- (a) any amount which is received by or accrues to any lessor in relation to such sale and leaseback arrangement, shall be limited to an amount which constitutes interest as contemplated in section 24J; and
- (b) such lessor shall, notwithstanding the provisions of this Act, not be entitled to any deduction in terms of section 11 (e), (f) or (gA), 12B, 12C or 13 in respect of an asset which is the subject matter of such sale and leaseback arrangement.

(3) Where the receipts or accruals of any person, who is a lessor in relation to a sale and leaseback arrangement, arising from such arrangement do not for the purposes of this Act constitute income of such person, any deduction to which a lessee or sublessee in relation to such sale and leaseback arrangement is entitled under the provisions of this Act shall, subject to the provisions of section 11 (f), be limited to an amount which constitutes interest as contemplated in section 24J.

(4) The provisions of subsection (2) (a) shall not apply to any person who is both a lessor and a lessee in relation to the same sale and leaseback arrangement during any year of assessment.

[S. 23G inserted by s. 16 (1) of Act 28 of 1997.]

### **23H Limitation of certain deductions**

(1) Where any person has during any year of assessment actually incurred any expenditure (other than expenditure incurred in respect of the acquisition of any trading stock)-

- (a) which is allowable as a deduction in terms of the provisions of section 11 (a), (c) or (d) or section 28 (2) (a) and (c); and

[Para. (a) substituted by s. 29 (1) of Act 59 of 2000.]

(b) in respect of-

- (i) goods or services, all of which will not be supplied or rendered to such person, during such year of assessment; or
- (ii) any other benefit, the period to which the expenditure relates extends beyond such year of assessment,



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

the amount of the expenditure which shall be allowable as a deduction in terms of such section in the said year and any subsequent year of assessment, shall be limited to, in the case of expenditure incurred in respect of-

- (i) goods to be supplied, so much of the expenditure as relates to the goods actually supplied to such person in such year of assessment; or
- (ii) services to be rendered, an amount which bears to the total amount of such expenditure the same ratio as the number of months in such year during which such services are rendered bears to the total number of months during which such services will be rendered; or
- (iii) any other benefit to which such expenditure relates, an amount which bears to the total amount of such expenditure the same ratio as the number of months in such year during which such person will enjoy such benefit bears to the total number of months during which such person will enjoy such benefit or where the period of such benefit is not determinable, such period over which the benefit is likely to be enjoyed:

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

Provided that the provisions of this section shall not apply -

- (aa) where all the goods or services are to be supplied or rendered within six months after the end of the year of assessment during which the expenditure was incurred, or such person will have the full enjoyment of such benefit in respect of which the expenditure was incurred within such period; or

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

- (bb) where the aggregate of all amounts of expenditure incurred by such person, which would otherwise be limited by this section, does not exceed R50 000; or
- (cc) to any expenditure to which the provisions of section 24I, 24J, 24K or 24L apply; or
- (dd) to any expenditure actually paid in respect of any unconditional liability to pay an amount imposed by legislation.

(2) If the Commissioner is in any case satisfied that the apportionment of the expenditure in accordance with subsection (1) does not reasonably represent a fair apportionment of such expenditure in respect of the goods, services or benefits to which it relates, he may direct that such apportionment be made in such other manner as to him appears fair and reasonable.

(3) Notwithstanding the provisions of subsections (1) and (2), where it is during any year of assessment shown by any person that-

- (a) the goods or services in respect of which the expenditure is incurred will never be received by or be rendered to such person; or
- (b) such person will never enjoy such other benefit in respect of which any expenditure is incurred,

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

such expenditure shall be allowed in such year, to the extent that such expenditure has been actually paid by such person.

(4) The exercise by the Commissioner of his discretion contemplated in subsection (2) shall be subject to objection and appeal.

[S. 23H inserted by s. 31 (1) of Act 30 of 2000.]

## 24 Credit agreements and debtors allowance

### Cases

(1) Subject to the provisions of section 24J, if any taxpayer has entered into any agreement with any other person in respect of any property the effect of which is that, in the case of movable property, the ownership shall pass or, in the case of immovable property, transfer shall be passed from the taxpayer to that other person, upon or after the receipt by the taxpayer of the whole or a certain portion of the amount payable to the taxpayer under the agreement, the whole of that amount shall for the purposes of this Act be deemed to have accrued to the taxpayer on the day on which the agreement was entered into.

[Sub-s. (1) substituted by s. 17 (1) of Act 28 of 1997.]

(2) In the case of such an agreement in terms of which at least 25 per cent of the said amount payable only becomes due and payable on or after the expiry of a period of not less than 12 months after the date of the said agreement, the Commissioner, taking into consideration any allowance he has made

under section 11 (j), may make such further allowance as under the special circumstances of the trade of the taxpayer seems to him reasonable, in respect of all amounts which are deemed to have accrued under such agreements but which have not been received at the close of the taxpayer's accounting period: Provided that any allowance so made shall be included as income in the taxpayer's returns for the following year of assessment and shall form part of his income.

(3) Where-

- (a) any taxpayer has in respect of his latest year of assessment ended before 1 January 1986 in good faith claimed an allowance under this section as applicable in that year;
- (b) such allowance was granted in accordance with the generally prevailing practice of the Commissioner as applicable in that year; and
- (c) in consequence of the amendment to this section effected by section 14 of the Income Tax Act, 1985 (Act 96 of 1985), or section 16 of the Income Tax Act, 1986, such allowance may not be granted in respect of the first year of assessment of the taxpayer ended or ending on or after 1 January 1986,

there shall be allowed to be deducted from the income of the taxpayer for his said first year of assessment and each of the three succeeding years of assessment (such succeeding years of assessment being referred to in this section as the second, third and fourth years, in chronological order) an allowance calculated in accordance with the provisions of subsection (4): Provided that any deduction so allowed shall be included as income in the taxpayer's return for the following year of assessment and shall form part of his income.

[Sub-s. (3) amended by s. 6 (1) of Act 108 of 1986.]

(4) The allowance under subsection (3) shall be-

- (a) in respect of the said first year, 80 per cent;
- (b) in respect of the said second year, 60 per cent;
- (c) in respect of the said third year, 40 per cent; and
- (d) in respect of the said fourth year, 20 per cent,

of an amount equal to the lesser of the allowance contemplated in subsection (3) (b) and so much of any allowance which, but for the amendment referred to in subsection (3) (c), would have been granted under subsection (2) in respect of the relevant year but which may in consequence of such amendment not be granted.

(5) Where any taxpayer was in respect of his last year of assessment ended on or before 6 May 1989 entitled to an allowance under subsection (2) in respect of any class of property sold by him in the course of his trade but is in consequence of his compliance with any regulation promulgated in terms of section 3 of the Credit Agreements Act, 1980 (Act 75 of 1980), no longer entitled to such allowance in respect of that class of property, there shall be allowed to be deducted from the income of the taxpayer for his first year of assessment immediately following such last year and each of the three succeeding years of assessment (such succeeding years being referred to hereinafter as the second, third and fourth years, in chronological order) an allowance calculated in accordance with the provisions of subsection (6): Provided that-

- (a) any deduction so allowed shall be included in the taxpayer's income in the following year of assessment; and
- (b) no deduction shall be made under this subsection-
  - (i) if the taxpayer has during the current or any previous year of assessment ceased to trade with that class of property; or
  - (ii) in any year of assessment during which the taxpayer is, in consequence of the amendment or repeal of any such regulation, once again entitled to claim an allowance under subsection (2) in respect of that class of property.

[Sub-s. (5) added by s. 23 of Act 101 of 1990.]

(6) The allowance under subsection (5) shall be-

- (a) in respect of the said first year, 80 per cent;
- (b) in respect of the said second year, 60 per cent;
- (c) in respect of the said third year, 40 per cent; and
- (d) in respect of the said fourth year, 20 per cent,

of the allowance granted to the taxpayer under this section in respect of his last year of assessment referred to in subsection (5): Provided that the allowance which may be granted in the said first year, shall be reduced by any allowance to which the taxpayer is entitled in that year under the provisions of subsection (2) in respect of that class of property.

[Sub-s. (6) added by s. 23 of Act 101 of 1990.]

[S. 24 amended by s. 22 of Act 89 of 1969, by s. 21 of Act 94 of 1983 and by s. 14 of Act 96 of 1985 and substituted by s. 16 (1) of Act 65 of 1986.]

#### **24A Transactions whereby fixed property is or company shares are exchanged for shares**

(1) If, under any transaction entered into before 1 October 2001 for the disposal by any person (hereinafter referred to as the trader) of any trading stock consisting of fixed property or any shares in any company, the consideration received by or accrued to the trader for such trading stock in effect consists of or includes-

- (a) shares in a public company; or
- (b) company shares quoted by a recognized stock exchange at the time of such transaction or within six months thereafter; or
- (c) shares in any other company, if such shares are, under a scheme for the consolidation or merger of the interests of two or more persons, issued or transferred to the trader,

the value of the shares which constitute or are included in such consideration shall, if the trader and the Commissioner agree thereto, be excluded from the trader's income for the year of assessment during which such consideration is received by or accrues to him.

[Sub-s. (1) amended by s. 35 of Act 60 of 2001.]

(2) For the purposes of this Act-

- (a) the shares which constitute or are included in the said consideration and any capitalization shares issued in respect of such shares (which shares and capitalization shares are hereinafter referred to as new trading stock) shall be deemed to be trading stock of the trader; and

[Para. (a) amended by s. 24 of Act 85 of 1974.]

- (b) the cost price to the trader of the shares which constitute or are included in the said consideration shall be deemed to be the cost to him of the trading stock referred to in subsection (1) or, if such last-mentioned trading stock was held by him and had not been disposed of by him at the beginning of the year of assessment, the amount taken into account under section 22 (2) as the value thereof, less an amount which bears to the said cost or the amount so taken into account, as the case may be, the same ratio as the value of such portion (if any) of the said consideration as does not consist of the said shares bears to the total value of the said consideration (including the said shares).

(3) Any amount (including the value of any benefit or advantage) which is received by or accrues to the trader from the disposal of new trading stock (or a portion thereof) shall be included in the trader's income, whether such amount is derived in carrying on any trade or otherwise or is derived from a source within or outside the Republic: Provided that the provisions of this subsection shall not be construed so as to prevent the provisions of subsection (1) being applied in respect of such amount.

[Sub-s. (3) amended by s. 15 (1) of Act 85 of 1987.]

(4) If on or after the date of promulgation of the Income Tax Act, 1971, the trader disposes of or ceases to be the owner of new trading stock for any reason other than his death or insolvency or, in the case of a company, the winding-up or liquidation thereof and no consideration accrues to him in respect of such new trading stock or a consideration accrues to him in respect of such new trading stock which in whole or part is not measurable in terms of money (the part of the consideration which is so measurable being less in value than the market value of such new trading stock at the date on which it was disposed of or on which the trader ceased to be the owner thereof), he shall for the purposes of this Act be deemed to have disposed of such new trading stock for a consideration equal to the market value thereof at the date on which it was disposed of or on which the trader ceased to be the owner thereof or the market value thereof on the date of the transaction referred to in subsection (1), whichever value is the lower, reduced by the amount (if any) included in the trader's income under subsection (3) in respect of the disposal, and such value, as so reduced, shall be included in his income: Provided that the foregoing provisions of this subsection shall not apply where the trader disposes of or ceases to be the owner of new trading stock by reason of the carrying out of any scheme referred to in section 22A and the trader is a transferor company as contemplated in that section.

(5) Where the trader has until his death or the prior sequestration of his estate or, in the case of a company, the commencement of the winding-up or liquidation thereof, continued to hold new trading stock, the trader shall for the purposes of this Act be deemed to have disposed of such new trading stock on the day preceding the date of his death or the sequestration of his estate (whichever first occurs) or, in the

case of a company the date on which the winding-up or liquidation thereof commenced, for a consideration equal to the market value on the said day of such new trading stock or the market value thereof on the date of the transaction referred to in subsection (1), whichever value is the lower, and such value shall be included in his income for the period of assessment within which the said day falls.

(6) For the purposes of this section-

- (a) 'fixed property' means property as defined in section 1 of the Transfer Duty Act, 1949 (Act 40 of 1949); and
- (b) a company which has not yet been recognized under the provisions of this Act as a public company, may at the request of the taxpayer, be deemed to be a public company, if the Commissioner is satisfied that such company will be so recognized.

[S. 24A inserted by s. 23 of Act 89 of 1969 and substituted by s. 20 (1) of Act 88 of 1971.]

#### **24B Transactions where assets are acquired in exchange for shares issued**

(1) Subject to subsection (2), if a company acquires any asset from any person in exchange for shares issued by that company-

- (a) that company is for purposes of this Act deemed to have actually incurred an amount of expenditure in respect of the acquisition of that asset, which is equal to the market value of that asset as determined at the time of acquisition; and
- (b) that person is for purposes of this Act deemed to have disposed of that asset for an amount equal to that market value.

(2) If a company acquires any share or debt instrument which is issued to that company directly or indirectly in exchange for the issue of shares by that company or any connected person in relation to that company, that company is for purposes of this Act deemed not to have incurred any expenditure in respect of the acquisition of that share or debt instrument so acquired.

(3) If a company issues any debt instrument directly or indirectly in exchange for the issue of shares or of a debt instrument which is issued to that company or to a connected person in relation to that company, that company is for purposes of this Act deemed to have incurred expenditure in respect of the acquisition of that share or debt instrument so acquired, only to the extent that the amounts are paid by that company in terms of the debt instrument so issued.

[S. 24B inserted by s. 9 (1) of Act 101 of 1978, substituted by s. 13 (1) of Act 104 of 1979, repealed by s. 32 of Act 30 of 2000 and inserted by s. 22 (1) of Act 32 of 2004.]

#### **24C Allowance in respect of future expenditure on contracts**

(1) For the purposes of this section, 'future expenditure' in relation to any year of assessment means an amount of expenditure which the Commissioner is satisfied will be incurred after the end of such year-

- (a) in such manner that such amount will be allowed as a deduction from income in a subsequent year of assessment; or
- (b) in respect of the acquisition of any asset in respect of which any deduction will be admissible under the provisions of this Act.

(2) If the income of any taxpayer in any year of assessment includes or consists of an amount received by or accrued to him in terms of any contract and the Commissioner is satisfied that such amount will be utilized in whole or in part to finance future expenditure which will be incurred by the taxpayer in the performance of his obligations under such contract, there shall be deducted in the determination of the taxpayer's taxable income for such year such allowance (not exceeding the said amount) as the Commissioner may determine, in respect of so much of such future expenditure as in his opinion relates to the said amount.

(3) The amount of any allowance deducted under subsection (2) in any year of assessment shall be deemed to be income received by or accrued to the taxpayer in the following year of assessment.

[S. 24C inserted by s. 18 (1) of Act No. 104 of 1980.]

#### **24D Deduction of certain expenditure incurred in respect of any National Key Point or specified important place or area**

(1) There shall be allowed to be deducted from the income of any taxpayer for any year of assessment so much of any expenditure actually incurred by the taxpayer as the Commissioner is satisfied was so incurred during such year-

- (a) directly in the performance of any act ordered, performed or executed under the provisions of the National Key Points Act, 1980 (Act No. 102 of 1980), in respect of any National Key Point or Key Point as defined in section 1 of that Act; or

- (b) directly in providing efficient security against loss, damage, disruption or immobilization of any place or area as defined in section 1 of the said Act which, although not declared a National Key Point under the provisions of the said Act, has been evaluated and approved by the Minister of Defence or any person or committee appointed by him as such a place or area in respect of which measures for the efficient security thereof ought to be taken by such taxpayer.

[Para. (b) substituted by s. 22 of Act No. 121 of 1984.]

(2) The amount of any expenditure allowed to be deducted under the provisions of subsection (1) shall be restricted to expenditure-

- (a) actually incurred by the taxpayer on or after 1 September 1978; and

(b) which was or is not otherwise allowable as a deduction under the provisions of this Act, and no claim by the taxpayer for the deduction of any expenditure under the provisions of this section shall be admitted by the Commissioner unless confirmation has been received by him from the Minister of Defence or any person or committee appointed by that Minister to the effect that it was deemed necessary or expedient that the expenditure in question be incurred by the taxpayer concerned.

(3) Where an amount has been paid by the State to a taxpayer in respect of expenditure incurred by him prior to 1 July 1983 which has qualified for deduction from his income under subsection (1) and the Minister, person or committee referred to in subsection (2) confirms that such amount was paid as a supplement to the benefit which the taxpayer has enjoyed or will enjoy by way of the said deduction, the provisions of section 8 (4) (a) shall not apply in respect of the said amount.

[Sub-s. (3) added by s. 16 (1) of Act No. 85 of 1987.]

[S. 24D inserted by s. 20 (1) of Act No. 96 of 1981.]

#### 24E .....

[S. 24E inserted by s. 18 of Act 91 of 1982 and deleted by s. 18 of Act 90 of 1988.]

#### 24F Taxable income of film owners

##### Cases

(1) In this section-

'completion date', in relation to a film, means the date on which the cut master negative and conforming sound track of the film are married in an answer print or, where such film is not a cinematographic film, the date on which the film is completed to an equivalent production stage;

'export', in relation to a film, means sell and consign or sell and deliver to any purchaser at any address in any export country, or the exploitation of the film by the film owner in an export country and any derivative of 'export' shall be construed accordingly;

[Definition of 'export' inserted by s. 25 (a) of Act 74 of 2002.]

'export country' means any country other than the Republic or a neighbouring country;

[Definition of 'export country' inserted by s. 25 (b) of Act 74 of 2002.]

'film' means a recording of moving visual images and sound by means of cinematographic film, video tape, video disc or otherwise, including any copy of the film and any right therein;

'film manufacturer' means any person who manufactures film and whose income is derived wholly or mainly from the production, processing, distribution or exhibition of films in the Republic;

'film owner' means any person who owns, whether solely or jointly, a film;

'marketing expenditure' means so much of the expenditure incurred by the film owner during the year of assessment to market a South African export film and allowed to be deducted from his or her income under section 11 as is proved to the satisfaction of the Commissioner to have been incurred directly-

- (a) in research into or obtaining information (including the remuneration of consultants, agents or representatives) in regard to the marketing of that film in any export country;
- (b) in advertising or otherwise securing publicity for that film in an export country (excluding expenditure incurred in sponsoring or promoting any sporting or any other event in a country other than an export country) or in soliciting orders for that film in, or participating in trade fairs in, export countries;
- (c) in providing without charge samples or technical information in respect of that film to prospective customers in any export country;
- (d) in bringing prospective customers from any export country to the Republic;
- (e) in connection with the preparation or submission of tenders or quotations in respect of

- that film to be exported to any export country;
- (f) in respect of commission or other remuneration for orders for that film exported to any export country or the clearing or forwarding of that film in that country;
- (g) by way of certification fees charged by any South African Certification Authority in respect of that film which has been exported;
- (h) by way of expenditure (including search and application fees) incurred in obtaining in any export country the registration of any copyright or patent or the restoration of any copyright or patent or the registration of any design or trade mark or the extension of the term or registration period of, or the renewal of the registration of, any copyright, patent, design or trade mark;
- (i) in connection with the design of any special label or packaging used for that film, if the Commissioner is satisfied that the requirements as to the labelling or packaging of that film differ materially from, or are additional to, the requirements of the South African market; and
- (j) by way of membership fees of any institution or body which-
  - (i) is actively engaged in export promotion of films;
  - (ii) does not receive financial support from the State; and
  - (iii) is approved by the Director-General of Trade and Industry;;

[Definition of 'marketing expenditure' inserted by s. 25 (c) of Act 74 of 2002.]

'post-production cost', in relation to a film, means any expenditure of the nature referred to in the definition of 'production cost' which is incurred after the completion date, but excluding any print cost in relation to such film;

'print cost', in relation to a film, means any expenditure incurred by the film owner in the making of copies of the film;

'production cost', in relation to a film, means the total expenditure incurred by a film owner in respect of the acquisition or production of such film, excluding expenditure incurred in the erection, construction or acquisition of any buildings or other structures or works of a permanent nature, but including, without in any way limiting the scope of this definition-

- (a) any remuneration, salary, legal, accounting or other fee, commission or other amount paid or payable to any person for the purposes of or in connection with the production of the film;
- (b) the cost of acquiring the story rights, script, screenplay, copyright or other rights in relation to the film;
- (c) insurance premiums in respect of insurance against injury to or death of persons, or loss or damage to property employed or used, as the case may be, in the production of the film;
- (d) premiums or commission payable in order to secure a guarantee that the cost of the film will not exceed a specified amount;
- (e) interest, finance charges and raising fees incurred for the purposes of or in connection with the production of the film;
- (f) the cost of acquiring or creating music, sound and other effects which will form part of the film;
- (g) any allowance which but for the provisions of this section would be allowed under section 11 (e) or (o) or 12C in respect of any machinery, implements, utensils or articles used in the production of a film: Provided that-
  - (i) any such allowance shall be deemed to be an amount of expenditure incurred;
  - (ii) an amount equal to the total amount of any such allowance which may be granted in respect of any year of assessment divided by the number of days in that year shall be deemed to have been incurred on each day of that year;
  - (iii) such expenditure shall be deemed to have been incurred in the country in which the asset in respect of which the allowance may be granted was acquired; and
  - (iv) no deduction or allowance shall be granted in respect of the cost of acquisition of any such machinery, implements, utensils or articles otherwise than as provided in this paragraph or paragraph (h); and

[Para. (g) amended by s. 26 of Act 129 of 1991.]

- (h) expenditure incurred in respect of-

- (i) the purchase, hire or construction of sets; and
- (ii) the hire of any machinery, implements, utensils or articles used in the production of the film,

but excluding any such expenditure incurred after the completion date and any expenditure incurred in the marketing or promotion of, or soliciting of orders for, the film;

'South African export film' means a film in respect of which-

- (a) at least 75 per cent of-
  - (i) the total amount of production cost and post-production cost (excluding amounts paid or payable to persons nominated under subparagraph (ii)) is incurred and is paid or payable in the Republic; and
  - (ii) the total amount paid or payable, whether by the film owner or any other person, in respect of services rendered by persons employed directly in connection with the production of the film (other than a maximum of four such persons nominated by the film owner for the purposes of this definition) is paid or payable to persons ordinarily resident in the Republic: Provided that where any person so nominated is replaced by another person who assumes responsibility for such firstmentioned person's duties, the amounts paid or payable to both such persons shall be deemed to have been paid or to be payable to one person; and
- (b) at least 50 per cent of-
  - (i) the production cost and post-production cost; and
  - (ii) any expenditure similar to production cost or post-production cost which is incurred in connection with the film by any person other than the film owner, is incurred and is paid or payable in the Republic;

'write-off period' .....

[Definition of 'write-off period' deleted by s. 24 (1) (a) of Act 101 of 1990.]

(2) (a) There shall be allowed to be deducted from the income of any film owner an allowance, to be known as the film allowance, determined in terms of subsection (3) in respect of the production cost and post-production cost incurred by him in respect of any film used by him in the production of his income or from which any income is received by or accrues to him.

(b) The film allowance which may be granted in respect of any film shall not in the aggregate exceed the production cost and post-production cost thereof and shall be in lieu of any deduction or allowance in respect of such production cost or post-production cost which may otherwise be allowable in terms of the provisions of this Act.

(3) Subject to the provisions of subsection (4), the amount of the film allowance which may be granted in respect of any one film shall be the sum of-

- (a) in the year of assessment in which the completion date of such film falls, the production cost of such film and any post-production cost of such film incurred during such year; and
- (b) in any subsequent year of assessment, any post-production cost of such film incurred during such year and the amount of any film allowance disallowed in the preceding year of assessment under the provisions of subsection (4).

[Sub-s. (3) substituted by s. 24 (1) (b) of Act 101 of 1990.]

(4) The film allowance which may be granted in respect of any one film in any year of assessment shall, together with the total film allowances granted in respect of that film in any preceding years of assessment, not exceed the sum of-

- (a) the amounts of production cost and post-production cost in respect of the film which have been paid by the film owner: Provided that where any loan or credit has been used by him for the payment or financing of the whole or any portion of such production cost or post-production cost and any portion of such loan or credit is owed by him on the last day of the year of assessment, the amount which may be taken into account under this paragraph shall be reduced by any portion of such loan or credit so owed by him for which the film owner is not under the provisions of subsection (8) deemed to be at risk on the last day of the year of assessment; and

[Para. (a) amended by s. 19 (1) (a) of Act 90 of 1988.]

- (b) the amounts of any production cost and post-production cost which have not been paid by

the film owner and for which he is under the provisions of subsection (8) deemed to be at risk on the last day of the year of assessment.

(5) and (6) .....

[Sub-ss. (5) and (6) deleted by s. 24 (1) (c) of Act 101 of 1990.]

(7) The amount of any print cost or any marketing expenditure which may be allowed under the provisions of section 11 shall not in the aggregate exceed the total of-

(a) the amount of such print cost or marketing expenditure which has been paid by the film owner: Provided that where any loan or credit has been used by him for the payment or financing of the whole or any portion of such print cost or marketing expenditure and any portion of such loan or credit is owed by him on the last day of the year of assessment, the amount to be allowed under this paragraph shall be reduced by any portion of such loan or credit so owed by him for which the film owner is not under the provisions of subsection (8) deemed to be at risk on the last day of the year of assessment; and

[Para. (a) amended by s. 19 (1) (b) of Act 90 of 1988.]

(b) the amount of any print cost or marketing expenditure which has not been paid by the film owner and for which he is under the provisions of subsection (8) deemed to be at risk on the last day of the year of assessment:

Provided that where-

(a) any such loan or credit for which the film owner is not deemed to be at risk has been used by him for the payment or financing of print cost and marketing expenditure; or

(b) he is in respect of the sum of any unpaid amount of print cost and marketing expenditure not deemed to be at risk,

he shall for the purposes of this subsection be deemed not to be at risk for so much of such loan or credit or so much of such sum, as the case may be, as does not exceed the amount of such marketing expenditure for which such loan or credit was used or which is unpaid: Provided further that any amount of print cost or marketing expenditure which has been disallowed in terms of this subsection shall be carried forward and be deemed for the purposes of section 11 to be an amount of print cost or marketing expenditure, as the case may be, incurred in the succeeding year of assessment.

[Sub-s (7) amended by s. 19 (1) (c) of Act 90 of 1988, by s. 30 (a) and (b) of Act 59 of 2000 and by s. 25 (d) of Act 74 of 2002.]

(8) For the purposes of subsections (4) and (7), a film owner shall be deemed to be at risk to the extent that the payment of the production cost, post-production cost, print cost or marketing expenditure incurred by him, or the repayment of any loan or credit used by him for the payment or financing of any such production cost, post-production cost, print cost or marketing expenditure, would (having regard to any transaction, agreement, arrangement, understanding or scheme entered into before or after such production cost, post-production cost, print cost or marketing expenditure is incurred) result in an economic loss to him were no income to be received by or accrue to him in future years from the exploitation by him of the film.

[Sub-s. (8) substituted by s. 25 (e) of Act 74 of 2002.]

(9) and (10) .....

[Sub-ss. (9) and (10) deleted by s. 25 (f) of Act 74 of 2002.]

(11) .....

[Sub-s. (11) added by s. 19 (1) (e) of Act 90 of 1988 and deleted by s. 25 (f) of Act 74 of 2002.]

[S. 24F inserted by s. 17 (1) of Act 85 of 1987]

## **24G Taxable income of toll road operators**

(1) For the purposes of this section-

'agreement' means an agreement concluded by the taxpayer in terms of which the taxpayer is entitled to operate a toll road;

'ancillary service' in relation to a toll road, means any-

- (a) vehicle service station, breakdown or repair facility;
- (b) shop or restaurant;
- (c) park, recreation or rest area;
- (d) emergency medical or first-aid facility;
- (e) hotel or other accommodation; or
- (f) entertainment facility,

or other service or facility to which persons or vehicles may gain access from the toll road;



'permanent work' means-

- (a) any earthwork, tunnel, bridge or structure forming part of a toll road, including any building erected for the purpose of housing toll equipment, but excluding any such work constructed or erected solely for the purposes of the repair or maintenance of a toll road; and
- (b) the reimbursement for the cost of acquisition or expropriation of land required for the purposes of the toll road; and  
[Para. (b) substituted by s. 14 (1) (a) of Act 16 of 2004.]
- (c) any payment made to the South African National Roads Agency Limited in respect of the acquisition of the right to operate a toll road;  
[Para. (c) added by s. 14 (1) (b) of Act 16 of 2004.]

'road pavement' means the road surface, road shoulders, subbase, base course, wearing courses, road signage, road markings, lighting, guard rails, tolling equipment, emergency telephone systems, emergency telephone repeater stations, access roads to emergency telephone repeater station sites and other parts and road furniture of a toll road, excluding any permanent work or ancillary service;

'single toll road' means-

- (a) a single continuous toll road or portion thereof, or two or more toll roads or portions thereof which are not contiguous but which the Minister of Transport Affairs, after consultation with the Minister of Finance, considers should be regarded as a single toll road; or
- (b) two or more toll roads or portions thereof in respect of which a single agreement has been concluded with the South African National Roads Agency Limited;  
[Para. (b) substituted by s. 14 (1) (c) of Act 16 of 2004.]

'South African National Roads Agency Limited' means the South African National Road Agency Limited incorporated in terms of section 3 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act 7 of 1998);

[Definition of 'South African National Roads Agency Limited' inserted by s. 14 (1) (d) of Act 16 of 2004.]

'tolling period', in relation to a toll road, means the initial period during which the South African National Roads Agency Limited has granted to the taxpayer or any other person the right to operate such toll road, including any period in respect of which such right was so granted in terms of an interim agreement concluded by the South African National Roads Agency Limited, but excluding any extension of such first-mentioned period in respect of which a right of renewal may be exercised;

[Definition of 'tolling period' substituted by s. 14 (1) (e) of Act 16 of 2004.]

'toll road' means a road or section thereof, including any access road, crossroad or ramp constituting a necessary adjunct to such road or section, in respect of which the taxpayer derives or will derive income through the imposition of a toll or the exploitation of the right to impose a toll.

(2) Subject to the provisions of subsection (5), there shall be deducted in the determination of the taxable income derived by the taxpayer during any year of assessment -

- (a) the sum of any annual allowances determined under subsection (3) in relation to expenditure incurred during the current or any previous year of assessment in respect of any permanent work, road pavement, major rehabilitation of the road pavement or erection or construction or ancillary services in relation to a toll road;
- (b) any expenditure incurred during the year of assessment in respect of the repair or maintenance of a toll road or any ancillary service in relation to such toll road, other than expenditure incurred on major rehabilitation of the road pavement;
- (c) any interest (other than interest which is deductible under section 11 (a)) incurred by the taxpayer during the year of assessment in respect of any loan utilized for the purpose of financing any expenditure contemplated in paragraph (a) or (b); and  
[Para. (c) substituted by s. 41 of Act 45 of 2003.]
- (d) any amount which has been disallowed in the preceding year of assessment under the provisions of subsection (5):

Provided that the aggregate of the allowances which may be granted under paragraph (a) shall not exceed the total expenditure incurred by the taxpayer on such permanent work, road pavement, major rehabilitation of road pavement or erection or construction of ancillary services.

(3) For the purposes of subsection (2), an annual allowance shall be calculated in respect of expenditure incurred by the taxpayer on permanent works, road pavements, major rehabilitation of road

pavements or the erection, construction, installation or provision of ancillary services during any year of assessment, such allowance to be equal to the expenditure so incurred during the year divided by the lesser of the number of years reckoned from the commencement of that year until the end of the tolling period (for which purpose a portion of a year shall be regarded as a year) and-

- (a) in the case of expenditure incurred on permanent works or the erection or construction of ancillary services, 25 years; and
- (b) in the case of such expenditure incurred on road pavements or major rehabilitation of road pavements, 8 years.

(4) No deduction or allowance shall be granted under this Act in respect of expenditure contemplated in subsection (2) otherwise than as provided in that subsection.

[Sub-s. (4) substituted by s. 14 (1) (f) of Act 16 of 2004.]

(5) The allowances which may be granted under subsection (2) (a), (b) and (d) in any year of assessment in respect of any single toll road shall not in the aggregate exceed the taxable income (as determined before the deduction of the said allowances) derived by the taxpayer during such year from-

- (a) the exploitation of such toll road or any ancillary service in relation to such toll road; and
- (b) any interest derived in the ordinary course of such exploitation and the financing of any expenditure contemplated in subsection (3) which relates to such toll road.

[S. 24G inserted by s. 20 (1) of Act 90 of 1988.]

## 24H Persons carrying on trade or business in partnership

### Cases

(1) For the purposes of this section, 'limited partner' means any member of a partnership *en commandite*, an anonymous partnership or any similar partnership, if such member's liability towards a creditor of the partnership is limited to the amount which he has contributed or undertaken to contribute to the partnership or is in any other way limited.

(2) Where any trade or business is carried on in partnership, each member of such partnership shall, notwithstanding the fact that he may be a limited partner, be deemed for the purposes of this Act to be carrying on such trade or business.

(3) Notwithstanding anything to the contrary in this Act contained, the amount of any allowance or deduction which may be granted to any taxpayer under any provision of this Act in respect of or in connection with any trade or business carried on by him in a partnership in relation to which he is a limited partner shall not in the aggregate exceed the sum of-

- (a) the amount, whether it consists of the taxpayer's contribution to the partnership or of any other amount, for which the taxpayer is or may be held liable to any creditor of the partnership; and
- (b) any income received by or accrued to the taxpayer from such trade or business.

[Sub-s. (3) amended by s. 26 of Act 74 of 2002.]

(4) Any allowance or deduction which has been disallowed under the provisions of subsection (3) shall be carried forward and be deemed to be an allowance or deduction to which the taxpayer is entitled in the succeeding year of assessment.

(5) (a) Where any income has in common been received by or accrued to the members of any partnership, a portion (determined in accordance with any agreement between such members as to the ratio in which the profits or losses of the partnership are to be shared) of such income shall, notwithstanding anything to the contrary contained in any law or the relevant agreement of partnership, be deemed to have been received by or to have accrued to each such member individually on the date upon which such income was received by or accrued to them in common.

(b) Where a portion of any income is under the provisions of paragraph (a) deemed to have been received by or to have accrued to a taxpayer, a portion (determined as aforesaid) of any deduction or allowance which may be granted under the provisions of this Act in the determination of the taxable income derived from such income shall be granted in the determination of the taxpayer's taxable income so derived.

[S. 24H inserted by s. 21 of Act 90 of 1988.]

## 24I Gains or losses on foreign exchange transactions

(1) For the purposes of this section-

'acquisition rate' means the exchange rate in respect of an exchange item obtained by dividing the amount of the expenditure incurred for the acquisition of such exchange item by the foreign currency

amount in respect of such exchange item;

'affected contract' means any foreign currency option contract or forward exchange contract, as the case may be, which has been entered into by any person during any year of assessment, to serve as a hedge in respect of a loan, advance or debt, where-

- (a) such loan or advance has not yet been obtained or granted, as the case may be, by such person, or such debt has not yet been incurred by, or the amount payable in respect of such debt has not yet accrued to such person, as the case may be, during such year of assessment; and
- (b) such loan, advance or debt-
  - (i) is to be utilised by such person to acquire any asset or to finance any expense; or
  - (ii) will arise from the sale of any asset or the supply of any services, in the ordinary course of his trade in terms of an agreement entered into by such person prior to the end of such year of assessment;

[Definition of 'affected forward exchange contract' inserted by s. 18 (1) (a) of Act 21 of 1994 and substituted by s. 13 (1) (a) of Act 36 of 1996 and by 'affected contract' by s. 35 (1) (a) of Act 30 of 1998.]

'disposal rate' means the exchange rate in respect of an exchange item obtained by dividing the amount received or accrued in respect of the disposal of such exchange item by the foreign currency amount in respect of such exchange item;

'exchange difference' means the foreign exchange gain or foreign exchange loss in respect of an exchange item during any year of assessment determined by multiplying such exchange item by the difference between-

- (a) the ruling exchange rate on transaction date in respect of such exchange item during that year of assessment, and-
  - (i) the ruling exchange rate at which such exchange item is realised during that year of assessment; or
  - (ii) the ruling exchange rate at which such exchange item is translated at the end of that year of assessment; or
- (b) the ruling exchange rate at which such exchange item was translated at the end of the immediately preceding year of assessment or at which it would have been translated had this section been applicable at the end of that immediately preceding year of assessment, and-
  - (i) the ruling exchange rate at which such exchange item is realised during that year of assessment; or
  - (ii) the ruling exchange rate at which such exchange item is translated at the end of that year of assessment;

'exchange item' of or in relation to a person means an amount in a foreign currency -

- (a) which constitutes any unit of currency acquired and not disposed of by that person;
- (b) owing by or to that person in respect of a loan or advance or a debt incurred by or payable to such person;
- (c) owed by or to that person in respect of a forward exchange contract; or
- (d) where that person has the right or contingent obligation to buy or sell that amount in terms of a foreign currency option contract.

[Definition of 'exchange item' amended by s. 18 (1) (b) of Act 21 of 1994 and substituted by s. 36 (1) (a) of Act 60 of 2001.]

'foreign currency' in relation to any exchange item of a person, means any currency which is not local currency;

[Definition of 'foreign currency' substituted by s. 31 (a) of Act 59 of 2000, by s. 36 (1) (b) of Act 60 of 2001 and by s. 27 (1) (a) of Act 74 of 2002.]

'foreign currency option contract' means any agreement in terms of which any person acquires or grants the right to buy from or to sell to any other person a certain amount of a nominated foreign currency on or before a future expiry date at a specified exchange rate;

'forward exchange contract' means any agreement in terms of which any person agrees with another person to exchange an amount of currency for another currency at some future date at a specified exchange rate;

'forward rate' means the specified exchange rate as referred to in the definition of 'forward exchange contract';

'intrinsic value', in relation to a foreign currency option contract, means the value for the holder or writer thereof, as the case may be, determined by applying the difference between-

- (a) the spot rate on translation date or the date on which the foreign currency option contract is realised, as the case may be; and
- (b) the option strike rate,

to the amount of foreign currency as specified in such foreign currency option contract: Provided that such foreign currency option contract shall have a nil value for the holder or writer thereof if such holder thereof would have sustained a loss had he exercised his right in terms of such foreign currency option contract on such translation date or date realised due to the unfavourable difference between the option strike rate and the spot rate on such translation date or date realised;

'local currency' means in relation to-

- (a) any exchange item which is attributable to any permanent establishment of a person outside the Republic, the currency used by that permanent establishment for purposes of financial reporting;
- (b) any resident in respect of an exchange item which is not attributable to a permanent establishment outside the Republic, the currency of the Republic; or  
[Para. (b) substituted by s. 42 (1) (a) of Act 45 of 2003.]
- (c) any person that is not a resident in respect of any exchange item which is attributable to a permanent establishment in the Republic, the currency of the Republic;  
[Para. (c) substituted by s. 42 (1) (a) of Act 45 of 2003.]

[Definition of 'local currency' inserted by s. 36 (1) (c) of Act 60 of 2001 and substituted by s. 27 (1) (b) of Act 74 of 2002.]

'market value', in relation to a foreign currency option contract, means-

- (a) in the case of a person who for accounting purposes uses a market-related valuation method in terms of a practice consistently applied by him to determine the value of all his foreign currency option contracts, the market-related value so determined; or
- (b) in the case of any other person, the intrinsic value of such foreign currency option contract;

'option strike rate' means the specified exchange rate as referred to in the definition of 'foreign currency option contract';

'premium or discount on a forward exchange contract' means the amount obtained by applying the difference between the forward rate in respect of a forward exchange contract and the spot rate on the date on which such forward exchange contract was entered into, to the foreign currency amount specified in such forward exchange contract;

'realised' means, in relation to an exchange item, where such exchange item is -

- (a) a loan or advance or debt in any foreign currency, when and to the extent to which payment is received or made in respect of such loan, advance or debt, or when and to the extent to which such loan, advance or debt is settled or disposed of in any other manner;
- (b) a forward exchange contract, when payment is received or made in respect of such forward exchange contract;
- (c) a foreign currency option contract, when payment is received or made in respect of the right in terms of such foreign currency option contract having been exercised, or when such foreign currency option contract expires without such right having been exercised, or when such foreign currency option contract is disposed of; or  
[Para. (c) substituted by s. 11 (1) (a) of Act 140 of 1993.]
- (d) an amount which constitutes a unit of currency, when that amount is disposed of;  
[Para. (d) added by s. 27 (1) (d) of Act 74 of 2002.]

'ruling exchange rate' means, in relation to an exchange item, where such exchange item is-

- (a) a loan or advance or debt in a foreign currency on-
  - (i) transaction date, the spot rate on such date, or in the case where a related or matching forward exchange contract has been entered into to hedge such loan, advance or debt and the forward rate has been used to record for accounting purposes such loan, advance or debt in accordance with generally accepted accounting practice, the forward rate in terms of such forward exchange contract;
  - (ii) the date it is translated, the spot rate on such date, or in the case where a related or matching forward exchange contract has been entered into to hedge such loan,

advance or debt and the forward rate has been used to translate for accounting purposes such loan, advance or debt in accordance with generally accepted accounting practice, the forward rate in terms of such forward exchange contract;  
or

(iii) the date it is realised, the spot rate on such date:

Provided that where the rate prescribed in respect of a loan or advance or debt in terms of this definition is the spot rate on transaction date or the spot rate on the date on which such loan or advance or debt is realised, and any consideration paid or payable or received or receivable in respect of the acquisition or disposal of such loan or advance or debt was determined by applying a rate other than such spot rate on transaction date or date realised, such spot rate shall be deemed to be the acquisition rate or disposal rate, as the case may be;

(b) a forward exchange contract on-

- (i) transaction date, the forward rate in terms of such forward exchange contract;
- (ii) the date it is translated, the market-related forward rate available for the remaining period of such forward exchange contract, or in the case where the forward rate in terms of such forward exchange contract has been used to translate a loan, advance or debt as contemplated in paragraph (a) (ii), the forward rate in terms of such contract, or in respect of a forward exchange contract which is an affected contract, the forward rate in terms of such forward exchange contract;

[Sub-para. (ii) substituted by s. 18 (1) (c) of Act 21 of 1994 and by s. 35 (1) (b) of Act 30 of 1998.]

(iii) the date it is realised, the spot rate on such date; or

(c) a foreign currency option contract on-

- (i) transaction date, a nil rate;
- (ii) the date it is translated-
  - (aa) in relation to a foreign currency option contract which is not an affected contract, the rate obtained by dividing the market value of such foreign currency option contract on that date by the foreign currency amount as specified in such foreign currency option contract; or
  - (bb) in relation to a foreign currency option contract which is an affected contract, the rate obtained by dividing any amount included or deducted, as the case may be, in terms of subsection (3) (b) by the foreign currency amount, as specified in such affected contract;

[Item (bb) substituted by s. 27 (1) (e) of Act 74 of 2002.]

[Sub-para. (ii) substituted by s. 35 (1) (c) of Act 30 of 1998.]

(iii) the date it is realised, the rate obtained by dividing the market value of such foreign currency option contract on that date by the foreign currency amount as specified in such foreign currency option contract: Provided that where such foreign currency option contract is realised by the disposal thereof, the rate shall be obtained by dividing the amount received or accrued as a result of the disposal of such foreign currency option contract, by the foreign currency amount as specified in such foreign currency option contract:

[Sub-para. (iii) amended by s. 11 (1) (b) of Act 140 of 1993.]

(iv) .....

[Sub-para. (iv) deleted by s. 11 (1) (c) of Act 140 of 1993.]

(d) an amount which constitutes a unit of currency, on-

- (i) transaction date, the spot rate on that date;
- (ii) the date it is translated, the spot rate on that date; or
- (iii) the date it is realised, the spot rate on that date:

[Para. (d) inserted by s. 27 (1) (f) of Act 74 of 2002.]

Provided that the Commissioner may, having regard to the particular circumstances of the case, prescribe an alternative rate to any of the aforementioned prescribed rates to be applied by a person in such particular circumstances, if such alternative rate is used for accounting purposes in terms of generally accepted accounting practice;

[Definition of 'ruling exchange rate' amended by s. 18 (1) (d) of Act 21 of 1994.]

'spot rate' means the appropriate quoted exchange rate at a specific time for the delivery of

currency;

[Definition of 'spot rate' substituted by s. 36 (1) (d) of Act 60 of 2001.]

'transaction date' means, in relation to-

- (a) a loan or advance owing by a person, the date on which the amount payable in respect of such loan or advance was received by such person;
- (b) a debt owing by a person, the date on which such debt was actually incurred;
- (c) a loan or advance owing to a person, the date on which the amount payable in respect of such loan or advance was paid to another person or the date on which such loan or advance was acquired by such person in any other manner;
- (d) a debt owing to a person, the date on which the amount payable in respect of such debt accrued to such person or the date on which such debt was acquired by such person in any other manner;
- (e) a forward exchange contract, the date on which such contract was entered into;
- (f) a foreign currency option contract, the date on which such contract was entered into or acquired; and
- (g) an amount which constitutes a unit of currency, the date on which that amount was acquired;

[Para. (g) added by s. 27 (1) (h) of Act 74 of 2002.]

'transitional exchange difference' .....

[Definition of 'transitional exchange difference' deleted by s. 36 (1) (e) of Act 60 of 2001.]

'translate' means the restatement of an exchange item in the local currency at the end of any year of assessment, by applying the ruling exchange rate to such exchange item.

[Definition of 'translate' substituted by s. 36 (1) (f) of Act 60 of 2001.]

(2) The provisions of this section shall apply in respect of any -

- (a) company;
- (b) trust carrying on any trade;
- (c) natural person who holds any amount contemplated in paragraph (a) or (b) of the definition of 'exchange item' as trading stock; and;

[Para. (c) substituted by s. 27 (1) (k) of Act 74 of 2002.]

(d) natural person or trust in respect of any amount contemplated in paragraph (c) or (d) of the definition of 'exchange item:

[Sub-para. (d) added by s. 27 (1) (l) of Act 74 of 2002.]

Provided that this section does not apply in respect of any exchange item of a person who is not a resident (other than a controlled foreign company), unless that exchange item is attributable to a permanent establishment of that person in the Republic.

[Sub-s. (2) amended by s. 31 (b) and (c) of Act 59 of 2000, substituted by s. 26 (1) (g) of Act 60 of 2001 and amended by s. 27 (1) (i) of Act 74 of 2002 and by s. 23 of Act 32 of 2004.]

(3) In determining the taxable income of any person contemplated in subsection (2), there shall be included in or deducted from the income, as the case may be, of that person-

- (a) any exchange difference in respect of an exchange item of or in relation to that person, subject to subsection (10);
- (b) (i) any premium or like consideration received by, or paid by, such person in terms of a foreign currency option contract entered into by such person; or
- (ii) any consideration paid by such person in respect of a foreign currency option contract acquired by such person; and
- (c) any discount which accrued to such person or any premium incurred by him in respect of any forward exchange contract, where-
  - (i) such forward exchange contract was entered into by such person as a related or matching forward exchange contract to serve as a hedge in respect of any loan, advance or debt utilized or to be utilized by such person to acquire any asset or to finance any expense, or to serve as a hedge in respect of any loan, advance or debt arising from the sale of any asset or the supply of any services; and
  - (ii) such loan, advance or debt was recorded on transaction date at the forward rate in terms of such forward exchange contract, but such asset so acquired or such expense so financed, or such asset so sold or services so supplied, was recorded at the spot rate or an alternative rate as the Commissioner may have prescribed in

terms of the definition of 'ruling exchange rate':

Provided that such discount or premium shall be deemed to have accrued or been incurred, as the case may be, on a day to day basis during the period of such forward exchange contract for the purposes of this paragraph.

[Sub-s. (3) substituted by s. 36 (1) (h) of Act 60 of 2001.]

(4) .....

[Sub-s. (4) substituted by s. 18 (1) (e) of Act 21 of 1994, amended by s. 31 (d) of Act 59 of 2000 and deleted by s. 27 (1) (m) of Act 74 of 2002.]

(5) Where during any year of assessment any premium or discount on a forward exchange contract is included in any exchange difference in respect of any loan, advance or debt, where such exchange difference arose by reason of such loan, advance or debt having been-

- (a) translated at the forward rate as contemplated in paragraph (a) (ii) of the definition of 'ruling exchange rate' or an alternative rate as the Commissioner may have prescribed in terms of that definition; and
- (b) (i) recorded during that year of assessment at the spot rate on transaction date as contemplated in paragraph (a) (i) of that definition; or
- (ii) translated at the end of the immediately preceding year of assessment at the spot rate on translation date as contemplated in paragraph (a) (ii) of that definition; or
- (iii) translated at the end of the immediately preceding year of assessment at the forward rate as contemplated in paragraph (a) (ii) of that definition, but such forward rate differs from the forward rate contemplated in paragraph (a) of this subsection; or
- (iv) recorded or translated, as the case may be, on any of the dates contemplated in subparagraph (i), (ii) or (iii) at an alternative rate as the Commissioner may have prescribed in terms of the definition of 'ruling exchange rate', such premium or discount on such forward exchange contract which is so included in such exchange difference, shall be deemed to have been incurred or accrued, as the case may be, on a day to day basis during the period of such forward exchange contract and such premium or discount shall, for the purposes of subsection (2), be included in or deducted from a person's income on such basis; or
- (v) recorded during that year of assessment at the forward rate on the transaction date as contemplated in paragraph (a) (i) of the definition of 'ruling exchange rate',

[Sub-para. (v) added by s. 18 (b) of Act 28 of 1997.]

[Sub-s. (5) substituted by s. 18 (1) (e) of Act 21 of 1994.]

(6) Any inclusion in or deduction from income in terms of this section shall be in lieu of any deduction or inclusion which may otherwise be allowed or included under any other provision of this Act.

[Sub-s. (6) substituted by s. 26 of Act 53 of 1999 and by s. 36 (1) (i) of Act 60 of 2001.]

(7) Notwithstanding the provisions of subsection (3), but subject to the provisions of sections 36 and 37E-

- (a) any exchange difference arising from a loan, advance or debt having been utilized by a person in respect of-
  - (i) the acquisition, installation, erection or construction of any machinery, plant, implement, utensil, building or improvements to any building, as the case may be; or
  - (ii) the devising, developing, creation, production, acquisition or restoration of any invention, patent, design, trade mark, copyright or other similar property or knowledge contemplated in section 11 (gA), as the case may be;

- (b) any exchange difference arising from a forward exchange contract or a foreign currency option contract which has been entered into by a person contemplated in paragraph (a), to the extent to which such forward exchange contract or foreign currency option contract is entered into to serve as a hedge in respect of a loan or advance obtained or to be obtained or a debt incurred or to be incurred for the utilization thereof as contemplated in paragraph (a); and

[Para. (b) substituted by s. 11 (1) (e) of Act 140 of 1993.]

- (c) any premium or other consideration paid or payable in respect of or in terms of a foreign currency option contract entered into or acquired by a person contemplated in paragraph

(a), to the extent to which such foreign currency option contract is entered into or obtained in order to serve as a hedge in respect of a loan or advance obtained or to be obtained or a debt incurred or to be incurred for the utilization thereof as contemplated in paragraph (a),

[Para. (c) substituted by s. 11 (1) (e) of Act 140 of 1993.]

shall, where such exchange difference arose or such premium or other consideration was paid or became payable in a year of assessment prior to the year of assessment during which such machinery, plant, implement, utensil, building, improvements to any building, invention, patent, design, trade mark, copyright or other similar property or knowledge was or is brought into use for the purposes of such person's trade, be carried forward and be taken into account in the determination of the taxable income of such person in the year of assessment during which such machinery, plant, implement, utensil, building, improvements to any building, invention, patent, design, trade mark, copyright or other similar property or knowledge was or is so brought into use for the purposes of such person's trade: Provided that where the Commissioner is satisfied that during any year of assessment subsequent to the year of assessment during which such exchange difference arose or such premium or other consideration was paid or became payable-

- (a) the loan, advance or debt to be obtained or incurred, as the case may be, as contemplated in paragraph (b) or (c) of this subsection will no longer be so obtained or incurred;
- (b) such loan, advance or debt has not been utilised as contemplated in paragraph (a); or
- (c) any such asset, property or knowledge will no longer be brought into use for the purpose of such person's trade,

such exchange difference or premium or other consideration shall no longer be carried forward, but shall be taken into account in the determination of such person's taxable income in such subsequent year of assessment.

[Sub-s. (7) amended by s. 11 (1) (d) of Act 140 of 1993, by s. 18 (1) (f) of Act 21 of 1994, by s. 13 (1) (b) of Act 36 of 1996 and by s. 36 (1) (j) of Act 60 of 2001.]

(7A) (a) Subject to subsection (10), where any exchange difference is to be included in or deducted from the income of any company in terms of subsection (3), there shall, in lieu of such deduction or inclusion, be included in or deducted, as the case may be, from the income of such company during any year of assessment an amount equal to 10 per cent of the deferred amount of such exchange difference arising from a loan or advance owing by such company to any other company or a loan or advance owing by any other company to such company (such a loan or advance referred to as a qualifying exchange item for the purposes of this subsection), if-

- (i) such company is a connected person in relation to such other company; and
- (ii) the qualifying exchange item is of a capital nature.

[Para. (a) amended by s. 36 (1) (k) of Act 60 of 2001.]

(b) The deferred amount of any exchange difference shall, subject to the provisions of paragraphs (c), (d) and (e), be the sum of-

- (i) the foreign exchange gain or foreign exchange loss as determined in terms of this section during any year of assessment in respect of any qualifying exchange item if such foreign exchange gain or foreign exchange loss arose as a result of the translation of such qualifying exchange item at the end of such year of assessment; and
- (ii) the balance of any foreign exchange gain or foreign exchange loss, in respect of any qualifying exchange item which had arisen as a result of the translation of such qualifying exchange item during any preceding year of assessment, not included in or deducted from the income of such company in terms of paragraph (a) during such preceding year of assessment.

(c) The foreign exchange gain and foreign exchange loss referred to in paragraph (b) (i) shall exclude-

- (i) in respect of all years of assessment ending on or before 31 December 1995, any foreign exchange loss in respect of any loan or advance made by such company to any other company or by any other company to such company on or before 31 December 1994; and
- (ii) any foreign exchange gain or foreign exchange loss arising in respect of any qualifying exchange item at the end of any year of assessment to the extent to which such qualifying exchange item is hedged by a related or matching forward exchange contract.

(d) The balance of any foreign exchange gain or foreign exchange loss in respect of any qualifying exchange item referred to in paragraph (b) (ii) shall-



- (i) where the foreign currency amount of a qualifying exchange item, to the extent to which it is not hedged by a related or matching forward exchange contract, at the end of any year of assessment is less than the foreign currency amount of such qualifying exchange item, to the extent to which it was not hedged by a matching or related forward exchange contract, as at the end of the immediately preceding year of assessment, be reduced by an amount which bears to such balance the same ratio as the reduction in the foreign currency amount of such qualifying exchange item which is not so hedged at the end of such year of assessment bears to the foreign currency amount of such qualifying exchange item which was not so hedged at the end of such immediately preceding year of assessment; or
- (ii) be reduced by 100 per cent of such balance in the first year of assessment during which the provisions of paragraph (a) have not been complied with.

(e) Where any qualifying exchange item (hereinafter referred to as the old qualifying exchange item) is realized during the year of assessment by conversion thereof into a qualifying exchange item denominated in any other foreign currency (hereinafter referred to as the new qualifying exchange item)-

- (i) any exchange difference arising as a result of such conversion shall, for the purposes of paragraph (b) (i), be deemed to be a deferred amount of any exchange difference in respect of such old qualifying exchange item;
- (ii) the foreign currency amount of such old qualifying exchange item shall, for the purposes of paragraph (d), be deemed not to have been reduced on realization to the extent that it was converted into a new qualifying exchange item and, thereafter, the old qualifying exchange item and the new qualifying exchange item shall be deemed to be one and the same qualifying exchange item and a reduction of the foreign currency amount of the new qualifying exchange item shall be deemed to be a reduction of the old qualifying exchange item; and
- (iii) the foreign currency amount of the old qualifying exchange item at the end of such immediately preceding year of assessment shall for the purposes of paragraph (d) be restated in the foreign currency in which the new qualifying exchange item is denominated by applying the appropriate exchange rate used to convert the old qualifying exchange item to the new qualifying exchange item.

(f) Any reduction in terms of paragraph (d) of the balance of any foreign exchange gain or foreign exchange loss in respect of a qualifying exchange item shall be included in or deducted from, as the case may be, the income of such company in the year of assessment of such reduction.

[Sub-s. (7A) inserted by s. 18 (1) (g) of Act 21 of 1994.]

(8) Any foreign exchange loss sustained in respect of a transaction entered into by a person, or any premium or other consideration paid in respect of or in terms of a foreign currency option contract entered into or acquired by a person, shall not be allowed as a deduction from such person's income under subsection (3) if such transaction was entered into or such foreign currency option contract was entered into or acquired solely or mainly to enjoy a reduction in tax by way of a deduction from income.

[Sub-s. (8) substituted by s. 36 (1) (l) of Act 60 of 2001.]

(9) For the purposes of this section, any exchange item of or in relation to-

- (a) a person contemplated in subsection (2), held or owed by that person on 1 October 2001, other than in the course of trade of such person, shall be deemed to have been received, incurred, acquired or entered into, as the case may be, by that person on that date at the ruling exchange rate on that date; and
- (b) a foreign company which becomes a controlled foreign company shall be deemed to have been received, incurred, acquired or entered into, as the case may be, by that controlled foreign company on the later of-
  - (i) the first day of the year of assessment commencing on or after 1 January 2000; or
  - (ii) the date that the foreign company becomes a controlled foreign company.

[Sub-s. (9) added by s. 36 (1) (m) of Act 60 of 2001 and substituted by s. 42 (1) (b) of Act 45 of 2003.]

(10) No amount shall be included in or deducted from the income of-

- (a) any resident in terms of this section in respect of any exchange difference determined on the translation of an exchange item to which that resident and any company are parties, where that company is a controlled foreign company in relation either to that resident or to any other company, which is a resident, and which forms part of the same group of

- companies as that resident; or  
 (b) any controlled foreign company in relation to any exchange item contemplated in paragraph (a):

[Para. (b) substituted by s. 42 (1) (c) of Act 45 of 2003.]

Provided that where that exchange item is realised during any year of assessment, the exchange difference in respect of that exchange item shall be determined by multiplying that exchange item by the difference between the ruling exchange rate on the date on which that exchange item is realised and the ruling exchange rate on transaction date, after taking into account any exchange difference included in or deducted from the income of that person in terms of this section in respect of that exchange item.

[Sub-s. (10) added by s. 36 (1) (m) of Act 60 of 2001 and substituted by s. 27 (1) (n) of Act 74 of 2002.]

(11) No amount shall be included in or deducted from the income of a person in terms of this section in respect of any exchange difference arising from-

- (a) any amount owing by a person in respect of a loan, advance or debt incurred by that person in foreign currency to acquire any asset, other than an asset-
- (i) which constitutes an exchange item;
  - (ii) the currency of expenditure of which is denominated in the local currency of that person; or
  - (iii) in respect of which the provisions of section 9G or paragraph 43 (4) of the Eighth Schedule would apply had that asset been disposed of, regardless of whether or not that asset constitutes trading stock; and

[Sub-para. (iii) substituted by s. 42 (1) (d) of Act 45 of 2003.]

- (b) any forward exchange contract or foreign currency option contract entered into to hedge such loan, advance or debt.

[Sub-s. (11) added by s. 36 (1) (m) of Act 60 of 2001 and substituted by s. 27 (1) (n) of Act 74 of 2002.]

(12) Where a person holds any exchange item and the provisions of this section at any time during a year of assessment -

- (a) become applicable to that person, that exchange item shall be deemed to have been acquired at that time for the purposes of this section; or  
 (b) cease to apply to that person, that exchange item shall be deemed to have been realised at that time for the purposes of this section.

[Sub-s. (12) added by s. 36 (1) (m) of Act 60 of 2001 and substituted by s. 27 (1) (n) of Act 74 of 2002.]

[S. 24I inserted by s. 21 of Act 113 of 1993.]

#### **24J Incurral and accrual of interest**

(1) For the purposes of this section, unless the context otherwise indicates -  
 'accrual amount', in relation to an accrual period, means an amount determined in accordance with the following formula:

$$A = B \times C$$

in which formula-

- (a) 'A' represents the amount to be determined;  
 (b) 'B' represents the yield to maturity; and  
 (c) 'C' represents the adjusted initial amount:

Provided that-

- (i) where the commencement or end of any year of assessment falls within an accrual period, the amount so determined shall be apportioned on a day to day basis over the term of such accrual period in order to determine the relevant portion of such amount relating to that part of such accrual period falling within the year of assessment so commencing or ending, as the case may be;
- (ii) where an instrument is transferred on a date other than at the end of an accrual period, the amount so determined shall be apportioned on a day to day basis over the term of such accrual period in order to determine the relevant portion of such amount relating to the relevant transferor or transferee, as the case may be, in relation to such instrument; and
- (iii) the amount so determined shall be appropriately adjusted by taking into account amounts received or payments made other than at the end of an accrual period;

'accrual period', in relation to an instrument, means-

- (a) where in terms of such instrument regular payments at intervals of equal length and not exceeding 12 months per interval are to be made throughout the term of such instrument,

- the period between such regular payments; or
- (b) any period not exceeding 12 months elected by the holder or issuer, as the case may be, which period shall be applied consistently throughout the term of such instrument;
- 'adjusted gain on transfer or redemption of an instrument' means-
- (a) in relation to the holder of any income instrument, where-
- (i) an alternative method has not been applied, the amount by which the sum of the transfer price or redemption payment of such income instrument in relation to such holder and any payments received by such holder in terms of such income instrument during the accrual period in which such income instrument is transferred or redeemed, exceeds the sum of the adjusted initial amount in relation to such income instrument and the accrual amount in relation to such accrual period and any payments made by such holder in terms of such income instrument during such accrual period; or
- (ii) an alternative method has been applied, the amount by which the sum of the transfer price or redemption payment of such income instrument in relation to such holder and any payments received by such holder in terms of such income instrument during the period from acquisition until transfer or redemption of such income instrument by such holder, exceeds the sum of the initial amount and all amounts determined in accordance with such alternative method and any other payments made by such holder in terms of such income instrument during the period from acquisition until transfer or redemption of such income instrument by such holder; or
- (b) in relation to the issuer of any instrument, where-
- (i) an alternative method has not been applied, the amount by which the sum of the adjusted initial amount in relation to such instrument and the accrual amount in relation to the accrual period during which such instrument is transferred or redeemed and any payments received by such issuer in terms of such instrument during the accrual period, exceeds the sum of the transfer price or redemption payment in relation to such instrument in relation to such issuer and any payments made by such issuer in terms of such instrument during such accrual period; or
- (ii) an alternative method has been applied, the amount by which the sum of the initial amount and all amounts determined in accordance with such alternative method and any other payments received by such issuer in terms of such instrument during the period from issue or acquisition until transfer or redemption of such instrument by such issuer, exceeds the sum of the transfer price or redemption payment in relation to such instrument in relation to such issuer and any payments made by such issuer in terms of such instrument during the period from issue or acquisition until transfer or redemption of such instrument by such issuer;

[Definition of 'adjusted gain on transfer or redemption of an instrument' substituted by s. 14 (1) (a) of Act 36 of 1996.]

'adjusted initial amount' means-

- (a) in relation to the holder of an income instrument with regard to a particular accrual period, the sum of the initial amount and the accrual amounts in relation to all previous accrual periods and any other payments made by such holder during all such previous accrual periods less any payments received by such holder during all such previous accrual periods, in terms of such income instrument; or
- (b) in relation to the issuer of an instrument with regard to a particular accrual period, the sum of the initial amount and the accrual amounts in relation to all previous accrual periods and any other payments received by such issuer during all such previous accrual periods less any payments made by such issuer during all such previous accrual periods, in terms of such instrument: Provided that where that instrument forms part of any transaction, operation or scheme-
- (i) any payments made by the issuer to any other person pursuant to that transaction, operation or scheme with a purpose or with the probable effect of making payment directly or indirectly to the holder or a connected person in relation to the holder, must be deducted for purposes of this paragraph; and

- (ii) in the case where any party to that transaction, operation or scheme is a connected person in relation to that issuer, any payments made by that connected person to any other person pursuant to that transaction, operation or scheme with a purpose or with the probable effect of making payment directly or indirectly to the holder or a connected person in relation to the holder, must be deducted for purposes of this paragraph;

[Para. (b) amended by s. 24 (1) (a) of Act 32 of 2004.]

'adjusted loss on transfer or redemption of an instrument' means-

- (a) in relation to the holder of any income instrument, where-
  - (i) an alternative method has not been applied, the amount by which the sum of the adjusted initial amount in relation to such income instrument and the accrual amount in relation to the accrual period during which such income instrument is transferred or redeemed and any payments made by such holder in terms of such income instrument during such accrual period, exceeds the sum of the transfer price or redemption payment in relation to such income instrument in relation to such holder and any payments received by such holder in terms of such income instrument during such accrual period; or
  - (ii) an alternative method has been applied, the amount by which the sum of the initial amount and all amounts determined in accordance with such alternative method and any other payments made by such holder in terms of such income instrument during the period from acquisition until transfer or redemption of such income instrument by such holder, exceeds the sum of the transfer price or redemption payment in relation to such income instrument in relation to such holder and any payments received by such holder in terms of such income instrument during the period from acquisition until transfer or redemption of such income instrument by such holder; or
- (b) in relation to the issuer of any instrument, where-
  - (i) an alternative method has not been applied, the amount by which the sum of the transfer price or redemption payment of such instrument in relation to such issuer and any payments made by such issuer in terms of such instrument during the accrual period during which such instrument is transferred or redeemed, exceeds the sum of the adjusted initial amount in relation to such instrument and the accrual amount in relation to such accrual period and any payments received by such issuer in terms of such instrument during such accrual period; or
  - (ii) an alternative method has been applied, the amount by which the sum of the transfer price or redemption payment of such instrument in relation to such issuer and any payments made by such issuer in terms of such instrument during the period from issue or acquisition until transfer or redemption of such instrument by such issuer, exceeds the sum of the initial amount and all amounts determined in accordance with such alternative method and any other payments received by such issuer in terms of such instrument during the period from issue or acquisition until transfer or redemption of such instrument by such issuer;

[Definition of 'adjusted loss on transfer or redemption of an instrument' substituted by s. 14 (1) (b) of Act 36 of 1996.]

'alternative method' means a method of calculating interest in relation to any class of instruments which-

- (a) conforms with generally accepted accounting practice;
- (b) is consistently applied in respect of all such instruments (excluding any instrument as contemplated in subsection (9)) for all financial reporting purposes; and
- (c) method achieves a result in so far as the timing of the accrual and incurrance of interest is concerned which does not differ significantly from the result achieved by the application of the provisions of subsections (2) (a) and (3) (a);

'deferred interest' includes-

- (a) any interest where such interest (or any portion thereof), calculated in respect of any accrual period falling within the term of any instrument by applying a constant interest rate throughout the term of such instrument, is not payable or receivable in terms of such

instrument within one year from the date of the commencement of such accrual period;  
and

- (b) any interest payable or receivable in terms of any instrument where such interest is not calculated by applying a constant interest rate throughout the term of such instrument;

'fixed rate instrument' means an instrument in terms of which the amount or amounts payable or receivable is or are or consists of or consist of-

- (a) a specified amount or specified amounts;
- (b) an amount or amounts the method of calculation of which does not involve the application of a variable rate; or
- (c) any combination of amounts referred to in paragraph (a) or (b);

'holder', in relation to an income instrument-

- (a) means any person who has become entitled to any interest or amount receivable in terms of such income instrument; or

[Para. (a) substituted by s. 24 (1) (b) of Act 32 of 2004.]

- (b) at any particular time, means any person who, if any interest payable in terms of such income instrument was due and payable at that time, would be entitled to receive payment of such interest;

'income instrument' means-

- (a) in the case of any person other than a company, any instrument -
  - (i) the term of which will, or is reasonably likely to, exceed one year; and
  - (ii) which is issued or acquired at a discount or premium or bears deferred interest;

and

- (b) in the case of any company, any instrument;

[Definition of 'income instrument' substituted by s. 14 (1) (c) of Act 36 of 1996.]

'initial amount' means the issue price or transfer price, as the case may be, in relation to an instrument';

'instrument' means any form of interest-bearing arrangement, whether in writing or not, including-

- (a) any stock, bond, debenture, bill, promissory note, certificate or similar arrangement;
- (b) any deposit with a bank or other financial institution;
- (c) any secured or unsecured loan, advance or debt;
- (d) any acquisition or disposal of any right to receive interest or the obligation to pay any interest, as the case may be, in terms of any other interest bearing arrangement; or
- (e) any repurchase agreement or resale agreement,

which was-

- (i) issued or deemed to have been issued after 15 March 1995;
- (ii) issued on or before 15 March 1995 and transferred on or after 19 July 1995; or
- (iii) in so far as it relates to the holder thereof, issued on or before 15 March 1995 and was unredeemed on 14 March 1996 (excluding any arrangement contemplated in subparagraphs (i) and (ii)),

but excluding-

- (A) any lease agreement (other than a sale and leaseback arrangement as contemplated in section 23G);
- (B) .....

[Item (B) deleted by s. 19 (1) (c) of Act 28 of 1997.]

[Definition of 'instrument' amended by s. 14 (1) (d) of Act 36 of 1996 and by s. 19 (1) (c) of Act 28 of 1997.]

'interest' includes the-

- (a) gross amount of any interest or related finance charges, discount or premium payable or receivable in terms of or in respect of a financial arrangement;
- (b) amount (or portion thereof) payable by a borrower to the lender in terms of any lending arrangement as represents compensation for any amount to which the lender would, but for such lending arrangement, have been entitled; and

[Para. (b) substituted by s. 27 (1) (a) of Act 53 of 1999.]

- (c) absolute value of the difference between all amounts receivable and payable by a person in terms of a sale and leaseback arrangement as contemplated in section 23G throughout the full term of such arrangement, to which such person is a party,

irrespective of whether such amount is -

- (i) calculated with reference to a fixed rate of interest or a variable rate of interest; or
- (ii) payable or receivable as a lump sum or in unequal instalments during the term of the financial arrangement;

[Definition of 'interest' substituted by s. 19 (1) (a) of Act 28 of 1997.]

'interest rate agreement' means an interest rate agreement as defined in section 24K;

[Definition of 'interest rate agreement' inserted by s. 19 (1) (b) of Act 28 of 1997.]

'issue', in relation to an instrument, means the creation of the liability to pay or the right to receive an amount or amounts in terms of such instrument;

'issue price', in relation to an instrument, means the market value of the consideration given or received, as the case may be, for the issue of the instrument as determined on the date on which that instrument is issued;

[Definition of 'issue price' substituted by s. 24 (1) (c) of Act 32 of 2004.]

'issuer', in relation to any instrument-

- (a) means any person who has incurred any interest or has any obligation to repay any amount in terms of such instrument; or

[Para. (a) substituted by s. 24 (1) (d) of Act 32 of 2004.]

- (b) at any particular time, means any person who, if any interest payable in terms of such instrument was due and payable at that time, would be liable to pay such interest;

'lending arrangement' means any arrangement or agreement in terms of which-

- (a) a person (in this section referred to as the lender) lends any instrument to another person (in this section referred to as the borrower); and
- (b) the borrower in return undertakes to return any instrument of the same kind and of the same or equivalent quantity and quality to the lender;

[Definition of 'lending arrangement' inserted by s. 27 (1) (b) of Act 53 of 1999.]

'redemption', in relation to an instrument, means the discharging of all liability to pay all amounts in terms of such instrument;

'redemption payment', in relation to an instrument, means any payment made or received which has the effect of redeeming such instrument;

'repurchase agreement' means the obtaining of money (which money shall for the purposes of this section be deemed to have been so obtained by way of a loan) through the disposal of an asset by any person to any other person subject to an agreement in terms of which such person undertakes to acquire from such other person at a future date the asset so disposed of or any other asset issued by the issuer of, and which has been so issued subject to the same conditions regarding term, interest rate and price as, the asset so disposed of;

'resale agreement' means the provision of money (which money shall for the purposes of this section be deemed to have been so provided in the form of a loan) through the acquisition of an asset by any person from any other person subject to an agreement in terms of which such person undertakes to dispose of to such other person at a future date the asset so acquired or any other asset issued by the issuer of, and which has been so issued subject to the same conditions regarding term, interest rate and price as, the asset so acquired;

'short selling' means the sale of any instrument by a person who is not the owner of such instrument, and in respect of which such person has the obligation to deliver such instrument at a future date;

'term', in relation to an instrument, means the period from the issue or transfer, as the case may be, until the date of redemption thereof;

'transfer', in relation to an instrument, includes-

- (a) the transfer, sale, assignment or disposal in any other manner of such instrument by the holder or issuer thereof, as the case may be; or
- (b) the acquisition of such instrument by the holder or issuer thereof, as the case may be, by way of a transfer, sale, assignment or disposal in any other manner,

but does not include the redemption of such instrument;

'transfer price', in relation to the transfer of an instrument, means the market value of the consideration payable or receivable, as the case may be, for the transfer of such instrument as determined on the date on which that instrument is transferred;

[Definition of 'transfer price' substituted by s. 24 (1) (e) of Act 32 of 2004.]

'variable rate' means a rate determined with reference to an interest or indexation rate or other similar factor, being a rate or factor that varies or may vary during the term of the instrument;

'variable rate instrument' means an instrument which is not a fixed rate instrument; and

'yield to maturity' means the rate of compound interest per accrual period at which the present value of all amounts payable or receivable in terms of any instrument in relation to a holder or an issuer, as the case may be, of such instrument during the term of such instrument equals the initial amount in relation to such holder or issuer of such instrument: Provided that where-

- (a) such instrument is a variable rate instrument, such rate of compound interest shall be calculated with reference to the variable rate applicable on the date such rate of compound interest is to be calculated to determine all amounts payable or receivable after such date;
- (b) in the case of a variable rate instrument the variable rate in relation to such instrument changes, the rate of compound interest shall be redetermined in relation to such variable rate instrument with reference to-
  - (i) the appropriate adjusted initial amount in relation to such variable rate instrument determined before such change in the rate; and
  - (ii) such changed variable rate applicable on the date such rate of compound interest is to be redetermined to determine all amounts payable or receivable after such date;
- (c) any variation in the terms or conditions of such instrument takes place which will result in a change in such rate of compound interest in relation to such instrument, the rate of compound interest shall be redetermined in relation to such instrument with reference to the appropriate adjusted initial amount in relation to such instrument determined before such variation ; or
- (d) there is a variation or alteration-
  - (i) of the rights or interests of a holder in relation to an income instrument in respect of any amounts receivable in terms of such income instrument, the rate of compound interest in relation to such income instrument shall be redetermined in respect of such holder with reference to the appropriate adjusted initial amount in relation to such income instrument determined before such variation or alteration; or  
[Sub-para. (i) substituted by s. 24 (1) (f) of Act 32 of 2004.]
  - (ii) in the obligations of an issuer in relation to an instrument in respect of any amounts payable in terms of such instrument, the rate of compound interest in relation to such instrument shall be redetermined in respect of such issuer with reference to the appropriate adjusted initial amount in relation to such instrument determined before such variation or alteration:  
[Sub-para. (ii) substituted by s. 24 (1) (f) of Act 32 of 2004.]

Provided further that where that instrument forms part of any transaction, operation or scheme-

- (a) any payments made by the issuer to any other person pursuant to that transaction, operation or scheme with a purpose or with the probable effect of making payment directly or indirectly to the holder or a connected person in relation to the holder; and
- (b) in the case where any party to that transaction, operation or scheme is a connected person in relation to that issuer, any payments made by that connected person to any other person pursuant to that transaction, operation or scheme with a purpose or with the probable effect of making payment directly or indirectly to the holder or a connected person in relation to the holder,

must be taken into account as amounts payable for purposes of determining that rate of compound interest.

[Sub-s. (1) amended by s. 24 (1) (g) of Act 32 of 2004.]

(2) Where any person is the issuer in relation to an instrument during any year of assessment, such person shall for the purposes of this Act be deemed to have incurred an amount of interest during such year of assessment, which is equal to-

- (a) the sum of all accrual amounts in relation to all accrual periods falling, whether in whole or in part, within such year of assessment in respect of such instrument; or
- (b) an amount determined in accordance with an alternative method in relation to such year of assessment in respect of such instrument,

which must be deducted from the income of that person derived from carrying on any trade, if that amount is incurred in the production of the income;

[Sub-s. (2) amended by s. 24 (1) (h) of Act 32 of 2004.]

(3) Where any person is the holder in relation to an income instrument during any year of assessment, there shall for the purposes of this Act be deemed to have accrued to that person and must be included in the gross income of that person during that year of assessment (whether or not that amount constitutes a receipt or accrual of a capital nature), an amount of interest which is equal to-

- (a) the sum of all accrual amounts in relation to all accrual periods falling, whether in part or in whole, within such year of assessment in respect of such income instrument; or
- (b) an amount determined in accordance with an alternative method in relation to such year of assessment in respect of such income instrument.

[Sub-s. (3) amended by s. 24 (1) (i) of Act 32 of 2004.]

(3A) Where any person is the holder of an income instrument which is an instrument as contemplated in paragraph (iii) of the definition of 'instrument', the amount by which the sum of all accrual amounts in relation to all accrual periods falling within the period from the date of acquisition (whether by way of issue or transfer, as the case may be) of such income instrument by such person until 13 March 1996, exceeds the sum of all interest received by or accrued to such person during such period had the provisions of this section not been applicable during such period in respect of such income instrument, shall for the purposes of this Act be deemed to have accrued to such person in the year of assessment during which such income instrument is transferred by such holder or redeemed (whichever is the earlier): Provided that the provisions of this subsection shall not apply in so far as any interest in relation to such income instrument was assessed to tax in the hands of such person under an assessment raised with a date of assessment before the date of promulgation of this Act.

[Sub-s. (3A) inserted by s. 14 (1) (e) of Act 36 of 1996.]

(4) Any-

- (a) adjusted gain on transfer or redemption of an instrument calculated in relation to the transfer or redemption, as the case may be, of such instrument by a person during any year of assessment shall for the purposes of this Act be deemed to have accrued to such person in such year of assessment; and
- (b) adjusted loss on transfer or redemption of an instrument calculated in relation to the transfer or redemption, as the case may be, of such instrument by a person during any year of assessment, shall for the purposes of this Act be deemed to have been incurred by such person in such year of assessment.

(4A) Where in the case of any-

- (a) holder of an income instrument any adjusted loss on transfer or redemption of such income instrument which has been deemed to have been incurred by such holder in terms of subsection (4) (b) during any year of assessment, includes an amount in relation to such income instrument representing an-
  - (i) accrual amount; or
  - (ii) amount determined in accordance with an alternative method, which amount has been included in the income of the holder during such year of assessment or any previous year of assessment, such amount shall be allowed as a deduction from the income of such holder during such year of assessment; or
- (b) issuer of an instrument any adjusted gain on transfer or redemption which has been deemed to have been accrued to such issuer in terms of subsection (4) (a) during any year of assessment, includes an amount in relation to such instrument representing an-
  - (i) accrual amount; or
  - (ii) amount determined in accordance with an alternative method, which amount has been allowed as a deduction from the income of such issuer during such year of assessment or any previous year of assessment, such amount shall be included in the income of such issuer during such year of assessment.

[Sub-s. (4A) inserted by s. 14 (1) (f) of Act 36 of 1996.]

(5) Where any interest actually-

- (a) paid by any person in terms of an instrument is to be taken into account in the determination of any accrual amount in relation to such an instrument or any other amount determined in accordance with an alternative method in relation to such



- instrument which accrual amount or other amount is to be dealt with in terms of the provisions of subsection (2), no account shall for the purposes of section 11 be taken of any such interest so actually paid, save by way of the operation of such subsection; or
- (b) received by any person in terms of an income instrument is to be taken into account in the determination of any accrual amount in relation to such income instrument or any other amount determined in accordance with an alternative method in relation to such income instrument which accrual amount or other amount is to be dealt with in terms of the provisions of subsection (3), no account shall for the purposes of the definition of 'gross income' in section 1 be taken of any such interest so actually received, save by way of the operation of such subsection.

(5A) Any amount which has been deemed to have been incurred by or accrued to a person, as the case may be, in respect of an instrument in terms of the provisions of this section, shall for the purposes of this Act not be deducted from or included in, as the case may be, the income of such person more than once by reason of the application of this section.

[Sub-s. (5A) inserted by s. 14 (1) (g) of Act 36 of 1996.]

(6) Where the term of an instrument issued on or before 15 March 1995 is extended or the terms or conditions of such instrument are materially varied after the said date, such instrument shall be deemed to have been issued after the said date and the provisions of this section shall apply to both the issuer and the holder in relation to such instrument as from the date of such extension or material variation.

(7) Where there is more than one-

- (a) holder in relation to an income instrument and any accrual amount in relation to an accrual period with regard to any one of the holders in relation to such income instrument is to be determined, such accrual amount shall be so determined without taking into account any consideration or any amount or amounts paid or payable or received or receivable by any other holder in terms of such income instrument; and
- (b) issuer in relation to an instrument and any accrual amount in relation to an accrual period with regard to any one of the issuers in relation to such instrument is to be determined, such accrual amount shall be so determined without taking into account any consideration or any amount or amounts paid or payable or received or receivable by any other issuer in terms of such instrument.

(8) Where in relation to an instrument any person is entitled to any interest in terms of such instrument and also liable to pay any interest in terms of such instrument, such person shall for the purposes of this section-

- (a) where the interest which he is entitled to receive in terms of such instrument exceeds the interest which he is liable to pay in terms of such instrument, be deemed not to be an issuer in relation to such instrument; and
- (b) where the interest which he is liable to pay in terms of such instrument exceeds the interest which he is entitled to receive in terms of such instrument, be deemed not to be a holder in relation to such instrument.

(9) (a) Any company whose business comprises the dealing in instruments (including the short selling of instruments), interest rate agreements or option contracts may elect that the provisions of subsections (2) to (8), inclusive, section 24K and section 24L shall not apply to all such instruments, interest rate agreements or option contracts in respect of which it so deals in.

[Para. (a) substituted by s. 19 (1) (d) of Act 28 of 1997 and by s. 27 (1) (c) of Act 53 of 1999.]

(b) Any election referred to in paragraph (a) shall-

- (i) be made in writing;
- (ii) be accompanied by a statement setting forth full details of the methodology to be applied by the company to determine the market value as contemplated in paragraph (c) in relation to all instruments, interest rate agreements or option contracts contemplated in paragraph (a);

[Sub-para. (ii) substituted by s. 19 (1) (e) of Act 28 of 1997 and by s. 27 (1) (d) of Act 53 of 1999.]

- (iii) not take effect unless the Commissioner has, subject to such conditions as he may deem necessary, approved-
- (A) the methodology to be applied by such company to determine the market value as contemplated in paragraph (c) in respect of such instruments, interest rate agreements or option contracts; and

[Item (A) substituted by s. 19 (1) (f) of Act 28 of 1997 and by s. 27 (1) (e) of Act 53 of 1999.]

- (B) the manner in which such market value in relation to such instruments, interest rate agreements or option contracts is to be taken into account in the determination of the taxable income of such company during any year of assessment; and

[Item (B) substituted by s. 19 (1) (f) of Act 28 of 1997 and by s. 27 (1) (e) of Act 53 of 1999.]

- (iv) subject to the provisions of paragraphs (e) and (f), be binding upon such company in respect of all such instruments, interest rate agreements and option contracts during the year of assessment in which it took effect and every succeeding year of assessment.

[Sub-para. (iv) substituted by s. 19 (1) (g) of Act 28 of 1997 and by s. 27 (1) (f) of Act 53 of 1999.]

(c) The market value in relation to all instruments, interest rate agreements and option contracts contemplated in paragraph (a) of a company which made an election as contemplated in such paragraph shall be determined in accordance with commercially accepted practice which is applied by such company consistently in respect of all such instruments, interest rate agreements and option contracts for financial reporting purposes to its shareholders.

[Para. (c) substituted by s. 19 (1) (h) of Act 28 of 1997 and by s. 27 (1) (g) of Act 53 of 1999.]

(d) Any instrument, interest rate agreement or option contract contemplated in paragraph (a) which as a result of an election made in terms of such paragraph is to be dealt with on a market value basis as contemplated in the foregoing provisions of this subsection shall (subject to the provisions of paragraphs (e) and (f)) be so dealt with until the date of redemption or transfer of such instrument, interest rate agreement or option contract; and

[Para. (d) substituted by s. 19 (1) (h) of Act 28 of 1997 and by s. 27 (1) (g) of Act 53 of 1999.]

(e) Where the Commissioner is satisfied that the approval granted by him in terms of paragraph (b) (iii) was obtained by fraud or in consequence of any misrepresentation or failure to disclose any material fact by the company which made the election in terms of paragraph (a), he shall, if he is satisfied that in the light of the full facts the approval should not have been granted, withdraw such approval as from the date such approval was granted by him.

(f) Where any company during any year of assessment no longer complies with the provisions of this subsection-

- (i) the approval granted by the Commissioner in terms of paragraph (b) (iii) shall be deemed to have been withdrawn by the Commissioner as from such year of assessment; and
- (ii) an appropriate adjustment shall be made to the taxable income of such company during such year of assessment in relation to all instruments, interest rate agreements or option contracts contemplated in paragraph (a) of the company held and not disposed of or not redeemed by it, as the case may be, as at the end of such year of assessment, having regard to all interest or amounts which would have been deemed to have been incurred by or accrued to such company had the provisions of this subsection not been applicable during all years of assessment before such year of assessment and all amounts which have been included in or deducted from the income of such company during such years of assessment: Provided that the provisions of this paragraph shall not have the effect that an amount be included in or deducted from the income of such company more than once.

[Sub-para. (ii) substituted by s. 19 (1) (i) of Act 28 of 1997 and amended by s. 27 (1) (h) of Act 53 of 1999.]

(10) Any reference in this section to any payment made or an amount paid or payable, consideration given or received or any payment received or an amount received or receivable, as the case may be, shall be construed as including a payment or an amount or consideration otherwise than in cash.

(11) Any decision of the Commissioner in the exercise of his discretion under this section shall be subject to objection and appeal.

[S. 24J inserted by s. 21 (1) of Act 21 of 1995.]

#### **24K Incurral and accrual of amounts in respect of interest rate agreements**

(1) For the purposes of this section 'interest rate agreement' means any agreement in terms of which any person-

- (a) acquires the right to receive-
  - (i) an amount calculated by applying any rate of interest to a notional principal amount specified or referred to in such agreement; or
  - (ii) an amount calculated with reference to the difference between any combination of rates of interest applied to a notional principal amount specified or referred to in

- such agreement; or
- (iii) a fixed amount specified or referred to in such agreement as consideration in terms of such agreement whereunder the obligation is imposed to pay any other amount as contemplated in paragraph (b) (i) in terms of such agreement or an amount equal to the difference between such fixed amount and such other amount; or
- (b) becomes liable to pay-
  - (i) an amount calculated by applying any rate of interest to a notional principal amount specified or referred to in such agreement; or
  - (ii) an amount calculated with reference to the difference between any combination of rates of interest applied to a notional principal amount specified or referred to in such agreement; or
  - (iii) a fixed amount specified or referred to in such agreement as consideration in terms of such agreement whereunder the right is acquired to receive any other amount as contemplated in paragraph (a) (i) in terms of such agreement or an amount equal to the difference between such fixed amount and such other amount.

(2) Any amount contemplated in the definition of 'interest rate agreement' in subsection (1) shall for the purposes of this Act be deemed to have been incurred by or accrued to, as the case may be, a person contemplated in such definition on a day to day basis during the period in respect of which it is calculated.

[Sub-s. (2) substituted by s. 15 (1) of Act 16 of 2004.]

(3) Where any amount contemplated in subsection (2) is to be calculated with reference to a variable rate for the purposes of such subsection, such amount shall be calculated with reference to the variable rate applicable on the date such amount is to be calculated to determine all amounts payable or receivable after such date.

[S. 24K inserted by s. 20 (1) of Act 28 of 1997.]

#### **24L Incurral and accrual of amounts in respect of option contracts**

(1) For the purposes of this section-

'intrinsic value', in relation to an option contract, means an amount equal to the difference between the market price or value of an asset, index, currency, rate of interest or any other factor, as provided for in the option contract, on the date of acquisition of the option contract and the pre-arranged price or value provided for in the option contract; and

'option contract' means an agreement the effect of which is that any person acquires the option (excluding a foreign currency option contract as defined in section 24I (1))-

- (a) to buy from or to sell to another person a certain quantity of corporeal or incorporeal things before or on a future date at a pre-arranged price; or
- (b) that an amount of money will be paid to or received from another person before or on a future date depending on whether the value or price of an asset, index, currency, rate of interest or any other factor is higher or lower before or on that future date than a pre-arranged value or price.

(2) The amount of-

- (a) any premium or like consideration paid or payable by a person in terms of an option contract; or
- (b) any consideration paid or payable by a person in respect of the acquisition of an option contract by such person,

shall for the purposes of this Act be deemed to have been incurred by such person on a day to day basis during the term of such option contract: Provided that-

- (i) where such option contract is exercised, terminated or is disposed of, the portion of the amount attributable to the period from the date of exercise, termination or disposal until the end of the original term of the option contract shall be deemed to have been incurred by such person on the date of exercise, termination or disposal of the option contract;
- (ii) the provisions of this section shall not be applied to an option contract held by a person as trading stock;
- (iii) where such amount includes an amount representing the intrinsic value in relation to the option contract, so much of such amount so representing the intrinsic value shall for the purposes of this Act be deemed to have been incurred by such person on the date of exercise, termination or disposal of the option contract.

(3) The amount of any premium or like consideration received or receivable by a person in terms of an option contract shall for the purposes of this Act be deemed to have accrued to such person on a day to day basis during the term of such option contract: Provided that where such option contract is exercised, terminated or disposed of, the portion of the amount attributable to the period from the date of exercise, termination or disposal of such option contract until the end of the original term of the option contract shall be deemed to have accrued to such person on the date of exercise, termination or disposal of the option contract.

[S. 24L inserted by s. 28 (1) of Act 53 of 1999.]

**24M Incurrence and accrual of amounts in respect of assets acquired or disposed of for unquantified amount**

(1) If a person during any year of assessment disposes of an asset for consideration which consists of or includes an amount which cannot be quantified in that year of assessment, so much of that consideration as -

- (a) cannot be quantified in that year must for purposes of this Act be deemed not to have been accrued to that person in that year; and
- (b) becomes quantifiable during any subsequent year of assessment must for purposes of this Act be deemed to have been accrued to that person from that disposal in that subsequent year.

(2) If a person during any year of assessment acquires an asset for consideration which consists of or includes an amount which cannot be quantified in that year of assessment, so much of that consideration as -

- (a) cannot be quantified in that year must for purposes of this Act be deemed not to have been incurred by that person in that year; and
- (b) becomes quantifiable during any subsequent year of assessment must for purposes of this Act be deemed to have been incurred by that person in respect of the acquisition of that asset in that subsequent year.

(3) The amount of any recovery or recoupment by a person of any amount allowed as a deduction in respect of any asset contemplated in subsection (1) must, for purposes of section 8 (4), be determined with reference to the amounts received by or accrued to that taxpayer in terms of this section.

(4) If an asset which was acquired by a person during any year of assessment as contemplated in subsection (2) -

- (a) constitutes a depreciable asset; and
- (b) any amount is in terms of subsection (2) (b) deemed to have been actually incurred by that person in any subsequent year of assessment which has not been taken into account in determining the amount of any allowance in respect of that depreciable asset in any previous year and would have been so taken into account had that amount been actually incurred by that person,

so much of the amount as would have been so allowed as an allowance in any previous year must be allowed in that subsequent year of assessment.

[S. 24M inserted by s. 25 (1) of Act 32 of 2004.]

**24N Incurrence and accrual of amounts in respect of disposal or acquisition of equity shares**

(1) Where a person (hereinafter referred to as 'the seller') during a year of assessment disposes of equity shares to any other person (hereinafter referred to as 'the purchaser') in the circumstances contemplated in subsection (2), any quantified or quantifiable amount payable by the purchaser to the seller must -

- (a) to the extent that it is not due and payable to the seller during that year, be deemed for purposes of this Act -
  - (i) not to have been accrued to the seller in that year; and
  - (ii) not to have been incurred by the purchaser during that year; and
- (b) to the extent that it becomes due and payable to the seller in any subsequent year of assessment, be deemed for purposes of this Act -
  - (i) to have been accrued to the seller during that subsequent year; and
  - (ii) to have been incurred by the purchaser during that subsequent year.

(2) Subsection (1) applies in respect of the disposal by a seller to a purchaser of any equity shares in a company where -

- (a) more than 25 per cent of the amount payable for those shares becomes due and payable

- by the purchaser after the end of the year of assessment of the seller and the amount payable is based on the future profits of that company;
- (b) the value of the equity shares in that company which have in aggregate been disposed of during that year and in respect of which the provisions of this section apply, exceeds 25 per cent of the total value of equity shares in that company;
  - (c) the purchaser and seller are not connected persons in relation to each other after that disposal;
  - (d) the purchaser is obliged to return the equity shares to the seller in the event of failure by the purchaser to pay any amount when due; and
  - (e) the amount is not payable by the purchaser to the seller in terms of a financial instrument which is payable on demand and which is readily tradeable in the open market.

[S. 24N inserted by s. 26 (1) of Act 32 of 2004.]

## **25 Income of beneficiaries and estates of deceased persons**

### **■ Cases**

(1) Any income received by or accrued to or in favour of any person in his capacity as the executor of the estate of a deceased person, and any amount so received or accrued which would have been income in the hands of the deceased person had it been received by or accrued to or in favour of such deceased person during his lifetime, shall, to the extent to which such income or amount has been derived for the immediate or future benefit of any ascertained heir or legatee of such deceased person, be deemed to be income received by or accrued to such heir or legatee, and shall, to the extent to which such income or amount is not so derived, be deemed to be income of the estate of such deceased person.

(2) Any deduction or allowance which may be granted under the provisions of this Act in the determination of the taxable income derived by way of any income or amount referred to in subsection (1) shall, to the extent to which such income or amount is under the provisions of that subsection deemed to be income which has accrued to an heir or legatee or the estate of such deceased person, be deemed to be a deduction or allowance which may be made in the determination of the taxable income derived by such heir or legatee or such estate, as the case may be.

[S. 25 substituted by s. 22 of Act 113 of 1993.]

## **25A Determination of taxable incomes of permanently separated spouses**

(1) Where during any period of assessment any taxpayer who is married in community of property has lived apart from his spouse in circumstances which, in the opinion of the Commissioner, indicate that the separation is likely to be permanent, his taxable income for such period shall be determined at such amount as the Commissioner, having regard to the circumstances of the case, determines to be the amount at which such taxpayer's taxable income would have been determined under the provisions of this Act if such taxpayer had not been married in community of property.

(2) Any decision of the Commissioner under subsection (1) as to the amount of the taxpayer's taxable income shall be subject to objection and appeal.

[S. 25A inserted by s. 21 (1) of Act 55 of 1966.]

## **25B Income of trusts and beneficiaries of trusts**

(1) Any amount received by or accrued to or in favour of any person during any year of assessment in his or her capacity as the trustee of a trust, shall, subject to the provisions of section 7, to the extent to which that amount has been derived for the immediate or future benefit of any ascertained beneficiary who has a vested right to that amount during that year, be deemed to be an amount which has accrued to that beneficiary, and to the extent to which that amount is not so derived, be deemed to be an amount which has accrued to that trust.

(2) Where a beneficiary has acquired a vested right to any amount referred to in subsection (1) in consequence of the exercise by the trustee of a discretion vested in him or her in terms of the relevant deed of trust, agreement or will of a deceased person, that amount shall for the purposes of that subsection be deemed to have been derived for the benefit of that beneficiary.

(2A) Where during any year of assessment any resident acquires any vested right to any amount representing capital of any trust which is not a resident, that amount must be included in the income of that resident in that year, if-

- (a) that capital arose from any receipts and accruals of such trust which would have constituted income if such trust had been a resident, in any previous year of assessment during which that resident had a contingent right to that amount; and

(b) that amount has not been subject to tax in the Republic in terms of this Act.

(3) Any deduction or allowance which may be made under the provisions of this Act in the determination of the taxable income derived by way of any amount referred to in subsection (1), must, to the extent to which that amount is under that subsection deemed to be an amount which has accrued to-

(a) a beneficiary, be deemed to be a deduction or allowance which may be made in the determination of the taxable income derived by that beneficiary; and

(b) the trust, be deemed to be a deduction or allowance which may be made in the determination of the taxable income derived by that trust.

(4) The deduction or allowance contemplated in subsection (3) which is deemed to be made in the determination of the taxable income of a beneficiary of a trust during any year of assessment, shall be limited to so much of the amount deemed to have been received by or accrued to that beneficiary in terms of subsection (1), as is included in the income of that beneficiary during that year of assessment.

(5) The amount by which the sum of the deductions and allowances contemplated in subsection (4) exceeds the amount included in the income of the beneficiary during a year of assessment as contemplated in that subsection-

(a) is deemed to be a deduction or allowance which may be made in the determination of the taxable income of the trust during that year: Provided that the sum of those deductions and allowances shall be limited to the taxable income of that trust during that year of assessment as calculated before allowing any deduction or allowance under this subsection; or

(b) where the trust is not subject to tax in the Republic, must be carried forward and be deemed to be a deduction or allowance which may be made in the determination of the taxable income derived by that beneficiary by way of amounts referred to in subsection (1) during the immediately succeeding year of assessment.

(6) The amount by which the sum of the deductions and allowances contemplated in subsection (4) exceeds the sum of the amount included in the income of the beneficiary as contemplated in subsection (4) and the taxable income of the trust as contemplated in subsection (5) (a), must be deemed to be a deduction or allowance for purposes of subsection (3), which may be made in the determination of the taxable income derived by that beneficiary by way of any amount referred to in subsection (1) during the immediately succeeding year of assessment.

(7) Subsections (4), (5) and (6) do not apply in respect of any amount which is deemed to have accrued to any beneficiary in terms of subsection (1), where that beneficiary is not subject to tax in the Republic on that amount.

[S. 25B inserted by s. 27 (1) of Act 129 of 1991, amended by s. 22 of Act 141 of 1992, by s. 36 (1) of Act 30 of 1998, by s. 32 (1) of Act 59 of 2000 and by s. 14 (1) of Act 19 of 2001 and substituted by s. 27 (1) of Act 32 of 2004.]

### **25C Income of insolvent estates**

For the purposes of this Act, and subject to any such adjustments as may be necessary the estate of a person prior to sequestration and that person's insolvent estate shall be deemed to be one and the same person for purposes of determining-

(a) the amount of any allowance, deduction or set off to which that insolvent estate may be entitled;

(b) any amount which is recovered or recouped by or otherwise required to be included in the income of that insolvent estate; and

(c) any taxable capital gain or assessed capital loss of that insolvent estate.

[S. 25C inserted by s. 21 of Act 28 of 1997 and substituted by s. 13 of Act 5 of 2001 and by s. 43 of Act 45 of 2003.]

### **25D Determination of taxable income in foreign currency**

(1) Unless expressly otherwise provided in this Act, any amount derived by a person during any year of assessment from amounts received by or accrued to, or in respect of expenditure incurred by, that person in any currency other than the currency of the Republic, shall be determined-

(a) where the amounts so received, accrued or incurred are attributable to a permanent establishment of that person outside the Republic, in the currency used by that permanent establishment for purposes of financial reporting (other than the currency of any country in the common monetary area); or

(b) in any other case, in the currency in which the amounts so received or accrued or the

expenditure so incurred is denominated.

(2) Unless expressly otherwise provided in this Act, the amount determined in terms of this Act in any currency other than the currency of the Republic, must be translated to the currency of the Republic by applying the average exchange rate for the relevant year of assessment.

[S. 25D inserted by s. 33 of Act 59 of 2000 and substituted by s. 37 (1) of Act 60 of 2001, by s. 28 (1) of Act 74 of 2002 and by s. 44 (1) of Act 45 of 2003.]

## 26 Determination of taxable income derived from farming

### Cases

(1) The taxable income of any person carrying on pastoral, agricultural or other farming operations shall, in so far as it is derived from such operations, be determined in accordance with the provisions of this Act but subject to the provisions of the First Schedule.

(2) In the case of any person who has discontinued carrying on pastoral, agricultural or other farming operations and is still in possession of any livestock or produce, or has entered into a 'sheep lease' or similar agreement relating to livestock or produce, which has been taken into account and in respect of which expenditure under the provisions of this Act or any previous Income Tax Act has been allowed in the determination of the taxable income derived by such person when such operations were carried on, the provisions of this Act, but subject to the provisions of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, or 11 of the First Schedule, shall continue to be applicable to that person in respect of such livestock or produce, as the case may be, until the year of assessment during which he disposes of the last of such livestock or produce, notwithstanding the fact that such operations have been discontinued.

[S. 26 substituted by s. 10 of Act 101 of 1978.]

## 26A Inclusion of taxable capital gain in taxable income

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

[S. 26A inserted by s. 14 of Act 5 of 2001.]

## 27 Determination of taxable income of co-operative societies and companies

### Cases

(1) In the determination of the taxable income of any co-operative trading society, as defined in the Co-operative Societies Act, 1939 (Act 29 of 1939), derived by that society from its transactions, whether with persons who are members or with persons who are not members of the society, the amount of any bonus distributed in any year of assessment to its members by any such society which is a closed society as defined in section *ninety-seven* of that Act shall be allowed as a deduction from the income of the society in so far as such bonus does not exceed an amount equivalent to one-tenth of the aggregate value of the business of such society with its members during such year of assessment, but no such deduction shall be allowed in the case of any such co-operative trading society which is not such a closed society.

(2) In the determination of the taxable income of any agricultural co-operative, there shall be allowed as deductions from the income of such agricultural co-operative for the year of assessment in question-

(a) the amounts of any profits distributed by it during the specified period in relation to the year of assessment by way of bonuses (other than bonuses distributed out of the stabilization fund referred to in paragraph (h)) to persons entitled to participate in such distribution: Provided that the amounts allowed as deductions under this paragraph shall not in the aggregate exceed an amount which bears to the taxable income of such agricultural co-operative for the year of assessment (as calculated before allowing any deductions under this paragraph and before setting off any balance of assessed loss brought forward from a previous year of assessment) the same ratio as the aggregate value of the business conducted by such agricultural co-operative with its members during such year bears to the aggregate value of all business conducted by it during such year;

[Para. (a) amended by s. 28 (a) of Act 129 of 1991, by s. 23 of Act 141 of 1992, by s. 23 (a) of Act 113 of 1993, by s.15 of Act 36 of 1996, by s. 34 of Act 59 of 2000 and by s. 29 of Act 74 of 2002.]

(b) subject to the provisions of subsections (3), (4) and (5), an allowance equal to two per cent of the cost (after the deduction of any amount referred to in subsection (4)) to such agricultural co-operative of-

(i) any building which was during the year of assessment wholly or mainly used by such co-operative as a storage, building, if such building was erected by such co-operative or by any other co-operative agricultural society or company or farmers'

- special co-operative company as defined in the Co-operative Societies Act, 1939, and the erection of such building was commenced on or after 25 March 1959; or
- (ii) any improvements (other than repairs) to any building referred to in subparagraph (i) which was during the year of assessment used as contemplated in that subparagraph; or
  - (iii) any improvements (other than repairs) to any other building which was during the year of assessment used as a storage building by such co-operative, if such improvements were commenced on or after 1 April 1971:

Provided that no allowance shall be granted under this paragraph in respect of the cost of any building or improvements if an allowance in respect of such cost has been granted in respect of the year of assessment under the provisions of section 13 (1): Provided further that no allowance shall be made under this paragraph in respect of such portion of the cost of any building or of any improvements as has been taken into account in the calculation of any storage building initial allowance or any allowance to such co-operative under section 11 (g), whether in the current or any previous year of assessment: Provided further that in the case of any such building the erection of which commences on or after 1 January 1989 and any such improvements which commence on or after that date the allowance under this paragraph shall be increased to 5 per cent of the cost (after the deduction of any amount as provided in subsection (4)) to the taxpayer of such building or improvements.

[Para. (b) amended by s. 15 (1) (a) of Act 96 of 1985 and by s. 22 of Act 90 of 1988.]

(c) .....

[Para. (c) amended by s. 11 (a) of Act 101 of 1978, by s. 19 (1) (a) of Act 104 of 1980 and by s. 21 (1) (a) of Act 96 of 1981 and deleted by s. 28 (b) of Act 129 of 1991.]

(d) .....

[Para. (d) amended by s. 21 (1) (b) of Act 96 of 1981, substituted by s. 15 (1) (b) of Act 96 of 1985, amended by s. 18 (a) of Act 85 of 1987 and deleted by s. 28 (b) of Act 129 of 1991.]

(e) .....

[Para. (e) amended by s. 11 (b) of Act 101 of 1978, by s. 19 (1) (b) of Act 104 of 1980 and by s. 21 (1) (c) of Act 96 of 1981 and deleted by s. 28 (b) of Act 129 of 1991.]

(f) .....

[Para. (f) amended by s. 18 (b) of Act 85 of 1987 and deleted by s. 28 (b) of Act 129 of 1991.]

(g) such allowance in respect of the year of assessment as the Commissioner may make in respect of losses suffered by such agricultural co-operative in consequence of physical damage to or deterioration of pastoral, agricultural and other farm products held by such agricultural co-operative on behalf of any control board established under the provisions of the Marketing Act, 1968 (Act 59 of 1968): Provided that such allowance shall be included in the income of such agricultural co-operative in the following year of assessment; and

(h) in the case of the vereniging defined in section 1 of the Wine and Spirit Control Act, 1970 (Act 47 of 1970), an allowance equal to so much of any amount which the said vereniging has, within the specified period in relation to the year of assessment, transferred from its profits for such year to a price stabilization fund for distribution to its members or winegrowers within a period not exceeding five years reckoned from the end of such year of assessment, as does not exceed an amount equal to that portion of the profits derived by such vereniging for that year of assessment in the exercise of its functions relating to the control of, and the stabilization of prices in, the wine industry;

[Para. (h) substituted by s. 28 (c) of Act 129 of 1991.]

(i) .....

[Para. (i) added by s. 15 (1) (c) of Act 96 of 1985, amended by s. 18 (c) of Act 85 of 1987 and deleted by s. 28 (d) of Act 129 of 1991.]

[Sub-s. (2) substituted by s. 17 (1) of Act 113 of 1977.]

(2A) .....

[Sub-s. (2A) inserted by s. 21 (1) (d) of Act 96 of 1981 and deleted by s. 28 (e) of Act 129 of 1991.]

(3) The aggregate of the allowances under subsection (2) (b) and section 13 (1) in respect of any building or improvements shall not exceed the cost (after the deduction of any amount referred to in



subsection (4)) of such building or improvements, as the case may be, less the aggregate of any storage building initial allowance and any allowances made to the agricultural co-operative concerned in respect of such building or improvements, as the case may be, under section 11 (g).

[Sub-s. (3) substituted by s. 17 (1) of Act 113 of 1977 and by s. 15 (1) (d) of Act 96 of 1985.]

(4) If in any year of assessment there falls to be included in an agricultural co-operative's income in terms of paragraph (a) of section 8 (4) an amount, which has been recovered or recouped, in respect of any allowance made under subsection (2) (b) in respect of any building or improvements, such portion of the amount so recovered or recouped as is set off against the cost of a further building as hereinafter provided shall, notwithstanding the provisions of the said paragraph, at the option of such co-operative, to be notified by it in writing to the Commissioner when submitting its return of income for the year of assessment during which the recovery of recoupment occurred, and provided it erects within twelve months or such further period as the Commissioner may allow from the date on which the event giving rise to the recovery or recoupment occurred, any other building to which the provisions of subsection (2) (b) apply, not be included in its income for such year of assessment, but shall be set off against so much of the cost to it of such further building erected by it as remains after the deduction of any portion of such cost in respect of which an allowance has been granted to such co-operative under section 11 (g), whether in the current or any previous year of assessment.

[Sub-s. (4) added by s. 17 (1) of Act 113 of 1977.]

(5) Where any agricultural co-operative (hereinafter referred to as the new co-operative) has before 1 April 1977 been constituted by an amalgamation under section 94 of the Co-operative Societies Act, 1939, of two or more other agricultural co-operatives and by reason of such amalgamation the ownership of any building used as a storage building by one of such other co-operatives (hereinafter referred to as the other co-operative) has passed from the other co-operative to the new co-operative-

(a) an allowance may in the appropriate circumstances be granted under subsection (2) (b) to the new co-operative in respect of such building or any improvements (other than repairs) thereto if such allowance would have been granted to the other co-operative if the amalgamation had not been effected;

[Para. (a) substituted by s. 23 (b) of Act 113 of 1993.]

(b) .....

[Para. (b) deleted by s. 28 (f) of Act 129 of 1991.]

(c) where an allowance or deduction may be granted or allowed as contemplated in paragraph (a) or (b), the provisions of subsections (2) (b), (3) and (4) shall be applied as though the other co-operative and the new co-operative had at all relevant times been one co-operative.

[Para. (c) substituted by s. 28 (g) of Act 129 of 1991.]

[Sub-s. (5) added by s. 17 (1) of Act 113 of 1977 and amended by s. 19 (1) (c) of Act 104 of 1980.]

(5A) Where any agricultural co-operative has on or after 1 April 1977 and before the date of commencement of the Co-operatives Act, 1981, been constituted by an amalgamation under section 94 of the Co-operatives Societies Act, 1939, of two or more other agricultural co-operatives, the said co-operative and such other co-operatives shall, for the purposes of assessments under this Act, be deemed to be and to have been one and the same agricultural co-operative.

[Sub-s. (5A) inserted by s. 19 (1) (d) of Act 104 of 1980 and substituted by s. 21 (1) (e) of Act 96 of 1981.]

(5B) Where any co-operative has on or after the date of commencement of the Co-operatives Act, 1981, come into being in pursuance of a conversion or amalgamation in terms of Chapter VIII of the Act, such co-operative and any company, co-operative or co-operatives out of which it so came into being shall, for the purposes of assessments under this Act for the year of assessment during which such co-operative came into being and subsequent years of assessment but subject to such conditions as the Commissioner may impose, be deemed to be and to have been one and the same co-operative.

[Sub-s. (5B) inserted by s. 21 (1) (f) of Act 96 of 1981.]

(6) .....

[Sub-s. (6) added by s. 17 (1) of Act 113 of 1977, amended by s. 11 (c) of Act 101 of 1978, by s. 19 (1) (e) of Act 104 of 1980 and by s. 21 (1) (g) of Act 96 of 1981 and deleted by s. 28 (h) of Act 129 of 1991.]

(7) .....

[Sub-s. (7) added by s. 17 (1) of Act 113 of 1977, amended by s. 11 (d) of Act 101 of 1978, by s. 19 (1) (f) of Act 104 of 1980 and by s. 21 (1) (h) of Act 96 of 1981 and deleted by s. 28 (h) of Act 129 of 1991.]

(8) (a) The full amount of any bonus distributed by any agricultural co-operative shall, to the

extent that such amount qualifies for deduction from the income of such co-operative under subsection (2) (a) or, if it is distributed out of the stabilization fund referred to in subsection (2) (h), be included in the gross income of the person who has become entitled thereto and shall be deemed to have accrued to such person on the date of the distribution of the bonus by such co-operative.

(b) For the purposes of this section the amount of any bonus distributed by way of capitalization shares or bonus debentures or securities shall be deemed to be the nominal value of such shares, debentures or securities, as the case may be.

[Sub-s. (8) added by s. 17 (1) of Act 113 of 1977.]

(9) In this section-

'agricultural co-operative' means any co-operative agricultural society or company or any farmers' special co-operative company, as defined in the Co-operative Societies Act, 1939;

'bonus' means any amount distributed by any co-operative society or company referred to in this section out of its profits or surplus for any year of assessment or, in the case of the vereniging referred to in paragraph (h) of subsection (2), out of the stabilization fund referred to in that paragraph, whether such amount is distributed in cash or by way of a credit or an award of capitalization shares or bonus debentures or securities, if such amount-

(a) is divided among the persons entitled thereto in such manner that the amount accruing to each such person is determined in accordance with the value of the business transactions between such society or company and such person; and

(b) is distributed during the specified period in relation to such year of assessment or is distributed out of the stabilization fund referred to in subsection (2) (h);

'improvements', in relation to any storage building, means any extension, addition or improvements (other than repairs) to a storage building which is or are effected for the purpose of increasing the capacity of the building for storing or packing pastoral, agricultural or other farm products or for carrying on therein any primary process in respect of any such products;

'primary process', in relation to any product produced in the course of pastoral, agricultural or other farming operations, means the first process to which such product is subjected by an agricultural co-operative in order to render such product marketable or to convert such product into a marketable commodity, and includes any further process carried on by such co-operative which is so connected with the said first process that such first process and such further process or processes may be regarded as one process and to be necessary to convert such product into a marketable commodity;

[Definition of 'primary process' substituted by s. 23 (c) of Act 113 of 1993.]

'storage building', in relation to any agricultural co-operative, means-

(a) a building which is at any relevant time or during any relevant period wholly or mainly used by such co-operative for storing or packing pastoral, agricultural or other products produced by such co-operative's members or for carrying on therein any primary process in respect of such products; or

(b) a structure of a permanent nature which is at any relevant time or during any relevant period wholly or mainly used by such co-operative in connection with the fattening of livestock on behalf of the members of such co-operative:

Provided that for the purposes of this definition the members of a central co-operative agricultural company or central farmers' special co-operative company or federal co-operative agricultural company or federal farmers' special co-operative company, as defined in the Co-operative Societies Act, 1939, shall be deemed to include the members of any agricultural co-operative which itself is a member of such company.

[Definition of 'storage building' substituted by s. 19 (1) (g) of Act 104 of 1980.]

[Sub-s. (9) added by s. 17 (1) of Act 113 of 1977.]

## **28 Determination of taxable income derived from insurance business**

### **Cases**

(1) .....

[Sub-s. (1) substituted by s. 21 (1) (a) of Act 88 of 1971, amended by s. 19 (1) of Act 91 of 1982, by s. 17 (a) of Act 65 of 1986, by s. 23 (1) of Act 90 of 1988 and by s. 13 (1) (a) of Act 70 of 1989, substituted by s. 25 (1) (a) of Act 101 of 1990, amended by s. 29 (a) of Act 129 of 1991, by s. 24 (a) of Act 113 of 1993 and by s. 19 (1) (b) of Act 21 of 1994 and deleted by s. 33 (a) of Act 30 of 2000.]

(1A) .....

[Sub-s. (1A) inserted by s. 17 (b) of Act 65 of 1986, substituted by s. 29 (b) of Act 129 of 1991 and deleted

by s. 33 (a) of Act 30 of 2000.]

(1B) .....

[Sub-s. (1B) inserted by s. 13 (1) (b) of Act 70 of 1989, amended by s. 25 (1) (b) of Act 101 of 1990 and deleted by s. 33 (a) of Act 30 of 2000.]

(1C) .....

[Sub-s. (1C) inserted by s. 24 (b) of Act 113 of 1993 and deleted by s. 33 (a) of Act 30 of 2000.]

(2) Subject to the provisions of this Act the taxable income derived by any taxpayer from the carrying on in the Republic of short-term insurance business (whether on mutual principles or otherwise) shall be determined by charging against the sum of all premiums (including premiums on reinsurance) received by or accrued to such taxpayer in respect of the insurance of any risk, and other amounts derived from the carrying on of such business of insurance in the Republic, the sum of-

- (a) the total amount of the liability incurred in respect of premiums on reinsurance;
- (b) the actual amount of the liability incurred in respect of any claims during the year of assessment in respect of that business of insurance, less the value of any claims recovered or recoverable under any contract of insurance, guarantee, security or indemnity;
- (c) the expenditure, not being expenditure falling under paragraph (a) or (b), incurred in respect of that business of insurance;
- (d) such allowance as may be made each year by the Commissioner in respect of unexpired risks: Provided that the allowance granted under this paragraph in respect of any year of assessment shall be included in the income of the taxpayer in the following year of assessment;

[Para. (d) substituted by s. 24 of Act 89 of 1969 and amended by s. 22 of Act 94 of 1983.]

- (e) such allowance as may be made each year by the Commissioner in respect of claims which have been intimated but not paid: Provided that the allowance granted under this paragraph in respect of any year of assessment shall be included in the income of the taxpayer in the following year of assessment, and for that purpose any allowance granted in terms of paragraph (v) of subsection (2) of section *eighteen* of the Income Tax Act, 1941, in respect of the year of assessment ended on the thirtieth day of June, 1961, shall be deemed to be an allowance which was granted under this paragraph; and

[Para. (e) amended by s. 17 of Act 90 of 1962.]

- (f) such allowance as may be made each year by the Commissioner in respect of claims which have not been intimated or paid: Provided that the allowance granted under this paragraph in respect of any year of assessment shall be included in the income of the taxpayer in the following year of assessment.

[Para. (f) added by s. 22 of Act 55 of 1966.]

(3) Nothing in this section contained shall be construed as relieving any taxpayer from the obligation to render returns of any income derived otherwise than from the carrying on of short-term insurance business or in the form of dividends or from any liability for taxation in respect of any taxable income so derived or as depriving the taxpayer of the right to set off against the taxable income derived from the business of insurance any loss incurred in respect of any other business or any balance of loss so incurred which the taxpayer would be entitled to set off under the provisions of section 20.

[Sub-s. (3) substituted by s. 21 (1) (b) of Act 88 of 1971, amended by s. 25 (1) (c) of Act 101 of 1990 and substituted by s. 33 (b) of Act 30 of 2000.]

(4) In this section-

'insurance' includes reinsurance;

'long-term insurance business' .....

[Definition of 'long-term insurance business' substituted by s. 19 (1) of Act 65 of 1973 and deleted by s. 33 (c) of Act 30 of 2000.]

'short-term insurance business' means any short-term insurance business as defined in the Short-term Insurance Act, 1998 (Act 53 of 1998).

[Definition of 'short-term insurance business' substituted by s. 33 (d) of Act 30 of 2000.]

**28bis** .....

[S. 28bis inserted by s. 19 (1) of Act 88 of 1965, amended by s. 25 of Act 85 of 1974, by s. 18 (1) of Act 113 of 1977, by s. 34 of Act 30 of 2000 and by s. 35 of Act 59 of 2000 and repealed by s. 38 (1) of Act 60 of 2001.]

## **29 Taxable income of companies carrying on long-term insurance business**

(1) For the purposes of this section-

'Insurance Act' means the Insurance Act, 1943 (Act 27 of 1943);

'insurer' means any company carrying on long-term insurance business as defined in section 1 of the Insurance Act;

'market value', in relation to any asset, means the sum which a person having the right freely to dispose of such asset might reasonably expect to obtain from a sale of such asset in the open market;

'owner', in relation to a policy, means the person who is entitled to enforce any benefit provided for in the policy;

'policy' means a policy as defined in section 1 of the Insurance Act, the assumption of obligations under which constitutes long-term insurance business as so defined;

'policy-holder fund' means any fund contemplated in subsection (4) (a), (b) or (c);

'prescribed value', in relation to the assets required to be held at any time by an insurer in a policyholder fund, means an amount equal to the net liabilities of the insurer in respect of the business conducted by it in the fund concerned in the Republic determined in the manner as contemplated in section 1 (2) (a) of the Insurance Act, but subject to such modifications as may from time to time be determined for the purposes of this section by the Chief Actuary of the Financial Services Board.

[Definition of 'prescribed value' substituted by s. 16 (a) of Act 36 of 1996.]

(2) The taxable income derived by any insurer in respect of any year of assessment commencing before 1 January 2000, shall be determined in accordance with the provisions of this Act, but subject to the provisions of this section; and

[Sub-s. (2) substituted by s. 29 (a) of Act 53 of 1999.]

(3) Every insurer shall, not later than the commencement of its first year of assessment commencing on or after 1 July 1996, establish four separate funds as contemplated in subsection (4), and shall thereafter maintain such funds in accordance with the provisions of this section.

(4) The funds referred to in subsection (3) shall be-

- (a) a fund, to be known as the untaxed policyholder fund, in which shall be placed assets having a market value equal to the prescribed value determined in relation to, and liabilities (other than those taken into account in the determination of such prescribed value) relating to-
  - (i) business carried on by the insurer with, and any policy of which the owner is, any pension fund, provident fund, retirement annuity fund or benefit fund;
  - (ii) any policy of which the owner is a person or body the entire receipts and accruals of whom or of which are exempt from tax under any provision of section 10: Provided that an insurer shall not deal with a policy in terms of the provisions of this subparagraph unless it has satisfied itself beyond all reasonable doubt that the owner of such policy is a person or body contemplated herein;
  - (iii) any annuity contracts entered into by it in respect of which annuities are being paid;
- (b) a fund, to be known as the individual policyholder fund, in which shall be placed assets having a market value equal to the prescribed value determined in relation to, and liabilities (other than those taken into account in the determination of such prescribed value) relating to, any policy (other than a policy contemplated in paragraph (a)) of which the owner is any person other than a company;
- (c) a fund, to be known as the company policyholder fund, in which shall be placed assets having a market value equal to the prescribed value determined in relation to, and liabilities (other than those taken into account in the determination of such prescribed value) relating to, any policy (other than a policy contemplated in paragraph (a)) of which the owner is a company; and
- (d) a fund, to be known as the corporate fund, in which shall be placed all the assets (if any) held by the insurer, and all liabilities owed by it, other than those contemplated in paragraphs (a), (b) and (c) and those relating to business conducted by it elsewhere than in the Republic.

[Para. (d) substituted by s. 16 (b) of Act 36 of 1996.]

(5) For the purposes of subsection (4), where the owner of a policy is the trustee of any trust or where two or more owners jointly own a policy-

- (a) if all the beneficiaries in such trust or all such owners are funds, persons or bodies

contemplated in subsection (4) (a), the owner of such policy shall be deemed to be such a fund, person or body, as the case may be; or

- (b) where paragraph (a) is not applicable and all the beneficiaries in such trust or all such owners are persons other than a company, the owner of such policy shall be deemed to be a person other than a company; or
- (c) where paragraphs (a) and (b) are not applicable, the owner of such policy shall be deemed to be a company.

(6) Every insurer shall within a period of six months after the end of every year of assessment redetermine the prescribed value in relation to each of its policyholder funds as at the last day of such year, and-

- (a) where the market value of the assets actually held by it in any such fund exceeds the prescribed value, it shall, subject to the provisions of subsection (8), within the said period transfer from such fund to its corporate fund assets having a market value equal to such excess; or
- (b) where the market value of the assets actually held by it in any such fund is less than the prescribed value, it shall within the said period transfer from its corporate fund to such fund assets having a market value equal to the shortfall.

(7) (a) An insurer who becomes aware that, in consequence of a change of ownership of any policy issued by it, the assets held by it in relation to such policy should in terms of the provisions of subsection (4) be held in a policyholder fund other than the policyholder fund in which such assets are actually held, may at its option forthwith transfer from such lastmentioned fund to such firstmentioned fund assets having a market value equal to the prescribed value determined on the date of such transfer in relation to the said policy.

(b) Any transfer of an asset effected by an insurer between one policyholder fund and another policyholder fund otherwise than in terms of the provisions of paragraph (a), shall be effected by way of a sale of such asset at the market value thereof and shall for the purposes of this section be treated as a purchase or sale of such asset, as the case may be, in each such fund.

(8) An insurer shall, in addition to assets having a market value equal to the prescribed value, be permitted to retain in each of its policyholder funds at the end of any year of assessment assets having a market value not exceeding the sum of-

- (a) 80 per cent of the residual surplus arising in the fund concerned during such year;
- (b) 60 per cent of the residual surplus so arising in the year of assessment immediately preceding the year referred to in paragraph (a);
- (c) 40 per cent of the residual surplus so arising in the year of assessment immediately preceding the year referred to in paragraph (b); and
- (d) 20 per cent of the residual surplus so arising in the year of assessment immediately preceding the year referred to in paragraph (c):

Provided that where in any case the year of assessment first mentioned in paragraph (b), (c) or (d) is a year of assessment which commenced before 1 July 1993, the provisions of that paragraph shall not apply.

(9) For the purposes of subsection (8), the residual surplus arising in any fund during a year of assessment shall be an amount determined in accordance with the formula-

$$S = A - B + C - D$$

in which formula-

- (a) 'S' represents the residual surplus to be determined;
- (b) 'A' represents the amount of the excess (if any) contemplated in subsection (6) (a) determined in respect of the fund concerned at the end of the said year of assessment;
- (c) 'B' represents the amount of the excess (if any) contemplated in subsection (6) (a) determined in respect of the fund concerned at the end of the immediately preceding year of assessment;
- (d) 'C' represents the amount (if any) actually transferred from the fund concerned to the corporate fund in respect of the said immediately preceding year of assessment in terms of the provisions of subsection (6) (a); and
- (e) 'D' represents the amount (if any) actually transferred from the corporate fund to the fund concerned in respect of the said immediately preceding year of assessment in terms of the provisions of subsection (6) (b).

(10) (a) Where-

- (i) the market value of the assets actually held by an insurer in its individual policyholder fund or its company policyholder fund at the end of any year of assessment is less than the prescribed value in relation to the fund concerned and the insurer is required in terms of the provisions of subsection (6) (b) to transfer assets from its corporate fund to make good the shortfall; and
- (ii) the taxable income derived by the insurer in its corporate fund in such year, as determined before deducting the transfer contemplated in subparagraph (i), is less than the amount of such transfer,

the insurer may designate so much of the amount of such transfer as exceeds its taxable income (determined as contemplated in subparagraph (ii)) to be a special transfer for the purposes of subsection (14).

(b) Where any amount has been designated as a special transfer under the provisions of paragraph (a), so much of any subsequent transfer made from the insurer's individual policyholder fund or company policyholder fund, as the case may be, to its corporate fund under the provisions of subsection (6) (a) as does not exceed the amount of the said special transfer, shall be a special transfer for the purposes of subsection (14).

(11) (a) An insurer may as at the commencement of the first year of assessment in which it establishes separate funds as contemplated in subsection (3) calculate in respect of each of its policyholder funds, in a manner determined for the purposes of this section by the Chief Actuary of the Financial Services Board, an amount representing unrecovered new business expenses.

(b) The amount calculated by an insurer under paragraph (a) shall be advised to the Commissioner in the return of income rendered by the insurer in respect of the said first year of assessment.

(c) So much of any amount transferred by an insurer from any policyholder fund to its corporate fund as does not exceed the sum of-

- (i) 12,5 per cent of the amount calculated under paragraph (a) in relation to such policyholder fund; and
- (ii) any amount carried forward from the preceding year of assessment in terms of the provisions of paragraph (d),

shall for the purposes of subsection (14) constitute a special transfer.

(d) Where in relation to any year of assessment the sum referred to in paragraph (c) exceeds the amount transferred from the policyholder fund concerned to the corporate fund, the excess shall be carried forward and be included for the purposes of determining the amount which may constitute a special transfer in relation to the succeeding year of assessment.

(e) The amounts constituting special transfers in relation to any policyholder fund in terms of the provisions of this subsection shall not in the aggregate exceed the amount calculated under paragraph (a) in respect of that fund.

(12) There shall be exempt from tax-

- (a) any income received by or accrued to an insurer from assets held by it in, and business conducted by it in relation to, its untaxed policyholder fund; and
- (b) any amount transferred to that fund in terms of subsection (6) (b).

(13) The taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund and its corporate fund shall be determined separately in accordance with the provisions of this Act as if each such fund had been a separate taxpayer.

(14) In the determination of the taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund and its corporate fund-

- (a) the amount to be allowed as a deduction in respect of selling expenses shall be the annual average of such expenses incurred during the current year of assessment and the immediately preceding four years of assessment;
- (b) any amount received or accrued from a source outside the Republic in respect of business conducted by the insurer in the Republic, shall be deemed to have been received or accrued from a source within the Republic;

[Para. (b) substituted by s. 16 (c) of Act 36 of 1996.]

- (c) there shall be exempt from tax income derived by the insurer from assets held by it in the Republic in respect of business conducted by it in Namibia;
- (d) any amount transferred in terms of the provisions of subsection (6) shall be deducted from the income of the fund from which it is transferred and included in the income of

the fund to which it is transferred: Provided that any transfer relating to the redetermination of the prescribed value in terms of subsection (6) in respect of the last year of assessment commencing before 1 January 2000, shall be deemed to have been made on the last day of such year of assessment and shall be included in or deducted from the income of the relevant fund in determining the taxable income of such fund for such year of assessment;

[Para. (d) amended by s. 29 (b) of Act 53 of 1999.]

- (e) the amount of any transfer contemplated in subsection (7) (a) and of any special transfer contemplated in subsection (10) or (11) shall not be deducted from the income of the fund from which it is transferred and shall not be included in the income of the fund to which it is transferred; and
- (f) premiums and reinsurance claims received and claims and reinsurance premiums paid shall be disregarded.

(15) Where any insurer is in its first year of assessment to which the provisions of this section apply entitled in terms of section 20 (1) (a) to set off a balance of assessed loss carried forward from the preceding year of assessment, such balance of assessed loss shall be allowed to be set off against the income derived in its individual policyholder fund, its company policyholder fund and its corporate fund in the ratio which the assets held in each such fund at the commencement of such first year of assessment bears to the total assets held in the said funds.

(16) In the allocation of any asset, expenditure or liability to any fund contemplated in subsection (4), an insurer shall, when establishing such fund and at all times thereafter-

- (a) to the extent to which such asset, expenditure or liability relates exclusively to business conducted by it in any one fund, allocate such asset, expenditure or liability to that fund; and
- (b) to the extent to which such asset, liability or expenditure does not relate exclusively to business conducted by it in any one fund, allocate such asset, expenditure or liability in a manner which is consistent with and appropriate to the manner in which its business is conducted.

(17) Notwithstanding the provisions of this section and of section 28, the tax payable by an insurer in respect of its first and second years of assessment commencing on or after 1 July 1993, shall be equal to the greater of the tax payable in respect of the year concerned as determined by applying the provisions of section 28 and-

- (a) in respect of the said first year, an amount equal to two-thirds of the tax payable as determined by applying the provisions of section 28 and one-third of the tax payable as determined by applying the provisions of this section; and
- (b) in respect of the said second year, an amount equal to one-third of the tax payable as determined by applying the provisions of section 28 and two-thirds of the tax payable as determined by applying the provisions of this section.

(18) For the purposes of subsection (17), the tax payable on taxable income determined in terms of section 28 in respect of any year of assessment ending during the period of 12 months ending on 31 March of any calendar year shall be calculated at the highest marginal rate of tax fixed under section 5 (2) for the year of assessment ending on the last day of February of that calendar year in respect of taxable income received by or accrued to a natural person.

[Sub-s. (18) amended by s. 22 of Act 21 of 1995.]

(19) An insurer who as at the commencement of its first year of assessment commencing on or after 1 July 1993 has not established the separate funds contemplated in subsection (4) shall as at the commencement of that year determine the prescribed value required in respect of each of its policyholder funds, and shall be deemed for the purposes of applying this section in that year and in any succeeding year of assessment in which it has not yet established such funds, to have established and maintained such funds in accordance with the provisions of this section.

(20) For the purposes of subsection (19)-

- (a) an appropriate portion of all the assets and liabilities of an insurer shall be deemed to have been placed by it in each of its funds in accordance with the provisions of this section;
- (b) an appropriate portion of any income received by or accrued to an insurer and any expenditure incurred by it shall be deemed to have been received by or to have accrued

- to, or to have been incurred by, as the case may be, each of its funds; and
- (c) any amount which would have been required to be transferred in terms of the provisions of subsection (6) (a) or (b) had such separate funds been so established and maintained, shall be deemed to have been so transferred.

[S. 29 amended by s. 18 of Act 90 of 1962, repealed by s. 23 of Act 121 of 1984 and inserted by s. 25 (1) of Act 113 of 1993.]

### 29A Taxation of long-term insurers

- (1) For the purposes of this section-
- 'business' means any long-term insurance business as defined in section 1 of the Long-term Insurance Act;
- 'insurer' means any long-term insurer as defined in section 1 of the Long-term Insurance Act;
- 'Long-term Insurance Act' means the Long-term Insurance Act, 1998 (Act 52 of 1998);
- 'market value', in relation to any asset, means the sum which a person having the right freely to dispose of such asset might reasonably expect to obtain from a sale of such asset in the open market;
- 'owner', in relation to a policy, means the person who is entitled to enforce any benefit provided for in the policy: Provided that where a policy has been-
- (a) ceded or pledged solely for the purpose of providing security for the performance of any obligation, the owner shall be the person who retains the beneficial interest in such policy; or
- (b) reinsured by one insurer with another insurer, the reinsurance policy shall be deemed to be owned by the owner of the insurance policy so insured;
- 'policy' means a long-term policy as defined in section 1 of the Long-term Insurance Act; 'policyholder fund' means any fund contemplated in subsection (4)(a), (b) or (c); 'value of liabilities', means an amount equal to the value of the liabilities of the insurer in respect of the business conducted by it in the fund concerned calculated on the basis as shall be determined by the Chief Actuary of the Financial Services Board in consultation with the Commissioner.
- (2) The taxable income derived by any insurer in respect of any year of assessment commencing on or after 1 January 2000, shall be determined in accordance with the provisions of this Act, but subject to the provisions of this section.
- (3) Every insurer shall establish four separate funds as contemplated in subsection (4), and shall thereafter maintain such funds in accordance with the provisions of this section: Provided that where any insurer which carries on long-term insurance business has prior to the commencement of this section established four separate funds in terms of the provisions of section 29 (3), such funds shall for the purposes of this section continue to be maintained in terms of this section.
- (4) The funds referred to in subsection (3) shall be-
- (a) a fund, to be known as the untaxed policyholder fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to-
- (i) business carried on by the insurer with, and any policy of which the owner is, any pension fund, provident fund, retirement annuity fund or benefit fund;
- (ii) any policy of which the owner is a person 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 accrue to that person: Provided that an insurer shall not deal with a policy in terms of the provisions of this subparagraph unless it has satisfied itself beyond all reasonable doubt that the owner of such policy is such a person or body;
- [Sub-para. (ii) amended by s. 16 of Act 16 of 2004.]
- (iii) any annuity contracts entered into by it in respect of which annuities are being paid;
- (b) a fund, to be known as the individual policyholder fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to any policy (other than a policy contemplated in paragraph (a)) of which the owner is any person other than a company;
- (c) a fund, to be known as the company policyholder fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to any policy (other than a policy contemplated in paragraph (a)) of which the owner is a company; and
- (d) a fund, to be known as the corporate fund, in which shall be placed all the assets (if any)



held by the insurer, and all liabilities owed by it, other than those contemplated in paragraphs (a), (b) and (c).

(5) For the purposes of subsection (4), where the owner of a policy is the trustee of any trust or where two or more owners jointly own a policy -

- (a) if all the beneficiaries in such trust or all such joint owners are funds, persons or bodies contemplated in subsection (4) (a), the owner of such policy shall be deemed to be such a fund, person or body, as the case may be; or
- (b) where paragraph (a) is not applicable and all the beneficiaries in such trust or all such joint owners are persons other than a company, the owner of such policy shall be deemed to be a person other than a company; or
- (c) where paragraphs (a) and (b) are not applicable, the owner of such policy shall be deemed to be a company.

(6) An insurer who becomes aware that, in consequence of -

- (a) a change of ownership of any policy issued by it; or
- (b) any change affecting the status of the owner of any policy,

the assets held by it in relation to such policy should in terms of the provisions of subsection (4) be held in a policyholder fund other than the policyholder fund in which such assets are actually held, shall forthwith transfer from such lastmentioned fund to such firstmentioned fund assets having a market value equal to the value of liabilities determined on the date of such transfer in relation to the said policy.

(7) Every insurer shall within a period of four months after the end of every year of assessment redetermine the value of liabilities in relation to each of its policyholder funds as at the last day of such year, and -

- (a) where the market value of the assets actually held by it in any such fund exceeds the value of liabilities in relation to such fund on such last day, it shall within the said period transfer from such fund to its corporate fund assets having a market value equal to such excess; or
- (b) where the market value of the assets actually held by it in any such fund is less than the value of liabilities in relation to such fund on such last day, it shall within the said period transfer from its corporate fund to such fund assets having a market value equal to the shortfall,

and such transfer shall for the purposes of this section be deemed to have been made on such last day.

(8) Any transfer of an asset effected by an insurer between one fund and another fund shall be effected by way of a disposal of such asset at the market value thereof and shall for the purposes of this Act be treated as an acquisition or disposal of such asset, as the case may be, in each such fund.

[Sub-s. (8) substituted by s. 15 (1) (a) of Act 5 of 2001.]

(9) Subject to the provisions of subsection (11) (d), there shall be exempt from tax any income received by or accrued to an insurer from assets held by it in, and business conducted by it in relation to, its untaxed policyholder fund.

(10) The taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund and its corporate fund shall be determined separately in accordance with the provisions of this Act as if each such fund had been a separate taxpayer and the individual policyholder fund, company policyholder fund, untaxed policyholder fund and corporate fund, shall be deemed to be separate companies which are connected persons in relation to each other for the purposes of subsections (6), (7) and (8) and sections 9B, 20, 24I, 24J, 24K, 24L, and 26A and the Eighth Schedule to this Act.

[Sub-s. (10) substituted by s. 15 (1) (b) of Act 5 of 2001 and by s. 39 (1) of Act 60 of 2001.]

(11) In the determination of the taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund and its corporate fund in respect of any year of assessment -

- (a) the amount of any expenses, allowances and transfers to be allowed as a deduction in the policyholder funds in terms of this Act shall, subject to subsections (11A), (11B) and (11C), be limited to the total of -
  - (i) the amount of expenses and allowances directly attributable to the income of such fund;
  - (ii) such percentage of the amount of -
    - (aa) all expenses allocated to such fund which are directly incurred during such year of assessment in respect of the selling and administration of policies;

and

- (bb) all expenses and allowances allocated to such fund which are not included in subparagraph (i), but excluding any expenses directly attributable to any amounts received or accrued which do not constitute income as defined in section 1,

which percentage shall-

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

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

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

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

in which formulae-

- (A) 'Y' represents the percentage to be applied to such amount;  
 (B) 'I' represents the gross amount of any interest as defined in section 24J of this Act, received by or accrued to such fund;  
 (C) 'R' represents the rental income of such fund after deduction of expenses directly attributable to such income; and  
 (D) 'L' represents the dividend income (other than taxable foreign dividends) of such fund; and

[Item (D) substituted by s. 15 (1) (e) of Act 5 of 2001.]

- (E) 'F' represents the taxable foreign dividends of such fund; and

[Item (E) added by s. 15 (1) (f) of Act 5 of 2001.]

- (iii) such percentage, determined in accordance with the formula contemplated in subparagraph (ii), of 50 per cent of the amount transferred from the policyholder fund in terms of subsection (7) (a), to the extent that the amount of such transfer is required to be included in the income of the corporate fund during such year of assessment in terms of paragraph (d) (i) of this subsection: Provided that the amount of the deduction in terms of this subparagraph shall not exceed the balance of the amount of the income of the policyholder fund remaining after taking into account any other amounts allowed to be deducted from the income of such fund in terms of this section;

[Para. (a) amended by s. 15 (1) (c) and (d) of Act 5 of 2001.]

- (b) .....

[Para. (b) deleted by s. 30 of Act 74 of 2002.]

- (c) .....

[Para. (c) deleted by s. 36 of Act 59 of 2000.]

- (d) any amount required to be transferred-

- (i) to the corporate fund in terms of the provisions of subsection (7) (a) shall be included in the income of the corporate fund; and  
 (ii) from the corporate fund in terms of the provisions of subsection (7) (b) shall not be deducted from the income of the corporate fund,

for the purposes of determining the taxable income of such fund for the year of assessment in respect of which the value of liabilities in relation to its policyholder funds was redetermined in terms of that subsection: Provided that where any amount is transferred from the corporate fund to any policyholder fund as contemplated in subparagraph (ii), any subsequent transfers from the policyholder fund to the corporate fund of any amounts which in the aggregate do not exceed the total amount of such transfer, shall not be included in the income of the corporate fund in terms of the provisions of subparagraph (i) of this

paragraph;

- (e) subject to the provisions of paragraph (a) (iii), no amount transferred to or from the corporate fund in terms of the provisions of subsection (7), shall be deducted from or included in the income of the policyholder fund from or to which such amount was transferred, as the case may be;
- (f) the amount of any transfer contemplated in subsection (6) or (8) shall not be deducted from the income of the fund from which it is transferred and shall not be included in the income of the fund to which it is transferred; and
- (g) premiums and reinsurance claims received and claims and reinsurance premiums paid shall be disregarded.

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

[Sub-s. (11A) inserted by s. 15 (1) (g) of Act 5 of 2001 and substituted by s. 15 (1) of Act 19 of 2001.]

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

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

[Sub-s. (11B) inserted by s. 15 (1) (g) of Act 5 of 2001.]

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

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

in which formula-

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

[Sub-s. (11C) inserted by s. 15 (1) (g) of Act 5 of 2001.]

(12) In the allocation of any asset, expenditure or liability to any fund contemplated in subsection (4), an insurer shall, when establishing such fund and at all times thereafter-

- (a) to the extent to which such asset, expenditure or liability relates exclusively to business conducted by it in any one fund, allocate such asset, expenditure or liability to that fund; and
- (b) to the extent to which such asset, expenditure or liability does not relate exclusively to business conducted by it in any one fund, allocate such asset, expenditure or liability in a manner which is consistent with and appropriate to the manner in which its business is conducted.

(13) An insurer who as at the commencement of its first year of assessment commencing on or

after 1 January 2000 has not established the separate funds contemplated in subsection (4) shall as at the commencement of that year determine the value of liabilities required in respect of each of its policyholder funds, and shall be deemed for the purposes of applying this section in that year and in any succeeding year of assessment in which it has not yet established such funds, to have established and maintained such funds in accordance with the provisions of this section.

(14) For the purposes of subsection (13)-

- (a) an appropriate portion of all the assets and liabilities of an insurer shall be deemed to have been placed by it in each of its funds in accordance with the provisions of this section;
- (b) an appropriate portion of any income received by or accrued to an insurer and any expenditure incurred by it shall be deemed to have been received by or to have accrued to, or to have been incurred by, as the case may be, each of its funds in accordance with the provisions of this section; and
- (c) any amount which would have been required to be transferred in terms of the provisions of subsection (7) (a) or (b) had such separate funds been so established and maintained, shall be deemed to have been so transferred.

(15) Every insurer shall, within 6 months after the commencement of the first year of assessment commencing on or after 1 January 2000, determine the value of liabilities in relation to each of its policyholder funds as at the first day of such year of assessment and where the market value of the assets held in such policyholder fund, after taking into account any transfers required to be made in terms of section 29 in respect of the last year of assessment commencing before 1 January 2000-

- (a) exceeds the value of the liabilities so determined in relation to such policyholder fund, the insurer shall, within such period, transfer from such policyholder fund to its corporate fund assets having a market value equal to such excess; or
- (b) is less than the value of liabilities so determined in relation to such policyholder fund, the insurer shall, within such period, transfer from the corporate fund to such policyholder fund assets having a market value equal to such shortfall,

and such transfer shall for the purposes of this section be deemed to have been made on such first day of such first year.

(16) Any amount transferred from-

- (a) the policyholder fund to the corporate fund in terms of subsection (15) (a), shall be included in the income of the corporate fund in respect of its first year of assessment commencing on or after 1 January 2000, and-
  - (i) such amount shall in the first instance be reduced by the balance of any assessed loss incurred by the corporate fund in any previous year which has been carried forward from the year preceding such year of assessment and the balance of the assessed loss shall be reduced accordingly; and
  - (ii) where such amount so transferred exceeds the balance of the assessed loss contemplated in subparagraph (i), there shall be allowed to be deducted in the corporate fund from the amount of the remainder of such transfer, an amount equal to-
    - (aa) the balance of any special transfer contemplated in section 29 (10) (b) and (11), which has not been utilised as at the last day of the last year of assessment commencing before 1 January 2000; and
    - (bb) such percentage, determined in accordance with the formula contemplated in subsection (11) (a) (ii), in respect of its first year of assessment commencing on or after 1 January 2000, of the amount of any selling expenses contemplated in section 29 (14) (a) incurred during the last year of assessment commencing before 1 January 2000 and the four preceding years of assessment which were not allowed as a deduction in terms of that section during such years of assessment:

Provided that-

- (A) the amount to be deducted in terms of items (aa) and (bb) shall be limited to such remainder of the transfer; and
- (B) so much of the special transfers contemplated in item (aa) and the selling expenses contemplated in item (bb) as is not deducted from the amount of the

transfer included in the income of the corporate fund in terms of subsection (15) shall be forfeited and not be allowed as a special transfer or deduction in any future year of assessment; and

- (b) the corporate fund to the policyholder fund in terms of subsection (15) (b) shall be dealt with as if such transfer was made in terms of subsection (7) (b).

[S. 29A inserted by s. 30 of Act 53 of 1999.]

### 30 Public benefit organisations

(1) For the purposes of this Act-

**'public benefit activity'** means-

- (a) any activity listed in Part I of the Ninth Schedule; and  
 (b) any other activity determined by the Minister from time to time by notice in the *Gazette* to be of a benevolent nature, having regard to the needs, interests and well-being of the general public;

[Definition of 'public benefit activity' substituted by s. 22 (a) of Act 30 of 2002.]

**'public benefit organisation'** means any organisation-

- (a) which is a company formed and incorporated under section 21 of the Companies Act, 1973 (Act 61 of 1973), or a trust or an association of persons;  
 (b) of which the sole object is carrying on one or more public benefit activities (including any undertakings or activities which are not prohibited under subsection (3) (b) (iv)), where-
- (i) all such activities are carried on in a non-profit manner and with an altruistic or philanthropic intent;  
 (ii) no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee; and  
 (iii) at least 85 per cent of such activities, measured as either the cost related to the activities or the time expended in respect thereof, are carried out for the benefit of persons in the Republic, unless the Minister, having regard to the circumstances of the case, directs otherwise: Provided that cost incurred for the benefit of persons outside the Republic shall be disregarded to the extent of donations received by that organisation from persons who are not resident and receipts and accruals derived directly or indirectly therefrom which donations, receipts and accruals have not previously been taken into account for purposes of this proviso; and [Sub-para. (iii) substituted by s. 45 (1) of Act 45 of 2003.]

(c) where-

- (i) each such activity carried on by that organisation is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups);  
 (ii) each such activity carried on by that organisation is for the benefit of, or is readily accessible to, the poor and needy; or  
 (iii) that organisation is at least 85 per cent funded by donations, grants from any organ of state or any foreign grants;

[Definition of 'public benefit organisation' substituted by s. 22 (b) of Act 30 of 2002.]

(2) Any activity determined by the Minister in terms of paragraph (b) of the definition of 'public benefit activity' in subsection (1) or any conditions prescribed by the Minister in terms of subsection (3) (a) must be tabled in Parliament within a period of 12 months after the date of publication by the Minister of that activity or those conditions in the *Gazette*, for incorporation into this Act.

[Sub-s. (2) substituted by s. 22 (c) of Act 30 of 2002.]

(3) The Commissioner shall, for the purposes of this Act, approve a public benefit organisation which-

- (a) complies with such conditions as the Minister may prescribe by way of regulation to ensure that the activities and resources of such organisation are directed in the furtherance of its object;  
 (b) has submitted to the Commissioner a copy of the constitution, will or other written instrument under which it has been established and in terms of which it is -  
 (i) required to have at least three persons, who are not connected persons in relation

to each other, to accept the fiduciary responsibility of such organisation and no single person directly or indirectly controls the decision making powers relating to that organisation: Provided that the provisions of this subparagraph shall not apply in respect of any trust established in terms of a will of any person who died on or before 31 December 2003;

[Sub-para. (i) substituted by s. 22 (d) of Act 30 of 2002.]

- (ii) prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established, or to invest such funds-
- (aa) with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act 97 of 1990);
- [Item (aa) substituted by s. 22 (e) of Act 30 of 2002.]
- (bb) in any listed financial instrument of a company contemplated in paragraph (a) of the definition of 'listed company'; or
- [Item (bb) substituted by s. 28 (1) of Act 32 of 2004.]
- (cc) in such other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organisations:

Provided that the provisions of this subparagraph shall not prohibit any such organisation from retaining any investment (other than any investment in the form of a business undertaking or trading activity or asset which is used in such business undertaking or trading activity) in the form that it was acquired by way of donation, bequest or inheritance;

- (iii) required on dissolution to transfer its assets to-
- (aa) any similar public benefit organisation which has been approved in terms of this section;
- (bb) any institution, board or body which is exempt from tax under the provisions of section 10 (1) (cA) (i), which has as its sole or principal object the carrying on of any public benefit activity; or
- (cc) any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10 (1) (a) or (b);

[Sub-para. (iii) substituted by s. 22 (f) of Act 30 of 2002.]

- (iv) prohibited from carrying on any business undertaking or trading activity, otherwise than to the extent that-
- (aa) the gross income derived from all such business undertakings or trading activities do not in total exceed the greater of-
- (A) 15 per cent of the gross receipts of such public benefit organisation; or
- (B) R25 000;
- [Item (aa) amended by s. 16 (1) of Act 19 of 2001.]
- (bb) the undertaking or activity is -
- (A) integral and directly related to the sole object of such public benefit organisation; and
- (B) carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost and which would not result in unfair competition in relation to taxable entities;
- (cc) the undertaking or activity, if not integral and directly related to the sole object of such public benefit organisation as contemplated in item (bb), is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation; or
- (dd) the undertaking or activity is approved by the Minister by notice in the *Gazette*, having regard to-
- (A) the scope and benevolent nature of the undertaking or activity;

- (B) the direct connection and interrelationship of the undertaking or activity with the sole purpose of the public benefit organisation;
  - (C) the profitability of the undertaking or activity; and
  - (D) the level of economic distortion that may be caused by the tax exempt status of the public benefit organisation carrying out the undertaking or activity;
- (v) prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A: Provided that a donor (other than a donor which is an approved public benefit organisation or an institution board or body which is exempt from tax in terms of section 10 (1) (cA) (i), which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation;  
[Sub-para. (v) amended by s. 22 (g) of Act 30 of 2002.]
- (vi) required to submit to the Commissioner a copy of any amendment to the constitution, will or other written instrument under which it was established;
- (c) the Commissioner is satisfied is or was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under this Act or any other Act administered by the Commissioner;
- (d) has not and will not pay any remuneration, as defined in the Fourth Schedule, to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and has not and will not economically benefit any person in a manner which is not consistent with its objects;  
[Para. (d) substituted by s. 22 (h) of Act 30 of 2002.]
- (e) complies with such reporting requirements as may be determined by the Commissioner;
- (f) the Commissioner is satisfied that, in the case of any public benefit organisation which provides funds to any association of persons contemplated in paragraph 10 (iii) of Part 1 of the Ninth Schedule, has taken reasonable steps to ensure that the funds are utilised for the purpose for which it has been provided; and  
[Para. (f) substituted by s. 31 (1) (a) of Act 74 of 2002.]
- (g) has, within such period as the Commissioner may determine, been registered in terms of section 13 (5) of the Nonprofit Organisations Act, 1997 (Act 71 of 1997), and complied with any other requirements imposed in terms of that Act, unless the Commissioner in consultation with the Director of Nonprofit Organisations designated in terms of section 8 of the Nonprofit Organisations Act, 1997, on good cause shown, otherwise directs; and;  
[Para. (g) added by s. 22 (i) of Act 30 of 2002.]
- (h) has not and will not use its resources directly or indirectly to support, advance or oppose any political party;  
[Para. (g) added by s. 22 (j) of Act 30 of 2002.]

Provided that notwithstanding subparagraph (iv) of paragraph (b), any business undertaking or trading activity, or asset used in such undertaking or activity, acquired by such organisation before 1 January 2001 may be retained or continued, as the case may be, in the form so acquired for a period of five years after that date.

[Sub-s. (3) amended by s. 22 (k) of Act 30 of 2002.]

(3A) The Commissioner may, for the purposes of subsection (3), grant approval in respect of any group of organisations sharing a common purpose, which carry on any public benefit activity under the direction or supervision of a regulating or co-ordinating body, where that body takes such steps, as prescribed by the Commissioner, to exercise control over those organisations in order to ensure that they comply with the provisions of this section.

[Sub-s. (3A) inserted by s. 22 (l) of Act 30 of 2002.]

(3B) Where an organisation applies for approval before the later of 31 December 2004 or the last day of its first year of assessment, the Commissioner may approve that organisation for the purposes of this section, or for the purposes of any provision contained in section 10 which was repealed on 15 July 2001, with retrospective effect.

[Sub-s. (3B) inserted by s. 22 (l) of Act 30 of 2002 and substituted by s. 28 (1) (b) of Act 32 of 2004.]

(4) Where the constitution, will or other written instrument does not comply with the provisions of subsection (3) (b), it shall be deemed to so comply -

- (a) in the case of a public benefit organisation established under the terms of a will, or under a constitution or other written instrument which cannot be amended to comply with the said subsection; or
- (b) in any other case, for a period not exceeding five years,

if the person responsible in a fiduciary capacity for the funds and assets of such organisation furnishes the Commissioner with a written undertaking that such organisation will be administered in compliance with the provisions of this section.

(5) Where the Commissioner is -

- (a) satisfied that any public benefit organisation approved under subsection (3) has during any year of assessment in any material respect; or
- (b) during any year of assessment satisfied that any such public benefit organisation has on a continuous or repetitive basis,

failed to comply with the provisions of this section, or the constitution, will or other written instrument under which it is established to the extent that it relates to the provisions of this section, the Commissioner shall after due notice withdraw approval of the organisation with effect from the commencement of that year of assessment, where corrective steps are not taken by that organisation within a period stated by the Commissioner in that notice.

[Sub-s. (5) amended by s. 22 (m) of Act 30 of 2002.]

(5A) Where any regulating or co-ordinating body contemplated in subsection (3A)-

- (a) with intent or negligently fails to take any steps contemplated in that subsection to exercise control over any public benefit organisation; or
- (b) fails to notify the Commissioner where it become aware of any material failure by any public benefit organisation over which it exercises control to comply with any provision of this section,

the Commissioner shall after due notice withdraw the approval of the group of public benefit organisations with effect from the commencement of that year of assessment, where corrective steps are not taken by that organisation within a period stated by the Commissioner in that notice.

[Sub-s. (5A) inserted by s. 22 (n) of Act 30 of 2002.]

(6) Where the Commissioner has so withdrawn his approval of such organisation, such organisation shall, within three months or such longer period as the Commissioner may allow after the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any other organisation which is -

- (a) approved in terms of this section; and
- (b) not a connected person in relation to such organisation.

(7) Where any such organisation fails so to transfer, or so to take reasonable steps to transfer, its remaining assets, the accumulated net revenue which has not been distributed in terms of this section shall for the purposes of this Act be deemed to be an amount of taxable income which accrued to such organisation during the year of assessment referred to in subsection (5).

(8) The provisions of this section shall not, if the Commissioner is satisfied that the non-compliance giving rise to the withdrawal contemplated in subsection (5) has been rectified, preclude any such organisation from applying for approval in terms of this section in the year of assessment following the year of assessment during which the approval was so withdrawn by the Commissioner.

(9) Any books of account, records or other documents relating to any approved public benefit organisation shall -

- (a) where kept in book form, be retained and carefully preserved by any person in control of such organisation for a period of four years after the date of the last entry in any book; or
- (b) where not kept in book form, be retained and carefully preserved by any person in control of such organisation for a period of four years after completion of the transactions, acts or



operations to which they relate.

(10) In the application of the provisions of this Act, the Commissioner may by notice in writing require any person whom the Commissioner may deem able to furnish information in regard to any approved public benefit organisation-

- (a) to answer any questions relating to such organisation; or
- (b) to make available for inspection by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation; or
- (c) to attend at the time and place appointed by the Commissioner for the purposes of producing for examination by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation.

(11) .....

[Sub-s. (11) deleted by s. 31 (1) (b) of Act 74 of 2002.]

(12) Any person who is in a fiduciary capacity responsible for the management or control of the income and assets of any approved public benefit organisation who intentionally fails to comply with any provision of this section or of the constitution, will or other written instrument under which such organisation is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding two years.

[S. 30 amended by s. 26 of Act 113 of 1993, repealed by s. 20 (1) of Act 21 of 1994 and inserted by s. 35 (1) of Act 30 of 2000.]

### **31 Determination of taxable income of certain persons in respect of international transactions**

(1) For the purposes of this section-

'goods' includes any corporeal movable thing, fixed property and any real right in any such thing or fixed property;

'international agreement' means a transaction, operation or scheme entered into between-

- (a) (i) a resident; and
- (ii) any other person who is not a resident; or
- (b) (i) a person who is not a resident; and
- (ii) any other person who is not a resident, for the supply of goods or services to or by a permanent establishment of either of such persons in the Republic; or
- (c) (i) a person who is a resident; and
- (ii) any other person who is a resident, for the supply of goods or services to or by a permanent establishment of either of such persons outside the Republic; or
- (d) .....

[Para. (d) deleted by s. 46 of Act 45 of 2003.]

where either of such persons is as a result of the application of the provisions of any agreement entered into by the Republic for the prevention of double taxation, not subject to tax in the Republic; and

[Definition of 'international agreement' substituted by s. 37 (1) of Act 30 of 1998, amended by s. 31 (1) (b) of act 53 of 1999 and substituted by s. 37 (a) of Act 59 of 2000.]

'permanent establishment' .....

[Definition of 'permanent establishment' inserted by s. 37 (b) of Act 59 of 2000 and deleted by s. 16 of Act 5 of 2001.]

'services' includes anything done or to be done, including, without limiting the generality of the foregoing-

- (a) the granting, assignment, cession or surrender of any right, benefit or privilege;
- (b) the making available of any facility or advantage;
- (c) the granting of financial assistance, including a loan, advance or debt, and the provision of any security or guarantee;
- (d) the performance of any work;
- (e) an agreement of insurance; or
- (f) the conferring of rights to incorporeal property.

(2) Where any goods or services are supplied or acquired in terms of an international agreement and-

- (a) the acquirer is a connected person in relation to the supplier; and

- (b) the goods or services are supplied or acquired at a price which is either-
- (i) less than the price which such goods or services might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm's length (such price being the arm's length price); or
  - (ii) greater than the arm's length price,

then, for the purposes of this Act in relation to either the acquirer or supplier, the Commissioner may, in the determination of the taxable income of either the acquirer or supplier, adjust the consideration in respect of the transaction to reflect an arm's length price for the goods or services.

(3) (a) Where any person who is not a resident (hereinafter referred to as the investor) has granted financial assistance contemplated in paragraph (c) of the definition of 'services' in subsection (1), whether directly or indirectly, to-

- (i) any connected person (in relation to the investor) who is a resident; or  
[Sub-para. (i) substituted by s. 37 (c) of Act 59 of 2000.]
- (ii) any other person (in whom he has a direct or indirect interest) other than a natural person, which is a resident (hereinafter referred to as the recipient) and, by virtue of such interest, is entitled to participate in not less than 25 per cent of the dividends, profits or capital of the recipient, or is entitled, directly or indirectly, to exercise not less than 25 per cent of the votes of the recipient,

[Sub-para. (ii) substituted by s. 37 (c) of Act 59 of 2000.]

and the Commissioner is, having regard to the circumstances of the case, of the opinion that the value of the aggregate of all such financial assistance is excessive in relation to the fixed capital (being share capital, share premium, accumulated profits, whether of a capital nature or not, or any other permanent owners' capital, other than permanent capital in the form of financial assistance as so contemplated) of such connected person or recipient, any interest, finance charge or other consideration payable for or in relation to or in respect of the financial assistance shall, to the extent to which it relates to the amount which is excessive as contemplated in this paragraph, be disallowed as a deduction for the purposes of this Act.

[Para. (a) amended by s. 37 (c) of Act 59 of 2000.]

(b) For the purposes of paragraph (a), financial assistance granted indirectly shall be deemed to include any financial assistance granted by any third person who is not a connected person in relation to the investor, a connected person contemplated in paragraph (a) or the recipient, where such financial assistance has been granted by arrangement, directly or indirectly, with the investor and on the strength of any financial assistance granted, directly or indirectly, by the investor or any connected person in relation to the investor, to such third person.

[S. 31 substituted by s. 23 (1) of Act 21 of 1995.]

### **31A** .....

[S. 31A inserted by s. 47 (1) of Act 45 of 2003 and repealed by s. 29 (1) of Act 32 of 2004.]

### **32 Assessment in the case of submarine cable or wireless business**

(1) Any person who carries on in the Republic the business of transmitting messages to places outside the Republic by submarine cables or by any form of wireless apparatus, shall be deemed to have derived therefrom (apart from the taxable income derived from other sources) a taxable income of ten rand for every two hundred rand payable to such person in respect of messages transmitted from any office of such person in the Republic, whether the amount be payable in or outside the Republic.

(2) For the purposes of this section any message which is delivered at any office in the Republic of the person who carries on the business referred to in subsection (1) for transmission in any manner whatsoever shall be deemed to be transmitted from that office.

(3) The provisions of this section shall not apply to any person so carrying on business who renders accounts which satisfactorily disclose the taxable income derived by such person from the business carried on by him in the Republic.

[Sub-s. (3) substituted by s. 27 of Act 113 of 1993.]

### **33 Assessment of owners or charterers of ships or aircraft who are not residents of the Republic**

(1) Any person other than a resident who embarks passengers or loads livestock, mails or goods in the Republic, as an owner or charterer of any ship or aircraft, shall be deemed to have derived therefrom (apart from any taxable income derived by him from other sources) a taxable income of 10 per cent of the amount payable to him or to any agent on his behalf, whether the amount be payable in or outside the Republic, in respect of passengers, livestock, mails and goods so embarked or loaded, but the provisions of this section shall not apply to any such person who renders accounts which satisfactorily disclose the

taxable income derived by him from the embarking of passengers or the loading of livestock, mails and goods as aforesaid.

[Sub-s. (1) amended by s. 26 of Act 85 of 1974 and substituted by s. 28 of Act 113 of 1993 and by s. 38 of Act 59 of 2000.]

(2) Where the person so embarking passengers or loading livestock, mails or goods has no recognized agent in the Republic other than the master of the ship or the pilot of the aircraft in connection with which any such amounts are payable, or where the agent fails to make returns of any such amounts payable in respect of any ship or aircraft -

- (a) the Commissioner may make the assessment from such information as may be available to him;
- (b) the tax thereon shall be payable to the Commissioner prior to the clearance of the ship or aircraft;
- (c) the principal officer of customs at the port or airport where such ship or aircraft is being cleared shall have power to detain the clearance until such payment is made; and
- (d) upon such payment the master, pilot or agent (as the case may be) shall be entitled to a certificate from such officer of customs that the amount so paid has been paid under the provisions of this Act, and such certificate shall be sufficient warrant to such master, pilot or agent of the amount so paid.

[S. 33 amended by s. 40 of Act 60 of 2001.]

34 .....

[S. 34 repealed by s. 19 of Act 90 of 1962.]

**35 Assessment of persons not ordinarily resident or registered, managed or controlled in the Republic who derive income from royalties or similar payments**

(1) Any person (other than a resident or a controlled foreign company) by whom any amount is received or to whom any amount accrues by virtue of-

- (a) the use or right of use in the Republic of, or the grant of permission to use in the Republic-
  - (i) any patent as defined in the Patents Act, 1978 (Act 57 of 1978), or any design as defined in the Designs Act, 1993 (Act 195 of 1993), or any trade mark as defined in the Trade Marks Act, 1993 (Act 194 of 1993), or any copyright as defined in the Copyright Act, 1978 (Act 98 of 1978), or any model, pattern, plan, formula or process or any other property or right of a similar nature; or
  - (ii) any motion picture film, or any film or video tape or disc for use in connection with television, or any sound recording or advertising matter used or intended to be used in connection with such motion picture film, film or video tape or disc, wheresoever such patent, design, trade mark, copyright, model, pattern, plan, formula, process, property, right, motion picture film, film, video tape or disc, sound recording or advertising matter has been produced or made or such right of use or permission has been granted or payment for such use, right of use or grant of permission has been made or is to be made, and whether such payment has been made or is to be made by a person resident in or outside the Republic; or
- (b) the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information for use in the Republic, or the rendering of or the undertaking to render, any assistance or service in connection with the application or utilisation of such knowledge or information, wheresoever such knowledge or information has been obtained or such knowledge or information has been imparted or is to be imparted or such assistance or service has been rendered or is to be rendered or any such undertaking has been given, and whether payment for such knowledge, information, assistance, service or undertaking has been made or is to be made by a person resident in or outside of the Republic,

shall be liable for tax, to be known as the withholding tax on royalties, which shall be levied and paid for the benefit of the National Revenue Fund at a rate of 12 per cent of such amount: Provided that the provisions of this subsection shall not apply in respect of any amount which is received by or accrues to any -

- (i) company which is not a resident, if such amount is derived by such company from any trade carried on through a branch or agency in the Republic and such amount

- is subject to tax in the Republic;
- (ii) person (other than a person whose place of residence is in a neighbouring country) in respect of the use (otherwise than for advertising purposes in connection with any motion picture film or otherwise than in connection with television) in any printed publication of any copyright as aforesaid.

[Sub-s. (1) amended by s. 20 (a) of Act 90 of 1962, substituted by s. 20 (1) (a) of Act 65 of 1973, amended by s. 27 (a) of Act 85 of 1974, substituted by s. 39 (a) of Act 59 of 2000 and amended by s. 32 (1) (a) of Act 74 of 2002.]

(2) (a) Any person who incurs a liability to pay to any other person who is not a resident any amount referred to in subsection (1), or who receives payment of any such amount on behalf of such other person, shall within 14 days after the end of the month during which the said liability is incurred or the said payment is received, as the case may be, or within such further period as the Commissioner may approve, make a payment (which shall be a final payment made on behalf of such other person) to the Commissioner in respect of such other person's liability for tax in terms of subsection (1), and shall submit to the Commissioner at the time of such tax payment a declaration in such form as the Commissioner may prescribe: Provided that-

- (i) if the Commissioner is satisfied that the tax payment required to be made in terms of this paragraph in respect of the said amount has been or will be made by any person, the Commissioner may direct that any other person who is in terms of this paragraph required to make a tax payment in respect of the said amount, shall be relieved of the duty to make such payment;
- (ii) for the purposes of this subsection a person having an address outside the Republic shall until the contrary is proved be deemed not to be a resident;

[Para. (ii) substituted by s. 27 (c) of Act 85 of 1974 and by s. 39 (c) of Act 59 of 2000.]

- (iii) this paragraph shall not be construed as requiring any person to make a tax payment in terms of this paragraph in respect of any liability to pay any amount in respect of the use in the Republic or of the grant of permission to use in the Republic or the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use in the Republic of any motion picture film or any sound recording or advertising matter used or intended to be used in connection with such film, if such liability was incurred and discharged before the commencement of the Income Tax Amendment Act, 1962.

[Para. (a) amended by s. 20 (b) of Act 90 of 1962, by s. 20 (1) (b) of Act 65 of 1973, by s. 27 (b) of Act 85 of 1974, by s. 24 of Act 94 of 1983, by s. 21 (1) of Act 21 of 1994 and by s. 39 (b) of Act 59 of 2000.]

(b) Any person making a payment to the Commissioner in terms of paragraph (a) shall, notwithstanding any agreement to the contrary, be entitled to deduct or withhold the amount of such payment from the amount which he is liable to pay to the aforesaid other person, or to recover the amount so paid from such other person or to retain out of any money that may be in his possession or may come to him as the agent of such other person an amount equal to the amount of such payment.

(c) .....

[Para. (c) substituted by s. 39 (d) of Act 59 of 2000 and by s. 32 (1) (b) of Act 74 of 2002 and deleted by s. 48 (a) of Act 45 of 2003.]

(d) A taxpayer on whose behalf a payment has been made to the Commissioner in terms of paragraph (a) shall not be entitled to recover the amount of such payment from the person who under the provisions of paragraph (b) deducts, withholds or retains the amount of such payment and shall be deemed to have received the amount so deducted or withheld.

(e) Every person who is required to make a payment to the Commissioner in terms of paragraph (a) shall be personally liable for making such payment, and the amount so payable shall be deemed to be a tax due by such person and shall be recoverable from him in the manner prescribed in section *ninety-one*.

(f) Nothing in this section contained shall be construed as relieving any person to whom the provisions of subsection (1) apply from the obligation to render a return of income for any year of assessment or from paying any tax for which he may be liable or as depriving him of the right to prove for the purposes of section *one hundred and two* that payments made on his behalf in terms of paragraph (a) in respect of any year of assessment were in excess of the amount of normal tax properly chargeable under this Act in respect of income received by or accrued to him during such year.

(3) The general provisions contained in Parts I to VI of Chapter III of this Act shall *mutatis mutandis* apply in respect of any withholding tax on royalties payable in terms of this section.

[Sub-s. (3) added by s. 48 (b) of Act 45 of 2003.]

[NB: A s. 35A has been inserted by s. 30 of the Revenue Laws Amendment Act 32 of 2004, a provision which will be put into operation by proclamation. See PENDLEX]

### **36 Calculation of redemption allowance and unredeemed balance of capital expenditure in connection with mining operations**

#### **■ Cases**

(1) and (2) .....

[Sub-ss. (1) and (2) deleted by s. 24 (a) of Act 141 of 1992.]

(2)*bis* .....

[Sub-s. (2)*bis* inserted by s. 12 (a) of Act 72 of 1963 and deleted by s. 24 (a) of Act 141 of 1992.]

(3) .....

[Sub-s. (3) amended by s. 12 (b) of Act 72 of 1963 and deleted by s. 24 (a) of Act 141 of 1992.]

(3)*bis* .....

[Sub-s. (3)*bis* inserted by s. 12 (c) of Act 72 of 1963, substituted by s. 15 (a) of Act 90 of 1964, amended by s. 20 of Act 88 of 1965 and by s. 14 (1) (a) of Act 76 of 1968 and deleted by s. 24 (a) of Act 141 of 1992.]

(3)*ter* .....

[Sub-s. (3)*ter* inserted by s. 14 (1) (b) of Act 76 of 1968 and deleted by s. 24 (a) of Act 141 of 1992.]

(4) .....

[Sub-s. (4) amended by s. 12 (d) of Act 72 of 1963 and by s. 14 (1) (c) of Act 76 of 1968 and deleted by s. 24 (a) of Act 141 of 1992.]

(5) .....

[Sub-s. (5) deleted by s. 24 (a) of Act 141 of 1992.]

(6) .....

[Sub-s. (6) amended by s. 15 (b) and (c) of Act 90 of 1964 and deleted by s. 24 (a) of Act 141 of 1992.]

(7) .....

[Sub-s. (7) deleted by s. 24 (a) of Act 141 of 1992.]

(7A) .....

[Sub-s. (7A) inserted by s. 26 of Act 89 of 1969 and deleted by s. 24 (a) of Act 141 of 1992.]

(7B) .....

[Sub-s. (7B) inserted by s. 21 (a) of Act 65 of 1973 and deleted by s. 24 (a) of Act 141 of 1992.]

(7C) Subject to the provisions of subsections (7E), (7F) and (7G), the amounts to be deducted under section 15 (a) from income derived from the working of any producing mine shall be the amount of capital expenditure incurred.

[Sub-s. (7C) inserted by s. 21 (a) of Act 65 of 1973, amended by s. 25 (a) of Act 94 of 1983 and by s. 26 (a) of Act 101 of 1990 and substituted by s. 24 (b) of Act 141 of 1992 and by s. 29 of Act 113 of 1993.]

(7D) .....

[Sub-s. (7D) inserted by s. 21 (a) of Act 65 of 1973, amended by s. 25 (b) of Act 94 of 1983 and deleted by s. 24 (c) of Act 141 of 1992.]

(7E) The aggregate of the amounts of capital expenditure determined under subsection (7C) in respect of any year of assessment in relation to any mine or mines shall not exceed the taxable income (as determined before the deduction of any amount allowable under section 15 (a), but after the set-off of any balance of assessed loss incurred by the taxpayer in relation to such mine or mines in any previous year which has been carried forward from the preceding year of assessment) derived by the taxpayer from mining, and any amount by which the said aggregate would, but for the provisions of this subsection, have exceeded such taxable income as so determined, shall be carried forward and be deemed to be an amount of capital expenditure incurred during the next succeeding year of assessment in respect of the mine or mines to which such capital expenditure relates.

[Sub-s. (7E) inserted by s. 25 (c) of Act 94 of 1983 and substituted by s. 26 (b) of Act 101 of 1990.]

(7F) The aggregate of the amounts of capital expenditure determined under subsection (7C) in respect of any year of assessment in relation to any one mine shall, unless the Minister of Finance, after consultation with the Minister of Mineral and Energy Affairs and having regard to any relevant fiscal, financial or technical implications, otherwise directs, not exceed the taxable income (as determined before the deduction of any amount allowable under section 15 (a), but after the set-off of any balance of assessed loss incurred by the taxpayer in relation to that mine in any previous year which has been carried forward

from the preceding year of assessment) derived by the taxpayer from mining on that mine, and any amount by which the said aggregate would, but for the provisions of this subsection, have exceeded such taxable income as so determined, shall be carried forward and be deemed to be an amount of capital expenditure incurred during the next succeeding year of assessment in respect of that mine: Provided that where the taxpayer was on 5 December 1984 carrying on mining operations on two or more mines, the said mines shall for the purposes of this subsection be deemed to be one mine.

[Sub-s. (7F) inserted by s. 16 (1) of Act 96 of 1985 and amended by s. 26 (c) of Act 101 of 1990.]

(7G) (a) Where in the case of any mine in respect of which mining operations or any related operations were or are commenced by the taxpayer after 14 March 1990 (in this subsection referred to as a new mine) an amount of capital expenditure falls to be disallowed under the provisions of subsection (7F), there shall, notwithstanding the provisions of that subsection, be deducted from the total taxable income derived by the taxpayer from mining (as determined after the deduction of any capital expenditure which does not fall to be disallowed under the said provisions and after the set-off of any assessed loss incurred by him from mining operations in a previous year of assessment which has been carried forward) so much of the total amount of capital expenditure which has been so disallowed in relation to all producing new mines owned by the taxpayer as does not exceed 25 per cent of such taxable income.

(b) The provisions of paragraph (a) shall not apply to capital expenditure incurred in respect of any new mine-

- (i) which has been disposed of by the taxpayer in the current or any previous year of assessment; or
- (ii) if the taxpayer is a company and its acquisition of the right to mine or the mineral rights in respect of such mine was financed wholly or partly by the issue of any share in respect of which any dividend is to be calculated by reference to that portion of the company's profits which is attributable to the operation of such mine.

[Sub-s. (7G) inserted by s. 26 (d) of Act 101 of 1990.]

(8) .....

[Sub-s. (8) substituted by s. 21 (b) of Act 65 of 1973 and by s. 28 (1) (a) of Act 85 of 1974 and deleted by s. 24 (c) of Act 141 of 1992.]

(9) .....

[Sub-s. (9) substituted by s. 21 (b) of Act 65 of 1973 and deleted by s. 24 (c) of Act 141 of 1992.]

(10) Where separate and distinct mining operations are carried on in mines that are not contiguous, the allowance for redemption of capital expenditure shall be computed separately.

[Sub-s. (10) substituted by s. 24 (d) of Act 141 of 1992.]

(11) For the purposes of this section-

'capital expenditure' means-

- (a) expenditure (other than interest or finance charges) on shaft sinking and mine equipment (other than expenditure referred to in paragraph (d)) and, in the case of a natural oil mine, the cost of laying pipelines from the mining block to the marine terminal or the local refinery, as the case may be; and

[Para. (a) substituted by s. 28 (1)(b) of Act 85 of 1974, by s. 14 (a) of Act 70 of 1989 and by s. 30 of Act 129 of 1991.]

- (b) expenditure on development, general administration and management (including any interest and other charges payable after the thirty-first day of December, 1950, on loans utilized for mining purposes) prior to the commencement of production or during any period of non-production; and
- (c) in the case of any post-1973 gold mine, any other deep level gold mine, any post-1990 gold mine or any natural oil mine, a capital allowance calculated at the rate of 10 per cent per annum in the case of a post-1973 gold mine or any other deep level gold mine or 12 per cent per annum in the case of any post-1990 gold mine or any natural oil mine on the amount of the aggregate of-
  - (i) the expenditure referred to in paragraphs (a) and (b), excluding any interest and other charges on loans referred to in paragraph (b), if the mine is a post-1973 gold mine, a post-1990 gold mine or a natural oil mine, or the expenditure referred to in paragraph (a), if the mine is any other deep level gold mine;
  - (ii) the amount (if any) allowed to rank as capital expenditure in terms of section 37;
  - (iii) any expenditure incurred during any period of production on development on any

- (iv) reef on which at the date of such development stoping has not yet commenced; the instalments of expenditure referred to in paragraph (d); and  
[Sub-para. (iv) substituted by s. 24 (f) of Act 141 of 1992.]
- (v) the unredeemed balance of the aggregate determined in terms of this paragraph up to the end of the year of assessment immediately preceding the year of assessment under charge and which shall include the capital allowance determined in terms of this paragraph for such preceding year of assessment,  
[Sub-para. (v) substituted by s. 24 (f) of Act 141 of 1992.]

if the mine is a post-1973 gold mine, a post-1990 gold mine or a natural oil mine, for the period from the end of the month in which the expenditure is actually incurred up to the end of the year of assessment immediately preceding the first year of assessment in respect of which the determination of the taxable income derived from the working of such mine does not result in an assessed loss or nil, and, if the mine is any other deep level gold mine, for a period of ten years from the commencement of the year of assessment during which the mine is recognized as any other deep level gold mine: Provided that-

- (aa) the amount under this paragraph shall not be calculated for any period during which mining operations are not carried on in accordance with the terms of the relevant-
  - (A) mining authorization issued under the Minerals Act, 1991 (Act 50 of 1991); or
  - (B) prospecting right, mining right, exploration right or production right, mining permit or retention permit issued in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);
 [Sub-para. (aa) substituted by s. 31 (1) of Act 32 of 2004.]
- (bb) notwithstanding anything to the contrary in any law contained, the amount under this paragraph shall not be taken into account for the purpose of-
  - (A) calculating the capital allowance provided for in section 25 (2) of the Mining Rights Act, 1967;
  - (B) determining the profits of which a share is payable to the State in terms of any mining authorization issued under the Minerals Act, 1991 (Act 50 of 1991); or
  - (C) determining the amounts payable to the State in terms of the transitional mineral and petroleum provisions contemplated in Schedule 3 of the Taxation Laws Amendment Act, 2004 (Act 16 of 2004);
 [Sub-para. (bb) substituted by s. 31 (1) of Act 32 of 2004.]
- (cc) the unredeemed balance of the aggregate of the amounts referred to in subparagraphs (i) to (v) inclusive, of this paragraph, shall be determined by the deduction from such aggregate at the end of every year of assessment-
  - (i) of the taxable income derived from the working of such mine for such year of assessment, as determined before the deduction of any amount allowable under section 15 (a) in relation to such mine and before the set-off in terms of section 20 (1) (a) of any balance of assessed loss which is attributable to any deduction made under section 15 (a) in relation to such mine; and
  - (ii) where the mine concerned is a mine to which subsection (7G) applies, an amount equal to that portion of the capital expenditure of such mine which has been set off against the taxable income of another mine or mines during such year of assessment;
- (dd) the sum of the expenditure contemplated in this paragraph shall be reduced by the sum of the amounts received or accrued during the said relevant period from disposals of assets contemplated in the definition of 'capital expenditure incurred';
- (ee) .....
- (ff) .....
- (gg) notwithstanding anything to the contrary in this paragraph, the instalment of expenditure which is in terms of paragraph (d) deemed to be payable during a year of assessment shall qualify for the calculation of the amount under this paragraph

as from the first day of the year of assessment following the said year of assessment;

- (hh) where a sale, transfer, lease or cession of any mining property, as contemplated in section 37, occurs which results in the disposal of an asset in respect of which the provisions of paragraph (d) are applicable, so much of the effective value as relates to the asset so disposed of shall qualify for the calculation of the amount under this paragraph as from the first day of the year of assessment following the year of assessment during which the agreement of sale, transfer, lease or cession of that mining property takes effect; and

[Para. (hh) substituted by s. 41 (1) of Act 60 of 2001.]

[Para. (c) amended by s. 14 (1) (d) of Act 76 of 1968, substituted by s. 28 (1)(c) of Act 85 of 1974, amended by s. 20 (1) of Act 104 of 1980, substituted by s. 14 (b) of Act 70 of 1989 and amended by s. 26 (e) of Act 101 of 1990 and by s. 24 (e) and (g) of Act 141 of 1992.]

- (d) expenditure (excluding the cost of land, surface rights and servitudes) the payment of which has become due on or after 1 July 1989 in respect of the acquisition, erection, construction, improvement or laying out of-
- (i) housing for residential occupation by the taxpayer's employees (other than housing intended for sale) and furniture for such housing;
  - (ii) infrastructure in respect of residential areas developed for sale to the taxpayer's employees;
  - (iii) any hospital, school, shop or similar amenity (including furniture and equipment) owned and operated by the taxpayer mainly for the use of his employees or any garage or carport for any motor vehicle referred to in subparagraph (vi);
  - (iv) recreational buildings and facilities owned and operated by the taxpayer mainly for the use of his employees;
  - (v) any railway line or system having a similar function for the transport of minerals from the mine to the nearest public transport system or outlet;
  - (vi) motor vehicles intended for the private or partly private use of the taxpayer's employees:

Provided that-

- (aa) such expenditure shall for the purposes of this definition be deemed to be payable in ten successive equal annual instalments or, where subparagraph (vi) is applicable, five successive equal annual instalments, the first of which shall be deemed to be payable on the date on which payment of the relevant expenditure became due and the succeeding instalments on the appropriate anniversaries of that date, but if any such anniversary falls on a date after the asset to which such expenditure relates has been sold, disposed of or scrapped by the taxpayer, the instalment of such expenditure so deemed to be payable on such anniversary shall be disregarded;
- (bb) where it is shown to the satisfaction of the Commissioner that the life of the relevant mine will extend over a period which is shorter than the period during which the said instalments are so deemed to be payable, the Commissioner may reduce the number of instalments relating to the expenditure not yet redeemed and the amount of each such instalment shall be determined by dividing the amount of the expenditure remaining to be redeemed by the number of years in the remainder of the life of the mine;
- (cc) where any asset the expenditure in respect of which has qualified as capital expenditure under this paragraph is sold, disposed of or scrapped by the taxpayer during any year of assessment, an allowance shall be made in respect of that asset, equal to the amount by which the full amount of the expenditure incurred by the taxpayer in respect of that asset, as contemplated in this paragraph, exceeds the total amount of all the instalments of such expenditure which are deemed by paragraph (aa) of this proviso to be payable before the asset was sold, disposed of or scrapped, and in such case the amount of the said allowance shall be deemed to be the final instalment of the said expenditure made on the date on which the asset was sold, disposed of or scrapped;



[Para. (d) added by s. 14 (c) of Act 70 of 1989.]

[Definition of 'capital expenditure' amended by s. 12 (e), (f), (g) and (h) of Act 72 of 1963 and substituted by s. 15 (d) of Act 90 of 1964, by s. 23 of Act 55 of 1966 and by s. 16 of Act 95 of 1967.]

'capital expenditure incurred', for the purpose of determining the amount of capital expenditure incurred during any period in respect of any mine, means the amount (if any) by which the expenditure that is incurred during such period in respect of such mine and is capital expenditure, exceeds the sum of the amounts received or accrued during the said period from disposals of assets the cost of which has in whole or in part been included in capital expenditure taken into account (whether under this Act or any previous Income Tax Act) for the purposes of any deduction in respect of such mine under section 15 (a) of this Act or the corresponding provisions of any previous Income Tax Act;

[Definition of 'capital expenditure incurred' inserted by s. 21 (c) of Act 65 of 1973 and substituted by s.17 of Act 36 of 1996.]

'expenditure on shaft sinking' includes the expenditure on sumps, pump-chambers, stations and ore bins accessory to a shaft;

'expenditure' means net expenditure after taking into account any rebates or returns from expenditure, regardless of when such last-mentioned expenditure was incurred.

[Definition of 'expenditure' substituted by s. 21 (d) of Act 65 of 1973.]

(12) The balance of capital expenditure unredeemed at the commencement of the first year of assessment chargeable under this Act shall be the balance shown to be unredeemed at the end of the last year of assessment chargeable under the Income Tax Act, 1941.

### **37 Calculation of capital expenditure on sale, transfer, lease or cession of mining property**

#### **■ Cases**

(1) For the purposes of this Act, but subject to subsection (1A), whenever a taxpayer-

- (a) sells, transfers, leases or cedes any mining property; and
- (b) disposes of any assets contemplated in section 36 (11) (hereinafter referred to as 'the capital assets') in consequence of the sale, transfer, lease or cession contemplated in paragraph (a),

the person acquiring those capital assets shall be deemed to have acquired such capital assets at a cost equal to the effective value of those capital assets to that person on the effective date of that agreement of sale, transfer, lease or cession of the mining property, and the said cost shall be deemed to be expenditure that is incurred by that person during the period of assessment during which that agreement takes effect and to be capital expenditure which is in respect of such period required to be taken into account for the purposes of the definition of 'capital expenditure incurred' in section 36 (11).

(1A) Where any consideration is given by the person acquiring the assets disposed of by the taxpayer, as contemplated in subsection (1), and the effective value of all those assets (including any mining property) so acquired, exceeds that consideration, the amount of the cost and expenditure in respect of the capital assets shall, for the purposes of subsection (1), be deemed to be an amount which bears to the total amount of such consideration the same ratio as such effective value of those capital assets bears to the effective value to that person of all the assets (including any mining property) so disposed of to that person.

(2) For the purposes of paragraph (j) of the definition of 'gross income' in section 1 and section 36, the taxpayer who disposes of any capital assets contemplated in subsection (1), shall be deemed to have disposed of such capital assets for a consideration equal in value to the cost of those capital assets to the person acquiring such capital assets as determined under subsection (1) and (1A), and such consideration shall be deemed to have been received by or to have accrued to the said taxpayer on the effective date of the agreement of sale, transfer, lease or cession.

(3) If the value of the consideration given or the value of the property disposed of is in dispute, the value may, be fixed by the Commissioner and shall be determined-

- (a) in the case of any mining property, in the same manner as if transfer duty were payable; or
- (b) in the case of any capital asset, at the market value of such capital asset.

(4) The effective value on the effective date of the agreement of sale, transfer, lease or cession, of all the assets disposed of, shall be determined by the Director-General for Minerals and Energy who shall, notwithstanding the repeal of the Second Schedule to the Transvaal Mining Leases and Mineral Law Amendment Act, 1918 (Act 30 of 1918), for the purposes of such determination have all the powers which were conferred upon him by the provisions of that Schedule.

(5) For the purpose of this section, 'mining property' means-

- (a) any land on which mining is carried on; or
- (b) any right to minerals (including any right to mine for minerals) and a lease or sub-lease of such a right.

[S. 37 amended by s. 29 of Act 85 of 1974 and by s. 25 of Act 141 of 1992 and substituted by s. 42 (1) of Act 60 of 2001.]

**37A** .....

[S. 37A inserted by s. 27 of Act 89 of 1969, amended by s. 18 (1) of Act 52 of 1970, by s. 22 (1) of Act 88 of 1971 and by s. 30 (1) of Act 85 of 1974 and repealed by s. 26 of Act 94 of 1983.]

**37B** .....

[S. 37B inserted by s. 12 (1) of Act 101 of 1978 and repealed by s. 22 (1) of Act 21 of 1994.]

**37C Determination of taxable income of persons previously assessable under certain other laws**

Where any rule provided in this Act as to the inclusion of any amount in the income of a taxpayer for any year of assessment ending on or after 1 March 1984, or as to the deduction or set-off of any amount from or against his income for such year, in effect requires that regard shall be had to anything that has been done or has occurred in or in relation to a previous year of assessment, anything that has in fact been done or has in fact occurred in or in relation to a year of assessment in respect of which the taxpayer was assessable for taxation purposes under the Black Taxation Act, 1969 (Act 92 of 1969), or any law of a legislative assembly established under the provisions of section 1 of the National States Constitution Act, 1971 (Act 21 of 1971), imposing a tax on income, shall for the purposes of applying such rule but subject to such adjustments as the Commissioner may make, be taken into account.

[S. 37C inserted by s. 3 of Act 30 of 1984.]

**37D Determination of taxable income of married women**

For the purposes of the determination of the taxable income of any married woman, where any rule provided in this Act as to the inclusion of any amount in her income or as to the deduction or set-off of any amount from or against her income, in effect requires that regard shall be had to anything that has been done or has occurred in or in relation to a previous year of assessment, anything that has in fact been done or has in fact occurred in or in relation to a year of assessment during which income derived by such married woman was under the provisions of section 7 (2) (prior to the amendment thereof by section 4 of the Income Tax Act, 1990) deemed to be income derived by her husband, shall, subject to such adjustments as may in the circumstances be appropriate, be taken into account for the purposes of applying such rule.

[S. 37D inserted by s. 27 of Act 101 of 1990.]

**37E Application of certain provisions where taxpayer carries on value-added process**

(1) For the purposes of this section-

'commencement date' means 12 September 1991;

'committee' means the committee appointed in terms of subsection (2);

'intermediate product' means any substance or material which is produced by any person in order to be subjected to further processing by any other person;

'local country' means the Republic, Botswana, Lesotho, Namibia, Swaziland or any country the territory of which formerly formed part of the Republic;

'value-added process' means any process approved by the committee whereby any raw material or any intermediate product is processed to yield any intermediate product or final product, if in the opinion of the committee-

- (a) such process will add at least 35 per cent to the value of the raw material or intermediate product processed, such added value being determined in accordance with the formula-

$$\frac{A - (B + C)}{A} \times \frac{100}{1}$$

in which formula-

(i) 'A' represents the ex-factory price of the intermediate product or final product produced by the taxpayer;

(ii) 'B' represents the cost of raw materials and intermediate products used by him in the production of such intermediate product or final product; and

(iii) 'C' represents the cost of electricity consumed by him in such production;

- (b) such process will be carried on on a scale which makes it internationally competitive; and

- (c) where the taxpayer intends acquiring any imported capital goods for use in such process,

he will make use of any foreign term credits which may be available for the purpose of financing the acquisition of such capital goods,

but excludes any process which is either a simple purification process in consequence of which the raw material or intermediate product in question remains unchanged except for the removal of impurities or a physical process resulting merely in a change of shape and any process which is a mining operation or any operation which is normally carried on in the course of mining operations.

(2) The Minister of Finance shall with the concurrence of the Minister of Trade and Industry appoint a committee which shall have power to-

- (a) approve any process as a value-added process for the purposes of this section, subject to such requirements and conditions as the committee considers necessary to ensure that the provisions of this section are applied in such a manner as to promote the carrying on of value-added processes;
- (b) direct that where the provisions of this section are applicable to any taxpayer, the taxpayer shall be excluded from such further assistance from the State as the committee may determine; and
- (c) perform such other functions as are assigned to it under the provisions of this section.

(3) In deciding whether a process is to be approved as a value-added process, the committee shall have regard to-

- (a) the degree to which the production of an intermediate product will encourage further processing of such intermediate product by industries situated in a local country;
- (b) the effect on the Exchequer;
- (c) the degree of preference which will be granted to products and skills from a local country; and
- (d) the effect of such process on small and medium size enterprises in a local country.

(4) Where any taxpayer incurs expenditure for the purpose of his trade on or in connection with-

- (a) any new or unused machinery or plant referred to in section 12C(1)(a) which the committee is satisfied will-
  - (i) be brought into use by the taxpayer within a period determined by the committee; and
  - (ii) be used by the taxpayer directly in a value-added process carried on by him; or
- (b) any building referred to in section 13 (1) (b) which the committee is satisfied will-
  - (i) be brought into use by the taxpayer within a period determined by the committee; and
  - (ii) be used by the taxpayer for the purpose of carrying on therein any value-added process,

the provisions of sections 11 (bA), 12C and 13 (1) shall, notwithstanding the fact that such machinery, plant or building may not have been brought into use or used as contemplated in those sections, be applied in accordance with the provisions of subsection (5), but subject to the provisions of subsection (6).

(5) Where any expenditure referred to in subsection (4)-

- (a) constitutes an amount of interest or related finance charges referred to in section 11 (bA) which has been incurred by the taxpayer in respect of the cost of any machinery or plant referred to in subsection (4) (a) or any building referred to in subsection (4) (b), the deduction under section 11 (bA) shall be allowed in the year of assessment in which such expenditure is incurred;
- (b) constitutes the whole or a portion of the cost to the taxpayer of any machinery or plant referred to in subsection (4) (a), the deduction under section 12C shall be allowed in the year of assessment in which such expenditure is incurred and in each of the four succeeding years of assessment; or
- (c) constitutes the whole or a portion of the cost to the taxpayer of any building referred to in subsection (4) (b), the deduction under section 13 (1) shall be allowed in the year of assessment in which such expenditure is incurred and in each applicable succeeding year of assessment.

(6) The provisions of this section shall apply to any taxpayer who on the commencement date has not yet commenced the erection of a value-added plant, if the process to be carried on by the taxpayer is approved by the committee as a value-added process within two years (or such shorter period as the committee in any case determines) after the commencement date.

(7) For the purposes of subsection (6), a taxpayer shall be deemed to have commenced the erection of a value-added plant on the date upon which he concludes an agreement for the acquisition of any machinery or plant referred to in subsection (4) (a) or on the date upon which he concludes an agreement for the erection of a building referred to in subsection (4) (b), whichever date is the earlier.

(8) Where a taxpayer fails to comply with any of the requirements or conditions imposed by the committee, no deduction shall be granted under the provisions of this section unless the committee otherwise directs.

(9) Where the sum of the deductions to which the taxpayer is entitled in any year of assessment under the provisions of sections 11(bA), 12C and 13(1), as applied in terms of the provisions of this section, in respect of expenditure referred to in subsection (4) exceeds the taxable income of the taxpayer for such year as determined before allowing the said deductions, the Commissioner may on application made to him by the taxpayer-

- (a) disallow as a deduction in the determination of the taxpayer's taxable income for such year an amount equal to so much of such sum as would, had such amount been allowed as a deduction, have created or increased an assessed loss as defined in section 20 (2); and
- (b) issue, subject to such terms and conditions as he may determine, to the taxpayer a negotiable tax credit certificate for such amount as, having regard to the rate of normal tax applicable to the taxpayer in such year, represents the amount of normal tax which would be payable in respect of a taxable income equal to the amount disallowed under the provisions of paragraph (a).

(10) A negotiable tax credit certificate issued to any taxpayer under the provisions of subsection (9) or (11) may be disposed of by such taxpayer or subsequent holder to any other taxpayer, and may in such case be utilized by such other taxpayer in payment of any normal tax, secondary tax on companies or provisional tax due by him.

(11) Where a negotiable tax credit certificate is utilized by any taxpayer and the value thereof is in excess of the amount of normal tax, secondary tax on companies or provisional tax due by such taxpayer, the Commissioner shall not be required to make a refund of such excess if such excess exceeds R5000, but he may issue to such taxpayer a replacement negotiable tax credit certificate in respect of such excess.

(12) The utilization by the taxpayer of a negotiable tax credit certificate or a refund by the Commissioner of any excess of a negotiable tax credit certificate shall be treated as a drawback from revenue charged to the National Revenue Fund.

[Sub-s. (12) amended by s. 41 of Act 36 of 1996.]

(13) For the purposes of section 8 (4) (a), any amount disallowed under subsection (9) (a) shall be deemed to be an amount allowed to be deducted or set off as contemplated in that section.  
[S. 37E inserted by s. 3 (1) of Act 136 of 1991, amended by s. 26 (1) of Act 141 of 1992 and substituted by s. 30 (1) of Act 113 of 1993.]

### **37F Determination of taxable income derived by persons previously assessable under certain other laws**

Where it is necessary for any rule provided in this Act as to the inclusion in the income of any taxpayer for any year or as to the deduction or set-off of any amount from or against his income for such year, that regard shall be had to anything that has been done or has occurred in or in relation to a previous year of assessment, anything that has in fact been done or has in fact occurred in or in relation to a year of assessment during which the taxpayer was assessable for taxation purposes in terms of any law of a former self-governing territory declared under section 26 of the repealed Self-governing Territories Constitution Act, 1971 (Act 21 of 1971), to be a self-governing territory or of the former Republic of Transkei, Bophuthatswana, Venda or Ciskei for any year of assessment, shall, subject to such adjustments as may in the circumstances be appropriate, for the purposes of applying such rule be taken into account.

[S. 37F inserted by s. 24 (1) of Act 21 of 1995.]

### **37G Determination of taxable income derived from small business undertakings**

(1) The Minister of Finance may make regulations to facilitate compliance with the provisions of this Act by natural persons who carry on business through small business undertakings, whether as sole proprietors or in partnership with other natural persons.

(2) A regulation made under subsection (1) may-

- (a) prescribe what shall constitute a small business undertaking, having regard to-
  - (i) the nature of the undertaking;

- (ii) the turnover, taxable income or profit of the undertaking;
  - (iii) the number of persons employed in the undertaking;
  - (iv) the nature and extent of other income derived by the proprietor or partners; and
  - (v) any other feature which, in the opinion of the said Minister, indicates that an undertaking should be regarded as a small business undertaking;
- (b) provide for the variation of any provision of this Act relating to the determination of the taxable income derived from a small business undertaking, including-
- (i) the determination of taxable income having regard only to amounts actually received or expended;
  - (ii) any variation in the manner in which the values of trading stock are taken into account;
  - (iii) the manner in which expenditure of a capital nature incurred is to be treated; and
  - (iv) any other provision which, save in so far as the timing of the receipt or accrual of income or the incurral of expenditure is concerned, will not result in a material variation in the determination of the taxable income derived by the undertaking over a period of time;
- (c) provide for the exemption from, or extension of time limits in, any provision of this Act relating to the preparation and submission of documents, accounts, returns or payments;
- (d) make such other provision as in the opinion of the said Minister will facilitate the carrying on of small business undertakings.

[S. 37G inserted by s. 24 (1) of Act 21 of 1995.]

### **37H Tax holiday scheme for certain companies**

(1) For the purposes of this section-

'board' means the board established by section 2 of the Regional Industrial Development Act, 1993 (Act 187 of 1993);

'commencement date' means 1 October 1996;

'goods' means goods as defined in section 31 (1);

'project' means a project which in the opinion of the board-

- (a) represents the manufacturing of any products, goods, articles or any other things as classified in 'Major Division 3: Manufacturing' of the Standard Industrial Classification of all Economic Activities (Fifth Edition) issued by the Central Statistical Services in January 1993; and
- (b) meets the investment requirements prescribed by the regulations under subsection (14) (a);

'qualifying company' means any company which-

- (a) is incorporated on or after the commencement date;
- (b) commences the carrying on of one qualifying project for the first time on or after the commencement date; and
- (c) has the sole object of carrying on one qualifying project as from the date of such incorporation and which does not carry on any trade other than such qualifying project;

'qualifying project' means a project which has been approved by the board in terms of subsection (2) (a);

'services' means services as defined in section 31 (1);

'State' means the Departments and Administrations as listed in Column 1 of Schedule 1 to the Public Service Act, 1994 (Proclamation 103 of 1994);

'tax holiday scheme' means a scheme in terms of which qualifying companies enjoy tax holiday status;

'tax holiday status' means the status whereby in respect of a year of assessment ending-

- (a) during the period of six months ending 31 March 1997, the income of a qualifying company is reduced in accordance with subsection (12); or
- (b) after 31 March 1997, the rate of normal tax on each rand of the taxable income received by or accrued to or in favour of a qualifying company is fixed at a rate of zero per cent in terms of section 5.

(2) The board may-

- (a) evaluate and approve any project, to be carried on by a company, as a qualifying project;
- (b) investigate or cause to be investigated any project for the purposes of this section;

- (c) monitor the tax holiday scheme to-
    - (i) determine whether the objectives of that scheme are being achieved; and
    - (ii) advise the Minister of Finance and the Minister of Trade and Industry on any future proposed amendment or adjustment thereof;
  - (d) direct that where this section is applicable to any company, the company shall be excluded from any such further assistance from the State as the board may determine;
  - (e) require any company contemplated in subsection (4) to furnish the board with any such information or documents as are necessary for the board to perform its functions in terms of this section; and
  - (f) perform such other functions as are assigned to it under this section.
- (3) The board shall not approve any project as a qualifying project-
- (a) if it is of the opinion that the project to be carried on by any company is substantially the same manufacturing concern as was or is carried on by any other person within the Republic on or before the submission of the application for approval of the project in terms of subsection (4); or
  - (b) after the commencement of the carrying on of such project by any company.
- (4) Any application by a company for the approval by the board of any project to be carried on by such company as a qualifying project, shall be made directly to the board in such form as the board may prescribe.
- (5) This section shall apply to any project which has been approved by the board as a qualifying project in respect of any application received by the board from the relevant company on or before 30 September 1999.
- (6) An application contemplated in subsection (4) shall be in respect of a project which shall consist of one or more of the following components-
- (a) a spatial component as contemplated in subsection (14) (b);
  - (b) an industry component as contemplated in subsection (14) (c); and
  - (c) a human resource component as contemplated in subsection (14) (d).
- (7) In determining whether a project is a qualifying project, the board shall-
- (a) have regard to the-
    - (i) financial viability of the project;
    - (ii) effect on national competitiveness;
    - (iii) utilisation of resources;
    - (iv) utilisation of competitive technology; and
    - (v) commitment to the upgrading and training of local skills; and
  - (b) subject to subsection (8)-
    - (i) analyse each component of the project; and
    - (ii) where it is satisfied that such component is a component as contemplated in subsection (14) (b), (c) or (d), as the case may be, certify such component accordingly.
- (8) Where the project consists solely of a human resource component or where one of the components of a project consists of a human resource component, the board shall-
- (a) subject to paragraph (b), carry out an initial analysis and certification of such human resource component on application for approval of the project; and
  - (b) review such initial analysis and certification-
    - (i) where the project consists solely of a human resource component, within six months after the end of the first year of assessment during which the qualifying company commences its tax holiday status; and
    - (ii) where the project consists of more than one component, one of which is a human resource component, before the expiration of the tax holiday status of the qualifying company attributable to the certification by the board of all other components of such project.
- (9) Where the board has approved a project to be carried on by a company as a qualifying project, the tax holiday status of such company shall, subject to subsections (10) and (15), be a period of-
- (a) two consecutive years of assessment where the board has certified one component of the project;
  - (b) four consecutive years of assessment where the board has certified two components of

- the project; or
- (c) six consecutive years of assessment where the board has certified three components of the project.

(10) Where a project consists of more than one component, one of which is a human resource component, the period of the tax holiday status in respect of such human resource component shall, for the purposes of this section, be deemed to commence as from the commencement of the year of assessment immediately subsequent to the expiration of the period of the tax holiday status in respect of every other component.

(11) The tax holiday status of a qualifying company shall commence as from the commencement of the first year of assessment during which such qualifying company derives a taxable income.

(12) Where a qualifying company has a year of assessment ending during the period of six months ending 31 March 1997, there shall be allowed to be deducted from the income of such company in respect of such year of assessment, an amount equal to the taxable income in respect of such year of assessment of such company as determined before granting a deduction under this subsection.

(13) Notwithstanding the provisions of this section, a qualifying company shall no longer enjoy tax holiday status after the expiry of 10 years as from the commencement of the year of assessment during which the project which is carried on by the qualifying company was approved as a qualifying project by the board.

(14) The Minister of Trade and Industry may in consultation with the Minister of Finance make regulations to-

- (a) prescribe the investment requirements for any project having regard to the amount of capital invested in-
  - (i) land whereon and buildings wherein the process of manufacture is to be carried on; and
  - (ii) machinery and plant to be used directly in the process of manufacture;
- (b) provide for the demarcation of a location with an existing specialisation and advantage in manufacturing within which a project is to be carried on (in this section referred to as the spatial component), having regard to the-
  - (i) reinforcement of secondary cities;
  - (ii) reinforcement of key urban nodes along any development corridor which qualifies as a spatial development initiative;
  - (iii) consolidation of emerging agglomeration areas where a sufficient supply of appropriate infrastructure is available; and
  - (iv) supporting of the diversification of local economies where a sufficient supply of appropriate infrastructure is available as a result of the restructuring of existing manufacturing activities;
- (c) identify any manufacturing group (as contemplated in the Standard Industrial Classification of all Economic Activities (Fifth Edition) issued by the Central Statistical Services in January 1993) that, on an average basis, is likely to contribute most significantly to the achievement of sustainable economic growth and employment creation in the medium to longer term through enhanced international competitiveness, as a qualifying industry (in this section referred to as the industry component), having regard to the-
  - (i) employment and output linkages throughout the economy;
  - (ii) capital to human resource ratio;
  - (iii) generation of increased output; and
  - (iv) potential to experience an increase in international demand for such group's products, goods, articles or any other things over the short to medium term;
- (d) prescribe a ratio in respect of human resource remuneration to value added (in this section referred to as the human resource component);
- (e) prescribe criteria in order to determine for the purposes of-
  - (i) subsection (3) (a), whether the project to be carried on by the company is substantially the same manufacturing concern as is or was carried on by any other person within the Republic, having regard to the-
    - (aa) scale and scope of the project;
    - (bb) extent of the utilisation of-

- (A) machinery and plant; or
  - (B) human resources;
  - (cc) influence thereof on the national normal tax base in existence on the date on which the application for approval is considered by the board; and
  - (dd) relationship between such company or its shareholders and any previous owner of such manufacturing concern; and
  - (ii) subsection (3) (b), when the carrying on of a project commences;
  - (f) define any expression referred to in this subsection, if necessary;
  - (g) further describe and define the issues as contemplated in subsection (7) (a) to which the board shall have regard; and
  - (h) prescribe and define any condition as he may deem necessary for the evaluation, approval or monitoring of a project or the monitoring of the tax holiday scheme.
- (15) Where the-
- (a) board is satisfied that the approval of the project was obtained by fraud or as a result of any misrepresentation or failure to disclose any material fact by the company, the board shall, unless it otherwise directs, withdraw such approval if it is satisfied that in the light of the full facts such approval should not have been granted and, in such a case, such approval shall be deemed to have been withdrawn as from the date on which such project was approved as a qualifying project;
  - (b) board, in reviewing its initial analysis and certification of the human resource component as contemplated in subsection (8) (b), is satisfied that such human resource component is not a human resource component as contemplated in subsection (14) (d), the board shall, unless it otherwise directs, withdraw the certification of such human resource component and such certification shall, where it was reviewed in terms of-
    - (i) subsection (8) (b) (i), be deemed to have been withdrawn as from the commencement of the year of assessment wherein such review takes place; and
    - (ii) subsection (8) (b) (ii), be deemed to be withdrawn as from the date of the board's initial certification of such human resource component;
  - (c) board is satisfied that a spatial component or an industry component no longer constitutes a spatial component or an industry component, as the case may be, as contemplated in subsection (14) (b) or (c), as the case may be, as a result of any reason other than a reason contemplated in paragraph (a), the board shall, unless it otherwise directs, withdraw the certification of such spatial component or industry component, as the case may be, and such certification shall be deemed to have been withdrawn from the commencement of the year of assessment during which such spatial component or industry component, as the case may be, no longer constitutes such a spatial component or such an industry component, as the case may be, as originally certified by the board; or
  - (d) Commissioner is satisfied that a qualifying company has entered into or carried out any transaction, operation or scheme whereby any goods or services are, directly or indirectly -
    - (i) supplied to a connected person in relation to the qualifying company; or
    - (ii) acquired from a connected person in relation to the qualifying company, and the goods or services are supplied or acquired, as the case may be, at a price which is either-
      - (aa) less than the price which such goods or services might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm's length (such price being the arm's length price); or
      - (bb) greater than the arm's length price,
 the tax holiday status of such qualifying company shall, unless the Commissioner otherwise directs, lapse from the commencement of the year of assessment during which such qualifying company entered into or carried out such transaction, operation or scheme.

(16) Where subsection (15) (a) has been applied, the company shall pay, in addition to the tax chargeable in respect of its taxable income for each of the years of assessment during which the tax holiday status was previously granted, an amount equal to twice the tax chargeable in respect of its taxable income for each of such years of assessment.



(17) (a) The Commissioner may in his discretion remit the additional charge imposed by subsection (16) or any part thereof.

(b) Notwithstanding the provisions of this subsection, the Commissioner may either before or after an assessment is issued agree with the company on the amount of the additional charge to be paid, and the amount so agreed upon shall not be subject to any objection and appeal.

(18) (a) The board shall notify the company and the Commissioner of any decision taken in accordance with subsection (2), (3), (7) or (15) (a), (b) or (c) within a period of 30 days after the approval of the minutes of the meeting whereat such decision was taken.

(b) The board shall furnish the company with reasons for any decision contemplated in paragraph (a) simultaneously with the notification of such decision.

(19) (a) Notwithstanding the provisions of section 4, the Commissioner may disclose to the board such information relating to the company's affairs as is necessary to enable the board to perform its functions in terms of this section.

(b) Before disclosing such information the Commissioner shall deliver or send to the company a written notification of his intended action setting forth particulars of the said information.

(c) The company may within 30 days after the date of such written notification or such further period as the Commissioner may approve, lodge in writing with the Commissioner any objection it may have to the disclosure of the information.

(d) If, on the expiry of the said period of 30 days or the said further period, no objection has been lodged as contemplated in paragraph (c) or, if an objection has been lodged and the Commissioner is not satisfied that the objection should be sustained, the Commissioner may thereupon disclose such information as contemplated in paragraph (a).

(20) (a) The members and employees of the board shall preserve and aid in preserving secrecy with regard to all matters that may come to their knowledge in the performance of their functions in terms of this section, and shall not communicate any such matter to any person whatsoever other than the company concerned or its legal representative nor suffer or permit any such person to have access to any records in the possession or custody of the Commissioner, except in the performance of their functions as members and employees of the board or by order of a competent court.

(b) Every member and employee of the board shall take and subscribe before a magistrate or justice of the peace or an officer of the South African Revenue Service who is a commissioner of oaths, such oath or solemn declaration, as the case may be, of fidelity or secrecy as may be prescribed.

(c) Any member or employee of the board who contravenes a provision of paragraph (a), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(21) Where-

(a) the certification of a component in respect of a qualifying company has been withdrawn in terms of subsection (15) (b) or (c); or

(b) the tax holiday status of a qualifying company has lapsed in terms of subsection (15) (d), the Commissioner may, notwithstanding the provisions of section 79, raise assessments in respect of the company as if such company were not a qualifying company.

(22) Any decision of the Commissioner under this section shall be subject to objection and appeal.

(23) The relevant division of the High Court may, on the application of a company which has made any application in terms of this section and which feels aggrieved by a decision made by the board in connection with that application, review the decision on the following grounds-

(a) interest in the application, bias, malice or the commission of an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, on the part of any member of the board;

[Para. (a) substituted by s. 36 (1) of Act 12 of 2004.]

(b) gross irregularity in the proceedings; and

(c) exercise of a power in an arbitrary, *mala fide* or unreasonable manner.

[Sub-s. (23) amended by s. 38 of Act 30 of 1998.]

(24) The court in reviewing a decision of the board in terms of subsection (23) may, if the court is satisfied that-

(a) any of the grounds for review referred to in the said subsection has been proved; and

(b) the applicant has been substantially prejudiced by the decision,

set aside the decision, and shall, in setting aside the decision, unless in its opinion exceptional circumstances warrant another order, issue an order that the board consider afresh the matter in respect of which the decision was made.

(25) (a) A company which has made any application in terms of this section and which feels aggrieved by a decision on a question of law made by the board in connection with the application, may appeal to the relevant division of the High Court against the decision.

[Para. (a) amended by s. 38 of Act 30 of 1998.]

(b) Such an appeal shall be noted and prosecuted as if it were an appeal against a judgment in a magistrate's court in civil proceedings.

(c) If the court, after considering the appeal, is satisfied that the board has misdirected itself in the making of the decision concerned, the court may set aside that decision, and shall, in setting aside the decision, unless in its opinion exceptional circumstances warrant another order, issue an order that the board consider afresh the matter in respect of which the decision was made.

[S. 37H inserted by s. 12 (1) of Act 46 of 1996.]

## *Part II*

### *Special Provisions Relating to Companies (ss 38-40B)*

#### **38 Classification of companies**

(1) For the purposes of this Act a company shall in respect of each year of assessment be recognized as either a public or a private company, and the Commissioner shall upon the request of any company inform that company whether it is recognized as a public company or as a private company.

(2) The following companies shall, subject to the provisions of section *thirty-nine*, be recognized as public companies, namely -

- (a) any company all classes of whose equity shares are publicly quoted on the specified date by a stock exchange in the list issued under its authority, provided the Commissioner is satisfied-
    - (i) that the stock exchange is a recognized and *bona fide* stock exchange under adequate control;
    - (ii) that the rules and regulations of the stock exchange for granting and continuing a quotation for the purchase and sale of shares provide for full protection of the interests of the public in regard to dealings in the shares of the company;
    - (iii) that the memorandum and articles of association of the company contain no such restrictions on the right to acquire or transfer any of its shares as are likely to preclude members of the general public from becoming shareholders in any class of the company's shares; and
    - (iv) that the general public was throughout the year of assessment in question interested either directly as shareholders in the company or indirectly as shareholders in any other company, in more than forty per cent, of every class of equity shares issued by the company;
- [Sub-para. (iv) substituted by s. 16 (a) of Act 90 of 1964.]
- (b) any other company, not being a private company as defined in section 20 of the Companies Act, 1973 (Act 61 of 1973) (as in force on 1 January 1974), nor a close corporation, in respect of which the Commissioner is satisfied-
    - (i) that the general public was throughout the year of assessment in question interested either directly as shareholders in the company or indirectly as shareholders in any other company, in more than fifty per cent of every class of equity shares issued by the company; and
- [Sub-para. (i) substituted by s. 16 (b) of Act 90 of 1964.]
- (ii) that the business of the company is conducted and its profits are distributed in such a manner that no person enjoys or receives or is entitled to enjoy or receive, by reason of shareholding, participation in the management or otherwise, any advantage which would not be enjoyed or received by him if the company had been under the control of a board of directors acting in the best interests of all its shareholders and had been one which could have been recognized as a public company under paragraph (a);

[Para. (b) amended by s. 31 (b) of Act 85 of 1974 and by s. 24 of Act 121 of 1984.]

- (c) any company which has been approved as a public benefit organisation in terms of the

provisions of section 30 (3);

[Para. (c) substituted by s. 43 (1) of Act 60 of 2001.]

- (d) any co-operative formed and incorporated or deemed to be formed and incorporated under the Co-operatives Act, 1981 (Act 91 of 1981);

[Para. (d) substituted by s. 28 of Act 89 of 1969 and by s. 27 of Act 94 of 1983.]

- (e) any insurance society or company subject to assessment in terms of section 28, 29 or 29A;

[Para. (e) substituted by s. 32 (c) of Act 53 of 1999.]

- (f) any public utility company, established by or under a special Act of Parliament;  
 (g) any company the sole or principal business of which in the Republic is mining for gold or diamonds;  
 (h) any company to which the provisions of section *thirty-three* apply; and  
 (i) any portfolio of a collective investment scheme referred to in paragraph (e) (i) of the definition of 'company' in section one.

[Para. (i) added by s. 21 of Act 90 of 1962 and substituted by s. 36 (1) of Act 30 of 2000 and by s. 33 of Act 74 of 2002.]

(3) A company which is not recognized as a public company shall be recognized as a private company.

[Sub-s. (3) amended by s. 16 (c) of Act 90 of 1964.]

(4) For the purposes of this section-

- (a) the general public in relation to any company (in this paragraph referred to as the company) shall be deemed not to include-
- (i) any director of the company; or
  - (ii) any relative of any director of the company, unless it is shown to the satisfaction of the Commissioner that such relative, if he is not the spouse or minor child of such director, has at all times which the Commissioner considers relevant exercised his rights as a shareholder in the company or in any other company through which such relative is interested in the shares of the company, independently of such director; or
  - (iii) the executor of the deceased estate or the trustee of the insolvent estate of any person referred to in subparagraph (i) or (ii); or
  - (iv) any person to the extent that he acts in a fiduciary capacity, or as a nominee, for the benefit of any person who is not in fact or in terms of any other provision of this subsection a member of the general public in relation to the company; or
  - (v) any man or his wife or any minor child of any man or his wife, if one or more of such persons are directly or indirectly interested (otherwise than by virtue of any shareholding in any public company or any private company which is interested in the shares of the company through a direct or indirect interest in the issued share capital of a public company) in altogether more than fifteen per cent of any class of equity shares issued by the company;
- (b) the general public in relation to any company (in this paragraph referred to as the company) shall be deemed to include-
- (i) any benefit fund, pension fund, provident fund or retirement annuity fund or any trust or institution which in the opinion of the Commissioner is of a public character; and
  - (ii) any person to the extent that he acts in a fiduciary capacity, or as a nominee, for the benefit of any person who is in fact or in terms of any other provision of this subsection a member of the general public in relation to the company;
- (c) where any person-
- (i) being a public company, is indirectly interested in any shares of any other company; or
  - (ii) being a member of the general public in relation to any company, is indirectly interested in any shares of that company,

by virtue of his being a shareholder in any private company and such interest is not attributable to a direct or indirect interest of such private company in the issued share capital of a public company, the said person shall be deemed to be interested in only that

portion of such shares as the Commissioner is satisfied such person would be entitled to receive if every company through which that person is interested in those shares were to be wound up or liquidated and the assets of each such company were, without regard to its liabilities, to be distributed among its shareholders;

- (d) where persons are jointly interested, whether directly or indirectly, but otherwise than through a direct or indirect interest in the issued share capital of a public company, in the shares of any company, each such person shall be deemed to be interested in only such proportion of those shares as the Commissioner is satisfied he would be entitled to receive if the joint interest of all such persons in such shares were to be divided between such persons.

[Sub-s. (4) added by s. 16 (d) of Act 90 of 1964.]

### **39 Redetermination of company's status**

If owing to changes in the constitution or shareholding of any company which has been recognized as a public company under paragraph (a), (b) or (c) of subsection (2) of section *thirty-eight*, or for any other reason, the Commissioner is no longer satisfied of the matters of which he is in terms of the applicable paragraph required to be satisfied, or the company ceases to comply with the requirements of that paragraph, the Commissioner may notify the public officer of the company that it will as from the next succeeding specified date be recognized as a private company.

### **40 Objection and appeal**

The decision of the Commissioner in the exercise of his discretion under paragraph (a), (b) or (c) of subsection (2) of section *thirty-eight* shall be subject to objection and appeal.

### **40A Close corporations**

section

(1) Where any company registered under the Companies Act, 1973 (Act 61 of 1973), has under the provisions of section 27 of the Close Corporations Act, 1984 (Act 69 of 1984), been converted into a close corporation, or any close corporation has under the provisions of section 29C of the Companies Act, 1973, been converted into a company, such company and such close corporation shall for the purposes of this Act be deemed to be and to have been one and the same company.

(2) to (4) inclusive .....

[Sub-ss. (2) to (4) inclusive deleted by s. 28 (1) of Act 101 of 1990.]

[S. 40A inserted by s. 25 of Act 121 of 1984.]

### **40B Conversion of co-operative to company**

Where any co-operative incorporated under the Co-operatives Act, 1981 (Act 91 of 1981), is incorporated as a company in accordance with the provisions of section 161A or 161C of that Act, such co-operative and such company shall for the purposes of this Act be deemed to be and to have been one and the same company.

[S. 40B inserted by s. 17 of Act 96 of 1985, repealed by s. 29 (1) of Act 101 of 1990 and inserted by s. 31 of Act 113 of 1993.]

### **Part III**

### ***Special rules relating to company formations, share-for-share transactions, amalgamation transactions, intra-group transactions, unbundling transactions and liquidation distributions (ss 41-47)***

[Part III repealed by s. 25 (1) of Act 21 of 1995, inserted by s. 44 (1) of Act 60 of 2001 and substituted by s. 34 (1) of Act 74 of 2002.]

### **41 General**

(1) For the purposes of this Part, unless the context otherwise indicates, any word or expression that has been defined in section 1, shall bear the same meaning so defined, and-

'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;

[Definition of 'allowance asset' substituted by s. 49 (1) (a) of Act 45 of 2003.]

'asset' means an asset as defined in paragraph 1 of the Eighth Schedule;

'base cost' means the base cost as defined in paragraph 1 of the Eighth Schedule: Provided that where the base cost of an asset as at a specific date is to be determined as contemplated in paragraph 26 or 27 of the Eighth Schedule, the amount thereof must, for purposes of section 42, 43 or 44, be determined as if that asset had been disposed of on that date for proceeds equal to the market value of that asset as at that date;

'capital asset' means an asset as defined in paragraph 1 of the Eighth Schedule, which does not

constitute trading stock;

'date of acquisition' means the date of acquisition as determined in accordance with paragraph 13 of the Eighth Schedule or, where a person acquires an asset in terms of a transaction subject to the provisions of this Part, the deemed date of acquisition of that asset by that person as contemplated in this Part;

'domestic financial instrument holding company' means any company which is a resident, where more than half of the market value or two-thirds of the actual cost of all the assets of that company, together with the assets of all controlled group companies in relation to that company, consist of financial instruments, other than-

- (a) any financial instrument that constitutes a debt due to that company or to any controlled group company in relation to that company in respect of goods sold or services rendered by that company or controlled group company, as the case may be, where-
  - (i) the amount of that debt is or was included in the income of that company or controlled group company, as the case may be (or in the case of a foreign controlled group company, would have been so included were that foreign company a resident); and  
[Sub-para. (i) substituted by s. 32 (1) (a) of Act 32 of 2004.]
  - (ii) that debt is an integral part of a business conducted as a going concern by that company or controlled group company, as the case may be;  
[Para. (a) substituted by s. 49 (1) (b) of Act 45 of 2003.]
- (b) any financial instrument held by that company or by any controlled group company in relation to that company, where that company or controlled group company, as the case may be, is -
  - (i) a bank regulated in terms of the Banks Act, 1990 (Act 94 of 1990);
  - (ii) an authorised user regulated in terms of the Securities Services Act, 2004;
  - (iii) an insurer regulated in terms of the Long Term Insurance Act, 1998 (Act 52 of 1998);
  - (iv) an insurer regulated in terms of the Short Term Insurance Act, 1998 (Act 53 of 1998); or
  - (vi) a collective investment scheme regulated in terms of the Unit Trusts Control Act, 1981 (Act 54 of 1981), or its successor the Collective Investment Schemes Control Act, 2002 (Act 45 of 2002); or

[Para. (b) amended by s. 49 (1) (b) of Act 45 of 2003 and substituted by s. 32 (1) (b) of Act 32 of 2004.]

- (c) any financial instrument held by any controlled group company in relation to that company if that controlled group company is a foreign company as contemplated in paragraph (b) of the definition of 'foreign financial instrument holding company';  
[Para. (c) added by s. 49 (1) (d) of Act 45 of 2003.]

Provided that in determining whether more than half of the market value or two-thirds of the actual cost of the assets of the company and controlled group companies consist of financial instruments, the following assets must be wholly disregarded-

- (i) any share of a controlled group company in relation to that company; and
- (ii) any financial instrument which constitutes a loan, advance or debt entered into between-
  - (aa) that company and any controlled group company in relation to that company; or
  - (bb) controlled group companies in relation to that company;

[Definition of 'domestic financial instrument holding company' amended by s. 49 (1) (b) and (e) of Act 45 of 2003.]

'disposal' means a disposal as defined in paragraph 1 of the Eighth Schedule;

'equity share' in relation to a company, means a share or part thereof in the equity share capital of that company or a member's interest in a company which is a close corporation;

'foreign financial instrument holding company' means any foreign company as defined in section 9D, where more than half of the market value or two-thirds of the actual cost of all the assets of that company, together with the assets of all controlled group companies in relation to that foreign company, consist of financial instruments, other than-

- (a) any financial instrument that constitutes a debt due to that foreign company, or to any controlled group company in relation to that foreign company, in respect of goods sold or services rendered by that foreign company or controlled group company, as the case may

be, where-

- (i) the amount of that debt is or was included in the income of that foreign company or controlled group company, as the case may be (or would have been so included were that foreign company or controlled group company a resident); and [Sub-para. (i) substituted by s. 32 (1) (c) of Act 32 of 2004.]
- (ii) that debt is an integral part of a business conducted as a going concern by that foreign company or controlled group company, as the case may be;
- (b) any financial instrument arising from the principal trading activities of that foreign company or of any controlled group company in relation to that foreign company which is a bank, insurer, dealer or broker with a licence or registration that allows that foreign company or controlled group company to operate in the same manner as a company that mainly conducts business with clients who are residents in the same country of residence as that company and that foreign company or controlled group company in relation to that foreign company either-
  - (i) regularly accepts deposits or premiums or effects transactions for the account of clients from the general public; or
  - (ii) derives more than 50 per cent of its income or gains from principal trading activities with respect to persons who are not connected persons in relation to that foreign company; or
- (c) any financial instrument held by any controlled group company in relation to that foreign company if that controlled group company is a controlled group company as contemplated in paragraph (b) of the definition of 'domestic financial instrument holding company':

Provided that in determining whether more than half of the market value or two-thirds of the actual cost of the assets of the company and all controlled group companies consist of financial instruments, the following assets must be wholly disregarded-

- (i) any share in any other company in the same group of companies;
- (ii) any financial instrument which constitutes a loan, advance or debt entered into between-
  - (aa) that company and any controlled group company in relation to that company; or
  - (bb) controlled group companies in relation to that company;

[Definition of 'foreign financial instrument holding company' substituted by s. 49 (1) (f) of Act 45 of 2003.]

'hold' in relation to an equity share means the holding, by a person, of an equity share in such manner that that person qualifies as a 'shareholder' as defined in this subsection, and the word 'held' must be construed accordingly;

'listed company' means a company as contemplated in paragraph (a) of the definition of 'listed company' in section 1;

'market value' in relation to an asset means the price which could be obtained upon a sale of that asset between a willing buyer and a willing seller dealing at arm's length in an open market; and

'qualifying interest' of any person means equity shares held by that person in a company, which-

- (a) is a listed company or will become a listed company within 12 months after the transaction as a result of which that person holds those shares; or
- (b) in any other case, constitute more than 25 per cent of the equity shares of that company;

'shareholder' in relation to an equity share, means the registered shareholder of that equity share, unless a person other than that registered shareholder is entitled to all or part of the benefit of the rights of participation in the profits, income or capital attaching to that equity share, in which case that person must, to the extent of that entitlement to that benefit, be deemed to be the shareholder; and

[Definition of 'shareholder' substituted by s. 49 (1) (g) of Act 45 of 2003.]

'trading stock'-

- (a) for purposes of sections 42, 44, 45 and 47, includes any livestock or produce contemplated in the First Schedule and any reference in section 11 (a) or 22 (1) or (2) to an amount taken into account in respect of an asset shall, in the case of such livestock or produce, be construed as a reference to the amount taken into account in respect thereof in terms of paragraph 5 (1) or 9 of the First Schedule, as the case may be; and
- (b) for purposes of sections 42 (7) (b) (i), 43 (6) (b), 44 (5) (b) (i), 45 (5) (b) (i) and 47 (4) (b) (i), means trading stock that is neither of the same kind nor of the same or equivalent quality as trading stock regularly and continuously disposed of by that person;

[Definition of 'trading stock' inserted by s. 49 (1) (h) of Act 45 of 2003.]

'unlisted company' means any company which is not a listed company as defined in this subsection.

(2) The provisions of this Part must, subject to subsection (5), apply in respect of a company formation transaction, a share-for-share transaction, an amalgamation transaction, an intra-group transaction, an unbundling transaction and a liquidation distribution as contemplated in sections 42, 43, 44, 45, 46 and 47, respectively, notwithstanding any provision to the contrary contained in the Act, other than sections 24B (2) and (3), and 103.

[Sub-s. (2) substituted by s. 49 (1) (l) of Act 45 of 2003 and by s. 32 (1) (d) of Act 32 of 2004.]

(3) Any person who acquires or disposes of any asset in terms of any transaction in respect of which the provisions of this Part apply, must provide full particulars relating to that transaction to the Commissioner, in such form as the Commissioner may prescribe, in the return furnished by that person for the year of assessment in which that transaction takes effect.

(4) A company must for the purposes of this Part, be deemed to have taken steps to liquidate, wind up or deregister, where-

- (a) in the case of a liquidation or winding-up-
    - (i) that company has lodged a resolution authorising the voluntary liquidation or winding-up of that company, for registration in terms of-
      - (aa) section 200 of the Companies Act, 1973 (Act 61 of 1973), in the case of a company registered in terms of that Act;
      - (bb) section 67 (2) of the Close Corporations Act, 1984 (Act 69 of 1984), in the case of a close corporation; or
      - (cc) a similar provision contained in any foreign law relating to the liquidation of companies, in the case where that company is incorporated in a country other than the Republic, if such foreign law so requires; and
    - (ii) that company has disposed of all assets and has settled all liabilities (other than assets required to satisfy any reasonably anticipated liabilities to any sphere of government of any country and costs of administration relating to the liquidation or winding-up), unless the Commissioner otherwise allows for a period which the Commissioner deems reasonable to enable that company to take adequate steps to wind down the business of the company; and
- [Sub-para. (ii) substituted by s. 49 (1) (j) of Act 45 of 2003.]
- (b) in the case of a deregistration of a company, that company has submitted a written statement signed by each of its directors confirming that the company has ceased to carry on business and has no assets or liabilities -
    - (i) to the Registrar of Companies in terms of section 73 (5) of the Companies Act, 1973, in the case of a company registered in terms of that Act;
    - (ii) to the Registrar of Close Corporations in terms of section 26 (2) of the Close Corporations Act, 1984, in the case of a close corporation; or
    - (iii) in the case where that company is incorporated in a country other than the Republic, to a person who, in terms of any similar provision contained in any foreign law, exercises the powers and performs the duties assigned to a Registrar contemplated in subparagraph (i) or (ii), if such foreign law so requires;
  - (c) that company has submitted a copy of the resolution contemplated in paragraph (a) (i) or the written statement contemplated in paragraph (b) to the Commissioner; and
  - (d) all the returns or information required to be submitted or furnished to the Commissioner in terms of any Act administered by the Commissioner by the end of the relevant period of six months within which the steps contemplated in this subsection must be taken, have been submitted or furnished or arrangements have been made with the Commissioner for the submission of any outstanding returns or furnishing of information.

(5) The Minister may prescribe by regulation the circumstances under which prior written approval of the Commissioner must be obtained or may be elected to be obtained in respect of any company formation transaction, share-for-share transaction, amalgamation transaction, intra-group transaction, unbundling transaction or liquidation distribution before the provisions of this Part must apply in respect of that transaction, transfer or distribution.

(6) Particulars of any election exercised in terms of this Part must be submitted to the

Commissioner in such form as the Commissioner may prescribe.

#### 42 Company Formations

(1) For the purposes of this section 'company formation transaction' means any transaction-

- (a) in terms of which a person (other than a trust which is not a special trust) disposes of an asset, the market value of which is equal to or exceeds-
  - (i) in the case of an asset held as a capital asset, the base cost of that asset on the date of that disposal; or
  - (ii) in the case of an asset held as trading stock, the amount taken into account in respect of that asset in terms of section 11 (a) or 22 (1) or (2), to a company which is a resident, in exchange for an equity share or shares of that company and that person, at the close of the day on which that asset is disposed of, holds a qualifying interest in that company;
 

[Para. (a) amended by s. 50 (1) (a) of Act 45 of 2003.]
- (b) as a result of which that company acquires that asset from that person-
  - (i) as a capital asset or as trading stock, where that person holds it as a capital asset; or
  - (ii) as trading stock, where that person holds it as trading stock; and
- (c) in respect of which that person and that company have jointly elected that this section applies.

(2) Subject to subsections (4) and (8), where a person disposes of an asset to a company in terms of a company formation transaction-

- (a) that person must be deemed to have-
  - (i) disposed of that asset for an amount equal to the amount contemplated in subparagraphs (i) or (ii) of paragraph (a) of the definition of 'company formation transaction', as the case may be; and
  - (ii) acquired the equity shares in that company on the date that such person acquired that asset and for a cost equal to-
    - (aa) where that asset is so disposed of as a capital asset, any expenditure in respect of that asset incurred by that person that is allowable in terms of paragraph 20 of the Eighth Schedule and to have incurred such cost at the date of incurral by that person of such expenditure; or
    - (bb) where that asset is so disposed of as trading stock, the amount taken into account in respect of that asset in terms of section 11 (a) or 22 (1) or (2), which cost must, where those equity shares are acquired as -
      - (A) capital assets, be treated as an expenditure actually incurred and paid by that person in respect of those equity shares for the purposes of paragraph 20 of the Eighth Schedule; and
      - (B) trading stock, be treated as the amount to be taken into account by that person in respect of those equity shares for the purposes of section 11 (a) or 22 (1) or (2);
- (b) that person and that company must, for purposes of determining-
  - (i) any taxable income derived by that company from a trade carried on by it; or
  - (iii) any capital gain or capital loss in respect of a disposal of that asset by that company,

be deemed to be one and the same person with respect to-

- (aa) where that asset is acquired by that company as a capital asset from that person who disposes of it as a capital asset-
  - (A) the date of acquisition of that asset by that person and the amount and date of incurral by that person of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and
  - (B) any valuation of that asset effected by that person within the period contemplated in paragraph 29 (4) of the Eighth Schedule;
- (bb) where that asset is acquired by that company as trading stock from that person who disposes of it as trading stock, the date of acquisition of that



asset by that person and the amount and date of incurral by that person of any cost or expenditure incurred in respect of that asset as contemplated in section 11 (a) or 22 (1) or (2); or

- (cc) where that asset is acquired by that company as trading stock from that person who disposes of it as a capital asset-
- (A) the date of acquisition of that asset by that person and the amount and date of incurral by that person of any expenditure allowable in terms of paragraph 20 of the Eighth Schedule; or
  - (B) where that person has valued that asset as contemplated in paragraph 29 (4) of the Eighth Schedule, the amount of the market value so determined,

which amount must, notwithstanding paragraph 25 of the Eighth Schedule, be treated as the amount to be taken into account by that company in respect of that asset for purposes of section 11 (a) or 22 (1) or (2); and

- (c) any valuation of that asset effected by that person within the period contemplated in paragraph 29 (4) of the Eighth Schedule must be deemed to have been effected in respect of the equity shares in that company acquired in terms of that company formation transaction.

[Para. (c) added by s. 50 (1) (d) of Act 45 of 2003.]

(3) Subject to subsection (4) or (8), where a person disposes of-

- (a) an asset that constitutes an allowance asset in that person's hands to a company as part of a company formation transaction and that company acquires that asset as an allowance asset-
  - (i) no allowance allowed to that person in respect of that asset must be recovered or recouped by that person or included in that person's income for the year of that transfer; and
  - (ii) that person and that company must be deemed to be one and the same person for purposes of determining the amount of any allowance-
    - (aa) to which that company may be entitled in respect of that asset; or
    - (bb) that is to be recovered or recouped by or included in the income of that company in respect of that asset;
- (b) an asset that constitutes an allowance asset in that person's hands to a company as part of a company formation transaction and that company acquires that asset as trading stock, no allowance allowed to that person in respect of that asset must be recovered or recouped by that person or included in that person's income for the year of that transfer; or
- (c) a contract to a company as part of a disposal of a business as a going concern in terms of a company formation transaction and that contract imposes an obligation on that person in respect of which an allowance in terms of section 24C was allowable to that person for the year preceding that in which that contract is transferred or would have been allowable to that person for the year of that transfer had that contract not been so transferred-
  - (i) no allowance allowed to that person in respect of that obligation must be included in that person's income for the year of that transfer; and
  - (ii) that person and that company must be deemed to be one and the same person for purposes of determining the amount of any allowance-
    - (aa) to which that company may be entitled in respect of that obligation; or
    - (bb) that is to be included in the income of that company in respect of that obligation.

(4) Where-

- (a) a person disposes of an asset to a company in terms of a company formation transaction; and

[Para. (a) substituted by s. 50 (1) (e) of Act 45 of 2003.]

- (b) that person becomes entitled, in exchange for that asset, to any consideration in addition to any equity shares issued by the company to that person, other than any debt assumed by that company as contemplated in subsection (8),

[Para. (b) substituted by s. 50 (1) (e) of Act 45 of 2003.]

the disposal of that asset to that company contemplated in paragraph (a) must, to the extent that any equity shares are issued by the company to that person, be deemed to be a disposal in terms of a company formation transaction for purposes of this section, and to the extent that such person becomes entitled to any other consideration, as contemplated in paragraph (b), be deemed to be a disposal of part of that asset other than in terms of a company formation transaction, in which case the amount to be determined in respect of-

- (i) in the case of a disposal of a capital asset, the base cost of that asset at the time of that disposal;
- (ii) in the case of a disposal of an allowance asset, the amount of the allowances allowed to that person in respect of that asset; or
- (iii) in the case of the disposal of an asset that constitutes trading stock, the amount taken into account in respect of that asset in terms of section 11 (a) or 22 (1) or (2),

that must be attributed to the part of the asset deemed to have been disposed of other than in terms of a company formation transaction, must bear the same ratio to the respective amounts referred to in subparagraphs (i) to (iii) as the market value of the consideration not consisting of equity shares issued by that company bears to the market value of the total consideration in respect of that asset.

[Sub-s. (4) amended by s. 50 (1) (e) and (g) of Act 45 of 2003.]

(5) Where a person-

- (a) acquired any equity share in a company in terms of a company formation transaction; and
- (b) disposes of any such equity share (other than by way of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46 or a liquidation distribution contemplated in section 47, an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or the death of that person) within a period of 18 months after the date of acquisition contemplated in paragraph (a) and immediately prior to that disposal more than 50 per cent of the market value of all the assets disposed of by that person to that company in terms of any transaction in respect of which the provisions of this Part apply, is attributable to allowance assets or trading stock or both,

that person must be deemed to have disposed of that share as trading stock.

(6) Where a person disposed of any asset in terms of a company formation transaction and that person ceases to hold a qualifying interest in that company, as contemplated in paragraph (b) of the definition of 'qualifying interest', within a period of 18 months after the date of the disposal of that asset (whether or not by way of the disposal of any shares in that company), that person must for purposes of subsection (5), section 22 or the Eighth Schedule be deemed to have-

- (a) disposed of all the equity shares acquired in terms of that company formation transaction that are still held immediately after that person ceased to hold such a qualifying interest, for an amount equal to the market value of those equity shares as at the beginning of that period of 18 months; and

[Para. (a) substituted by s. 50 (1) (h) of Act 45 of 2003.]

- (b) immediately reacquired all the equity shares contemplated in paragraph (a) at a cost equal to the amount contemplated in that paragraph:

[Para. (b) substituted by s. 50 (1) (h) of Act 45 of 2003.]

Provided that the provisions of this subsection do not apply where that person ceases to hold a qualifying interest in that company in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46 or a liquidation distribution contemplated in section 47, an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been a financial instrument, or as the result of the death of that person.

[Sub-s. (6) amended by s. 50 (1) (h) of Act 45 of 2003.]

(7) Where a company disposes of an asset within a period of 18 months after acquiring that asset in terms of a company formation transaction, and-

- (a) that asset constitutes a capital asset, so much of any capital gain determined in respect of the disposal of that asset as does not exceed the amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date, may not be taken into account in determining any net capital gain or assessed capital loss of that company but is subject to

paragraph 10 of the Eighth Schedule for purpose of determining an amount of taxable capital gain derived from that gain, which taxable capital gain may not be set off against any assessed loss or balance of assessed loss of that company; or

- (b) that asset constitutes-
- (i) trading stock in the hands of that company, so much of the amount received or accrued in respect of the disposal of that trading stock as does not exceed the market value of that trading stock as at the beginning of that period of 18 months and so much of the amount taken into account in respect of that trading stock in terms of section 11 (a) or 22 (1) or (2) as is equal to the amount so taken into account in terms of subsection (2) (b); or
  - (ii) an allowance asset in the hands of that company, so much of any allowance in respect of that asset that is recovered or recouped by or included in the income of that company as a result of that disposal as does not exceed the amount that would have been recovered had that asset been disposed of at the beginning of that period of 18 months for an amount equal to the market value of that asset as at that date,

must be deemed to be attributable to a separate trade carried on by that company, the taxable income from which trade may not be set off against any assessed loss or balance of assessed loss of that company.

(8) Where a person disposes of-

- (a) any asset which secures any debt (other than a debt contemplated in paragraph 20 (3) (c) of the Eighth Schedule) to a company in terms of a company formation transaction and that debt was incurred by that person-
  - (i) more than 18 months before that disposal; or
  - (ii) within a period of 18 months before that disposal-
    - (aa) and that debt was incurred at the same time as that asset was acquired by that person; or
    - (bb) to the extent that debt constitutes the refinancing of any debt in respect of that asset incurred as contemplated in subparagraph (i) or item (aa) of subparagraph (ii),
 and that company assumes that debt or an equivalent amount of debt that is secured by that asset; or
- (b) any business undertaking as a going concern to a company in terms of a company formation transaction and that disposal includes any amount of any debt that is attributable to, and arose in the normal course of that business undertaking (other than any debt that has been taken into account as contemplated in paragraph 20 (3) (c) of the Eighth Schedule in determining the base cost of any asset so disposed of as part of that business undertaking),

that person must, upon the disposal of any equity share acquired in terms of that company formation transaction and notwithstanding the fact that that person may be liable as surety for the payment of the debt referred to in subparagraph (a) or (b), treat so much of the face value of that debt as relates to that equity share, as a capital distribution of cash in respect of that equity share, for the purposes of paragraph 76 of the Eighth Schedule, where that equity share is held as a capital asset or, where that equity share is held as trading stock, as income to be included in that person's income.

[Sub-s. (8) amended by s. 50 (1) (i) of Act 45 of 2003.]

(9) No election may be made in terms of paragraph (c) of the definition of 'company formation transaction' in subsection (1) in respect of the disposal of any asset by a person, where that asset constitutes a financial instrument, unless-

- (a) that financial instrument constitutes a debt due to that person in respect of goods sold or services rendered by that person in the course of carrying on any business where the amount of that debt is or was included in the income of that person and that debt is transferred as an integral part of a going concern; or
- (b) the total market value immediately prior to that disposal of all financial instruments so disposed of (other than financial instruments contemplated in paragraph (a)), does not exceed five per cent of the total market value of all assets of any business which is transferred as a going concern; or
- (c) that financial instrument is being transferred to any company that is-

- (i) a bank regulated in terms of the Banks Act, 1990 (Act 94 of 1990);
- (ii) an authorised user regulated in terms of the Securities Services Act, 2004;
- (iii) an insurer regulated in terms of the Long Term Insurance Act, 1998 (Act 52 of 1998);
- (iv) an insurer regulated in terms of the Short Term Insurance Act, 1998 (Act 53 of 1998); or
- (vi) a collective investment scheme regulated in terms of the Unit Trusts Control Act, 1981 (Act 54 of 1981), or its successor the Collective Investment Schemes Control Act, 2002 (Act 45 of 2002).

[Para. (c) substituted by s. 33 (1) of Act 32 of 2004.]

[Sub-s. (9) amended by s. 50 (1) (j) of Act 45 of 2003.]

(10) No election may be made in terms of paragraph (c) of the definition of 'company formation transaction' in subsection (1) in respect of the disposal of any asset by a company where that asset was acquired by that company in terms of any company formation transaction, unless that asset was held by that company for a period of more than 18 months after that company formation transaction.

#### **43 Share-for-share transactions**

(1) For the purposes of this section, a 'share-for-share transaction' means any transaction-

- (a) in terms of which a person (other than a trust which is not a special trust) disposes of an equity share, the market value of which is equal to or exceeds-
  - (i) in the case of a share held as a capital asset, the base cost of that share on the date of that disposal; or
  - (ii) in the case of a share held as trading stock, the amount taken into account in respect of that share in terms of section 11 (a) or 22 (1) or (2), (hereinafter referred to as the 'target share') in a company (hereinafter referred to as the 'target company') to any other company (hereinafter referred to as the 'acquiring company'), which is a resident, in exchange for any equity share or shares issued by that acquiring company to that person; and
- [Para. (a) amended by s. 51 (1) (a) of Act 45 of 2003.]
- (b) where that person acquires that share or those shares in the acquiring company-
  - (i) where that target share is disposed of as a capital asset, as a capital asset or as trading stock; or
  - (ii) where that target share is disposed of as trading stock, as trading stock; and
- (c) where the acquiring company -
  - (i) in the case where that target company is a listed company, after that disposal and any other share-for-share transaction entered into in terms of any offer made on the same terms as that transaction and which is accepted within a period of 90 days after that disposal, holds-
    - (aa) more than 25 per cent of the equity shares of that target company, in the case where no other shareholder holds an equal or greater amount of equity shares of that target company; or
    - (bb) in any other case, at least 35 per cent of the equity shares of the target company; or
  - (ii) where the target company is not a company as contemplated in subparagraph (i), after that disposal holds more than 50 per cent of the equity shares of the target company; and
- (d) where that person at the close of the day of that disposal, holds a qualifying

interest in that acquiring company:

Provided that this section will not apply to a disposal by a person of target shares to an acquiring company where that person and that target company form part of the same group of companies immediately before and after that disposal, if that person and that acquiring company jointly so elect.

[Sub-s. (1) amended by s. 51 (1) (b) of Act 45 of 2003.]

(2) Subject to subsection (3), where a person disposes of any target share to an acquiring company in terms of a share-for-share transaction-

- (a) that person must be deemed to have-
  - (i) disposed of that target share for an amount equal to the amount contemplated in subparagraphs (i) or (ii) of paragraph (a) of the definition of 'share-for-share

- transaction', as the case may be; and
- (ii) acquired the equity shares in the acquiring company on the date that such person acquired that target share and-
- (aa) where that target share is so disposed of as a capital asset, for a cost equal to any expenditure in respect of that target share incurred by that person that is allowable in terms of paragraph 20 of the Eighth Schedule and to have incurred such cost at the date of incurral by that person of such expenditure, which cost must, where those equity shares are acquired as-
- (A) capital assets, be treated as an expenditure actually incurred and paid by that person in respect of those equity shares for the purposes of paragraph 20 of the Eighth Schedule; and
- (B) trading stock, be treated as the amount to be taken into account by that person in respect of those equity shares for the purposes of section 11 (a) or 22 (1) or (2); or
- (bb) where that target share is so disposed of as trading stock and those equity shares are acquired as trading stock, for a cost equal to the amount referred to in subparagraph (ii) of paragraph (a) of the definition of 'share-for-share transaction', which cost must be treated as the amount to be taken into account by that person in respect of those equity shares for purposes of section 11 (a) or 22 (1) or (2); and
- (b) the acquiring company must, where the target company is a listed company and the listed equity shares in that company were acquired by the acquiring company from any shareholder who does not hold more than 25 per cent of the equity share capital of the acquiring company after any transaction referred to in paragraph (c) (i) of the definition of 'share-for-share transaction', be deemed to have acquired those equity shares at a cost equal to the market value of those equity shares; or
- (c) that person and the acquiring company must, in any other case, for purposes of determining-
- (i) any taxable income derived by the acquiring company from a trade carried on by it; or
- (ii) any capital gain or capital loss in respect of a disposal of that equity share by the acquiring company,
- be deemed to be one and the same person with respect to-
- (aa) where that share is acquired by the acquiring company as a capital asset from that person who disposes of it as a capital asset -
- (A) the date of acquisition of that share by that person and the amount and date of incurral by that person of any expenditure in respect of that share allowable in terms of paragraph 20 of the Eighth Schedule; and
- (B) any valuation of that share effected by that person within the period contemplated in paragraph 29 (4) of the Eighth Schedule;
- (bb) where that share is acquired by the acquiring company as trading stock from that person who disposes of it as trading stock, the date of acquisition of that share by that person and the amount and date of incurral by that person of any cost or expenditure incurred in respect of that asset as contemplated in section 11 (a) or 22 (1) or (2);
- (cc) where that share is acquired by the acquiring company as trading stock from that person who disposes of it as a capital asset -
- (A) the date of acquisition of that share by that person and the amount and date of incurral by that person of any expenditure in respect of that share allowable in terms of paragraph 20 of the Eighth Schedule; or
- (B) where that person has valued that share as contemplated in paragraph 29 (4) of the Eighth Schedule, the amount of the market value so determined,
- which amount must, notwithstanding paragraph 25 of the Eighth Schedule,

- be treated as the amount to be taken into account by the acquiring company in respect of that share for purposes of section 11 (a) or 22 (1) or (2); or
- (dd) where that share is acquired by the acquiring company as a capital asset from that person who disposed of it as trading stock, the date of acquisition of that share by that person and the amount and date of incurral of any cost or expenditure incurred by the person in respect of that share as contemplated in section 11 (a) or 22 (1) or (2), which amount must, notwithstanding paragraph 25 of the Eighth Schedule be treated as expenditure actually incurred and paid by the acquiring company in respect of that share for purposes of paragraph 20 of the Eighth Schedule; and
- (d) any valuation of that target share effected by that person within the period contemplated in paragraph 29 (4) of the Eighth Schedule must be deemed to have been effected in respect of those equity shares in the acquiring company.

[Para. (d) added by s. 51 (1) (d) of Act 45 of 2003.]

(3) Where-

- (a) a person disposes of a target share to a company in terms of a share-for-share transaction; and
- (b) that person becomes entitled, in exchange for that share, to any consideration in addition to any equity shares issued by the acquiring company to that person,

the disposal of that share to the acquiring company contemplated in paragraph (a) must, to the extent that any equity shares are issued by the acquiring company to that person, be deemed to be a disposal in terms of a share-for-share transaction for purposes of this section, and to the extent that such person becomes entitled to any other consideration, as contemplated in paragraph (b), be deemed to be a disposal of part of that share other than in terms of a share-for-share transaction, in which case the amount to be determined in respect of-

- (i) in the case of a disposal of a share as a capital asset, the base cost of that share at the time of that disposal; or
- (ii) in the case of the disposal of a share as trading stock, the amount taken into account in respect of that share in terms of section 11 (a) or 22 (1) or (2),

that must be attributed to the part of the share deemed to have been disposed of other than in terms of a share-for-share transaction, must bear the same ratio to the respective amounts contemplated in subparagraph (i) or (ii) as the market value of the consideration not consisting of equity shares issued by the acquiring company bears to the market value of the total consideration in respect of that share.

[Sub-s. (3) amended by s. 51 (1) (e) of Act 45 of 2003.]

(4) Where a person disposed of a target share in terms of a share-for-share transaction and that person ceases to hold a qualifying interest in the acquiring company within a period of 18 months after the date of the disposal of that share (whether or not by way of the disposal of any shares in the acquiring company), that person must for purposes of section 22 or the Eighth Schedule be deemed to have-

- (a) disposed of all the shares acquired in terms of that share-for-share transaction that are still held immediately after that person ceased to hold such a qualifying interest, for an amount equal to the market value of those equity shares as at the beginning of that period of 18 months; and
- (b) immediately reacquired all the shares contemplated in paragraph (a) at a cost equal to the amount contemplated in that paragraph:

Provided that the provisions of this subsection do not apply where that person ceases to hold a qualifying interest in the acquiring company in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46, an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been a financial instrument, or as the result of the death of that person.

[Sub-s. (4) substituted by s. 51 (1) (f) of Act 45 of 2003.]

(5) Where an acquiring company acquired any target share in terms of a share-for-share transaction and that acquiring company ceases to hold an interest in the target company, as contemplated in paragraph (c) of the definition of 'share-for-share transaction' in subsection (1), within a period of 18 months after so acquiring that share (whether or not by way of the disposal of any target shares), that acquiring company must for purposes of section 22 or the Eighth Schedule be deemed to have-

- (a) disposed of all the target shares acquired in terms of that share-for-share transaction that are still held immediately after that acquiring company ceased to hold such an interest, for an amount equal to the market value of those target shares as at the beginning of that period of 18 months; and
- (b) immediately reacquired all the target shares contemplated in paragraph (a) at a cost equal to the amount contemplated in that paragraph:

Provided that the provisions of this subsection do not apply where that acquiring company ceases to hold such an interest in the target company, in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46, a liquidation distribution contemplated in section 47 or an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been a financial instrument.

[Sub-s. (5) substituted by s. 51 (1) (g) of Act 45 of 2003.]

(6) Where an acquiring company disposes of a target share within a period of 18 months after acquiring that share in terms of a share-for-share transaction and-

- (a) that share constitutes a capital asset, so much of any capital gain determined in respect of the disposal of that share as does not exceed the amount that would have been determined had that share been disposed of for proceeds equal to the market value of that share as at the beginning of that period of 18 months, may not be taken into account in determining any net capital gain or assessed capital loss of that company but is subject to paragraph 10 of the Eighth Schedule for purposes of determining an amount of taxable capital gain derived from that gain, which taxable capital gain may not be set off against any assessed loss or balance of assessed loss of that company; or
- (b) that share constitutes trading stock in the hands of that company, so much of the amount received or accrued in respect of the disposal of that trading stock as does not exceed the market value of that trading stock as at the beginning of that period of 18 months and so much of the amount taken into account in respect of that trading stock under section 11 (a) or 22 (1) or (2) as is equal to the amount so taken into account in terms of subsection (2) (b) or (c) must be deemed to be attributable to a separate trade carried on by that company, the taxable income from which trade may not be set off against any assessed loss or balance of assessed loss of that company.

(7) The provisions of this section do not apply in respect of the disposal by a person of an equity share in a target company where that target company immediately prior to that disposal constitutes a domestic financial instrument holding company or a foreign financial instrument holding company.

[Sub-s. (7) substituted by s. 34 of Act 32 of 2004.]

(8) The provisions of this section do not apply in respect of the disposal of any equity share by a company where that equity share was acquired by that company in terms of a share-for-share transaction unless that equity share was held by that company for a period of more than 18 months after that share-for-share transaction.

**43A** .....

#### **44 Amalgamation transactions**

(1) For the purposes of this section 'amalgamation transaction' means any transaction-

- (a) in terms of which any company (hereinafter referred to as the 'amalgamated company') disposes of all of its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to another company (hereinafter referred to as the 'resultant company') which is a resident, by means of an amalgamation, conversion or merger; and

[Para. (a) substituted by s. 52 (1) (a) of Act 45 of 2003.]

- (b) as a result of which that amalgamated company's existence will be terminated:

Provided that the provisions of this section will not apply to a disposal of an asset by an amalgamated company to a resultant company where that resultant company and the person contemplated in subsection (6) form part of the same group of companies immediately before and after that disposal, if that amalgamated company, resultant company and person jointly so elect.

[Definition of 'amalgamation transaction' amended by s. 52 (1) (b) of Act 45 of 2003.]

'equity share' includes a participatory interest in a portfolio of a collective investment scheme referred to in paragraph (e) (i) of the definition of 'company' in section 1;

'qualifying interest' of any person means-

- (a) a qualifying interest as defined in section 41; or
- (b) any equity shares held by that person in a resultant company which is a collective investment scheme referred to in paragraph (e) (i) of the definition of 'company' in section 1.

(2) Where an amalgamated company disposes of-

- (a) a capital asset in terms of an amalgamation transaction to a resultant company which acquires it as a capital asset-
  - (i) the amalgamated company must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of that disposal; and
  - (ii) that resultant company and that amalgamated company must, for purposes of determining any capital gain or capital loss in respect of a disposal of that asset by that resultant company, be deemed to be one and the same person with respect to-
    - (aa) the date of acquisition of that asset by that amalgamated company and the amount and date of incurrence by that amalgamated company of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and
    - (bb) any valuation of that asset effected by that amalgamated company as contemplated in paragraph 29 (4) of the Eighth Schedule;
- (b) an asset held by it as trading stock in terms of an amalgamation transaction to a resultant company which acquires it as trading stock-
  - (i) that amalgamated company must be deemed to have disposed of that asset for an amount equal to the amount taken into account by that amalgamated company in respect of that asset in terms of section 11 (a) or 22 (1) or (2); and
  - (ii) that amalgamated company and that resultant company must, for purposes of determining any taxable income derived by that resultant company from a trade carried on by it, be deemed to be one and the same person with respect to the date of acquisition of that asset by that amalgamated company and the amount and date of incurrence by that amalgamated company of any cost or expenditure incurred in respect of that asset as contemplated in section 11 (a) or 22 (1) or (2).

(3) Where an amalgamated company disposes of-

- (a) an asset that constitutes an allowance asset in that amalgamated company's hands to a resultant company as part of an amalgamation transaction and that resultant company acquires that asset as an allowance asset -
  - (i) no allowance allowed to that amalgamated company in respect of that asset must be recovered or recouped by that amalgamated company or included in that amalgamated company's income for the year of that transfer; and
  - (ii) that amalgamated company and that resultant company must be deemed to be one and the same person for purposes of determining the amount of any allowance-
    - (aa) to which that resultant company may be entitled in respect of that asset; or
    - (bb) that is to be recovered or recouped by or included in the income of that resultant company in respect of that asset;
- (b) a contract to a resultant company as part of a disposal of a business as a going concern in terms of an amalgamation transaction and that contract imposes an obligation on that amalgamated company in respect of which an allowance in terms of section 24C was allowable to that amalgamated company for the year preceding that in which that contract is transferred or would have been allowable to that amalgamated company for the year of that transfer had that contract not been so transferred-
  - (i) no allowance allowed to that amalgamated company in respect of that obligation must be included in that amalgamated company's income for the year of that transfer; and
  - (ii) that amalgamated company and that resultant company must be deemed to be one and the same person for purposes of determining the amount of any allowance-
    - (aa) to which that resultant company may be entitled in respect of that obligation; or
    - (bb) that is to be included in the income of that resultant company in respect of



that obligation.

(4) The provisions of subsections (2) and (3) will apply to a disposal of an asset by an amalgamated company to a resultant company as part of an amalgamation transaction only to the extent that such asset is so disposed of in exchange for-

- (a) an equity share or shares in that resultant company; or
- (b) the assumption by that resultant company of a debt of that amalgamated company.  
[Sub-s. (4) substituted by s. 52 (1) (c) of Act 45 of 2003.]

(5) Where the resultant company acquires any asset from the amalgamated company in terms of an amalgamation transaction that was subject to subsection (2) or (3) and that resultant company disposes of that asset within a period of 18 months after so acquiring that asset and-

- (a) that asset constitutes a capital asset in the hands of that resultant company -
  - (i) so much of any capital gain determined in respect of the disposal of that asset as does not exceed the amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date, may not be taken into account in determining any net capital gain or assessed capital loss of that resultant company but is subject to paragraph 10 of the Eighth Schedule for purpose of determining an amount of taxable capital gain derived from that gain, which taxable capital gain may not be set off against any assessed loss or balance of assessed loss of that resultant company; or
  - (ii) so much of any capital loss determined in respect of the disposal of that asset as does not exceed the amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date, must be disregarded in determining the aggregate capital gain or aggregate capital loss of that resultant company for purposes of the Eighth Schedule: Provided that the amount of any capital loss so disregarded may be deducted from the amount of any capital gain determined in respect of the disposal during that year or any subsequent year of assessment of any other asset acquired by that resultant company from that amalgamated company in terms of that amalgamation transaction; or
- (b) that asset constitutes-
  - (i) trading stock in the hands of that resultant company, so much of the amount received or accrued in respect of the disposal of that trading stock as does not exceed the market value of that trading stock as at the beginning of that period of 18 months and so much of the amount taken into account in respect of that trading stock in terms of section 11 (a) or 22 (1) or (2) as is equal to the amount so taken into account in terms of subsection (2) (b); or
  - (ii) an allowance asset in the hands of that resultant company, so much of any allowance in respect of that asset that is recovered or recouped by or included in the income of that resultant company as a result of that disposal as does not exceed the amount that would have been recovered had that asset been disposed of at the beginning of that period of 18 months for an amount equal to market value of that asset as at that date,

must be deemed to be attributable to a separate trade carried on by that resultant company, the taxable income or assessed loss from which trade may not be set off against or added to any assessed loss or balance of assessed loss of that resultant company.

(6) Subject to subsection (7), where a person (other than a trust which is not a special trust) disposes of any equity share in an amalgamated company, the market value of which share exceeds-

- (a) in the case of a share held as a capital asset, the base cost of that share on the date of that disposal; or
- (b) in the case of a share held as trading stock, the amount taken into account in respect of that share in terms of section 11 (a) or 22 (1) or (2),

in return for an equity share or equity shares in the resultant company and that person-

- (i) acquires that share or those shares in the resultant company as part of an amalgamation transaction that was subject to subsection (2) or (3)-
  - (aa) where that share in the amalgamated company is disposed of as a capital asset, as

- a capital asset or as trading stock; or
    - (bb) where that share in the amalgamated company is disposed of as trading stock, as trading stock; and
  - (ii) at the end of the day during which that disposal is effected, holds a qualifying interest in that resultant company,

that person must be deemed to have-

- (aa) disposed of the equity share in that amalgamated company for an amount equal to the amount contemplated in subparagraphs (a) or (b), as the case may be;
  - (bb) acquired the equity share or shares in that resultant company on the date that such person acquired that equity share in the amalgamated company and for a cost equal to any expenditure in respect of that equity share in the amalgamated company incurred by that person that is allowable in terms of paragraph 20 of the Eighth Schedule or taken into account in terms of section 11 (a) or 22 (1) or (2), as the case may be, and to have incurred such cost at the date of incurral by that person of such expenditure, which cost must, where those equity shares are acquired as -
    - (A) capital assets, be treated as an expenditure actually incurred and paid by that person in respect of those equity shares for the purposes of paragraph 20 of the Eighth Schedule; and
    - (B) trading stock, be treated as the amount to be taken into account by that person in respect of those equity shares for the purposes of section 11 (a) or 22 (1) or (2); and
  - (cc) effected any valuation of that equity share in the amalgamated company that was done within the period contemplated in paragraph 29 (4) of the Eighth Schedule, in respect of the equity share or shares in that resultant company.
- [Sub-s. (6) substituted by s. 52 (1) (d) of Act 45 of 2003.]

(7) Where-

- (a) a person disposes of an equity share in an amalgamated company; and
- (b) that person becomes entitled, in exchange for that share, to any consideration in addition to any equity shares in the resultant company,

the disposal of that share in the amalgamated company contemplated in paragraph (a) must, to the extent that that person becomes entitled to any equity shares in that resultant company, be deemed to be a disposal in respect of which subsection (6) applies (hereinafter referred to as the qualifying transaction), and to the extent that such person becomes entitled to any other consideration, as contemplated in paragraph (b), be deemed to be a disposal of part of that share in respect of which subsection (6) does not apply (hereinafter referred to as the non-qualifying transaction), in which case the amount to be determined in respect of-

- (i) in the case of a disposal of a share as a capital asset, the base cost of that share at the time of that disposal; or
- (ii) in the case of the disposal of a share as trading stock, the amount taken into account in respect of that share in terms of section 11 (a) or 22 (1) or (2),

that must be attributed to the part of the share deemed to have been disposed of in terms of the non-qualifying transaction, must bear the same ratio to the respective amounts contemplated in subparagraphs (i) or (ii) as the market value of the total consideration not consisting of equity shares in that resultant company bears to the amount of the full consideration in respect of that share.

[Sub-s. (7) amended by s. 52 (1) (e) of Act 45 of 2003.]

(8) Where an amalgamated company disposes of any equity shares in a resultant company that were acquired by that amalgamated company in terms of an amalgamation transaction that was subject to subsection (2) or (3), to a shareholder of that amalgamated company as part of that amalgamation transaction, that amalgamated company must disregard that disposal for purposes of determining its taxable income or assessed loss.

(9) Where an amalgamated company disposes of any equity shares in a resultant company that were acquired by that amalgamated company in terms of an amalgamation transaction that was subject to subsection (2) or (3), to a shareholder of that amalgamated company as part of an amalgamation transaction-

- (a) the disposal by that amalgamated company of those shares must be deemed not to be a dividend with respect to that amalgamated company for purposes of section 64B (3); and
- (b) any shares acquired by a company in terms of that disposal must be deemed not to be a

dividend which accrued to that company for the purposes of section 64B (3).

[Para. (b) substituted by s. 52 (1) (f) of Act 45 of 2003.]

(10) So much of the amount of any other consideration to which a person becomes entitled as contemplated in subsection (7) (b) as does not exceed the amalgamated company's profits and reserves which are available for distribution as contemplated in section 64C (4) (c) must, for purposes of section 64B, be deemed to be a dividend declared and distributed out of profits of that amalgamated company to that person and to have accrued as a dividend to that person on the date on which that person became entitled thereto.

[Sub-s. (10) substituted by s. 52 (1) (g) of Act 45 of 2003.]

(11) Where a person disposed of any equity share in an amalgamated company in terms of a qualifying transaction contemplated in subsection (7) and that person ceases to hold an interest in the resultant company, as contemplated in the definition of 'qualifying interest' in subsection (1), within a period of 18 months after the disposal in terms of that qualifying transaction (whether or not by way of the disposal of any shares in the resultant company), that person must for purposes of section 22 or the Eighth Schedule be deemed to have-

- (a) disposed of all the equity shares in the resultant company acquired in terms of that qualifying transaction that are still held immediately after that person ceased to hold such an interest, for an amount equal to the market value of those equity shares as at the beginning of that period of 18 months; and

[Para. (a) substituted by s. 52 (1) (h) of Act 45 of 2003.]

- (b) immediately reacquired all the equity shares contemplated in paragraph (a) at a cost equal to the amount contemplated in that paragraph:

[Para. (b) substituted by s. 52 (1) (h) of Act 45 of 2003.]

Provided that the provisions of this subsection do not apply where that person ceases to hold a qualifying interest in that resultant company, as contemplated in the definition of 'qualifying interest' in subsection (1), in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46, an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been a financial instrument, or as the result of the death of that person.

[Sub-s. (11) amended by s. 52 (1) (h) of Act 45 of 2003.]

(12) The provisions of this section do not apply in respect of the disposal of the assets of an amalgamated company where that amalgamated company immediately prior to that disposal constitutes a domestic financial instrument holding company or a foreign financial instrument holding company.

[Sub-s. (12) substituted by s. 52 (1) (i) of Act 45 of 2003.]

(13) The provisions of this section do not apply where the amalgamated company-

- (a) has not, within a period of six months after the date of the amalgamation transaction, taken the steps contemplated in section 41 (4) to liquidate, wind up or deregister; or
- (b) has at any stage withdrawn any step taken to liquidate, wind up or deregister that company, as contemplated in paragraph (a), or does anything to invalidate any step so taken, with the result that the company will not be liquidated, wound up or deregistered.

[Sub-s. (13) substituted by s. 52 (1) (j) of Act 45 of 2003.]

#### **45 Intra-group transactions**

(1) For the purposes of this section 'intra-group transaction' means any transaction-

- (a) in terms of which any asset is disposed of by one company (hereinafter referred to as the 'transferor company') to another company which is a resident (hereinafter referred to as the 'transferee company') and both companies form part of the same group of companies as at the end of the day of that transaction;

[Para. (a) substituted by s. 53 (1) (a) of Act 45 of 2003.]

- (b) as a result of which that transferee company acquires that asset from that transferor company-
  - (i) as a capital asset, where that transferor company holds it as a capital asset; or
  - (ii) as trading stock, where that transferor company holds it as trading stock; and
- (c) in respect of which that transferor company and that transferee company have jointly elected that this section applies.

(2) Where a transferor company disposes of-

- (a) a capital asset in terms of an intra-group transaction to a transferee company which

acquires it as a capital asset-

- (i) the transferor company must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of that disposal; and
  - (ii) that transferor company and that transferee company must, for purposes of determining any capital gain or capital loss in respect of a disposal of that asset by that transferee company, be deemed to be one and the same person with respect to-
    - (aa) the date of acquisition of that asset by that transferor company and the amount and date of incurral by that transferor company of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and
    - (bb) any valuation of that asset effected by that transferor company as contemplated in paragraph 29 (4) of the Eighth Schedule;
- (b) an asset held by it as trading stock in terms of an intra-group transaction to a transferee company which acquires it as trading stock -
- (i) that transferor company must be deemed to have disposed of that asset for an amount equal to the amount taken into account by that transferor company in respect of that asset in terms of section 11 (a) or 22 (1) or (2); and
  - (ii) that transferor company and that transferee company must, for purposes of determining any taxable income derived by that transferee company from a trade carried on by it, be deemed to be one and the same person with respect to the date of acquisition of that asset by that transferor company and the amount and date of incurral by that transferor company of any cost or expenditure incurred in respect of that asset as contemplated in section 11 (a) or 22 (1) or (2).
- (3) Where a transferor company transfers-
- (a) an asset that constitutes an allowance asset in that transferor company's hands to a transferee company in terms of an intra-group transaction and that transferee company acquires that asset as an allowance asset -
    - (i) no allowance allowed to that transferor company in respect of that asset must be recovered or recouped by that transferor company or included in that transferor company's income for the year of that transfer; and
    - (ii) that transferor company and that transferee company must be deemed to be one and the same person for purposes of determining the amount of any allowance-
      - (aa) to which that transferee company may be entitled in respect of that asset; or
      - (bb) that is to be recovered or recouped by or included in the income of that transferee company in respect of that asset;
  - (b) a contract to a transferee company as part of a disposal of a business as a going concern in terms of an intra-group transaction and that contract imposes an obligation on that transferor company in respect of which an allowance in terms of section 24C was allowable to that transferor company for the year preceding that in which that contract is transferred or would have been allowable to that transferor company for the year of that transfer had that contract not been so transferred-
    - (i) no allowance allowed to that transferor company in respect of that obligation must be included in that transferor company's income for the year of that transfer; and
    - (ii) that transferor company and that transferee company must be deemed to be one and the same person for purposes of determining the amount of any allowance-
      - (aa) to which that transferee company may be entitled in respect of that obligation; or
      - (bb) that is to be included in the income of that transferee company in respect of that obligation.
- (4) (a) This subsection applies in respect of a transferee company which has acquired an asset -
- (i) in terms of a disposal by a transferor company by means of an intra-group transaction; or
  - (ii) in terms of one or more disposals subsequent to the disposal contemplated in subparagraph (i) and no capital gain or capital loss was determined in respect of any of those disposals as a result of the application of this Part.
- (b) Where a transferee company which has acquired an asset as contemplated in paragraph (a)

ceases to form part of any group of companies in relation to the transferor company contemplated in paragraph (a) (i) at any time before the disposal by the transferee company of that asset, that transferee company must-

- (i) except as provided for in subparagraph (ii), be deemed to have disposed of that asset on the day immediately before the date on which that transferee company ceased to form part of that group of companies for an amount equal to the market value of the asset as at that date and as having immediately reacquired that asset for an amount equal to the market value of that asset as at that date; and
- (ii) for purposes of determining a deduction or allowance to which that transferee company may be entitled as contemplated in the definition of 'allowance asset' in section 41, be deemed as having immediately reacquired that asset for an amount equal to the lower of the market value of that asset as at that date or the cost of that asset immediately prior to that disposal;

[Sub-s. (4) amended by s. 53 (1) (b) of Act 45 of 2003 and substituted by s. 35 (1) (a) of Act 32 of 2004.]

(5) Where a transferee company disposes of an asset, other than in terms of an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been a financial instrument, within a period of 18 months after acquiring that asset in terms of an intra-group transaction and-

- (a) that asset constitutes a capital asset in the hands of that transferee company-
  - (i) so much of any a capital gain determined in respect of the disposal of that asset as does not exceed the amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date, may not be taken into account in determining any net capital gain or assessed capital loss of that transferee company but is subject to paragraph 10 of the Eighth Schedule for purposes of determining an amount of taxable capital gain derived from that gain, which taxable capital gain may not be set off against any assessed loss or balance of assessed loss of that transferee company; or
  - (ii) so much of any capital loss determined in respect of the disposal of that asset as does not exceed that amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date, must be disregarded in determining the aggregate capital gain or aggregate capital loss of that transferee company for purposes of the Eighth Schedule: Provided that the amount of any capital loss so disregarded may be deducted from the amount of any capital gain determined in respect of the disposal during that year or any subsequent year of assessment of any other asset acquired by that transferee company from the transferor company in terms of an intra-group transaction; or
- (b) that asset constitutes-
  - (i) trading stock in the hands of that transferee company, so much of the amount received or accrued in respect of the disposal of that trading stock as does not exceed the market value of that trading stock as at the beginning of that period of 18 months and so much of the amount taken into account in respect of that trading stock in terms of section 11 (a) or 22 (1) or (2) as is equal to the amount so taken into account in terms of subsection (2) (b); or
  - (ii) an allowance asset in the hands of that transferee company, so much of any allowance in respect of that asset that is recovered or recouped by or included in the income of that transferee company as a result of that disposal as does not exceed the amount that would have been recovered had that asset been disposed of at the beginning of that period of 18 months for an amount equal to the market value of that asset as at that date,

must be deemed to be attributable to a separate trade carried on by that transferee company, the taxable income or assessed loss from which trade may not be set off against any assessed loss or balance of assessed loss of that transferee company.

[Sub-s. (5) amended by s. 53 (1) (c) of Act 45 of 2003.]

(6) No election may be made in terms of paragraph (c) of the definition of 'intra-group transaction'

in subsection (1) in respect of the disposal of any asset where-

- (a) that asset constitutes a financial instrument, unless-
  - (i) that financial instrument constitutes a debt due to that transferor company in respect of goods sold or services rendered by that transferor company in the course of carrying on any business where the amount of that debt is or was included in the income of that transferor company and that debt is transferred as an integral part of a going concern;
  - (ii) the total market value, immediately prior to that disposal, of all financial instruments so transferred (other than financial instruments contemplated in paragraph (i) or (iv)), does not exceed five per cent of the total market value of all assets of any business which is transferred as a going concern;  
[Sub-para. (ii) substituted by s. 53 (1) (d) of Act 45 of 2003.]
  - (iii) that financial instrument is being transferred to any transferee company that is-
    - (aa) a bank regulated in terms of the Banks Act, 1990 (Act 94 of 1990);
    - (bb) an authorised user regulated in terms of the Securities Services Act, 2004;
    - (cc) an insurer regulated in terms of the Long Term Insurance Act, 1998 (Act 52 of 1998);
    - (dd) an insurer regulated in terms of the Short Term Insurance Act, 1998 (Act 53 of 1998); or
    - (ff) a collective investment scheme regulated in terms of the Unit Trusts Control Act, 1981 (Act 54 of 1981), or its successor the Collective Investment Schemes Control Act, 2002 (Act 45 of 2002); or  
[Sub-para. (iii) substituted by s. 35 (1) (b) of Act 32 of 2004.]
  - (iv) that financial instrument constitutes an equity share in a controlled group company in relation to that transferor company and that controlled group company is not a domestic financial instrument holding company or foreign financial instrument holding company immediately prior to that disposal: Provided that for purposes of determining whether that controlled group company is a domestic financial instrument holding company or a foreign financial instrument holding company, no regard shall be had to any financial instrument the market value of which is equal to its base cost; or  
[Sub-para. (iv) amended by s. 53 (1) (e) of Act 45 of 2003.]
- (b) all the receipts and accruals of the transferee company are exempt from tax in terms of section 10 (1) (cA), (cH), (cM), (cN), (d), (t) and (tA).

#### **46 Unbundling transactions**

(1) For purposes of this section 'unbundling transaction' means any transaction in terms of which all the equity shares of a company which is a resident (hereinafter referred to as the 'unbundled company') that are held by a company (hereinafter referred to as the 'unbundling company') which, if listed, is a resident, are disposed of by that unbundling company to the shareholder or shareholders of that unbundling company in accordance with the effective interest of that shareholder or those shareholders, as the case may be, in the shares of that unbundling company, but only to the extent to which those shares are so disposed of-

- (a) where that unbundling company is a listed company and the shares of the unbundled company are listed within 12 months after that disposal, to the shareholders of that unbundling company;
- (b) where that unbundling company is an unlisted company, to any shareholder of that unbundling company that forms part of the same group of companies as that unbundling company; or
- (c) pursuant to an order in terms of the Competition Act, 1998 (Act 89 of 1998) made by the Competition Tribunal or the Competition Appeal Court, to the shareholders of that unbundling company:

Provided that the shares contemplated in paragraph (a) or (b) constitute-

- (i) where that unbundled company is a listed company immediately before that disposal-
  - (aa) more than 25 per cent of the equity shares of that unbundled company in the case where no other shareholder holds an equal or greater amount of equity shares in that unbundled company; or

- (bb) in any other case, at least 35 per cent of the equity shares of that unbundled company; or
- (ii) where that unbundled company is an unlisted company immediately before that disposal, more than 50 per cent of the equity shares of that unbundled company.  
[Sub-s. (1) substituted by s. 54 (1) (a) of Act 45 of 2003.]

(2) Where an unbundling company disposes of shares to a shareholder in terms of an unbundling transaction, that unbundling company must disregard that disposal for purposes of determining its taxable income or assessed loss.

[Sub-s. (2) substituted by s. 54 (1) (b) of Act 45 of 2003.]

(3) Where a shareholder acquires shares in terms of an unbundling transaction-

- (a) that shareholder must be deemed to have acquired the equity shares held in the unbundling company (hereinafter referred to as the 'previously held shares') and those shares at a cost equal to-
  - (i) where the previously held shares were held by that shareholder as trading stock, the amount taken into account by that person in respect of the previously held shares as contemplated in section 11 (a) or 22 (1) or (2); or
  - (ii) where the previously held shares were held by that shareholder as capital assets and those shares -
    - (aa) constitute pre-valuation date assets as contemplated in paragraph 1 of the Eighth Schedule, the valuation date value of those shares as contemplated in paragraph 25 of the Eighth Schedule; or
    - (bb) do not constitute pre-valuation date assets as contemplated in paragraph 1 of the Eighth Schedule, the expenditure in respect of those shares allowable in terms of paragraph 20 of the Eighth Schedule; and

[Para. (a) amended by s. 54 (1) (c) of Act 45 of 2003 and substituted by s. 36 (1) (a) of Act 32 of 2004.]

- (b) that shareholder must determine the portion of the cost contemplated in paragraph (a) that must be attributed to those shares, by determining an amount which bears to that cost the same ratio that the market value of those shares, as at the end of the day after the date of that disposal, bears to the sum of the market values, as at the end of that day, of the previously held shares and of those shares, which portion of the cost must, where the shareholder held the previously held shares as -
  - (i) capital assets and acquired those shares as capital assets, be treated as an expenditure actually incurred and paid by that shareholder in respect of those shares for the purposes of paragraph 20 of the Eighth Schedule; or
  - (ii) trading stock and acquired those shares as trading stock, be treated as the amount to be taken into account by that shareholder in respect of those shares for the purposes of section 11 (a) or 22 (1) or (2); and

[Para. (b) substituted by s. 54 (1) (d) of Act 45 of 2003.]

- (c) that shareholder must determine the portion of the cost contemplated in paragraph (a) that must be attributed, after that unbundling transaction, to the previously held shares, by reducing that cost by the amount determined in terms of paragraph (b);
- (d) that shareholder's previously held shares and those shares must be deemed to be the same shares in respect of the date of acquisition of those shares and the date of incurral of any expenditure in respect of those previously held shares.

[Para. (d) substituted by s. 54 (1) (e) of Act 45 of 2003.]

[Sub-s. (3) amended by s. 54 (1) (c) of Act 45 of 2003.]

(4) Where those shares are disposed of by an unbundling company to a shareholder in terms of an unbundling transaction and that shareholder held the previously held shares in that unbundling company as a result of the exercise, by that shareholder, of a right contemplated in section 8A, a portion of any gain made by that shareholder in the exercise of that right to acquire those previously held shares must be included in the income of that shareholder-

- (a) in the year of assessment during which that shareholder becomes entitled to dispose of those shares, which portion shall be an amount which bears to such gain the same ratio as that contemplated in subsection (3) (b); and;

[Para. (a) substituted by s. 54 (1) (f) of Act 45 of 2003.]

- (b) in the year of assessment during which that person becomes entitled to dispose of the

previously held shares, which portion shall be calculated by reducing such gain by the amount which has been determined or is to be determined in terms of paragraph (a).

[Sub-s. (4) amended by s. 54 (1) (f) of Act 45 of 2003.]

(5) Where shares are disposed of by an unbundling company to a shareholder in terms of an unbundling transaction-

- (a) the disposal by that unbundling company of the shares must be deemed not to be a dividend with respect to that unbundling company for the purposes of section 64B (3); and
- (b) any shares acquired by a company in terms of that disposal must be deemed not to be a dividend which accrued to that company for the purposes of section 64B (3).

[Sub-s. (5) substituted by s. 54 (1) (g) of Act 45 of 2003.]

(6) Any shares disposed of by an unbundling company in terms of an unbundling transaction, must be deemed to have been disposed of first from the share premium account of that unbundling company.

[Sub-s. (6) substituted by s. 54 (1) (h) of Act 45 of 2003.]

(7) The provisions of this section do not apply -

- (a) where the unbundled company is a domestic financial instrument holding company immediately prior to that disposal; or
- (b) in respect of any disposal of shares in terms of an unbundling transaction to a shareholder-
  - (i) who is not subject to tax (as defined in this Act or the Tax on Retirement Funds Act, 1996) in the Republic or who is subject to tax in the Republic at a reduced rate as a result of the application of any agreement for the avoidance of double taxation; and
  - (ii) where that shareholder acquires more than five per cent of those shares.

[Para. (b) substituted by s. 54 (1) (i) of Act 45 of 2003 and by s. 36 (1) (b) of Act 32 of 2004.]

(8) Where an unlisted unbundling company disposes of shares in an unlisted unbundled company in terms of an unbundling transaction to a shareholder and that unbundled company is a controlled group company in relation to that shareholder immediately before and after that disposal, the provisions of this section will not apply to that disposal if that shareholder and that unbundling company jointly so elect.

[Sub-s. (8) added by s. 54 (1) (j) of Act 45 of 2003.]

#### **47 Transactions relating to liquidation, winding-up and deregistration**

(1) For the purposes of this section 'liquidation distribution' means any transaction-

- (a) in terms of which any company (hereinafter referred to as the 'liquidating company') distributes all its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to its shareholders in anticipation of or in the course of the liquidation, winding up or deregistration of that company, but only to the extent to which those assets are so disposed of to another company (hereinafter referred to as the 'holding company') which-
  - (i) is subject to tax (as defined in this Act or the Tax on Retirements Funds Act, 1996) in the Republic, unless that company is taxed at a reduced rate in the Republic as a result of the application of any agreement for the avoidance of double taxation; and
  - (ii) on the date of that disposal holds at least 75 per cent of the equity shares of that liquidating company; and

[Para. (a) substituted by s. 37 (1) of Act 32 of 2004.]

- (b) in respect of which that liquidating company and that holding company have jointly elected that this section applies in respect of all the assets so disposed of by that liquidating company to that holding company.

[Sub-s. (1) substituted by s. 55 (1) (a) of Act 45 of 2003.]

(2) Where a liquidating company disposes of-

- (a) a capital asset in terms of a liquidation distribution to its holding company which acquires it as a capital asset-
  - (i) that liquidating company must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of the disposal thereof; and
  - (ii) that liquidating company and that holding company must, for purposes of determining any capital gain or capital loss in respect of a disposal of that asset by



- that holding company, be deemed to be one and the same person with respect to-
- (aa) the date of acquisition of that asset by that liquidating company and the amount and date of incurral by that liquidating company of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and
  - (bb) any valuation of that asset effected by that liquidating company as contemplated in paragraph 29 (4) of the Eighth Schedule; or
- (b) an asset held by it as trading stock in terms of a liquidation distribution to its holding company which acquires it as trading stock-
- (i) that liquidating company must be deemed to have disposed of that asset for an amount equal to the amount taken into account by that liquidating company in respect of that asset in terms of section 11 (a) or 22 (1) or (2), and
  - (ii) that liquidating company and that holding company must, for purposes of determining any taxable income derived by that holding company from a trade carried on by it, be deemed to be one and the same person with respect to the date of acquisition of that asset by that liquidating company and the amount and date of incurral by that liquidating company of any cost or expenditure incurred in respect of that asset as contemplated in section 11 (a) or 22 (1) or (2).
- (3) Where a liquidating company disposes of-
- (a) an asset that constitutes an allowance asset in that liquidating company's hands to its holding company in terms of a liquidation distribution and that holding company acquires that asset as an allowance asset-
    - (i) no allowance allowed to that liquidating company in respect of that asset must be recovered or recouped by that liquidating company or included in that liquidating company's income for the year of that transfer; and
    - (ii) that liquidating company and that holding company must be deemed to be one and the same person for purposes of determining the amount of any allowance-
      - (aa) to which that holding company may be entitled in respect of that asset; or
      - (bb) that is to be recovered or recouped by or included in the income of that holding company in respect of that asset; or
  - (b) a contract to its holding company as part of a disposal of a business as a going concern in terms of a liquidation distribution and that contract imposes an obligation on that liquidating company in respect of which an allowance in terms of section 24C was allowable to that liquidating company for the year preceding that in which that contract is transferred or would have been allowable to that liquidating company for the year of that transfer had that contract not been so transferred-
    - (i) no allowance allowed to that liquidating company in respect of that obligation must be included in that liquidating company's income for the year of that transfer; and
    - (ii) that liquidating company and that holding company must be deemed to be one and the same person for purposes of determining the amount of any allowance-
      - (aa) to which that holding company may be entitled in respect of that obligation; or
      - (bb) that is to be included in the income of that holding company in respect of that obligation.
- (4) Where the holding company acquires any asset from the liquidating company in terms of a liquidation distribution and that holding company disposes of that asset within a period of 18 months after so acquiring that asset and-
- (a) that asset constitutes a capital asset in the hands of that holding company-
    - (i) so much of any capital gain determined in respect of the disposal of that asset as does not exceed the amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date, may not be taken into account in determining any net capital gain or assessed capital loss of that holding company but is subject to paragraph 10 of the Eighth Schedule for purposes of determining an amount of taxable capital gain derived from that gain, which taxable capital

- gain may not be set off against any assessed loss or balance of assessed loss of that holding company; or
- (ii) so much of any capital loss determined in respect of the disposal of that asset as does not exceed the amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date must be disregarded in determining the aggregate capital gain or aggregate capital loss of that holding company for purposes of the Eighth Schedule: Provided that the amount of any capital loss so disregarded may be deducted from the amount of any capital gain determined in respect of the disposal during that year or any subsequent year of assessment of any other asset acquired by that holding company from the liquidating company in terms of that liquidation distribution; or
- (b) that asset constitutes-
- (i) trading stock in the hands of that holding company, so much of the amount received or accrued in respect of the disposal of that trading stock as does not exceed the market value of that trading stock as at the beginning of that period of 18 months and so much of the amount taken into account in respect of that trading stock in terms of section 11 (a) or 22 (1) or (2) as is equal to the amount so taken into account in terms of subsection (2) (b); or
- (ii) an allowance asset in the hands of that holding company, so much of any allowance in respect of that asset that is recovered or recouped by or included in the income of that holding company as a result of that disposal as does not exceed the amount that would have been recovered had that asset been disposed of at the beginning of that period of 18 months for an amount equal to the market value of that asset as at that date,

must be deemed to be attributable to a separate trade carried on by that holding company, the taxable income or assessed loss from which trade may not be set off against or added to any assessed loss or balance of assessed loss of that holding company.

(5) Where a holding company disposes of any equity share in a liquidating company as a result of the liquidation, winding up or deregistration of that liquidating company, that holding company must disregard that disposal for purposes of determining its taxable income or assessed loss.

[Sub-s. (5) substituted by s. 55 (1) (b) of Act 45 of 2003.]

- (6) The provisions of this section do not apply where-
- (a) all the receipts and accruals of the holding company are exempt from tax in terms of section 10 (1) (cA), (cH), (cM), (cN), (d), (t) and (tA);
- (b) the liquidating company constitutes a domestic financial instrument holding company or foreign financial instrument holding company immediately prior to that disposal: Provided that for purposes of determining whether that liquidating company is a domestic financial instrument holding company or a foreign financial instrument holding company, no regard shall be had to any financial instrument the market value of which is equal to its base cost.
- [Para. (b) amended by s. 55 (1) (c) of Act 45 of 2003.]
- (c) the liquidating company-
- (i) has not, within a period of six months after the date of the liquidation distribution, taken the steps contemplated in section 41 (4) to liquidate, wind up or deregister; or
- (ii) has at any stage withdrawn any step taken to liquidate, wind up or deregister that company, as contemplated in paragraph (i), or does anything to invalidate any step so taken, with the result that the company will not be liquidated, wound up or deregistered:

Provided that any tax which becomes payable as a result of the application of this paragraph shall be recoverable from the holding company.

[Para. (c) amended by s. 55 (1) (d) of Act 45 of 2003.]

#### *Part IV*

#### *Undistributed Profits Tax (ss 48-53)*

[S. 48 substituted by s. 30 of Act 89 of 1969, amended by s. 23 (1) of Act 65 of 1973, by s. 33 of Act 85 of 1974 and by s. 19 (1) of Act 103 of 1976 and repealed by s. 30 (1) of Act 101 of 1990.]

49 .....

**Cases**

[S. 49 amended by s. 22 of Act 90 of 1962, by s. 9 of Act 6 of 1963, by s. 17 of Act 90 of 1964, by s. 31 (1) of Act 89 of 1969, by s. 24 (1) of Act 88 of 1971, by s. 24 (1) of Act 65 of 1973, by s. 34 (1) of Act 85 of 1974, by s. 23 (1) of Act 69 of 1975, by s. 20 (1) of Act 113 of 1977, by s. 21 of Act 104 of 1980, by s. 22 (1) of Act 96 of 1981, by s. 30 of Act 94 of 1983, by s. 26 (1) of Act 121 of 1984, by ss. 46 and 47 of Act 97 of 1986 and by s. 19 of Act 85 of 1987 and repealed by s. 31 (1) of Act 101 of 1990.]

50 .....

[S. 50 amended by s. 23 of Act 90 of 1962, by s. 19 of Act 95 of 1967, by s. 32 (1) of Act 89 of 1969, by s. 25 (1) of Act 88 of 1971, by s. 25 of Act 65 of 1973, by s. 35 (1) of Act 85 of 1974, by s. 27 of Act 121 of 1984 and by s. 20 (1) of Act 85 of 1987 and repealed by s. 32 (1) of Act 101 of 1990.]

51 .....

[S. 51 repealed by s. 33 (1) of Act 101 of 1990.]

52 .....

[S. 52 amended by s. 24 of Act 90 of 1962 and by s. 36 (1) of Act 85 of 1974 and repealed by s. 34 (1) of Act 101 of 1990.]

53 .....

[S. 53 repealed by s. 35 (1) of Act 101 of 1990.]

**Part V**

**Donations Tax (ss 54-64)**

**54 Levy of donations tax**

**Cases**

Subject to the provisions of section 56, there shall be paid for the benefit of the National Revenue Fund a tax (in this Act referred to as donations tax) on the value of any property disposed of (whether directly or indirectly and whether in trust or not) under any donation by any resident (in this Part referred to as the donor).

[S. 54 amended by s. 37 of Act 85 of 1974 and by s. 20 of Act 103 of 1976, substituted by s. 24 of Act 90 of 1988, amended by s. 41 of Act 36 of 1996 and substituted by s. 40 of Act 59 of 2000.]

**55 Definitions for purposes of this Part**

**Cases**

(1) In this Part, unless the context otherwise indicates-  
'cumulative taxable value' .....

[Definition of 'cumulative taxable value' deleted by s. 25 (a) of Act 90 of 1988.]

'donation' means any gratuitous disposal of property including any gratuitous waiver or renunciation of a right;

'donee' means any beneficiary under a donation and includes, where property has been disposed of under a donation to any trustee to be administered by him for the benefit of any beneficiary, such trustee: Provided that any donations tax paid or payable by any trustee in his capacity as such may, notwithstanding anything to the contrary contained in the trust deed concerned, be recovered by him from the assets of the trust;

'fair market value', in relation to immovable property on which a *bona fide* farming undertaking is being carried on in the Republic, means, at the option of the donor, either-

(a) the fair market value thereof; or

(b) an amount to be determined in accordance with the provisions of subsection (2) as representing the aggregate of the fair agricultural or pastoral value of the land and the value which any improvements situated thereon may be expected to add to such value of the land (which aggregate is hereinafter referred to as the surface value) together with the fair market value of any mineral rights attaching to the land, as at the date upon which the donation takes effect;

[Definition of 'fair market value' amended by s. 25 (b) of Act 90 of 1988.]

'property' means any right in or to property movable or immovable, corporeal or incorporeal, wheresoever situated.

(2) (a) In the case of any property in respect of which the donor elects the value determined in accordance with paragraph (b) of the definition of 'fair market value' in subsection (1), the donor shall lodge an application in the prescribed form in duplicate for a determination of the surface value of that property with the magistrate of the district in which such property is situate.

(b) Any magistrate with whom such an application has been lodged shall forward both copies thereof to a land bank valuator selected by him who has been appointed in terms of section *seventy* of the Land Bank Act, 1944 (Act 13 of 1944), with instructions to make a valuation of the surface value of the property in question.

(c) The provisions of the Land Bank Act, 1944, applicable to valutors under the said Act, and any instructions issued from time to time by the Land Bank to such valutors in connection with the exercise of their duties, shall apply to any such valuator instructed to make a valuation of the surface value of any such property, as though he were making a valuation for land bank purposes.

(d) Fees and travelling expenses shall be paid by the donor to any such valuator in accordance with the tariffs applicable to the valuation of property by sworn appraisers appointed by Masters of the High Court.

[Para. (d) amended by s. 22 of Act 28 of 1997.]

(e) Any land bank valuator to whom any such application in duplicate has been referred, shall cause the particulars of his valuation of the surface value of the property in question to be inserted on both copies of the application and shall within three days from the date on which his valuation was made forward one copy to the donor and the remaining copy to the magistrate for transmission to the Commissioner.

(f) The Commissioner shall, subject to the provisions of paragraph (h), thereupon determine the surface value of the property in question, or may refer the matter to the Board of the Land Bank as constituted under section *four* of the Land Bank Act, 1944 (in this section referred to as the Board), for its determination of such value.

(g) The Commissioner shall at the same time determine the fair market value of the mineral rights attaching to the property in question and shall advise the donor of the values determined by him under this paragraph and paragraph (f) and shall indicate in such advice whether the determination of the surface value of the property was made by him or by the Board.

(h) If the donor considers himself aggrieved by the Commissioner's determination of the surface value of any property in terms of paragraph (f) he shall notify the Commissioner thereof in writing within twenty-one days or such further period as the Commissioner may allow from the date of the advice referred to in paragraph (g) and the Commissioner shall thereupon cause the matter to be referred to the Board for review.

(i) For the purposes of its determination under paragraph (f) or (h) the Board shall apply the same principles and follow the same practice and procedure as in the case of a determination by it of the value of property for land bank purposes.

(j) Any person duly authorized thereto by the Board shall at all reasonable times have full access to the property the value of which is being determined by the Board.

(k) There shall be no appearance by or on behalf of either party before the Board, whose decision shall be communicated in duplicate to the Commissioner who shall forward one copy thereof to the donor.

[Para. (k) substituted by s. 37 of Act 30 of 2000.]

(3) For the purposes of this Part a donation shall be deemed to take effect upon the date upon which all the legal formalities for a valid donation have been complied with.

## 56 Exemptions

### Cases

(1) Donations tax shall not be payable in respect of the value of any property which is disposed of under a donation-

(a) to or for the benefit of the spouse of the donor under a duly registered antenuptial or post-nuptial contract or under a notarial contract entered into as contemplated in section 21 of the Matrimonial Property Act, 1984 (Act 88 of 1984);

[Para. (a) amended by s. 18 (a) of Act 90 of 1964 and substituted by s. 18 (1) of Act 96 of 1985.]

(b) to or for the benefit of the spouse of the donor who is not separated from him under a judicial order or notarial deed of separation;

[Para. (b) amended by s. 18 (b) of Act 90 of 1964.]

- (c) as a *donatio mortis causa*;
- (d) in terms of which the donee will not obtain any benefit thereunder until the death of the donor;
- (e) which is cancelled within six months from the date upon which it took effect;
- (f) .....  
[Para. (f) deleted by s. 32 (1) (a) of Act 113 of 1993.]
- (g) if such property consists of any right in property situated outside the Republic and was acquired by the donor-
  - (i) before the donor became a resident of the Republic for the first time; or  
[Sub-para. (i) amended by s. 38 (a) of Act 85 of 1974 and substituted by s. 41 of Act 59 of 2000.]
  - (ii) by inheritance from a person who at the date of his death was not ordinarily resident in the Republic or by a donation if at the date of the donation the donor was a person (other than a company) not ordinarily resident in the Republic; or  
[Sub-para. (ii) substituted by s. 21 of Act 113 of 1977.]
  - (iii) out of funds derived by him from the disposal of any property referred to in subparagraph (i) or (ii) or, if the donor disposed of such lastmentioned property and replaced it successively with other properties (all situated outside the Republic and acquired by the donor out of funds derived by him from the disposal of any of the said properties), out of funds derived by him from the disposal of, or from revenue from any of those properties; or
  - (iv) out of funds derived by him from any trade carried on by him outside the Republic; or
  - (v) in the case of immovable property, not less than ten years before the date on which the donation takes effect;  
[Para. (g) substituted by s. 18 (c) of Act 90 of 1964.]
- (gA) .....  
[Para. (gA) inserted by s. 33 of Act 89 of 1969 and deleted by s. 26 (a) of Act 90 of 1988.]
- (h) by or to any person (including any government) referred to in section 10 (1) (a), (b), (cA), (cE), (cN), (d) or (e);  
[Para. (h) substituted by s. 38 (b) of Act 85 of 1974, by s. 23 (a) of Act 96 of 1981, by s. 21 of Act 85 of 1987, by s. 28 of Act 141 of 1992, by s. 32 (1) (b) of Act 113 of 1993 and by s. 38 (1) (a) of Act 30 of 2000.]
- (i) .....  
[Para. (i) amended by s. 26 (b) of Act 90 of 1988 and deleted by s. 38 (1) (b) of Act 30 of 2000.]
- (j) .....  
[Para. (j) amended by s. 26 (c) of Act 90 of 1988 and deleted by s. 38 (1) (b) of Act 30 of 2000.]
- (k) as a voluntary award the value of which is required to be included in the gross income of the donee in terms of paragraph (c), (d) or (i) of the definition of 'gross income' in section 1;  
[Para. (k) substituted by s. 28 of Act 121 of 1984.]
- (l) if such property is disposed of under and in pursuance of any trust;
- (m) if such property consists of a right (other than a fiduciary, usufructuary or other like interest) to the use or occupation of property used for farming purposes, for no consideration or for a consideration which is not an adequate consideration, and the donee is a child of the donor;
- (n) on or after the seventeenth day of August, 1966, by any company which is recognized as a public company in terms of section 38;  
[Para. (n) added by s. 25 (1) of Act 55 of 1966.]
- (o) where such property consists of the full ownership in immovable property, if-
  - (i) such immovable property was acquired by any beneficiary entitled to any grant or services in terms of the Land Reform Programme, as contemplated in the White Paper on South African Land Policy, 1997; and
  - (ii) the Minister of Land Affairs or a person designated by him has, on such terms and conditions as such Minister may in consultation with the Commissioner prescribe, approved the particular project in terms of which such immovable property is so acquired;

[Para. (o) added by s. 38 (c) of Act 85 of 1974, deleted by s. 4 (1) of Act 30 of 1984 and added by s. 39 (1) of Act 30 of 1998.]

(p) .....

[Para. (p) added by s. 31 (1) (a) of Act 94 of 1983 and deleted by s. 18 (1) (a) of Act 36 of 1996.]

(q) .....

[Para. (q) added by s. 45 (1) of Act 60 of 2001 and deleted by s. 35 (a) of Act 74 of 2002.]

(r) by a company to any other company that is a resident and is a member of the same group of companies as the company making that donation.

[Para. (r) added by s. 35 (b) of Act 74 of 2002 and substituted by s. 56 (1) of Act 45 of 2003 and by s. 38 (1) of Act 32 of 2004.]

(2) Donations tax shall not be payable in respect of-

(a) so much of the sum of the values of all casual gifts made by a donor other than a natural person during any year of assessment as does not exceed R10 000: Provided that where the year of assessment exceeds or is less than 12 months, the amount in respect of which the tax shall not be payable in terms of this paragraph shall be an amount which bears to R10 000 the same ratio as that year of assessment bears to 12 months.

[Para. (a) substituted by s. 23 (b) of Act 96 of 1981, amended by s. 31 (1) (b) of Act 94 of 1983, substituted by s. 26 (d) of Act 90 of 1988 and amended by s. 24 (1) (a) of Act 30 of 2002.]

(b) so much of the sum of the values of all property disposed of under donations by a donor who is a natural person as does not during any year of assessment exceed R30 000;

[Para. (b) amended by s. 13 (1) of Act 101 of 1978 and by s. 31 (1) (c) of Act 94 of 1983, substituted by s. 26 (d) of Act 90 of 1988 and by s. 18 (1) (b) of Act 36 of 1996 and amended by s. 24 (1) (b) of Act 30 of 2002.]

(c) so much of any *bona fide* contribution made by the donor towards the maintenance of any person as the Commissioner considers to be reasonable.

#### **57 Donations by a body corporate at the instance of any person**

(1) If any property is disposed of under any donation by any body corporate at the instance of any person, that property shall for the purposes of this Part be deemed to be disposed of under a donation by that person: Provided that any tax paid or payable by that person in respect of any property so disposed of under a donation by any body corporate may be recovered from the assets of that body corporate.

(2) For the purposes of subsection (1) property shall be deemed to be disposed of under a donation by any body corporate at the instance of any person if, having regard to the circumstances under which that donation was made by such body corporate, the Commissioner is of the opinion-

(a) that it was not made in the ordinary course of the normal income earning operations of that body corporate; and

(b) that the selection of the donee who benefited by the donation was made at the instance of that person.

[S. 57 amended by s. 22 of Act 88 of 1965 and by s. 27 of Act 90 of 1988 and substituted by s. 26 of Act 21 of 1995.]

#### **57A Donations by spouses married in community of property**

For the purposes of this Part, in the case of spouses married in community of property, where any property is disposed of in terms of a donation by one of the spouses and-

(a) such property falls within the joint estate of the spouses, such donation shall be deemed to have been made in equal shares by each spouse; and

(b) such property was excluded from the joint estate of the spouses, such donation shall be deemed to have been made solely by the spouse making the donation.

[S. 57A inserted by s. 27 of Act 21 of 1995.]

#### **58 Property disposed of under certain transactions deemed to have been disposed of under a donation**

##### **■ Cases**

(1) Where any property has been disposed of for a consideration which, in the opinion of the Commissioner, is not an adequate consideration that property shall for the purposes of this Part be deemed to have been disposed of under a donation: Provided that in the determination of the value of such property a reduction shall be made of an amount equal to the value of the said consideration.

(2) Where a person disposes of a restricted equity instrument, as defined in section 8C, to any

other person under the circumstances contemplated in section 8C (5), that restricted equity instrument shall for the purposes of this Part be deemed to have been donated at the time that it is deemed to vest for the purposes of section 8C and to have a value equal to the fair market value of that instrument at that time: Provided that in the determination of the value of that restricted equity instrument a reduction shall be made of an amount equal to the value of any consideration in respect of that donation.

[Sub-s. (2) added by s. 39 (b) of Act 32 of 2004.]

#### **59 Persons liable for the tax**

The person liable for donations tax shall be the donor: Provided that if the donor fails to pay the tax within the period prescribed in subsection (1) of section *sixty* the donor and the donee shall be jointly and severally liable for the tax.

#### **60 Payment and assessment of the tax**

(1) Donations tax shall be paid to the Commissioner within three months or such longer period as the Commissioner may allow from the date upon which the donation in question takes effect.

[Sub-s. (1) substituted by s. 39 of Act 85 of 1974 and by s. 46 of Act 60 of 2001.]

(2) Where a donor has during the year of assessment disposed of property under more than one donation in respect of which an exemption may be applicable under the provisions of section 56 (2) (a) or (b), the amount to be exempted in respect of any such donation shall be calculated according to the order in which such donations took effect.

[Sub-s. (2) substituted by s. 28 of Act 90 of 1988.]

(3) Where a donor has disposed of property under more than one donation on the same date those donations shall for the purpose of determining the tax payable in respect of each donation be deemed to have taken effect -

- (a) in such order as the donor may elect; or
- (b) if the donor fails to make an election within fourteen days after having been called upon by the Commissioner to do so, in such order as the Commissioner may determine.

(4) The payment of the tax in terms of subsection (1) shall be accompanied by a return in such form as may be prescribed by the Commissioner.

(5) The Commissioner may at any time assess either the donor or the donee or both the donor and the donee for the amount of donations tax payable or, where the Commissioner is satisfied that the tax payable under this Part has not been paid in full, for the difference between the amount of the tax payable and the amount paid, but the payment by either of the said parties of the amount payable under such assessment shall discharge the joint obligation.

#### **61 Extension of scope of certain provisions of Act for purposes of donations tax**

For the purposes of the donations tax-

- (a) any reference in subsection (1) or (2) of section *seventy-four*, paragraph (c) or (d) of subsection (1) of section *seventy-five* or paragraph (a) or (e) of the definition of 'representative taxpayer' in section *one* to the income of any person or to the gross income received by or accrued to or in favour of any person shall be deemed to include a reference to property disposed of by any person under a donation or to the value of such property, as the context may require;
- (b) the reference in subsection (2) of section *seventy-four* to any person entitled to or in receipt of any income shall be deemed to include a reference to any person who has disposed of property under a donation;
- (c) the reference in section *seventy-eight* to the taxable income in relation to which any return or information is required shall be deemed to include a reference to the value of any property disposed of under a donation in relation to which the return or information is required;
- (d) the reference in paragraphs (b) and (c) of the definition of 'representative taxpayer' in section *one* to the income under the management, disposition or control of an agent or to income the subject of any trust, as the case may be, shall be deemed to include a reference to any property disposed of under a donation which is under the management, disposition or control of the agent or to property disposed of under a donation which is the subject of the trust, as the case may be.
- (e) the reference in subsection (1) of section *ninety-five* to the income to which a representative taxpayer is entitled in his representative capacity, or of which in such capacity he has the management, receipt, disposal, remittance, payment or control shall

be deemed to include a reference to any property disposed of under a donation of which a representative taxpayer in his representative capacity has the management, receipt, disposal, remittance, payment or control, and the reference in the said subsection to income received by or accruing to or in favour of such a person beneficially shall be deemed to include a reference to property disposed of by such a person in his own right under a donation.

- (f) the reference in subsection (1) *bis* of section *ninety-five* to the income received by or accrued to any deceased person during his lifetime shall be deemed to include a reference to any property disposed of by the deceased person under any donation during his lifetime, and the reference in the said subsection to income received by or accrued to or in favour of a representative taxpayer beneficially shall be deemed to include a reference to property disposed of by the representative taxpayer in his own right under a donation;  
[Para. (f) added by s. 25 of Act 90 of 1962.]
- (g) the reference in section 96 (2) to the taxable income of any deceased person shall be deemed to include a reference to the value of property disposed of by such person under any donation;  
[Para. (g) added by s. 25 of Act 90 of 1962 and substituted by s. 29 of Act 90 of 1988.]
- (h) any reference in section 76 to taxable income of a taxpayer is deemed to include a reference to the value of any property disposed of by that taxpayer under a donation.  
[Para. (h) added by s. 57 of Act 45 of 2003.]

## 62 Value of property disposed of under donations

### Cases

- (1) For the purposes of donations tax the value of any property shall be deemed to be-
- (a) in the case of any fiduciary, usufructuary or other like interest in property, an amount determined by capitalizing at twelve per cent. the annual value of the right of enjoyment of the property over which such interest was or is held, to the extent to which the donee becomes entitled to such right of enjoyment, over the expectation of life of the donor, or if such right of enjoyment is to be held for a lesser period than the life of the donor, over such lesser period;  
[Para. (a) amended by s. 8 (a) of Act 114 of 1977.]
- (b) in the case of any right to any annuity, an amount equal to the value of the annuity capitalized at twelve per cent. over the expectation of life of the donor, or if such right is to be held by the donee for a lesser period than the life of the donor, over such lesser period;  
[Para. (b) amended by s. 8 (b) of Act 114 of 1977.]
- (c) in the case of a right of ownership in any movable or immovable property which is subject to a usufructuary or other like interest in favour of any person, the amount by which the fair market value of the full ownership of such property exceeds the value of such interest, determined-
- (i) in the case of a usufructuary interest, by capitalizing at twelve per cent. the annual value of the right of enjoyment of the property subject to such usufructuary interest over the expectation of life of the person entitled to such interest, or, if such right of enjoyment is to be held for a lesser period than the life of such person, over such lesser period;  
[Sub-para. (i) amended by s. 8 (c) of Act 114 of 1977.]
- (ii) in the case of an annuity charged upon the property, by capitalizing at twelve per cent. the amount of the annuity over the expectation of life of the person entitled to such annuity, or, if it is to be held for a lesser period than the life of such person, over such lesser period; or  
[Sub-para. (ii) amended by s. 8 (c) of Act 114 of 1977.]
- (iii) in the case of any other interest, by capitalizing at twelve per cent. such amount as the Commissioner may consider reasonable as representing the annual yield of such interest, over the expectation of life of the person entitled to such interest, or, if such interest is to be held for a lesser period than the life of such person, over such lesser period;



[Sub-para. (iii) amended by s. 8 (c) of Act 114 of 1977.]

- (d) in the case of any other property, the fair market value of such property as at the date upon which the donation takes effect: Provided that in any case in which, as a result of conditions which in the opinion of the Commissioner were imposed by or at the instance of the donor, the value of any property is reduced in consequence of the donation, the value of such property shall be determined as though the conditions in terms of which the value of the said property is reduced in consequence of the donation, had not been imposed.

(1A) Where any company not quoted on any stock exchange owns immovable property on which *bona fide* farming operations are being carried on in the Republic, the value of such immovable property shall, in so far as it is relevant for the purposes of determining the value of any shares in such company, be determined in the manner prescribed in the definition of 'fair market value' in section 55 (1).

[Sub-s. (1A) inserted by s. 36 of Act 101 of 1990.]

(2) For the purposes of paragraphs (a) and (c) of subsection (1) the annual value of the right of enjoyment of a property means an amount equal to twelve per cent. upon the value of the full ownership of the property which is subject to any fiduciary, usufructuary or other like interest: Provided that-

- (a) where the Commissioner is satisfied that the property which is subject to any such interest could not reasonably be expected to produce an annual yield equal to 12 per cent on such value of the property, the Commissioner may fix such sum as representing the annual yield as may seem to him to be reasonable, and the sum so fixed shall for the purposes of paragraphs (a) and (c) of subsection (1) be deemed to be the annual value of the enjoyment of such property;

[Para. (a) amended by s. 8 (d) of Act 114 of 1977, by s. 23 (1) of Act 28 of 1997 and by s. 33 (b) of Act 53 of 1999.]

- (b) where the property which is subject to any such interest consists of books, pictures, statuary or other objects of art, the annual value of the right of enjoyment shall for the purposes of paragraph (a) of subsection (1) be deemed to be the average net receipts (if any) derived by the person entitled to such right of enjoyment of such property during the three years immediately preceding the date on which the donation took effect.

[Sub-s. (2) amended by s. 8 (d) of Act 114 of 1977.]

(3) Where for the purposes of subsection (1) any calculation is required to be made over the expectation of life of any person, such calculation shall, in the case of a person who is not a natural person, be made over a period of fifty years.

(4) If the Commissioner is of the opinion that the amount shown in any return as the fair market value of any property other than property whereof the fair market value has been determined in accordance with the provisions of subsection (2) of section *fifty-five*, is less than the fair market value of such property, he may fix the fair market value of that property, and the value so fixed shall, subject to the provisions of section *sixty-three*, be deemed for the purposes of this Part to be the fair market value of such property.

(5) In fixing the fair market value of any property in terms of subsection (4), the Commissioner shall have regard *inter alia*-

- (a) to the municipal or divisional council valuation (if any) of such property;
- (b) to any sworn valuation of such property furnished by or on behalf of the donor or the donee; and
- (c) to any valuation of such property made by any competent and disinterested person appointed by the Commissioner.

### **63 Objection and appeal**

The decision of the Commissioner in the exercise of his discretion under section 57 (2), section 62 (1) (c) (iii), the proviso to section 62 (1) (d) or section 62 (2) (a) or 62 (4), and any determination by the Commissioner under section 55 (2) (g) of the value of the mineral rights attaching to any property, shall be subject to objection and appeal.

[S. 63 substituted by s. 34 of Act 53 of 1999 and by s. 47 of Act 60 of 2001.]

### **64 Rate of donations tax**

The rate of the donations tax chargeable under section 54 in respect of the value of any property disposed of under a donation shall be 20 per cent of such value.

[S. 64 substituted by s. 30 of Act 90 of 1988 and amended by s. 19 (1) of Act 36 of 1996 and by s. 17 of Act 5 of 2001.]

**Part VI**

[Part VI added by s. 20 of Act 95 of 1967, amended by s. 15 of Act 76 of 1968, by ss. 34 to 36 of Act 89 of 1969, by ss. 20 and 21 of Act 52 of 1970, by s. 26 of Act 88 of 1971, by ss. 19 and 20 of Act 90 of 1972, by ss. 40 to 42 of Act 85 of 1974, by s. 21 of Act 103 of 1976, by s. 22 of Act 113 of 1977, by s. 14 of Act 104 of 1979, by s. 22 of Act 104 of 1980, by s. 24 of Act 96 of 1981, by s. 21 of Act 91 of 1982, by ss. 32 to 34 of Act 94 of 1983, by s. 29 of Act 121 of 1984, by s. 18 of Act 65 of 1986, by ss. 7 and 8 of Act 108 of 1986, by s. 22 (1) of Act 85 of 1987 and by ss. 31 to 36 of Act 90 of 1988, substituted by s. 4 of Act 136 of 1991 and repealed by s. 24 (1) of Act 28 of 1997.]

**64A .....**

[S. 64A inserted by s. 4 of Act 136 of 1991, substituted by s. 29 (1) of Act 141 of 1992, amended by s. 33 of Act 113 of 1993, by s. 28 (1) of Act 21 of 1995 and by s. 20 (1) of Act 36 of 1996 and repealed by s. 24 (1) of Act 28 of 1997.]

**Part VII****Secondary Tax on Companies (ss 64B-64C)**

[Part VII inserted by s. 34 (1) of Act 113 of 1993.]

**64B Levy and recovery of secondary tax on companies**

(1) For the purposes of this Part-  
'affected company' .....

[Definition of 'affected company' inserted by s. 21 (1) (b) of Act 36 of 1996 and deleted by s. 36 (1) (a) of Act 74 of 2002.]

'declared', in relation to any dividend (including a dividend *in specie*), means the approval of the payment or distribution thereof by the directors of the company or by some other person under authority conferred by the memorandum and articles of association of the company;

'dividend cycle' means-

- (a) in relation to the first dividend declared by a company (other than a company which carries on long-term insurance business) on or after 17 March 1993, the period commencing on the later of-
  - (i) 1 September 1992;
  - (ii) the day following the date of declaration of the last dividend (other than a dividend *in specie* or a dividend payable on a preference share) declared by the company prior to 17 March 1993;
  - (iii) the date on which that company was incorporated, formed or otherwise established; and  
[Sub-para. (iii) added by s. 58 (1) (b) of Act 45 of 2003.]
  - (iv) the date on which that company becomes a resident,  
[Sub-para. (iv) added by s. 58 (1) (b) of Act 45 of 2003.]  
and ending on the date on which such first dividend accrues to the shareholder concerned or on which the amount is deemed to have been distributed as contemplated in section 64C (2);

[Para. (a) amended by s. 24 (1) (a) of Act 21 of 1994 and by s. 58 (1) (c) of Act 45 of 2003.]

- (aA) in relation to the first dividend declared by a company which carries on long-term insurance business out of profits derived during any year of assessment commencing on or after 1 July 1993, the period commencing on the later of-
  - (i) the day falling six months prior to the declaration of the said dividend; and
  - (ii) the day following the date of declaration of the last dividend (other than a dividend *in specie* or a dividend payable on a preference share) declared by the company prior to the declaration of the said first dividend,  
and ending on the date on which such first dividend accrues to the shareholder concerned or on which the amount is deemed to have been distributed as contemplated in section 64C (2); and

[Para. (aA) inserted by s. 24 (1) (c) of Act 21 of 1994 and amended by s. 58 (1) (d) of Act 45 of 2003.]

- (b) in relation to any subsequent dividend declared by that company, the period commencing immediately after the previous dividend cycle of the company and ending on the date on which such dividend accrues to the shareholder concerned or on which the amount is deemed to have been distributed as contemplated in section 64C (2).

[Para. (b) substituted by s. 58 (1) (e) of Act 45 of 2003.]

'holding company' .....

[Definition of 'holding company' added by s. 21 (1) (c) of Act 36 of 1996, substituted by s. 48 (1) (a) of Act 60 of 2001 and deleted by s. 36 (1) (a) of Act 74 of 2002.]

'intermediate company' means any company at least 75 per cent of whose equity share capital is held by-

- (a) the first-mentioned company in the definition of 'controlling group company'; or
- (b) (i) one or more companies which are intermediate companies in terms of paragraph (a); or
- (ii) a controlling group company and one or more companies referred to in subparagraph (i);

[Definition of 'intermediate company' inserted by s. 21 (1) (c) of Act 36 of 1996, amended by s. 48 (1) (b) of Act 60 of 2001 and substituted by s. 36 (1) (b) of Act 74 of 2002.]

'share incentive scheme' .....

[Definition of 'share incentive scheme' added by s. 21 (1) (c) of Act 36 of 1996, substituted by s. 25 (1) (a) of Act 28 or 1997 and deleted by s. 48 (1) (c) of Act 60 of 2001.]

[Sub-s. (1) amended by s. 21 (1) (a) of Act 36 of 1996.]

(2) There shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the secondary tax on companies, which is calculated at the rate of 12,5 per cent of the net amount, as determined in terms of subsection (3), of any dividend declared on or after 14 March 1996 by any company which is a resident.

[Sub-s. (2) substituted by s. 24 (1) (d) of Act 21 of 1994, by s. 21 (1) (d) of Act 36 of 1996 and by s. 42 (1) (a) of Act 59 of 2000.]

(3) Subject to subsection (3A), the net amount of any dividend referred to in subsection (2) shall be the amount by which such dividend declared by a company exceeds the sum of any dividends which have accrued to that company during the dividend cycle in relation to such firstmentioned dividend:

Provided that-

- (a) where the sum of such dividends accrued exceeds such dividend declared, the excess shall be carried forward and be deemed to be a dividend which accrued to the company during the succeeding dividend cycle of the company; and
- (b) in the determination of the net amount of any dividend distributed in the course or in anticipation of the liquidation or winding up or deregistration of a company, there shall be allowed as a deduction any dividend contemplated in subsection (5) (c) which has during the current or any previous dividend cycle accrued to the company.

[Para. (b) substituted by s. 29 (1) (a) of Act 21 of 1995.]

[Sub-s. (3) amended by s. 24 (1) (e) of Act 21 of 1994, by s. 39 (1) (a) of Act 30 of 2000, by s. 42 (1) (b) of Act 59 of 2000, by s. 58 (1) (f) of Act 45 of 2003 and by s. 40 (1) (a) of Act 32 of 2004.]

(3A) In determining the sum of the dividends which have accrued to a company as contemplated in subsection (3), no regard must be had to-

- (a) any dividend contemplated in subsection (5) (b), (c) or (f);
- (b) any dividend to the extent that the dividend is taxable by virtue of section 10 (1) (k) (i) (bb);
- (c) any dividend which accrued to a borrower as contemplated in the definition of 'securities lending arrangement' in respect of a share which was borrowed in terms of that arrangement; or
- (d) any foreign dividend, other than a foreign dividend which accrued to that company (hereinafter referred to as the 'recipient company')-
  - (i) in circumstances other than as contemplated in subparagraph (ii) to the extent that the profits from which the dividend is distributed relate to an amount which has been subject to tax in the Republic in terms of this Act without reduction as a result of the application of any agreement for the avoidance of double taxation, at the rate applicable to a company which either-
    - (aa) mines for gold on any gold mine and which is in terms of an option exercised by it exempt from the payment of secondary tax on companies; or
    - (bb) has its place of residence outside the Republic and carries on a trade through a branch or agency within the Republic; or

- (ii) to the extent that that foreign dividend arose directly or indirectly from any dividend declared by a company which is a resident (hereinafter referred to as the 'resident company') and which was subject to secondary tax on companies: Provided that where-
- (aa) at least 10 per cent of the equity share capital in that resident company is indirectly held by that recipient company through any foreign company as defined in section 9D (hereinafter referred to as an 'intermediate company'); and
- (bb) no other resident directly or indirectly holds an equal or greater interest in the equity share capital of that resident company (other than an interest held indirectly through that recipient company),
- so much of any foreign dividend which accrues to the recipient company from an intermediate company as does not exceed the aggregate amount of all dividends declared by that resident company to any intermediate company while that recipient company holds at least that interest in that resident company, which have not previously been taken into account under this paragraph, is deemed to arise indirectly from a dividend declared by that resident company.

[Sub-s. (3A) inserted by s. 40 (1) (b) of Act 32 of 2004.]

(4) (a) Where any dividend is declared by a company subject to the condition that it will be payable to shareholders registered in the company's share register on a specified date, such dividend or interim dividend shall for the purposes of this section be deemed to accrue to the shareholders on that date.

(b) Any interim dividend declared by a company otherwise than as contemplated in paragraph (a), shall for the purposes of this section be deemed to accrue to the shareholders on the date upon which it is declared.

(c) Where any cash or assets is or are transferred or distributed-

- (i) by a company to shareholders of that company otherwise than by way of a formal declaration of a dividend; or
- (ii) by the liquidator of a company to the shareholders of that company in the course of the winding up or liquidation of that company,

and the amount of such cash or the value of such assets, in whole or in part constitutes a dividend, such dividend shall for the purposes of this section be deemed to have been declared by the company and to have accrued to the shareholders on the date on which the shareholders became entitled to such cash or assets.

[Para. (c) amended by s. 58 (1) (g) of Act 45 of 2003.]

(5) There shall be exempt from the secondary tax on companies-

- (a) dividends declared by any company the entire receipts and accruals of which, or so much of the receipts and accruals of which as are derived otherwise than from investments, are exempt from tax under the provisions of section 10: Provided that the provisions of this paragraph shall not apply to a company which is exempt from tax under the said provisions solely because it derives gross income of a particular nature;

[Para. (a) amended by s. 12 (1) (a) of Act 140 of 1993 and substituted by s. 58 (1) (h) of Act 45 of 2003.]

- (b) any dividend declared by a fixed property company contemplated in section 11 (s) which may be allowed as a deduction in the determination of the taxable income of such company in terms of the provisions of that section;
- (c) so much of any dividend distributed in the course or in anticipation of the liquidation or winding up or deregistration of a company, as is shown by the company to be a-
- (i) distribution of profits derived during any year of assessment which ended not later than 31 March 1993, (other than any such profits derived by way of the revaluation of trading stock held by such company); or
- (ii) distribution of profits of a capital nature (other than capital profits attributable to the disposal of any asset on or after 1 October 2001 which capital profits must, in the case of an asset acquired before that date, be limited to the amount of profit determined as if that asset had been acquired on 1 October 2001 for a cost equal to the market value of that asset on that date determined in the manner contemplated in paragraph 29 of the Eighth Schedule): Provided that where that company became a resident after 1 October 2001, the capital profits in respect of an asset acquired before becoming a resident, must be limited to the amount of profit

determined as if that asset had been acquired on the date of so becoming a resident for a cost equal to the market value of that asset on that date; or  
 [Sub-para. (ii) substituted by s. 58 (1) (i) of Act 45 of 2003.]

- (iii) distribution of profits derived by that company before that company became a resident:

[Sub-para. (iii) added by s. 58 (1) (j) of Act 45 of 2003.]

Provided that where such dividend is distributed in anticipation of the liquidation or winding-up or deregistration of a company and such company-

- (i) has not within six months taken such steps as contemplated in section 41 (4) to liquidate, wind up or deregister that company; or  
 (ii) has at any stage withdrawn any step taken to liquidate, wind up or deregister that company, as contemplated in paragraph (i), or does anything to invalidate any such step so taken, with the result that the company is or will not be liquidated, wound up or deregistered,

the provisions of this paragraph and of subsection (3) (b) shall be deemed not to have applied to such dividend and any secondary tax on companies which becomes payable as a result thereof shall be recoverable from the shareholders to whom such dividend was distributed in the same proportion as such dividend was so distributed:

[Para. (c) substituted by s. 12 (1) (b) of Act 140 of 1993 and by s. 29 (1) (b) of Act 21 of 1995, amended by s. 48 (1) (d) of Act 60 of 2001 and by s. 25 of Act 30 of 2002 and substituted by s. 36 (1) (c) of Act 74 of 2002.]

(d) .....

[Para. (d) substituted by s. 39 (1) (b) of Act 30 of 2000 and by s. 36 (1) (d) of Act 74 of 2002 and deleted by s. 40 (1) (c) of Act 32 of 2004.]

- (e) so much of any dividend declared by a company referred to in subsection (12) (e) during any subsequent year of assessment as contemplated in that subsection, as represents a distribution of an amount received by or accrued to such company as a result of the disposal of gold mining assets;

[Para. (e) added by s. 24 (1) (g) of Act 21 of 1994.]

- (f) any dividend declared by a company which accrues to a shareholder (as defined in Part III) of that company if-
- (i) that shareholder is a company forming part of the same group of companies as the company declaring the dividend;
- (ii) to the extent that the dividend is derived out of profits earned by that company during any period when that company formed part of the same group of companies as the shareholder to whom the dividend accrued;  
 [Sub-para. (ii) substituted by s. 58 (1) (l) of Act 45 of 2003.]
- (iii) that shareholder would be subject to secondary tax on companies should that shareholder-
- (aa) declare a dividend from that dividend so declared by that company; and  
 (bb) not elect that this paragraph must apply in respect of that dividend; and  
 [Sub-para. (iii) substituted by s. 40 (1) (d) of Act 32 of 2004.]
- (iv) .....
- [Sub-para. (iv) deleted by s. 58 (1) (n) of Act 45 of 2003.]
- (v) the company declaring the dividend elects the exemption under this paragraph to apply by submitting this election-
- (aa) no later than the last day on which the secondary tax on companies would otherwise be due but for this paragraph (or no later than any other subsequent date prescribed by the Commissioner), and  
 (bb) in such form as the Commissioner may prescribe:

Provided that for purposes of this paragraph, where that shareholder was formed solely by one company within that group of companies, that shareholder must be deemed-

- (a) to have been in existence from the date on which the controlling company in relation to that shareholder was formed; and  
 (b) to have been the controlling company in relation to the company declaring the dividend from the date on which that company declaring the dividend formed part of the same

group of companies as the controlling company in relation to the shareholder;  
 [Para. (f) added by s. 24 (1) (g) of Act 21 of 1994, amended by s. 29 (1) (c) of Act 21 of 1995, substituted by s. 21 (1) (e) of Act 36 of 1996 and by s. 36 (1) (e) of Act 74 of 2002 and amended by s. 58 (1) (k) and (o) of Act 45 of 2003 and by s. 40 (1) (e) of Act 32 of 2004.]

- (g) any dividend declared by a company which carries on long-term insurance business out of profits derived during any year of assessment commencing prior to 1 July 1993;

[Para. (g) added by s. 24 (1) (g) of Act 21 of 1994 and substituted by s. 21 (1) (f) of Act 36 of 1996.]

- (h) .....

[Para. (h) added by s. 21 (1) (h) of Act 36 of 1996 and deleted by s. 42 (1) (c) of Act 59 of 2000.]

- (i) in the case of any company which is a 'qualifying company' as defined in section 37H, any dividend declared by such company during the period ending six months after the end of the last year of assessment during which such company qualifies for the tax holiday status referred to in that section out of profits derived during the period during which such company qualifies for such tax holiday status; and

[Para. (i) added by s. 13 (b) of Act 46 of 1996.]

- (j) any dividend declared by a company contemplated in paragraph (e) (i) of the definition of 'company' in section 1;

[Para. (j) added by s. 13 (b) of Act 46 of 1996 and substituted by s. 39 (1) (c) of Act 30 of 2000.]

- (k) any dividend declared by a company to a natural person-

- (i) which constitutes the distribution *in specie* of 'an interest' as defined in paragraph 44 of the Eighth Schedule, of such person in a residence; or  
 (ii) out of any profits of a capital nature arising from the disposal to such person of any such an interest in a residence,

where-

- (aa) such interest is so distributed to that person on or after the date of promulgation of the Taxation Laws Amendment Act, 2001, but before 30 September 2002 or such interest is so disposed of on or after the date of promulgation of the Taxation Laws Amendment Act, 2001, but before 30 September 2002 and any profit resulting from that disposal is distributed to that person on or before 31 March 2003;  
 (bb) that person alone or together with that person's spouse held all the equity share capital or members' interest in that company from 5 April 2001 to the date of registration in the deeds registry of that residence in the name of that person or that person's spouse or their names jointly;  
 (cc) that person alone or together with that person's spouse ordinarily resided in that residence and used it mainly for domestic purposes as his or her or their ordinary residence from 5 April 2001 to the date of that registration in the name of that person or that person's spouse or their names jointly; and  
 (dd) such residence will after such distribution or disposal constitute that person's or that person and that person's spouse's primary residence as defined in paragraph 44 of the Eighth Schedule:

Provided that the provisions of this paragraph shall only apply to the portion of any dividend that relates to the portion of the property contemplated in paragraph 46 of the Eighth Schedule.

[Para. (k) added by s. 18 of Act 5 of 2001.]

- (6) .....

[Sub-s. (6) deleted by s. 58 (1) (p) van Wet 45 van 2003.]

(7) The secondary tax on companies shall be paid to the Commissioner by the company liable therefore by not later than the last day of the month following the month in which the dividend cycle relevant to such dividend ends and each payment of such tax shall be accompanied by a return in such form as the Commissioner may require: Provided that-

- (i) the Commissioner may in any case extend the applicable date of payment; and  
 (ii) for the purposes of this subsection the expression 'month' means any of the twelve portions into which any calendar year is divided.

[Para. (ii) substituted by s. 40 (1) (f) of Act 32 of 2004.]

[Sub-s. (7) amended by s. 58 (1) (q) of Act 45 of 2003.]

- (8) Where the Commissioner is satisfied that any amount of secondary tax on companies has not

been paid in full, he may estimate the unpaid amount and issue to the company concerned a notice of assessment of the unpaid amount.

(9) If any company fails to pay any amount of secondary tax on companies in full within the period concerned contemplated in subsection (7), interest shall be paid by such company on the balance of the tax outstanding at the prescribed rate reckoned from the end of the period concerned.

(10) .....

[Sub-s. (10) amended by s. 36 (1) (f) of Act 74 of 2002 and deleted by s. 58 (1) (r) of Act 45 of 2003.]

(11) The provisions of this Act relating to the assessment and recovery of normal tax and additional tax in the event of default or omission shall with the changes required by the context *mutatis mutandis* apply in respect of secondary tax on companies.

[Sub-s. (11) substituted by s. 40 (1) (g) of Act 32 of 2004.]

(12) (a) Any company which on 17 March 1993 was engaged in mining for gold, may by notice in writing furnished to the Commissioner not later than 31 August 1993, elect to be exempt from the payment of secondary tax on companies.

(b) Any company which after 17 March 1993 commences mining for gold may by notice in writing furnished to the Commissioner not later than six months after the date on which it so commences, elect to be exempt from the payment of secondary tax on companies.

(c) An election made in terms of paragraph (a) or (b) shall, subject to the provisions of paragraph (e), be binding upon the company in respect of all future dividends declared by it.

(d) The exemption under this subsection shall apply to all dividends declared by the company concerned, whether payable out of profits derived from mining for gold or otherwise.

(e) Where any company which has made an election in terms of paragraph (a) or (b) ceases mining for gold during any year of assessment, the exemption under this subsection shall not apply to any dividend declared by such company during any subsequent year of assessment.

(13) In the determination of the net amount of any dividend declared by a company which carries on long-term insurance business, the amount to be taken into account in terms of subsection (3) in respect of dividends accrued to the company shall be limited-

(a) where the company has established or deemed to have established separate funds as contemplated in section 29 or 29A, to dividends accrued on shares constituting an asset in its corporate fund; or

[Para. (a) substituted by s. 35 (b) of Act 53 of 1999.]

(b) where the company has not established such separate funds, to an amount which bears to the total dividends which accrued to the company during the dividend cycle concerned the same ratio as the company's free reserves (calculated as provided in subsection (14) as at the end of the last year of assessment of the insurer which ended prior to the declaration of the firstmentioned dividend) bears to the market value of the total assets held by the insurer as at the end of that year.

(14) For the purposes of subsection (13), the free reserves of an insurer shall-

(a) subject to the provisions of paragraph (b), be the amount by which the market value of the total assets held by the insurer exceeds the prescribed value determinable in terms of section 29 in relation to business and policies contemplated in subsection (4) (a), (b) and (c) of that section; or

(b) in respect of any dividend cycle commencing on or after the commencement of the first year of assessment of the company in respect of which section 29A applies, be the amount by which the market value of the total assets held by the insurer exceeds the value of liabilities determinable in terms of section 29A in relation to business and policies contemplated in subsection (4) (a), (b) and (c) of that section.

[Sub-s. (14) substituted by s. 35 (c) of Act 53 of 1999.]

(15) Where a company which carries on long-term insurance business declares a dividend out of profits derived during any year of assessment commencing on or after 1 July 1993 and the company's normal tax payable for that year has in terms of section 29 (17) been determined wholly or partially by applying the provisions of section 28, there shall be deducted from the secondary tax on companies payable in respect of such dividend, an amount (hereinafter referred to as the insurers' credit) equal to so much of the normal tax payable in respect of such year as exceeds the normal tax which would have been payable had the company's normal tax been determined entirely by applying the provisions of section 29.

[Sub-s. (15) added by s. 24 (1) (h) of Act 21 of 1994.]

(16) Where the insurers' credit exceeds the secondary tax on companies payable in respect of any dividend declared out of profits derived during-

- (a) the first year of assessment commencing on or after 1 July 1993, such excess shall be carried forward and be deemed to be the insurers' credit in respect of the second year of assessment; and
- (b) the second year of assessment commencing on or after 1 July 1993, such excess shall be carried forward and be deducted from the secondary tax on companies payable in respect of dividends declared out of profits derived during the third year of assessment commencing on or after 1 July 1993.

[Sub-s. (16) added by s. 24 (1) (h) of Act 21 of 1994.]

(17) For the purposes of subsections (5) (g), (15) and (16) a dividend shall be deemed not to have been declared out of profits derived during any year of assessment to the extent that such dividend could have been declared out of profits derived during any subsequent year of assessment.

[Sub-s. (17) added by s. 24 (1) (h) of Act 21 of 1994.]

[S. 64B inserted by s. 34 (1) of Act 113 of 1993.]

#### 64C Certain amounts distributed deemed to be dividends

##### Cases

(1) For the purposes of this section 'recipient' .....

[Definition of 'recipient' amended by s. 40 (1) of Act 30 of 2000 and deleted by s. 59 (1) (a) of Act 45 of 2003.]

'share incentive scheme' means a scheme in terms of which not more than 20 per cent of the equity share capital of a company is -

- (a) held by the directors and full-time employees of-
  - (i) such company; or
  - (ii) an associated institution, as defined in paragraph 1 of the Seventh Schedule, in relation to such company,
    - in terms of a share incentive scheme carried on for their own benefit;
- (b) held by a trustee for the benefit of such directors and employees under a scheme referred to in section 38 (2) (b) of the Companies Act, 1973 (Act 61 of 1973); or
- (c) collectively held by such directors and full-time employees, and such a trustee.

[Definition of 'share incentive scheme' added by s. 37 (1) (a) of Act 74 of 2002.]

(2) For the purposes of section 64B, an amount shall, subject to the provisions of subsection (4), be deemed to be a dividend declared by a company to a shareholder, where-

- (a) any cash or asset is distributed or transferred by that company to or for the benefit of that shareholder or any connected person in relation to that shareholder;
- (b) the shareholder or any connected person in relation to that shareholder is released or relieved from any obligation measurable in money which is owed to that company by that shareholder or connected person, to the extent that the amount so owed was not already deemed to be a dividend declared by that company in terms of paragraph (g);
  - [Para. (b) substituted by s. 41 (1) (a) of Act 32 of 2004.]
- (c) any debt owed by the shareholder or any connected person in relation to that shareholder to any third party is paid or settled by that company;
- (d) any amount is used or applied by that company in any other manner for the benefit of the shareholder or any connected person in relation to that shareholder;
- (e) that amount represents additional taxable income or reduced assessed loss of that company by virtue of any transaction with the shareholder or connected person in relation to such a shareholder, the consideration of which is adjusted in accordance with the provisions of section 31;
- (f) the company ceases to be a resident to the extent profits and reserves of that company are available for distribution immediately before so ceasing to be a resident (including any amount deemed in terms of the definition of 'dividend' in section 1 to be a profit available for distribution): Provided that any prohibition or limitation on any distribution contained in the company's memorandum and articles of association or founding statement or any agreement must be disregarded; or
- (g) any loan or advance is granted and made available to that shareholder or connected



- (h) person in relation to that shareholder; or  
 that amount is incurred by that company in terms of an instrument in respect of which section 8F applies;

[Para. (h) added by s. 41 (1) (c) of Act 32 of 2004.]

[Sub-s. (2) substituted by s. 37 (1) (b) of Act 74 of 2002 and by s. 59 (1) (b) of Act 45 of 2003.]

(3) .....

[Sub-s. (3) amended by s. 30 (c) of Act 21 of 1995, by s. 37 (1) (c) of Act 74 of 2002 and by s. 38 (1) (b) of Act 12 of 2003 and deleted by s. 59 (1) (c) of Act 45 of 2003.]

(4) The provisions of subsection (2) shall not apply-

- (a) where the amount constitutes a dividend or would have constituted a dividend but for the provisions of paragraphs (e) to (i), inclusive, of the definition of 'dividend' in section 1;

[Para. (a) substituted by s. 13 (1) (a) of Act 140 of 1993 and by s. 59 (1) (e) of Act 45 of 2003.]

- (b) where the amount constitutes remuneration in the hands of the shareholder or any connected person in relation to that shareholder or the settlement of any debt owed by the company to the shareholder or connected person;

[Para. (b) substituted by s. 59 (1) (e) of Act 45 of 2003.]

- (bA) where the amount constitutes cash or an asset which is transferred by the company in terms of a disposal or acquisition of an asset for consideration which reflects an arm's length price;

[Para. (bA) inserted by s. 41 (1) (d) of Act 32 of 2004.]

- (c) to so much of any amount (other than an amount contemplated in subsection (2) (e)) as exceeds the company's profits and reserves which are available for distribution, including any amount deemed in terms of the definition of 'dividend' in section 1 to be a profit available for distribution: Provided that any prohibition or limitation on any such distribution contained in the company's memorandum and articles of association or founding statement or any agreement shall be disregarded in the application of this paragraph;

[Para. (c) amended by s. 36 (1) of Act 53 of 1999 and by s. 59 (1) (f) of Act 45 of 2003.]

- (d) to any loan granted in respect of which a rate of interest not less than the 'official rate of interest', as defined in paragraph 1 of the Seventh Schedule is payable by the shareholder or any connected person in relation to the shareholder;

[Para. (d) substituted by s. 40 of Act 30 of 1998, by s. 43 (1) (a) of Act 59 of 2000 and by s. 59 (1) (g) of Act 45 of 2003.]

- (e) to any loan granted to the shareholder or any connected person in relation to the shareholder if the shareholder or connected person is an employee of the company or an associated institution contemplated in paragraph 1 of the Seventh Schedule in relation to the company and such loan is granted under, and in compliance with the normal terms and conditions of, a loan scheme generally available to employees of the company or of the associated institution who are not shareholders;

[Para. (e) substituted by s. 13 (1) (b) of Act 140 of 1993 and by s. 59 (1) (g) of Act 45 of 2003.]

- (f) to any loan or credit granted to a shareholder of the company or any connected person in relation to the shareholder during any year of assessment of the company granting the loan or credit, if-

- (i) such loan or credit is repaid or otherwise extinguished by not later than the end of the immediately succeeding year of assessment;

- (ii) the amount thereof is not included in any subsequent loan or credit granted to the shareholder or any connected person in relation to the shareholder; and

[Sub-para. (ii) substituted by s. 59 (1) (i) of Act 45 of 2003.]

- (iii) the provisions of this paragraph have not been applied in the case of the company in any previous year of assessment;

[Para. (f) amended by s. 25 (1) (a) of Act 21 of 1994, by s. 59 (1) (h) of Act 45 of 2003 and by s. 41 (1) (e) of Act 32 of 2004.]

(g) .....

[Para. (g) substituted by s. 22 (1) of Act 36 of 1996 and deleted by s. 41 (1) (f) of Act 32 of 2004.]

(h) .....

[Para. (h) substituted by s. 13 (1) (c) of Act 140 of 1993, deleted by s. 30 (d) of Act 21 of 1995, inserted by

s. 22 (1) of Act 36 of 1996, substituted by s. 37 (1) (d) of Act 74 of 2002 and deleted by s. 59 (1) (j) of Act 45 of 2003.]

- (i) to any loan or credit granted to a trust by a company to enable that trust to purchase shares in that company or the controlling company in relation to that company with a view to the resale of those shares by that trust to employees of that company, under a share incentive scheme operated by the company for the benefit of those employees;

[Para. (i) added by s. 25 (1) (d) of Act 21 of 1994 and substituted by s. 41 (1) (g) of Act 32 of 2004.]

- (j) .....

[Para. (j) added by s. 43 (1) (d) of Act 59 of 2000, substituted by s. 59 (1) (l) of Act 45 of 2003 and deleted by s. 41 (1) (f) of Act 32 of 2004.]

- (k) to any amount contemplated in subsection (2) (a), (b), (c), (d) or (g) distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available for the benefit of any shareholder which is a resident or any connected person in relation to the shareholder, which is a resident -
  - (i) if that shareholder is a company that is a member of the same group of companies as the company which is deemed to have declared that dividend; and
  - (ii) to the extent that the amount does not exceed the company's profits and reserves available for distribution that arose during the period that the shareholder was a member of the same group of companies as the company which is deemed to have declared that dividend: Provided that any profits and reserves taken into account for purposes of this paragraph may not be taken into account in applying this paragraph in respect of any future amounts distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available; and

[Para. (k) added by s. 59 (1) (m) of Act 45 of 2003 and substituted by s. 41 (1) (h) of Act 32 of 2004.]

- (l) to any amount contemplated in subsection (2) (a), (b), (c), (d) or (g) distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available by a company for the benefit of any controlled group company in relation to that company.

[Para. (l) added by s. 59 (1) (m) of Act 45 of 2003.]

[Sub-s. (4) amended by s. 59 (1) (d) of Act 45 of 2003.]

(5) Where any loan granted by a company to a shareholder or any connected person in relation to the shareholder-

- (a) was deemed to be a dividend declared by the company in terms of this section; and
- (b) is thereafter wholly or partly repaid by the shareholder or connected person,

[Para. (b) substituted by s. 59 (1) (o) of Act 45 of 2003.]

the amount so repaid shall for the purposes of section 64B be deemed to be a dividend which accrued to the company concerned on the date on which such amount was repaid.

[Sub-s. (5) amended by s. 25 (1) (e) of Act 21 of 1994 and by s. 59 (1) (n) of Act 45 of 2003.]

(6) For purposes of this section and section 64B, the dividend contemplated in subsection (2) shall respectively be deemed to have been declared by the company on the date that -

- (a) the cash or asset is distributed or transferred as contemplated in subsection (2) (a);
- (b) the obligation is released or relieved as contemplated in subsection (2) (b);
- (c) the debt is paid or settled as contemplated in subsection (2) (c);
- (d) the amount is used or applied as contemplated in subsection (2) (d);
- (e) the loan or advance is made available as contemplated in subsection (2) (g); or
- (f) the amount is incurred as contemplated in subsection (2) (h).

[Sub-s. (6) added by s. 59 (1) (p) of Act 45 of 2003 and substituted by s. 41 (1) (i) of Act 32 of 2004.]

[S. 64C inserted by s. 34 (1) of Act 113 of 1993.]

### CHAPTER III

#### GENERAL PROVISIONS (ss 65-112)

##### Part I

##### Returns (ss 65-76A)

#### **65 Returns to be in form and submitted at place prescribed by Commissioner**

All forms of returns and other forms required for the administration of this Act shall be in such form and be submitted at such place as may be prescribed by the Commissioner from time to time.

[S. 65 substituted by s. 60 of Act 45 of 2003.]

#### **66 Notice by Commissioner requiring returns for assessment of taxes under this Act and manner**

## of furnishing returns and interim returns

### ■ Cases

(1) The Commissioner must annually give public notice that all persons who are personally or in a representative capacity liable to taxation under this Act or who are required to furnish returns for the assessment of tax, must furnish returns within the period prescribed in that notice, or such longer period as the Commissioner may allow, for the purposes of assessments in respect of the years of assessment specified in that notice.

[Sub-s. (1) amended by s. 27 of Act 88 of 1971, substituted by s. 22 (a) of Act 91 of 1982, amended by s. 19 of Act 65 of 1986, by s. 23 of Act 85 of 1987, by s. 37 of Act 101 of 1990, amended by s. 41 of Act 30 of 2000, by s. 19 (a) of Act 5 of 2001, by s. 26 of Act 30 of 2002, by s. 38 (1) of Act 74 of 2002 and by s. 18 of Act 16 of 2004 and substituted by s. 7 of Act 34 of 2004.]

(2) Such notice shall state the places at which the prescribed forms may be obtained, and it shall be the duty of all persons, and of all persons required by this Act to furnish such returns, to apply for the prescribed forms of returns.

(3) Any such person failing to furnish such returns shall not be relieved from any penalty by reason only of his having received no notice to furnish the same or of the prescribed form not having been delivered to him, but the Commissioner may, if he deems it advisable, cause forms to be delivered or sent by post to any person.

(4) The Commissioner may, prior to the issue of any such annual notice, require any person by notice in writing to render interim returns for any period he may designate in such notice, and may proceed to make an assessment in respect of that period.

(5) (a) Every person shall on publication of the annual notice or on receipt of a form delivered or sent by post as provided in subsection (3) or of a notice issued in terms of subsection (4), prepare and deliver in the prescribed manner within the time mentioned in any such notice or form to the person appointed to receive the same, a return in the form prescribed, giving the particulars required and all other details in relation thereto which may be prescribed.

(b) .....

[Para. (b) deleted by s. 22 (b) of Act 91 of 1982.]

(5A) Any person who is not in terms of this section required to furnish a return in respect of any year of assessment may for the purpose of having his liability for taxation determined on assessment furnish such a return within three years after the end of such year of assessment.

[Sub-s. (5A) inserted by s. 22 (c) of Act 91 of 1982.]

(6) Any return furnished as contemplated in this section shall be signed by the taxpayer or by his agent duly authorized in that behalf, and any person signing any such return shall be deemed for all purposes in connection with this Act to be cognizant of all statements made in that return.

[Sub-s. (6) substituted by s. 22 (d) of Act 91 of 1982.]

(7) Any return made or purporting to be made or signed by or on behalf of any person for the purposes of this Act, shall be deemed to be duly made and signed by the person affected unless such person proves that such return was not made or signed by him or on his behalf.

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

[Sub-s. (7A) inserted by s. 19 (b) of Act 5 of 2001.]

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

[Sub-s. (7B) inserted by s. 19 (b) of Act 5 of 2001.]

(7C) Where in any proceedings or prosecution under this Act or in any dispute in which the State, the Minister or the Commissioner is a party, the question arises whether an electronic or digital signature of a taxpayer affixed to any return as contemplated in subsection (7A), was used with or without the consent and authority of that taxpayer, it shall, in the absence of proof to the contrary, for purposes of this Act be assumed that such signature was so used with the consent and authority of that taxpayer.

[Sub-s. (7C) inserted by s. 17 of Act 19 of 2001.]

(7D) (a) Notwithstanding anything contained to the contrary in this Act or in any other law, whenever in any proceedings or prosecution under this Act or in any dispute in which the State, the

Minister or the Commissioner is a party, it is necessary to prove the authenticity, the veracity, the origin, the contents, an electronic signature or any other aspect of any electronic communication transmitted to and received by the Commissioner under this section, the provisions and conditions of any agreement (entered into in accordance with any regulations made by the Minister in terms of subsection (7B)) establish the basis upon which any court of competent jurisdiction shall determine such issues.

(b) Notwithstanding anything to the contrary contained in any other law, nothing in the application of the rules of evidence shall be applied so as to deny the admissibility of any electronic communication under this section for purposes of this Act in evidence-

- (i) on the sole grounds that it is an electronic data message; or
  - (ii) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in original form.
- (c) (i) Information in the form of a data message shall be given due evidential weight.
- (ii) In assessing the evidential weight of a data message a court shall have regard to-
- (aa) the reliability of the manner in which the data message was generated, stored and communicated;
  - (bb) the reliability of the manner in which the integrity of the information was maintained;
  - (cc) the manner in which its originator was identified;
  - (dd) whether these functions were in compliance with the agreement contemplated in paragraph (a); and
  - (ee) the requirements of this section, and any other relevant factor.

[Sub-s. (7D) inserted by s. 17 of Act 19 of 2001.]

(7E) Any person who uses an electronic or digital signature of any other person in any electronic communication to the Commissioner for any purpose, without the consent and authority of such person, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 2 years.

[Sub-s. (7E) inserted by s. 17 of Act 19 of 2001.]

(8) If any person fails to make such a return, the Commissioner may appoint a person to make a return on behalf of such person, and the return made by the person so appointed shall for all the purposes of this Act be deemed to be the return of the person liable to make the same.

(9) The returns furnished by or on behalf of any person required to furnish returns under this Act shall contain such particulars, be in such form, and be furnished to the person appointed to receive the same at such time as may be prescribed by the Commissioner.

(10) The Commissioner may, when and as often as he thinks necessary, require any person to make further or more detailed returns respecting any matter of which a return is required or prescribed by this Act.

(11) All returns required to be furnished under this Act shall be delivered at, or sent by post to, the prescribed address.

(12) .....

[Sub-s. (12) deleted by s. 26 of Act 21 of 1994.]

(13) The return of income to be made by any person in respect of any year of assessment shall be a full and true return-

- (a) in the case of a person (other than a company), for the whole period of twelve months ending upon the last day of the year of assessment under charge: Provided that where-
  - (a) a person dies, a return shall be made for the period commencing on the first day of that year of assessment and ending on the date of death;
  - (b) the estate of a person is sequestrated, separate returns must be made for the periods-
    - (i) commencing on the first day of that year of assessment and ending on the date preceding the date of sequestration; and
    - (ii) commencing on the date of sequestration and ending on the last day of that year of assessment;

[Para. (a) amended by s. 61 (a) of Act 45 of 2003.]

- (b) in the case of a company, for the whole period of the relevant financial year of that company comprising the year of assessment.

[Sub-s. (13) amended by s. 10 (a) of Act 6 of 1963 and substituted by s. 19 (a) of Act 90 of 1964 and by s. 38 (1) (c) of Act 74 of 2002.]

(13)*bis* .....

[Sub-s. (13)*bis* inserted by s. 10 (b) of Act 6 of 1963, substituted by s. 19 (b) of Act 90 of 1964 and deleted by s. 38 (1) (d) of Act 74 of 2002.]

(13)*ter* .....

[Sub-s. (13)*ter* inserted by s. 10 (b) of Act 6 of 1963, substituted by s. 19 (c) of Act 90 of 1964 and deleted by s. 38 (1) (d) of Act 74 of 2002.]

(13)*quat* .....

[Sub-s. (13)*quat* inserted by s. 10 (b) of Act 6 of 1963 and deleted by s. 38 (1) (d) of Act 74 of 2002.]

(13)*quin* .....

[Sub-s. (13)*quin* inserted by s. 19 (c) of Act 5 of 2001 and deleted by s. 38 (1) (d) of Act 74 of 2002.]

(13A) Where-

- (a) it is established to the satisfaction of the Commissioner that the whole or any portion of the income of any person to whom the provisions of subsection (13) (a) apply cannot be conveniently returned for any year of assessment, the Commissioner may, subject to such conditions as he or she may impose, accept accounts in respect of the whole or a portion of the taxpayer's income drawn to a date agreed to by the Commissioner, whether for a longer or shorter period than the year of assessment under charge, and the income disclosed in any such accounts must be deemed to be income of that person in respect of that year under charge;
- (b) any such accounts are drawn to a date later than the last day of the year of assessment, no further regard shall be had to the income disclosed by those accounts for purposes of any subsequent year of assessment;
- (c) any such accounts are drawn to a date falling within the year of assessment and the person concerned dies or his or her estate is sequestrated during the interim period between that date and the last day of the year of assessment, any income received by or accrued to that person during that interim period must be deemed to be part of that person's income for the year of assessment.

[Sub-s. 13A inserted by s. 38 (1) (e) of Act 74 of 2002.]

(13B) For the purposes of subsections (13), (13A) and (14), the word 'income' must be construed as including any aggregate capital gain or aggregate capital loss.

[Sub-s. 13B inserted by s. 38 (1) (e) of Act 74 of 2002.]

(14) If any person when called upon to furnish a return under this Act is unable to furnish such return, the Commissioner may accept a return of estimated income for assessment, and such assessment shall be adjusted by the Commissioner if and when an actual return of income is furnished.

(15) Persons carrying on any business in partnership shall make a joint return as partners in respect of such business, together with such particulars as may from time to time be prescribed, and each partner shall be separately and individually liable for the rendering of the joint return.

## **67 Registration as taxpayer**

(1) Every person who at any time becomes liable for any normal tax or who becomes liable to submit any return contemplated in section 66 must, within 60 days after so becoming a taxpayer, apply to the Commissioner to be registered as a taxpayer.

(1A) If a person's address which is normally used by the Commissioner for any correspondence with that taxpayer at any time changes, that person must, within 60 days after that change, inform the Commissioner of the new address for correspondence.

[Sub-s. (1A) inserted by s. 8 (a) of Act 34 of 2004.]

(2) Subsections (1) and (1A) do not apply in respect of any person whose income is derived solely from net remuneration, as defined in paragraph 11B of the Fourth Schedule, and the employees' tax required to be deducted or withheld from that net remuneration under the Fourth Schedule consists solely of Standard Income Tax on Employees.

[Sub-s. (2) substituted by s. 8 (b) of Act 34 of 204.]

[S. 67 amended by s. 16 of Act 76 of 1968, by s. 37 (1) of Act 90 of 1988 and by s. 38 of Act 101 of 1990, repealed by s. 32 of Act 129 of 1991 and inserted by s. 62 of Act 45 of 2003.]

## **67A Registration of tax practitioners**

(1) Every natural person who-

- (a) provides advice to any other person with respect to the application of any Act administered by the Commissioner; or

- (b) completes or assists in completing any document to be submitted to the Commissioner by any other person in terms of any such Act,

must register with the Commissioner as a tax practitioner, in such form as the Commissioner may determine, at the later of 30 June 2005 or 30 days after the date on which that person for the first time so provides advice or completes or assists in completing any such document.

(2) The provisions of this section do not apply in respect of a person who-

- (a) provides advice or completes or assists in completing any document, as contemplated in subsection (1), solely for no consideration to that person or his or her employer or connected person in relation to that employer;
- (b) provides advice contemplated in subsection (1) solely in anticipation of any litigation to which the Commissioner is a party, or in the course of such litigation;
- (c) provides advice contemplated in subsection (1) solely as an incidental or subordinate part of providing goods or other services to another person;
- (d) provides advice or completes or assists in completing any document, as contemplated in subsection (1) solely-
- (i) to or in respect of the employer by whom that person is employed on a full-time basis or to or in respect of that employer and connected persons in relation to that employer; or
- (ii) under the direct supervision of any person who is registered as a tax practitioner in terms of subsection (1); or
- (e) provides advice solely with respect to the application of the Customs and Excise Act, 1964 (Act 91 of 1964), or completes or assists in completing any documents for purposes of that Act.

[S. 67A inserted by s. 9 of Act 34 of 2004.]

#### **68 Income and capital gain of married persons and minor children**

(1) Any-

- (a) income received by or accrued to or in favour of any person married with or without community of property which in terms of section 7 (2) is deemed to be income received by or accrued to such person's spouse; or
- (b) capital gain which is in terms of paragraph 68 of the Eighth Schedule taken into account in the determination of the aggregate capital gain or aggregate capital loss of such person's spouse,

shall be included by such spouse in returns of income required to be rendered by that spouse under this Act.

(2) In the event of the death of any person during any year in respect of which such income is chargeable or in which such capital gain is taken into account, the income or capital gain of such person's spouse for the period elapsing between the date of such death and the last day of the year of assessment shall be returned as the separate income of such spouse.

(3) (a) Every parent shall be required to include in his return-

- (i) any income received by or accrued to or in favour of any of that parent's minor children either directly or indirectly from that parent; or
- (ii) any capital gain or capital loss in respect of any transaction entered into directly or indirectly by that parent, which is taken into account in the determination of the aggregate capital gain or aggregate capital loss of any of that parent's minor children,

together with such particulars as may be required by the Commissioner.

(b) Every parent shall be required to include in that parent's return any income deemed to be that parent's income in terms of subsection (3) or (4) of section 7 or any capital gain deemed to be that parent's capital gain in terms of paragraph 69 of the Eighth Schedule.

[s. 68 amended by s. 26 of Act 90 of 1962, by s. 23 of Act 88 of 1965, by s. 39 of Act 101 of 1990 and by s. 33 of Act 129 of 1991 and substituted by s. 20 of Act 5 of 2001.]

#### **69 Duty to furnish returns as to employees, their earnings and other matters**

##### **Cases**

(1) Every person shall, if required by the Commissioner, furnish to him, in such form and within such time as may be prescribed or as the Commissioner may direct, returns showing-

- (a) the names and addresses of all persons or of all persons of any particular class employed by him, and the earnings, salary, wages, allowances or pensions, whether in money or

otherwise, received by or accrued to or in favour of each such person in respect of such employment;

- (b) all amounts received by or accrued to or in favour of any person in respect of any share or interest in any business carried on by the person furnishing the return;
- (c) all moneys received by the person furnishing the return from any person for investment or on loan or on deposit with or without interest;
- (d) all interest or rent received by or accrued to or in favour of any person from the person furnishing the return or from any business carried on by the last-named person in the Republic;
- (e) all interest, rent or dividends collected for or on behalf of any person by the person furnishing the return;
- (f) all such other information in his possession with regard to the income received by or accrued to or in favour of himself or of any other person as may be required by the Commissioner;
- (g) all amounts received by or accrued to or in favour of any employee or former employee of that person in respect of the disposal of any qualifying equity share contemplated in section 8B within 5 years from the date of grant of that qualifying equity share;  
[Para. (g) added by s. 10 of Act 34 of 2004.]
- (h) in the case where that person is a medical scheme contemplated in paragraph (b) of the definition of 'benefit fund'-
  - (i) the names and addresses of all the members who contribute to that medical scheme;
  - (ii) the amounts of those contributions; and
  - (iii) all amounts paid by that medical scheme on behalf of any member which must be refunded to the medical scheme by the member;  
[Para. (h) added by s. 10 of Act 34 of 2004.]
- (i) in the case where that person is a pension fund, a provident fund or a retirement annuity fund-
  - (i) the names and addresses of all the members who contribute to that fund; and
  - (ii) the amounts of those contributions;  
[Para. (i) added by s. 10 of Act 34 of 2004.]

(2) In addition to the returns specified in subsection (1), every person shall, if required by the Commissioner-

- (a) furnish the Commissioner with information reflecting-
  - (i) the full name and address; and
  - (ii) in the case of-
    - (aa) any natural person, his or her identification number: Provided that if he or she is not in possession of a South African identity document, any other form of identification; or
    - (bb) any person other than a natural person, the registration number, in relation to the amounts received by or accrued to such person as contemplated in subsection (1) (b) to (f), inclusive; and
- (b) supply such information and furnish such returns or such further or other returns as the Commissioner may require.

[Sub-s. (2) substituted by s. 41 of Act 30 of 1998 and amended by s. 39 of Act 74 of 2002.]

(3) Every person to whom a form of return or a written request for information is sent by the Commissioner shall complete the form of return or comply with the written request for information in accordance with the requirements of the Commissioner and shall return the completed form or furnish the information to the Commissioner at such place and within such time as the Commissioner may direct.

#### **70 Duty of companies to furnish returns**

(1) Where, during any period of 12 months ending on the last day of February in any year, any interest has become due by any company upon or in respect of debentures, debenture stock, loans or advances, the company shall, within 30 days after the end of such period or within such further period as the Commissioner may allow, furnish the Commissioner with a return giving-

- (a) the full name and address; and
- (b) in the case of-

- (i) any natural person, his or her identification number: Provided that where he or she is not in possession of a South African identity document, any other form of identification; or
  - (ii) any person other than a natural person, the registration number,
- of each person to whom such interest became due and the amount of such interest.

[Sub-s. (1) amended by s. 11 of Act 6 of 1963 and substituted by s. 43 (a) of Act 85 of 1974 and by s. 26 of Act 28 of 1997.]

(2) Where, during any period of twelve months ending on the last day of February in any year, any cash or any asset the amount or value of which in whole or part constitutes a dividend as defined in section 1, is given to shareholders in any company or a company distributes to shareholders any amount which constitutes a dividend so defined, whether by way of an award of capitalization shares or bonus debentures or securities or otherwise, the company concerned shall, within thirty days after the end of the said period, or within such further period as the Commissioner may allow -

- (a) furnish the Commissioner with a return giving the full name and address of each shareholder and the amount of the dividend accruing to such shareholder; and
- (b) .....

[Para. (b) substituted by s. 44 of Act 59 of 2000 and deleted by s. 63 of Act 45 of 2003.]

[Sub-s. (2) amended by s. 11 of Act 6 of 1963 and substituted by s. 43 (a) of Act 85 of 1974 and by s. 42 of Act 30 of 2000.]

(3) Every company which has after 31 December 1973 transferred from its reserves (excluding any share premium account) or unappropriated profits to its share capital or share premium account any amount which is in whole or part deemed by the first proviso to the definition of 'dividend' in section 1 to be a profit available for distribution to shareholders of the company, shall, when rendering the annual return of the company's income, furnish the Commissioner with a statement (which may be included in the accounts or statements accompanying such return) showing the profits of a capital nature and those not of a capital nature so deemed to be available for distribution on the last day of the year of assessment in question.

[Sub-s. (3) deleted by s. 20 of Act 90 of 1964, inserted by s. 43 (b) of Act 85 of 1974 and substituted by s. 37 of Act 53 of 1999.]

(3A) Where any cash or any asset (including any asset, interest, benefit or advantage referred to in the second proviso to the definition of 'dividend' in section 1) is given to any shareholder of a company in consequence of the winding-up, liquidation or reconstruction of the company, the partial reduction or redemption of its share capital (including any share premium) or the acquisition of any share of such shareholder in terms of section 85 of the Companies Act, 1973 (Act 61 of 1973), and the amount of such cash or the value of such asset or a portion of such amount or value constitutes a dividend in terms of the said definition the company shall, before payment to the shareholders is effected or within such period as the Commissioner may approve, calculate the amount of such dividend and furnish the Commissioner with a written statement setting forth the facts necessary for a determination by the Commissioner of the amount of such dividend and giving details of the company's calculation of that amount.

[Sub-s. (3A) inserted by s. 43 (b) of Act 85 of 1974 and substituted by s. 24 of Act 69 of 1975 and by s. 37 of Act 53 of 1999.]

(3B) Within thirty days after the date of an advice by the Commissioner of the amount of any dividend determined by him as contemplated in subsection (3A) or within such further period as the Commissioner may approve, the company shall, on the basis of the Commissioner's determination, calculate the amount accruing to each shareholder by way of such dividend and notify the shareholder accordingly.

[Sub-s. (3B) inserted by s. 43 (b) of Act 85 of 1974.]

(4) Every company shall file with the Commissioner a copy of the memorandum and articles of association constituting the company and copies of all amendments thereto.

(5) Every company shall, within thirty days of the registration by the Registrar of Companies of any prospectus proposed to be issued by it, file with the Commissioner a copy of the prospectus.

#### **70A Return of information by Portfolio of Collective Investment Scheme**

Any portfolio of a collective investment scheme contemplated in paragraph (e) (i) of the definition of 'company' in section 1, and any portfolio comprised in any collective investment scheme in property contemplated in Part V of the Collective Investment Schemes Control Act, 2002, managed or carried on by a company registered under section 42 of that Act for the purposes of Part V of that Act, shall furnish to the



Commissioner an annual return in such form and within such time and containing such information as the Commissioner may prescribe.

[S. 70A inserted by s. 21 of Act 5 of 2001 and substituted by s. 49 (1) of Act 60 of 2001 and by s. 40 (1) of Act 74 of 2002.]

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

(1) Every person who administers a portfolio of financial instruments, on behalf of any other person and has the mandate of that other person to buy and sell any such financial instruments on such other person's behalf, shall furnish to the Commissioner an annual return in such form and within such time and containing such information as the Commissioner may prescribe.

[Sub-s. (1) substituted by s. 50 (1) of Act 60 of 2001 and by s. 64 of Act 45 of 2003.]

(2) Subsection (1) shall not apply in respect of-

- (a) any pension fund, provident fund or retirement annuity fund; or
- (b) any insurer contemplated in section 29A, in respect of any financial instruments of any person in that person's capacity as policyholder.

[S. 70B inserted by s. 21 of Act 5 of 2001.]

**71 Return of payments in respect of bearer warrants**

Every bank carrying on business in the Republic or company dealing in or negotiating bearer warrants shall keep a record in such form, including any electronic form, as the Commissioner may prescribe of all payments in respect of interest or dividends made to any person by means of bearer warrants, and shall in such manner and form and at such times as may be prescribed or as the Commissioner may require, furnish particulars of such payments.

[S. 71 substituted by s. 41 of Act 74 of 2002.]

**72 Return as to shareholdings**

Every person who makes a return of his own income or in a representative capacity makes a return of the income of some other person, shall attach to such return a statement in such form as the Commissioner may require, showing fully-

- (a) the number of shares in any company registered in the name of the taxpayer for whom the return is rendered;
- (b) the dividends from any company received by or accrued to the taxpayer for whom the return is rendered;
- (c) the name and address of the person, if the taxpayer for whom the return is rendered is not entitled to retain the dividends received or accrued from any company, or, in the case of a private company, to participate in the profit or income of any such company, who, under any agreement or arrangement, is entitled to receive and retain such dividends or to participate in such profit or income;
- (d) the number of shares in any company which are not registered in the name of the taxpayer for whom the return is rendered but in respect of which such taxpayer under an agreement or arrangement with the registered owner obtains all dividends payable by such company or in the case of a private company the rights of the registered owner to participate in the profit or income of such company;
- (e) the dividends so received by the taxpayer for whom the return is rendered from the person in whose name such shares are registered.

[S. 72 amended by s. 45 of Act 59 of 2000.]

**72A Return relating to controlled foreign company**

(1) Every resident who on the last day of the foreign tax year of a controlled foreign company or immediately before a foreign company ceases to be a controlled foreign company directly or indirectly, together with any connected person in relation to that resident, holds at least 10 per cent of the participation rights in any controlled foreign company (otherwise than indirectly through a company which is a resident), must submit to the Commissioner together with the return contemplated in section 66 in respect of that year of assessment a return containing-

- (a) the name, address and country of residence of the controlled foreign company;
- (b) a description of the various classes of participation rights in that controlled foreign company;
- (c) the percentage and class of participation rights held by the resident, whether directly, indirectly or together with connected persons and any such rights held by all connected

- persons;
- (d) the rights of that person to participate in-
    - (i) any dividends of that controlled foreign company; and
    - (ii) any distribution upon the liquidation of that controlled foreign company,
 and any such rights of all connected persons;
  - (e) the determination of the net income of the controlled foreign company and the calculation of the proportional amount relating thereto;
  - (f) a description of any amount of tax proved to be payable by that controlled foreign company to the government of any other country in respect of any income contemplated in paragraph (e), including particulars relating to the country in which that tax was payable and the underlying profits to which that foreign tax relates.
- (2) A resident must together with the return contemplated in subsection (1), submit a copy of the financial statements of the controlled foreign company (prepared in accordance with generally accepted accounting practice) for the relevant foreign tax year, as defined in section 9D, of that controlled foreign company in respect of which there is an inclusion in the income of that resident in terms of section 9D.
- (3) Where a person in respect of any year of assessment fails to comply with the provisions of-
- (a) subsection (1) (c) in respect of the participation rights held in any controlled foreign company and no reasonable grounds exist for that person to believe that such person was not subject to that requirement-
    - (i) that person shall be deemed to hold all the participation rights in that controlled foreign company for purposes of section 9D, unless that person proves otherwise;
    - (ii) the exclusions contemplated in section 9D (9) shall not apply in determining the proportional amount of the net income of that controlled foreign company which must be included in the income of that person in terms of section 9D; and
    - (iii) the provisions of section 6quat shall not apply in respect of any tax proved to be payable to the government of any other country with respect to the proportional amount of the net income of that controlled foreign company which is included in the income of that person in terms of section 9D; or
  - (b) subsection (2) and no reasonable grounds exist either for that failure which is outside the control of the person or for that person to believe that such person was not subject to that requirement-
    - (i) the proportional amount which must be included in the income of that person in terms of section 9D for that year shall be determined with reference only to the receipts and accruals of the controlled foreign company; and
    - (ii) the provisions of section 6quat shall not apply in respect of any tax proved to be payable to the government of any other country with respect to the proportional amount of the net income of that controlled foreign company which is included in the income of that person in terms of section 9D.

[S. 72A inserted by s. 46 of Act 59 of 2000, amended by s. 42 (1) of Act 74 of 2002 and substituted by s. 65 (1) of Act 45 of 2003.]

### **73 Duty of persons submitting accounts in support of returns or preparing accounts for other persons**

(1) If any person submits in support of any return furnished by him under this Act any balance sheet, statement of assets and liabilities or account prepared by any other person, he shall, if the Commissioner so requires, submit a certificate or statement by such other person recording the extent of the examination by such other person of the books of account and of the documents from which the books of account were written up, and recording in so far as may be ascertained by such examination, whether or not the entries in such books and documents disclose the true nature of any transaction, receipt, accrual, payment or debit.

(2) Any person who has prepared any balance sheet, statement of assets and liabilities or account for any other person shall, at the request of such other person, furnish him with the certificate of statement required under subsection (1).

### **73A Record keeping by persons who render returns**

(1) A person who is required to render a return or who is not so required but has rendered a return must retain all records relevant to that return for a period of five years from the date upon which the return relevant to the last entry in those records was received by the Commissioner.

[Sub-s. (1) substituted by s. 43 (a) of Act 74 of 2002.]

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

- (a) ledgers, cash books, journals, cheque books, bank statements, deposit slips, paid cheques, invoices and stock lists and all other books of account; and
- (b) any electronic representations of information in any form,

[Para. (b) substituted by s. 66 (b) of Act 45 of 2003.]

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

(3) The records contemplated in subsection (1) must be retained in such form, including any electronic form, as may be prescribed by the Commissioner.

[Sub-s. (3) added by s. 43 (b) of Act 74 of 2002.]

[S. 73A inserted by s. 22 of Act 5 of 2001 and amended by s. 66 (a) of Act 45 of 2003.]

### **73B Record keeping in relation to taxable capital gain or assessed capital loss**

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

[Sub-s. (1) substituted by s. 44 (a) of Act 74 of 2002.]

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

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

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

(4) The records contemplated in subsections (1) and (2) must be retained in such form, including any electronic form, as may be prescribed by the Commissioner.

[Sub-s. (4) added by s. 44 (b) of Act 74 of 2002.]

[S. 73B inserted by s. 22 of Act 5 of 2001.]

### **73C Retention period of records where objection and appeal lodged**

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

[S. 73C inserted by s. 22 of Act 5 of 2001.]

## **74 General provisions with regard to information, documents or things**

### **■ Cases**

(1) For the purposes of this section and sections 74A, 74B, 74C, 74D and 75- 'administration of this Act' means the-

- (a) obtaining of full information in relation to any -
  - (i) amount received by or accrued to any person;
  - (ii) property disposed of under a donation by any person; and
  - (iii) dividend declared by any company;
- (b) ascertaining of the correctness of any return, financial statement, document, declaration of facts or valuation;
- (c) determination of the liability of any person for any tax, duty or levy and any interest or penalty in relation thereto leviable under this Act;

- (d) collecting of any such liability;
- (e) ascertaining whether an offence in terms of this Act has been committed;
- (f) ascertaining whether a person has, other than in relation to a matter contemplated in paragraphs (a), (b), (c), (d) and (e) of this definition, complied with the provisions of this Act;
- (g) enforcement of any of the Commissioner's remedies under this Act to ensure that any obligation imposed upon any person by or under this Act, is complied with; and
- (h) performance of any other administrative function which is necessary for the carrying out of the provisions of this Act;

'authorisation letter' means a written authorisation granted by the Commissioner, or by any person designated by the Commissioner for this purpose or occupying a post designated by the Commissioner for this purpose, to an officer to inspect, audit, examine or obtain, as contemplated in section 74B, any information, documents or things;

[Definition of 'authorisation letter' substituted by s. 51 of Act 60 of 2001.]

'documents' include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any printout of information generated, sent, received, stored, displayed or processed by electronic means;

[Definition of 'documents' substituted by s. 67 of Act 45 of 2003.]

'information' includes any electronic representations of information in any form;

[Definition of 'information' substituted by s. 67 of Act 45 of 2003.]

'judge' means a judge of the High Court and includes a judge in chambers;

[Definition of 'judge' substituted by s. 27 of Act 28 of 1997.]

'officer' means an officer contemplated in section 3 (1);

'premises' include any building, premises, aircraft, vehicle, vessel or place;

'things' include any corporeal or incorporeal thing and any document relating thereto;

'warrant' means a written authorisation issued by a judge to search for and seize any information, documents or things under section 74D.

(2) For the purposes of sections 74A, 74B, 74C and 74D, where any information, documents or things are not in one of the official languages, the Commissioner or any officer may by notice in writing require the taxpayer or, on the taxpayer's default, any other person, to produce, within a reasonable period, a translation thereof in one of the official languages determined by the Commissioner or such officer.

(3) Any translation referred to in subsection (2) shall be-

- (a) produced at such time and premises as may be specified by the Commissioner or any officer; and
- (b) prepared and certified by a sworn translator or another person approved by the Commissioner or such officer.

(4) For the purposes of sections 74C and 74D, the Commissioner may delegate the powers vested in him by those sections, to any other officer.

[S. 74 amended by s. 24 of Act 88 of 1965 and substituted by s. 14 of Act 46 of 1996.]

#### **74A Furnishing of information, documents or things by any person**

The Commissioner or any officer may, for the purposes of the administration of this Act in relation to any taxpayer, require such taxpayer or any other person to furnish such information (whether orally or in writing) documents or things as the Commissioner or such officer may require.

[S. 74A inserted by s. 14 of Act 46 of 1996.]

#### **74B Obtaining of information, documents or things at certain premises**

(1) The Commissioner, or an officer named in an authorisation letter, may, for the purposes of the administration of this Act in relation to any taxpayer, require such taxpayer or any other person, with reasonable prior notice, to furnish, produce or make available any such information, documents or things as the Commissioner or such officer may require to inspect, audit, examine or obtain.

(2) For the purposes of the inspection, audit, examination or obtaining of any such information, documents or things, the Commissioner or an officer contemplated in subsection (1), may call on any person-

- (a) at any premises; and
- (b) at any time during such person's normal business hours.

(3) For the purposes of subsection (2), the Commissioner or any officer contemplated in subsection (1), shall not enter any dwelling-house or domestic premises (except any part thereof as may be

occupied or used for the purposes of trade) without the consent of the occupant.

(4) Any officer exercising any power under this section, shall on demand produce the authorisation letter issued to him.

[S. 74B inserted by s. 14 of Act 46 of 1996.]

#### 74C Inquiry

(1) The Commissioner or an officer contemplated in section 74 (4) may authorise any person to conduct an inquiry for the purposes of the administration of this Act.

(2) Where the Commissioner, or any officer contemplated in section 74 (4), authorises a person to conduct an inquiry, the Commissioner or such officer shall apply to a judge for an order designating a presiding officer before whom the inquiry is to be held.

(3) A judge may, on application by the Commissioner or any officer contemplated in section 74 (4), grant an order in terms of which a person contemplated in subsection (7) is designated to act as presiding officer at the inquiry contemplated in this section.

[Sub-s. (3) substituted by s. 28 of Act 28 of 1997.]

(4) An application under subsection (2) shall be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based.

(5) A judge may grant the order referred to in subsection (3) if he is satisfied that there are reasonable grounds to believe that-

- (a) (i) there has been non-compliance by any person with his obligations in terms of this Act; or
- (ii) an offence in terms of this Act has been committed by any person;
- (b) information, documents or things are likely to be revealed which may afford proof of-
  - (i) such non-compliance; or
  - (ii) the committing of such offence; and
- (c) the inquiry referred to in the application is likely to reveal such information, documents or things.

(6) An order under subsection (3) shall, *inter alia*-

- (a) name the presiding officer;
- (b) refer to the alleged non-compliance or offence to be inquired into;
- (c) identify the person alleged to have failed to comply with the provisions of the Act or to have committed the offence; and
- (d) be reasonably specific as to the ambit of the inquiry.

(7) Any presiding officer shall be a person appointed by the Minister of Finance in terms of section 83A (4).

(8) For the purposes of an inquiry contemplated in this section, a presiding officer designated under subsection (3) shall-

- (a) determine the proceedings as he may think fit;
  - (b) have the same powers-
    - (i) to enforce the attendance of witnesses and to compel them to give evidence or to produce evidential material; and
    - (ii) relating to contempt committed during the proceedings,
- as are vested in a President of the Special Court contemplated in section 83, and for those purposes sections 84 and 85 shall apply *mutatis mutandis*; and

[Para. (b) substituted by s. 43 (a) of Act 30 of 2000.]

- (c) record the proceedings and evidence at an inquiry in such manner as he may think fit.

(9) Any person may, by written notice issued by the presiding officer, be required to appear before him in order to be questioned under oath or solemn declaration for the purposes of an inquiry contemplated in this section.

(10) The notice contemplated in subsection (9) shall specify the-

- (a) place where such inquiry will be conducted;
- (b) date and time of such inquiry; and
- (c) reasons for such inquiry.

(11) Any person whose affairs are investigated in the course of an inquiry contemplated in this section, shall be entitled to be present at the inquiry during such time as his affairs are investigated, unless on application by the person contemplated in subsection (1), the presiding officer directs otherwise on the ground that the presence of the person and his representative, or either of them, would be prejudicial to the

effective conduct of the inquiry.

[Sub-s. (11) substituted by s. 43 (b) of Act 30 of 2000.]

(12) Any person contemplated in subsection (9) has the right to have a legal representative present during the time that he appears before the presiding officer.

[Sub-s. (12) substituted by s. 43 (b) of Act 30 of 2000.]

(13) An inquiry contemplated in this section shall be private and confidential and the presiding officer shall at any time on application by the person whose affairs are investigated or any other person giving evidence or the person contemplated in subsection (1), exclude from such inquiry or require to withdraw therefrom, all or any persons whose attendance is not necessary for the inquiry.

[Sub-s. (13) substituted by s. 43 (b) of Act 30 of 2000.]

(14) Any person may, at the discretion of the presiding officer, be compensated for his reasonable expenditure related to the attendance of an inquiry, by way of witness fees in accordance with the tariffs prescribed in terms of section 51 of the Magistrates' Courts Act, 1944 (Act 32 of 1944).

(15) The provisions with regard to the preservation of secrecy contained in section 4 shall *mutatis mutandis* apply to any person present at the questioning of any person contemplated in subsection (9), including the person being questioned.

[Sub-s. (15) substituted by s. 43 (c) of Act 30 of 2000.]

(16) Subject to subsection (17), the evidence given under oath or solemn declaration at an inquiry may be used by the Commissioner in any subsequent proceedings to which the person whose affairs are investigated is a party or to which a person who had dealings with such person is a party.

[Sub-s. (16) added by s. 43 (d) of Act 30 of 2000.]

(17) (a) No person may refuse to answer any question during an inquiry on the grounds that it may incriminate him.

(b) No incriminating evidence so obtained shall be admissible in any criminal proceedings against the person giving such evidence, other than in proceedings where that person stands trial on a charge relating to the administering or taking of an oath or the administering or making of an affirmation or the giving of false evidence or the making of a false statement in connection with such questions and answers, or a failure to answer questions lawfully put to him, fully and satisfactorily.

[Sub-s. (17) added by s. 43 (d) of Act 30 of 2000.]

(18) An inquiry in terms of this section shall proceed notwithstanding the fact that any civil or criminal proceedings are pending or contemplated against or involving any person contemplated in subsection (6) (c) or any witness or potential witness or any person whose affairs may be investigated in the course of such inquiry.

[Sub-s. (18) added by s. 43 (d) of Act 30 of 2000.]

[S. 74C inserted by s. 14 of Act 46 of 1996.]

## 74D Search and seizure

### Cases

(1) For the purposes of the administration of this Act, a judge may, on application by the Commissioner or any officer contemplated in section 74 (4), issue a warrant, authorising the officer named therein to, without prior notice and at any time-

- (a) (i) enter and search any premises; and
- (ii) search any person present on the premises, provided that such search is conducted by an officer of the same gender as the person being searched,
  - for any information, documents or things, that may afford evidence as to the non-compliance by any taxpayer with his obligations in terms of this Act;
- (b) seize any such information, documents or things; and
- (c) in carrying out any such search, open or cause to be opened or removed and opened, anything in which such officer suspects any information, documents or things to be contained.

[Sub-s. (1) amended by s. 29 of Act 28 of 1997.]

(2) An application under subsection (1) shall be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based.

(3) A judge may issue the warrant referred to in subsection (1) if he is satisfied that there are reasonable grounds to believe that-

- (a) (i) there has been non-compliance by any person with his obligations in terms of this

- Act; or
- (ii) an offence in terms of this Act has been committed by any person;
  - (b) information, documents or things are likely to be found which may afford evidence of-
    - (i) such non-compliance; or
    - (ii) the committing of such offence; and
  - (c) the premises specified in the application are likely to contain such information, documents or things.
- (4) A warrant issued under subsection (1) shall-
- (a) refer to the alleged non-compliance or offence in relation to which it is issued;
  - (b) identify the premises to be searched;
  - (c) identify the person alleged to have failed to comply with the provisions of the Act or to have committed the offence; and
  - (d) be reasonably specific as to any information, documents or things to be searched for and seized.
- (5) Where the officer named in the warrant has reasonable grounds to believe that-
- (a) such information, documents or things are-
    - (i) at any premises not identified in such warrant; and
    - (ii) about to be removed or destroyed; and
  - (b) a warrant cannot be obtained timeously to prevent such removal or destruction,
- such officer may search such premises and further exercise all the powers granted by this section, as if such premises had been identified in a warrant.
- (6) Any officer who executes a warrant may seize, in addition to the information, documents or things referred to in the warrant, any other information, documents or things that such officer believes on reasonable grounds afford evidence of the non-compliance with the relevant obligations or the committing of an offence in terms of this Act.
- (7) The officer exercising any power under this section shall on demand produce the relevant warrant (if any).
- (8) The Commissioner, who shall take reasonable care to ensure that the information, documents or things are preserved, may retain them until the conclusion of any investigation into the non-compliance or offence in relation to which the information, documents or things were seized or until they are required to be used for the purposes of any legal proceedings under this Act, whichever event occurs last.
- (9) (a) Any person may apply to the relevant division of the High Court for the return of any information, documents or things seized under this section.
- [Para. (a) amended by s. 38 of Act 53 of 1999.]
- (b) The court hearing such application may, on good cause shown, make such order as it deems fit.
- (10) The person to whose affairs any information, documents or things seized under this section relate, may examine and make extracts therefrom and obtain one copy thereof at the expense of the State during normal business hours under such supervision as the Commissioner may determine.
- [S. 74D inserted by s. 14 of Act 46 of 1996.]

## 75 Penalty on default

### Cases

- (1) Any person who-
- (a) fails or neglects to furnish, file or submit any return or document as and when required by or under this Act; or
  - (aA) any person who fails to register as a taxpayer or to inform the Commissioner of any change in address as contemplated in section 67;
- [Para. (aA) inserted by s. 68 (1) of Act 45 of 2003 and substituted by s. (1) (a) of Act 34 of 2004.]
- (aB) any person who fails to register as a tax practitioner as contemplated in section 67A;
    - [Para. (aB) inserted by s. 11 (1) (b) of Act 34 of 2004.]
  - (b) without just cause shown by him, refuses or neglects to-
    - (i) furnish, produce or make available any information, documents or things;
    - (ii) reply to or answer truly and fully, any questions put to him; or
    - (iii) attend and give evidence,
 as and when required in terms of this Act; or
    - [Para. (b) substituted by s. 15 of Act 46 of 1996.]

- (c) fails to show in any return made by him any portion of the gross income received by or accrued to or in favour of himself or fails to disclose to the Commissioner, when making such return, any material facts which should have been disclosed; or
- (d) fails to show in any return prepared or rendered by him on behalf of any other person any portion of the gross income received by or accrued to or in favour of such other person or fails to disclose to the Commissioner when preparing or making such return, any facts which, if so disclosed, might result in increased taxation; or
- (e) obstructs or hinders any officer in the discharge of his duties; or
- (f) without just cause fails to comply with the provisions of section 70A, 70B, 73A, 73B or 73C;

[Para. (f) substituted by s. 30 of Act 141 of 1992, amended by s. 35 of Act 113 of 1993 and substituted by s. 39 (a) of Act 53 of 1999 and by s. 23 of Act 5 of 2001.]

- (g) submits or furnishes a false certificate or statement under section *seventy-three*; or
- (h) holds himself out as an officer engaged in carrying out the provisions of this Act; or  
[Para. (h) inserted by s. 39 (c) of Act 53 of 1999.]
- (i) obtains approval of any project as a qualifying strategic industrial project in terms of section 12G of the Act, where such approval was based on any fraudulent information provided or material misrepresentation made by that person; or  
[Para. (i) inserted by s. 18 (b) of Act 19 of 2001.]
- (j) without just cause fails to comply with the provisions of section 99, where that person has been declared to be the agent of any other person as contemplated in that section,  
[Para. (j) inserted by s. 52 (b) of Act 60 of 2001.]

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

[Sub-s. (1) amended by s. 40 of Act 101 of 1990, by s. 34 (a) of Act 129 of 1991, by s. 44 of Act 30 of 2000 and by s. 45 of Act 74 of 2002.]

(2) .....

[Sub-s. (2) substituted by s. 27 of Act 21 of 1994 and deleted by s. 19 of Act 16 of 2004.]

(3) Any person who has been convicted under subsection (1) of failing to furnish any return, information or reply, shall, if he fails within any period deemed by the Commissioner to be reasonable and of which notice has been given to him by the Commissioner, to furnish the return, information or reply in respect of which the offence was committed, be guilty of an offence and liable on conviction to a fine of R50 for each day during which such default continues or to imprisonment without the option of a fine for a period not exceeding 12 months.

[Sub-s. (3) substituted by s. 34 (b) of Act 129 of 1991.]

#### **75A Publication of names of offenders**

(1) Notwithstanding the provisions of section 4, the Commissioner may from time to time publish for general information such particulars as specified in subsection (2), relating to any offence committed by any person, where such person has been convicted of such offence in terms of-

- (a) section 75 or 104, paragraph 11A (7) or 30 of the Fourth Schedule or paragraph 19 of the Seventh Schedule;
- (b) the common law, where the criminal conduct corresponds materially with an offence referred to in paragraph (a),

after any appeal or review proceedings in relation thereto have been completed or not been instituted within the period allowed therefor.

[Sub-s. (1) amended by s. 40 (a) of Act 53 of 1999.]

(2) Every such publication may specify-

- (a) the name and address of the offender;
- (b) such particulars of the offence as the Commissioner may think fit;
- (c) the year of assessment or tax period during which the offence occurred;
- (d) the amount or estimated amount of the tax or additional tax involved;
- (e) the particulars of the fine or sentence imposed.

[Sub-s. (2) amended by s. 40 (b) of Act 53 of 1999.]

[S. 75A inserted by s. 42 (1) of Act 30 of 1998.]

#### **76 Additional tax in the event of default or omission**



## ■ Cases

(1) A taxpayer shall be required to pay in addition to the tax chargeable in respect of his taxable income-

- (a) if he makes default in rendering a return in respect of any year of assessment, an amount equal to twice the tax chargeable in respect of his taxable income for that year of assessment; or
- (b) if he omits from his return any amount which ought to have been included therein, an amount equal to twice the difference between the tax as calculated in respect of the taxable income returned by him and the tax properly chargeable in respect of his taxable income as determined after including the amount omitted;
- (c) if he makes an incorrect statement in any return rendered by him which results or would if accepted result in the assessment of the normal tax at an amount which is less than the tax properly chargeable, an amount equal to twice the difference between the tax as assessed in accordance with the return made by him and the tax which would have been properly chargeable.

(2) (a) The Commissioner may remit the additional charge imposed under subsection (1) or any part thereof as he may think fit: Provided that, unless he is of the opinion that there were extenuating circumstances, he shall not so remit if he is satisfied that any act or omission of the taxpayer referred to in paragraph (a), (b) or (c) of subsection (1) was done with intent to evade taxation.

(b) In the event of the Commissioner deciding not to remit the whole of the additional charge imposed under subsection (1), his decision shall be subject to objection and appeal.

(c) Notwithstanding the provisions of this subsection, the Commissioner may either before or after an assessment is issued agree with the taxpayer on the amount of the additional charge to be paid, and the amount so agreed upon shall not be subject to any objection and appeal.

(3) The additional amounts of tax for which provision is made under this section shall be chargeable in cases where the taxable income or any part thereof is estimated by the Commissioner in terms of section *seventy-eight* or agreed upon with the taxpayer in terms of the proviso to subsection (2) of the said section as well as in cases where such taxable income or any part thereof is determined from accounts rendered by the taxpayer.

(4) The powers conferred upon the Commissioner by this section shall be in addition to any right conferred upon him by this Act to take proceedings for the recovery of any penalties for evading or avoiding assessment or the payment of tax or attempting to do so.

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

[Sub-s. (5) substituted by s. 24 of Act 5 of 2001.]

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

[Sub-s. (6) substituted by s. 24 of Act 5 of 2001.]

(7) If in any year of assessment in which the determination of the taxable income of the taxpayer does not result in an assessed loss, he is entitled to the set-off of a balance of assessed loss from the previous year of assessment and such balance is less than it would have been had it been calculated on the basis of the returns rendered by him, he shall for the purposes of this section be deemed to have omitted from his return for the first-mentioned year of assessment an amount equal to the difference between the amount at which such balance is finally determined and the amount at which it would have been determined on the said basis.

### 76A Reportable arrangements

(1) For purposes of this section-

'arrangement' means any transaction, operation or scheme;

'reportable arrangement' means-

- (a) any arrangement in terms of which-
  - (i) the calculation of interest as defined in section 24J, finance costs, fees or any other charges is wholly or partly dependent on the tax treatment of that arrangement;
  - (ii) provision is made for the variation of that interest, finance costs, fees or any other charges should the actual tax treatment differ from the anticipated tax treatment (otherwise than by reason of any change in the provisions of the Act) or should the anticipated tax treatment be challenged by the Commissioner; and
  - (iii) the potential amount of the variation contemplated in subparagraph (ii) exceeds R5 million,
 but does not include any arrangement identified by the Minister by notice in the *Gazette*, which is not likely to lead to any undue tax benefit;
- (b) any arrangement which has certain characteristics identified by the Minister by notice in the *Gazette* which are likely to lead to an undue tax benefit;

'tax benefit' means any reduction in or postponement of the liability of a person for any tax, duty, levy, charge or other amount in terms of any Act administered by the Commissioner based on the anticipated tax treatment of the arrangement.

(2) Every company or trust which derives or will derive any tax benefit in terms of a reportable arrangement must report that arrangement to the Commissioner at such place as the Commissioner may determine within 60 days after the date that any amount is first received by or accrues to any person or is paid or actually incurred by any person in terms of that arrangement: Provided that the Commissioner may extend the period of 60 days by no more than 60 days where he or she is satisfied that reasonable grounds exist for the delay in reporting that arrangement.

(3) The company or trust must in so reporting provide to the Commissioner-

- (a) a description of all the steps and key features of the reportable arrangement;
- (b) a list of all the parties to that arrangement;
- (c) copies of all the signed documents relating to that arrangement; and
- (d) any financial model of that arrangement, including any spreadsheet or computer model of the implementation thereof:

Provided that the company or trust may in so reporting, where another company or trust has reported that arrangement to the Commissioner, provide to the Commissioner only the name and address of that other company or trust and the date on which that arrangement was reported.

(4) (a) Where a company or trust fails to report a reportable arrangement as contemplated in subsections (2) and (3), that company or trust shall be deemed to have entered into that arrangement in a manner or by means as contemplated in section 103 (1) (b) (i) or to have created rights or obligations as contemplated in section 103 (1) (b) (ii).

(b) Where a company or trust willfully or recklessly fails to report a reportable arrangement as contemplated in subsections (2) and (3), that company or trust shall also be required to pay, in addition to the tax chargeable in respect of its taxable income, an amount equal to the tax benefits in terms of that arrangement to which that company or trust is entitled: Provided that the Commissioner may remit the additional charge or any part thereof where he or she is satisfied that there were extenuating circumstances.

[S. 76A inserted by s. 69 (1) of Act 45 of 2003.]

[NB: A Part IA has been inserted by s. 12 (1) of the Second Revenue Laws Amendment Act 34 of 2002, a provision which will be put into operation by proclamation. See PENDLEX.]

## *Part II*

### *Assessments (ss 77-80)*

#### **77 Assessments and recording thereof**

##### **Cases**

(1) All assessments required to be made under this Act shall, subject to the provisions of section *three*, be made by the Commissioner or under his direction.

(2) The particulars of every assessment and the amount of tax payable thereon shall be recorded or filed and kept in the office of the Commissioner: Provided that any assessment so recorded or filed may be destroyed by the Commissioner after the expiration of such period from the date of recording or filing as may be approved by the Auditor-General.

[Sub-s. (2) amended by s. 46 (1) (a) of Act 74 of 2002.]

(3) Upon recording or filing the particulars of any assessment the Commissioner shall give notice

of the assessment to the taxpayer assessed.

[Sub-s. (3) substituted by s. 25 (a) of Act 69 of 1975.]

(4) .....

[Sub-s. (4) deleted by s. 25 (b) of Act 69 of 1975.]

(5) The Commissioner shall, in the notice of assessment, give notice to the taxpayer that any objection to the assessment made must be sent to him or her within the period contemplated in section 81.

[Sub-s. (5) substituted by s. 25 (c) of Act 69 of 1975, amended by s. 41 (a) of Act 101 of 1990 and substituted by s. 46 (1) (b) of Act 74 of 2002.]

(6) .....

[Sub-s. (6) deleted by s. 35 of Act 129 of 1991.]

(7) Separate assessments shall, notwithstanding the provisions of subsection (15) of section *sixty-six*, be made upon partners.

(8) .....

[Sub-s. (8) deleted by s. 31 of Act 21 of 1995.]

## **78 Estimated assessments**

(1) In every case in which any person makes default in furnishing any return or information or the Commissioner is not satisfied with the return or information furnished by any person, the Commissioner may estimate either in whole or in part the taxable income in relation to which the return or information is required.

(a) Where the Commissioner has reason to believe that any resident has not declared or accounted for-

- (i) any funds held in foreign currency or any assets owned by that resident outside the Republic; or
- (ii) any funds in foreign currency or assets outside the Republic from which any income or gain would be attributable to that resident during the relevant year of assessment in terms of section 7 or Part X of the Eighth Schedule,

in any return contemplated in section 66 (1), the Commissioner shall estimate the amount in foreign currency of any such funds or the market value in foreign currency of such assets, that he or she believes are owned by that resident outside the Republic on the last day of that year of assessment, after giving that resident notice to account for those funds or assets and that resident has failed to so account within the period stated by the Commissioner in that notice.

(b) The amount or value in foreign currency contemplated in paragraph (a) may be estimated after taking into account any information at the disposal of the Commissioner including, but not limited to, information relating to-

- (i) any funds or assets transferred by that resident from the Republic;
- (ii) any funds or assets received by or accrued to that resident from any source outside the Republic; or
- (iii) the period that has elapsed since those funds or assets were transferred, or funds or assets were received or accrued.

(1A) (a) Where the Commissioner has reason to believe that any resident has not declared or accounted for-

- (i) any funds held in foreign currency or any assets owned by that resident outside the Republic; or
- (ii) any funds in foreign currency or assets outside the Republic from which any income or capital gain would be attributable to that resident during the relevant year of assessment in terms of section 7 or Part X of the Eighth Schedule,

[Sub-para. (ii) substituted by s. 13 of Act 34 of 2004.]

in any return contemplated in section 66 (1), the Commissioner shall estimate the amount in foreign currency of any such funds or the market value in foreign currency of such assets, that he or she believes are owned by that resident outside the Republic on the last day of that year of assessment, after giving that resident notice to account for those funds or assets and that resident has failed to so account within the period stated by the Commissioner in that notice.

(b) The amount or value in foreign currency contemplated in paragraph (a) may be estimated after taking into account any information at the disposal of the Commissioner including, but not limited to, information relating to-

- (i) any funds or assets transferred by that resident from the Republic;

- (ii) any funds or assets received by or accrued to that resident from any source outside the Republic; or
- (iii) the period that has elapsed since those funds or assets were transferred, or funds or assets were received or accrued.

[Sub-s. (1A) inserted by s. 27 (1) (a) of Act 30 of 2002.]

(1B) The Commissioner shall estimate an amount of taxable income derived from any funds or assets contemplated in subsection (1A), which estimated amount shall be calculated by applying a percentage, determined at the rate contemplated in paragraph (a) of the definition of 'official rate of interest' contemplated in paragraph 1 of the Seventh Schedule during the year of assessment to the estimated amount of those funds or value of those assets or such higher amount as may be estimated in terms of subsection (1).

[Sub-s. (1B) inserted by s. 27 (1) (a) of Act 30 of 2002 and substituted by s. 47 (1) (a) of Act 74 of 2002.]

(1C) The amount of taxable income estimated in terms of subsection (1B) shall be-

- (a) translated to the currency of the Republic on the last day of the relevant year of assessment at the ruling exchange rate at that date to determine the amount to be included in taxable income; and
- (b) taken into account by the Commissioner during any succeeding year of assessment in estimating the amount of any funds in foreign currency or value of any assets owned by that resident outside the Republic, as contemplated in subsection (1A).

[Para. (b) substituted by s. 47 (1) (b) of Act 74 of 2002.]

[Sub-s. (1C) added by s. 27 (1) (a) of Act 30 of 2002.]

(2) Any such estimate of the taxable income as contemplated in subsection (1), or the estimated amount of any funds or value of any assets as contemplated in subsection (1A), shall be subject to objection and appeal: Provided that if it appears to the Commissioner that any person is unable from any cause to furnish an accurate return of his income, aggregate capital gain, aggregate capital loss or amount of funds in foreign currency or value of assets owned outside the Republic, the Commissioner may agree with such person as to-

- (a) what amount of such income, aggregate capital gain or aggregate capital loss shall be taxable income, net capital gain or assessed capital loss; or
- (b) the amount of the funds in foreign currency or value of the assets owned outside the Republic,

and any amount or value so agreed upon shall not be subject to any objection or appeal..

[Sub-s. (2) substituted by s. 25 of Act 5 of 2001 and by s. 27 (1) (b) of Act 30 of 2002.]

(3) For the purposes of this section, 'foreign currency' means currency other than the currency of the Republic.

[Sub-s. (3) added by s. 47 (1) (c) of Act 74 of 2002.]

## 79 Additional assessments

### Cases

(1) If at any time the Commissioner is satisfied-

- (a) that any amount which was subject to tax and should have been assessed to tax under this Act has not been assessed to tax; or
- (b) that any amount of tax which was chargeable and should have been assessed under this Act has not been assessed; or
- (c) that, as respects any tax which is chargeable and has become payable under this Act otherwise than under an assessment, such tax has not been paid in respect of any amount upon which such tax is chargeable or an amount is owing in respect of such tax,

he shall raise an assessment or assessments in respect of the said amount or amounts, notwithstanding that an assessment or assessments may have been made upon the person concerned in respect of the year or years of assessment in respect of which the amount or amounts in question is or are assessable, and notwithstanding the provisions of sections 81 (5) and 83 (18): Provided that the Commissioner shall not raise an assessment under this subsection-

- (i) after the expiration of three years from the date of the assessment (if any) in terms of which any amount which should have been assessed to tax under such assessment was not so assessed or in terms of which the amount of tax assessed was less than the amount of such tax which was properly chargeable, unless-

- (aa) the Commissioner is satisfied that the fact that the amount which should have been assessed to tax was not so assessed or the fact that the full amount of tax chargeable was not assessed, was due to fraud or misrepresentation or non-disclosure of material facts; or
- (bb) the Commissioner and the taxpayer agree otherwise prior to the expiry of that three year period; or  
[Para. (i) substituted by s. 14 (1) (a) of Act 34 of 2004.]
- (ii) in respect of any tax referred to in paragraph (c), after the expiration of three years from the date of payment of any amount paid in respect of such tax unless-
  - (aa) the Commissioner is satisfied that the fact that such tax was not paid in full was due to fraud or misrepresentation or non-disclosure of material facts; or
  - (bb) the Commissioner and the taxpayer agree otherwise prior to the expiry of that three year period; or  
[Para. (ii) substituted by s. 14 (1) (a) of Act 34 of 2004.]
- (iii) if the amount which should have been assessed to tax under the assessment referred to in paragraph (i) of this proviso was, in accordance with the practice generally prevailing at the date of the assessment, not assessed to tax, or the full amount of tax which should have been assessed under such assessment was, in accordance with such practice, not assessed; or
- (iv) in respect of any amount, if any previous assessment made on the person concerned has in respect of that amount been amended or reduced pursuant to any order made by a special court for hearing income tax appeals constituted under the provisions of this Act, unless the Commissioner is satisfied that the order in question was obtained by fraud or misrepresentation or non-disclosure of material facts; or
- (v) in respect of any year of assessment of any taxpayer (other than a company) ending on or after 28 February 1983, if-
  - (aa) the taxpayer's income for such year of assessment consisted solely of any amount or amounts of remuneration as defined in the Fourth Schedule;
  - (bb) a period of at least three years has elapsed since the end of such year of assessment; and
  - (cc) the taxpayer was not required under any provision of this Act to furnish a return of income for such year of assessment and did not render such a return during the period referred to in subparagraph (bb),  
unless any amount of employees tax which should have been deducted or withheld from such remuneration under the provisions of the said Schedule was not so deducted or withheld or an amount of employees tax was deducted or withheld which was less than the amount of such tax which should have been so deducted or withheld, and the Commissioner is not satisfied that the omission or failure of the employer concerned to deduct or withhold such tax or the full amount of such tax was not due-
    - (A) to any intent by the employer to assist or enable the taxpayer to evade tax or any of his obligations under this Act; or
    - (B) to the fact that the employee has furnished false information to the employer and in consequence thereof, an incorrect amount of tax was withheld:

[Item (B) substituted by s. 32 of Act 21 of 1995.]

[Para. (v) added by s. 23 of Act 91 of 1982.]

Provided further that where the Commissioner has in respect of any year of assessment made an assessment upon any company for normal tax purposes, he or she shall not after the expiration of three years from the date of the said assessment (or, where more than one such assessment has been made, from the date of the latest of such assessments), or such longer period as the company and the Commissioner may agree prior to the expiry of that three year period, make any assessment in respect of any amount of secondary tax on companies payable by the company in respect of any dividend declared during that year, unless the Commissioner is satisfied that the fact that an assessment in respect of the said amount was not previously made was due to fraud or misrepresentation or non-disclosure of material facts.

[Sub-s. (1) substituted by s. 26 (1) (a) of Act 69 of 1975 and amended by s. 23 (1) of Act 36 of 1996 and by s. 14 (1) (b) of Act 34 of 2004.]

- (2) For the purposes of this section any amount referred to in subsection (1) (a) shall include an

amount the incorporation of which in an assessment would result in the reduction of any loss or assessed capital loss ranking for set-off or in only a portion of such amount becoming chargeable with tax.

[Sub-s. (2) substituted by s. 26 (1) (a) of Act 69 of 1975 and by s. 26 of Act 5 of 2001.]

(2A) For the purposes of paragraph (ii) of the first proviso to subsection (1) the date of payment of any amount referred to in that paragraph shall be deemed to be the date of the official receipt acknowledging the receipt of such amount, and, where more than one such payment was made, the date from which the period of three years referred to in that paragraph shall be reckoned shall be the date of the official receipt acknowledging the latest of such payments.

[Sub-s. (2A) inserted by s. 26 (1) (b) of Act 69 of 1975.]

(3) The provisions of sections *seventy-six* and *seventy-eight* shall apply to any assessments or additional assessments made by the Commissioner under the powers conferred by this section.

#### **79A Reduced assessments**

(1) The Commissioner may, notwithstanding the fact that no objection has been lodged or appeal noted in terms of the provisions of Part III of Chapter III of this Act, reduce an assessment-

- (a) to rectify any processing error made in issuing that assessment; or
- (b) where it is proved to the satisfaction of the Commissioner that in issuing that assessment any amount which-
  - (i) was taken into account by the Commissioner in determining the taxpayer's liability for tax, should not have been taken into account; or
  - (ii) should have been taken into account in determining the taxpayer's liability for tax, was not taken into account by the Commissioner:

Provided that such assessment, wherein the amount was so taken into account or not taken into account, as contemplated in subparagraph (i) or (ii), as the case may be, was issued by the Commissioner based on information provided in the taxpayer's return for the current or any previous year of assessment.

(2) The Commissioner shall not reduce an assessment under subsection (1)-

- (a) after the expiration of three years from the date of that assessment; or
- (b) if the amount was assessed in terms of an assessment accepted by the taxpayer and which was made in accordance with the practice generally prevailing at the date of that assessment..

[S. 79A inserted by s. 28 of Act 30 of 2002.]

#### **79B Withdrawal of assessments**

(1) The Commissioner may, notwithstanding the fact that no objection has been lodged or appeal has been noted in terms of Part III of Chapter III, withdraw an assessment, which-

- (a) was issued to the incorrect taxpayer; or
- (b) was issued in respect of the incorrect year of assessment.

(1A) The Commissioner must withdraw any assessment issued in respect of-

- (a) the estate of a person for the period prior to the date of sequestration; and
- (b) the insolvent estate of that person,

where the sequestration order is set aside.

[Sub-s. (1A) inserted by s. 70 of Act 45 of 2003.]

(2) Any assessment withdrawn by the Commissioner in terms of this section shall for all purposes of this Act be deemed not to have been issued.

[S. 79B inserted by s. 48 (1) of Act 74 of 2002.]

#### **80 Inspection of record of assessments**

##### Cases

The record of assessments shall not be open to public inspection, but every taxpayer shall be entitled to copies certified by or on behalf of the Commissioner of such recorded particulars as relate to him.

### **Part III**

#### **Objections and Appeals (ss 81-88)**

#### **81 Objection against assessment**

##### Cases

(1) Objections to any assessment made under this Act shall be made in the manner and under the terms and within the period prescribed by this Act and the rules promulgated in terms of section 107A by

any taxpayer who is aggrieved by any assessment in which that taxpayer has an interest.

[Sub-s. (1) substituted by s. 27 of Act 69 of 1975, amended by s. 15 (a) of Act 70 of 1989 and substituted by s. 53 (1) (b) of Act 60 of 2001.]

(2) The period prescribed in the rules within which objections must be made may be extended by the Commissioner where the Commissioner is satisfied that reasonable grounds exist for the delay in lodging the objection: Provided that the period for objection may not be so extended-

- (a) for a period exceeding 30 days, unless exceptional circumstances exist which gave rise to the delay in lodging the objection;
- (b) where more than three years have lapsed from the date of the assessment; or
- (c) where the grounds for objection are based wholly or mainly on any change in practice generally prevailing which applied on the date of that assessment.

[Sub-s. (2) amended by s. 15 (b) of Act 70 of 1989, substituted by s. 53 (1) (c) of Act 60 of 2001 and amended by s. 71 (1) (a) of Act 45 of 2003.]

(3) Any decision by the Commissioner in the exercise of his or her discretion under subsection (2) shall be subject to objection and appeal.

[Sub-s. (3) substituted by s. 53 (1) (c) of Act 60 of 2001.]

(4) The Commissioner may on receipt of a notice of objection to an assessment alter the assessment or may disallow the objection and shall send to the taxpayer or his or her representative notice of such alteration or disallowance, and record therein any alteration or disallowance made in the assessment.

[Sub-s. (4) substituted by s. 53 (1) (c) of Act 60 of 2001.]

(5) Where no objections are made to any assessment or where objections have been allowed in full or withdrawn, such assessment or altered assessment, as the case may be, shall be final and conclusive.

[Sub-s. (5) substituted by s. 53 (1) (c) of Act 60 of 2001.]

(6) .....

[Sub-s. (6) added by s. 53 (1) of Act 60 of 2001, substituted by s. 71 (1) (b) of Act 45 of 2003 and deleted by s. 15 of Act 34 of 2004.]

[S. 81 amended by s. 53 (1) of Act 60 of 2001.]

## **82 Burden of proof as to exemptions, deductions, abatements, disregarding or exclusions**

### **■ Cases**

The burden of proof that any amount is -

- (a) exempt from or not liable to any tax chargeable under this Act; or
- (b) subject to any deduction, abatement or set-off in terms of this Act; or
- (c) to be disregarded or excluded in terms of the Eighth Schedule,

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

[S. 82 substituted by s. 27 of Act 5 of 2001.]

## **83 Appeals to tax court against assessment**

### **■ Cases**

(1) Any person entitled to object to an assessment, may, subject to the provisions of section 83A, appeal against such assessment to the tax court established in terms of the provisions of this section in the manner and under the terms and within the period prescribed by this Act and the rules promulgated in terms of section 107A.

[Sub-s. (1) substituted by s. 36 (a) of Act 129 of 1991 and by s. 54 (1) (b) of Act 60 of 2001.]

(1A) The period prescribed in the rules within which appeal must be noted may be extended by the Commissioner where the Commissioner is satisfied that reasonable grounds exist for the delay in noting the appeal: Provided that any decision by the Commissioner in the exercise of his or her discretion under this subsection shall be subject to objection and appeal.

[Sub-s. (1A) inserted by s. 54 (1) (c) of Act 60 of 2001.]

(1B) No notice of appeal shall be of any force or effect whatsoever which is not delivered at the Commissioner's office within the period prescribed for noting an appeal, or within such extended period as contemplated in subsection (1A).

[Sub-s. (1B) inserted by s. 54 (1) (c) of Act 60 of 2001.]

(1C) (1C) The Commissioner may alter any assessment against which an appeal has been noted, as contemplated in subsection (1), where the Commissioner has conceded that appeal or resolved a dispute in terms of the alternative dispute resolution procedures prescribed in the rules contemplated in section 107A (2), in whole or in part, at any stage before-

- (a) the matter is heard by the tax board contemplated in section 83A, or the tax court contemplated in subsection (2); or
- (b) any appeal against a judgment of the tax court is heard, as contemplated in section 86A.

[Sub-s. (1C) inserted by s. 29 (1) of Act 30 of 2002 and amended by s. 16 of Act 34 of 2004.]

(2) There shall be a court to be known as the tax court which shall be a court of record.

[Sub-s. (2) substituted by s. 36 (a) of Act 129 of 1991, amended by s. 30 (a) and (b) of Act 28 of 1997 and substituted by s. 54 (1) (d) of Act 60 of 2001.]

(3) The President of the Republic may, by proclamation in the *Gazette*, establish a tax court or courts for any area or areas as he may think fit, and may from time to time by proclamation abolish any existing court or courts or establish additional courts as circumstances may require.

[Sub-s. (3) amended by s. 30 (c) of Act 28 of 1997 and substituted by s. 54 (1) (d) of Act 60 of 2001.]

(4) Subject to subsection (4B), every tax court established in terms of this Act shall consist of a judge or an acting judge of the High Court, who shall be the President of the court, an accountant and a representative of the commercial community who shall be of good standing and who have appropriate experience: Provided that-

- (a) in all cases relating to the business of mining such third member shall, if the President of the court, the Commissioner or the appellant so desires, be a qualified mining engineer;
- (b) where any such appeal relates to the valuation of immovable property, or of both movable and immovable property, such third member shall, if the President of the court, the Commissioner or the appellant so desires, be a person appointed by the Commissioner from amongst persons approved by the President of the Republic, and who shall be a person appointed and carrying on business as a sworn appraiser who has skills or knowledge relating to the purpose for which the property is utilised; and

[Para. (b) substituted by s. 70 (1) of Act 30 of 2002.]

- (c) when an appeal before the court involves a matter of law only or constitutes an application for condonation, the court shall consist of the President of the court sitting alone.

[Sub-s. (4) substituted by s. 21 of Act 90 of 1964 and by s. 54 (1) (d) of Act 60 of 2001.]

(4A) Any question as to whether a matter for decision involves a matter of fact or a matter of law, as contemplated in subsection (4) (c), shall be decided by the President of the court sitting alone.

[Sub-s. (4A) inserted by s. 54 (1) (e) of Act 60 of 2001.]

(4B) The Judge President of the Provincial Division of the High Court having jurisdiction in the area where the tax court to hear the appeal is situated, may, where-

- (a) the amount which is the subject of the dispute exceeds R50 million; or
- (b) the Commissioner and the appellant agree thereto and have jointly applied to that Judge President,

direct that the tax court hearing that appeal shall consist of three judges or acting judges of the High Court, one of whom shall be the President of the tax court, and the members of the court, as contemplated in subsection (4).

[Sub-s. (4B) inserted by s. 54 (1) (e) of Act 60 of 2001.]

(4C) If at any stage during the hearing of an appeal, or after hearing of the appeal but before judgment has been handed down-

- (a) one of the judges dies, retires or becomes otherwise incapable of acting in that capacity, the hearing of an appeal shall be heard *de novo*, unless the court consists of three judges, as contemplated in subsection (4B), and the remaining judges constitute the majority of judges before whom the hearing was commenced, in which case the hearing shall proceed before the remaining judges and members; or
- (b) one of the members dies, retires or becomes otherwise incapable of acting in that capacity, the hearing of an appeal shall proceed before the President and remaining members.

[Sub-s. (4C) inserted by s. 72 (a) of Act 45 of 2003.]

(4D) The judgment of the remaining judges and members contemplated in subsection (4C), shall



be the judgment of the court.

[Sub-s. (4C) inserted by s. 72 (a) of Act 45 of 2003.]

(5) (a) The members of any tax court other than judges shall be appointed by the President of the Republic by proclamation in the *Gazette*, and shall hold office for five years from the date of the relevant proclamation: Provided that the appointment of any such member may at any time be terminated by the President of the Republic for any reason which he considers good and sufficient, and shall lapse in the event of the abolition of the court in terms of subsection (3).

[Para. (a) amended by s. 30 (c) of Act 28 of 1997.]

(b) Any person so appointed shall be eligible for re-appointment for such further period or periods as the President of the Republic may think fit.

[Para. (b) amended by s. 30 (c) of Act 28 of 1997.]

(c) The members appointed under this section as on the date that the amendments to this section are introduced by the Second Revenue Laws Amendment Act, 2001, come into operation, shall be deemed to have been appointed under the provisions of this subsection until the expiry of the term of office of that member, as contemplated in subsection (5) (a).

[Para. (c) substituted by s. 54 (1) (g) of Act 60 of 2001.]

[Sub-s. (5) amended by s. 54 (1) (f) of Act 60 of 2001.]

(6) The Judge President of the Provincial Division of the High Court having jurisdiction in the area for which a tax court has been constituted shall nominate and second a judge or an acting judge of that division to be the President of that tax court, and that secondment shall be for such period or for the hearing of such cases as the said Judge-President shall determine.

[Sub-s. (6) amended by s. 30 (a) of Act 28 of 1997 and substituted by s. 54 (1) (h) of Act 60 of 2001.]

(7) Any court established under the provisions of this Act may hear and determine any appeal lodged under the provisions of this Act, or any other Act administered by the Commissioner which provides that the objection and appeal procedures contained in this Part shall apply, whether or not the appellant is resident or carries on business within the area for which that court is established and whether or not the dispute arose within that area.

[Sub-s. (7) amended by s. 19 of Act 96 of 1985 and substituted by s. 16 of Act 70 of 1989 and by s. 54 (1) (h) of Act 60 of 2001.]

(8) If an assessment has been altered, the assessment as altered shall be deemed to be the assessment against which the appeal is made.

[Sub-s. (8) substituted by s. 54 (1) (h) of Act 60 of 2001.]

(9) .....

[Sub-s. (9) substituted by s. 36 (a) of Act 113 of 1993 and deleted by s. 54 (1) (i) of Act 60 of 2001.]

(10) .....

[Sub-s. (10) deleted by s. 54 (1) (i) of Act 60 of 2001.]

(11) The sittings of the tax court shall not be public, and the court shall at any time on the application of the appellant exclude or require to withdraw from such sitting all or any persons whomsoever whose attendance is not necessary for the hearing of the appeal under consideration.

[Sub-s. (11) substituted by s. 54 (1) (j) of Act 60 of 2001.]

(12) The Commissioner or any person authorized by him may appear in support of the assessment on the hearing of any appeal, and the appellant and any person who is interested in such appeal may appear in person or by his counsel, attorney or agent.

(13) Subject to the provisions of this Act, the court may-

- (a) in the case of any assessment under appeal-
  - (i) confirm the assessment; or
  - (ii) order that assessment to be altered; or
  - (iii) if it thinks fit, refer the assessment back to the Commissioner for further investigation and assessment;

[Para. (a) substituted by s. 54 (1) (k) of Act 60 of 2001.]

- (b) in the case of any appeal against the amount of any additional tax imposed by the Commissioner, reduce, confirm or increase the amount of the additional tax so imposed, subject to the maximum amount chargeable in terms of this Act;

[Para. (b) substituted by s. 54 (1) (k) of Act 60 of 2001.]

- (c) in the case of any other decision of the Commissioner which is subject to appeal, confirm or amend such decision; and

- (d) hear any interlocutory application and decide on procedural matters as provided for in the rules of the tax court contemplated in section 107A.

[Para. (d) added by s. 72 (c) of Act 45 of 2003.]

(14) Any altered assessment made by the Commissioner as a result of a referral of an assessment back to the Commissioner, as contemplated in subsection (13)(a) (iii), shall be subject to objection and appeal as provided in this Part and the rules promulgated in terms of section 107A.

[Sub-s. (14) substituted by s. 54 (1) (l) of Act 60 of 2001.]

(15) and (16) .....

[Sub-ss. (15) and (16) deleted by s. 54 (1) (m) of Act 60 of 2001.]

(17) Where-

- (a) the claim of the Commissioner is held to be unreasonable;
- (b) the grounds of appeal of the appellant are held to be frivolous;
- (c) the decision of the tax board contemplated in section 83A is substantially confirmed;
- (d) the hearing of the appeal is postponed at the request of one of the parties; or
- (e) the appeal has been withdrawn or conceded by one of the parties after a date of hearing has been allocated by the registrar,

the tax court may, on application by the aggrieved party, grant an order for costs in favour of that aggrieved party, which costs shall be determined in accordance with the fees prescribed by the rules of the High Court.

[Sub-s. (17) substituted by s. 36 (b) of Act 129 of 1991 and by s. 54 (1) (n) of Act 60 of 2001.]

(18) Any decision of the court under this section shall, subject to the provisions of section 86A, be final.

[Sub-s. (18) substituted by s. 22 of Act 103 of 1976 and by s. 36 (b) of Act 113 of 1993.]

(19) The President of the court may indicate which judgments or decisions of the court must be published for general information, in such form as does not reveal the identity of the appellant.

[Sub-s. (19) added by s. 15 (1) of Act 104 of 1979, amended by s. 45 of Act 30 of 2000 and substituted by s. 54 (1) (o) of Act 60 of 2001.]

(20) There shall be a registrar of the tax court, who shall be appointed by the Commissioner.

[Sub-s. (20) added by s. 54 (1) (p) of Act 60 of 2001.]

(21) A person appointed as registrar shall become an employee of the South African Revenue Service.

[Sub-s. (21) added by s. 54 (1) (p) of Act 60 of 2001.]

(22) The registrar shall exercise his or her functions in terms of the Act and the rules independently and impartially.

[Sub-s. (22) added by s. 54 (1) (p) of Act 60 of 2001.]

(23) Any reference in this Part and the rules to 'day' means any day other than a Saturday, Sunday or public holiday: Provided that the days between 16 December of a year and 15 January of the following year, both inclusive, shall not be taken into account in determining days or the period allowed for complying with any provision in this Part or the rules.

[Sub-s. (23) added by s. 54 (1) (p) of Act 60 of 2001.]

### **83A Appeals to tax board**

(1) Any appeal referred to in section 83 (1) of this Act shall in the first instance be heard by the Board referred to in subsection (2) of this section, where-

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

[Para. (a) amended by Government Notice R1245 of 26 September 1997 and substituted by s. 47 of Act 59 of 2000 and by s. 28 of Act 5 of 2001.]

- (b) the Commissioner and the appellant agree thereto; or
- (c) no objection to the jurisdiction of the Board to hear the appeal is made at or before the commencement of the hearing of the appeal:

Provided that where the Commissioner, at any time prior to the hearing of such appeal, or the Chairperson of the board, at any time prior to or during the hearing of such appeal, is of the opinion that on the ground of the disputes or legal principles arising or that may arise out of such appeal, such appeal should rather be heard by the tax court, such appeal shall be set down for hearing *de novo* before the tax court referred to in section 83.

[Sub-s. (1) amended by s. 55 (1) (b) of Act 60 of 2001.]

(2) A board, to be known as the tax board, is hereby established for the hearing of an appeal referred to in subsection (1).

[Sub-s. (2) substituted by s. 55 (1) (c) of Act 60 of 2001.]

(3) The board shall consist of an advocate or attorney referred to in subsection (4), who shall be the Chairperson of the board, and, if the Chairperson, the Commissioner or the taxpayer considers it necessary, an accountant or a representative of the commercial community referred to in section 83 (4).

[Sub-s. (3) substituted by s. 37 (a) of Act 113 of 1993 and by s. 55 (1) (c) of Act 60 of 2001.]

(4) (a) The Minister of Finance shall in consultation with the Judge President of the Provincial Division within whose area of jurisdiction the board is to sit, appoint, by notice in the *Gazette*, advocates and attorneys to a panel, from which a Chairperson of the board shall be nominated from time to time or as required, and such persons shall hold office for five years from the date of the relevant notice: Provided that the appointment of such a person may at any time be terminated by the said Minister for any reason which he considers good and sufficient.

[Para. (a) substituted by s. 55 (1) (d) of Act 60 of 2001.]

(b) A person so appointed shall be eligible for reappointment for such further period or periods as the said Minister may think fit.

(5) The Commissioner shall appoint a clerk of the Board.

(6) The Commissioner shall determine the places for the hearing of appeals by the Board, and the Board shall hear an appeal at whichever place is closest to the appellant's residence: Provided that the appellant and the Commissioner may agree that the appeal be heard at another place.

(7) The clerk shall-

(a) act as convener of the Board;

(b) within the period prescribed in the rules contemplated in section 107A, furnish the members of the board and the appellant with a written notice of the time and place of the hearing of the appeal and a dossier containing copies of-

(i) the assessment against which the appeal has been lodged;

(ii) the notice of objection and appeal;

(iii) the relevant return of income; and

(iv) any correspondence between the Commissioner and the appellant as well as any other documents which are, in the opinion of the Commissioner, relevant to the appeal.

[Para. (b) amended by s. 37 (b) of Act 113 of 1993, by s. 55 (1) (e) of Act 60 of 2001 and by s. 73 of Act 45 of 2003.]

(8) The Commissioner shall designate an officer from his office to appear in support of the assessment at the hearing of the appeal.

(9) The appellant shall-

(a) in the case of a natural person who has the capacity to act, appear in person; or

(b) in any other case, be represented by his representative taxpayer,

at the hearing of the appeal: Provided that-

(i) the appellant or his or her representative taxpayer may, together with his notice of appeal or within such further period as the Chairperson may allow, request permission to present his or her case otherwise than as contemplated in this subsection;

[Sub-para. (i) substituted by s. 55 (1) (f) of Act 60 of 2001.]

(ii) the Chairperson may as he or she deems fit permit the appellant to present his or her case in such manner as the Chairperson sees fit;

[Sub-para. (ii) substituted by s. 55 (1) (f) of Act 60 of 2001.]

(iii) where the appellant's return of income for the relevant year of assessment was prepared by any other person, such other person may appear on the appellant's behalf.

(10) (a) During the hearing of the appeal the Chairperson shall determine the procedures as he or she sees fit, subject to each party having the opportunity to put his or her case to the board in a reasonable

manner.

[Para. (a) substituted by s. 55 (1) (g) of Act 60 of 2001.]

(b) The board shall not be required to record its proceedings, but the decision of the board shall be recorded in writing by the Chairperson, with a short statement of the facts of the case as found by the board and the reasons for its decision.

[Para. (b) substituted by s. 55 (1) (g) of Act 60 of 2001.]

(c) The hearing of an appeal may be adjourned by the Chairperson to any time and place that may seem convenient.

[Para. (c) substituted by s. 55 (1) (g) of Act 60 of 2001.]

(d) The clerk shall by notice in writing furnish the Commissioner and the appellant with a copy of the Board's decision.

(e) (i) If neither the appellant nor anyone authorized to appear on his or her behalf appears before the board at the time and place appointed for the purpose, the board may, at the request of the Commissioner's representative and on proof that the prescribed notice of the sitting of the board had been submitted to the appellant, confirm the assessment in respect of which the appeal has been lodged, and thereafter such appellant shall not be entitled to request that the appeal be referred to the tax court in terms of subsection (13) (a).

(ii) If the Commissioner's representative fails to appear before the board at the time and place appointed for the purpose the board may, at the request of the appellant, allow the appellant's appeal and thereafter the Commissioner shall not be entitled to refer the appeal to the tax court in terms of subsection (13) (b).

[Para. (e) substituted by s. 55 (1) (h) of Act 60 of 2001.]

(f) The provisions of paragraph (e) shall not apply where the Chairperson is satisfied that sound reasons exist for the non-appearance and such reasons are advanced by the appellant or the Commissioner (as the case may be) within seven days after the date on which the appeal was set down for hearing.

[Para. (f) substituted by s. 55 (1) (h) of Act 60 of 2001.]

(g) If the appellant has failed to state the grounds of his objection and appeal in definite terms, the Board may, upon the opening of the proceedings, decide what shall be considered to constitute the grounds of the objection and appeal.

(11) For the purposes of this section the provisions of sections 82, 83 (1B), (8), (11) and (13), 87 and 88 shall *mutatis mutandis* apply.

[Sub-s. (11) substituted by s. 55 (1) (i) of Act 60 of 2001.]

(12) Subject to the provisions of subsection (13), any decision of the Board in terms of this section, shall be final and conclusive.

(13) (a) Where an appellant is not satisfied with the decision of the board, he may, within 30 days (or within such further period as the Chairperson may on good cause shown allow) after the date of the notice referred to in subsection (10) (d), require that the appeal be referred to the tax court for hearing.

(b) Where the Commissioner is not satisfied with the decision of the board, he may refer the appeal to the tax court for hearing and he shall notify the appellant thereof within 30 days (or within such further period as the Chairperson may on good cause shown allow) after the date of the notice referred to in subsection (10) (d).

[Sub-s. (13) substituted by s. 55 (1) (j) of Act 60 of 2001.]

(14) An appeal which has been heard by the board and has been referred to the tax court by virtue of subsection (13) (a) or (b), shall be heard *de novo* by the tax court.

[Sub-s. (14) substituted by s. 55 (1) (j) of Act 60 of 2001.]

[S. 83A inserted by s. 37 of Act 129 of 1991 and amended by s. 55 (1) (a) of Act 60 of 2001.]

#### **84 Summoning of witnesses and penalty for non-attendance**

(1) The Commissioner, the appellant or the President of a tax court may procure the attendance of any witness (whether residing or for the time being within the area of jurisdiction of that court or not) in the manner prescribed in the rules.

[Sub-s. (1) substituted by s. 56 (1) (a) of Act 60 of 2001.]

(2) If any person who has been duly subpoenaed to give evidence at the hearing of an appeal or to produce any book, record, document or thing in his possession or under his control, fails without reasonable cause to attend or to give evidence or to produce that book, record, document or thing according to the subpoena or, unless excused by the President of the court, to remain in attendance throughout the proceedings, the President of the court may, upon being satisfied upon oath or by the return of the person

by whom the subpoena was served, that such person has been duly subpoenaed and that his reasonable expenses have been paid or offered to him, impose upon the said person a fine or in default of payment imprisonment for a period not exceeding three months.

[Sub-s. (2) substituted by s. 46 of Act 30 of 2000.]

(3) If any person so subpoenaed fails to appear or unless duly excused to remain in attendance throughout the proceedings, the President of the court may also, upon being satisfied as aforesaid and in case no lawful excuse for such failure seems to him to exist, issue a warrant for the apprehension of that person in order that he may be brought up to give evidence or to produce any book, record, document or thing according to the subpoena, and on failure so to give evidence or produce that book, record, document or thing to be dealt with in the manner prescribed in subsection (2).

(4) The President of the court may, on cause shown, remit the whole or any part of any fine or imprisonment which he may have imposed under this section.

(5) The President of the court may order the costs of any postponement or adjournment occasioned by the default of a witness, or any portion of those costs, to be paid out of any fine imposed under this section.

(6) A penalty imposed under subsection (2) or (3) shall be enforced *mutatis mutandis* as if it were a penalty imposed by a High Court in circumstances such as are described in the relevant subsection, and the provisions of any law which are applicable in respect of such a penalty imposed by a High Court shall *mutatis mutandis* apply in respect of a penalty imposed under either of the said subsections.

[Sub-s. (6) substituted by s. 56 (1) (b) of Act 60 of 2001.]

## 85 Contempt of tax court

(1) If during the sitting of a tax court, any person wilfully insults a member of the court or any officer of the court attending at the sitting, or wilfully interrupts the proceedings of the court or otherwise misbehaves in the place where the court is held, the President of the court may make an order committing that person to imprisonment for any period not exceeding three months or order that person to pay a fine or in default of payment thereof to be imprisoned for such a period.

[Sub-s. (1) substituted by s. 47 of Act 30 of 2000 and by s. 57 (1) (b) of Act 60 of 2001.]

(2) An order made under subsection (1) shall be executed *mutatis mutandis* as if it were an order made by a magistrate's court under circumstances such as are described in that subsection, and the provisions of any law which are applicable in respect of such an order made by a magistrate's court shall *mutatis mutandis* apply in respect of an order made under the said subsection.

[S. 85 amended by s. 56 (1) (a) of Act 60 of 2001.]

## 86 .....

### Cases

[S. 86 amended by s. 23 of Act 103 of 1976 and repealed by s. 38 of Act 113 of 1993.]

## 86A Appeals against decisions of a tax court

### Cases

(1) The appellant in a tax court or the Commissioner may in the manner hereinafter provided appeal under this section against any decision of that court.

[Sub-s. (1) substituted by s. 39 (a) of Act 113 of 1993 and by s. 58 (1) (b) of Act 60 of 2001.]

(2) Such appeal shall lie-

(a) to the provincial division of the High Court having jurisdiction in the area in which the sitting of the special court was held; or

[Para. (a) amended by s. 31 (a) of Act 28 of 1997.]

(b) where-

(i) the President of the tax court has granted leave under subsection (5); or

(ii) the appeal was heard by the tax court constituted in terms of section 83 (4B), to the Supreme Court of Appeal, without any intermediate appeal to such provincial division.

[Para. (b) amended by s. 31 (b) of Act 28 of 1997 and substituted by s. 58 (1) (c) of Act 60 of 2001.]

(3) Any party who in terms of subsection (1) has a right to appeal against a decision of a tax court and intends to lodge an appeal against such decision under this section shall, within 21 days after the date of the notice issued by the registrar of the tax court notifying such decision or within such further period as the President of that court may on good cause shown allow, lodge with the said registrar and the opposite party or his attorney or agent a notice of his intention to appeal against such decision.

[Sub-s. (3) substituted by s. 58 (1) (d) of Act 60 of 2001.]

(4) Any such notice of an intention to appeal shall state-

- (a) in which division of the High Court the intending appellant wishes the appeal to be heard;  
[Para. (a) amended by s. 31 (c) of Act 28 of 1997.]
- (b) if the intending appellant wishes the appeal to be heard by the Supreme Court of Appeal, whether the whole or part only of the judgment is to be appealed against and if part only what part, and the contemplated grounds of the intended appeal, indicating the findings of fact or rulings of law to be appealed against; and  
[Para. (b) amended by s. 31 (d) of Act 28 of 1997.]
- (c) whether, for the purposes of preparing the record on appeal, a transcript is required of the evidence given at the hearing of the case by the tax court or, if only a part of such evidence is required, what part is required.

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

(5) If an intending appellant wishes his appeal against a decision of the tax court to be heard by the Supreme Court of Appeal, the registrar of the tax court shall submit the notice or notices of intention to appeal lodged under subsection (3) to the President of the tax court who shall, having regard to the contemplated grounds of the intended appeal or appeals as indicated in the said notice or notices, make an order granting or refusing, as he sees fit, leave to appeal against such decision to the said Court, and the order so made shall be final.

[Sub-s. (5) amended by s. 31 (e) of Act 28 of 1997 and substituted by s. 58 (1) (f) of Act 60 of 2001.]

(6) If the person nominated as President of the tax court cannot act in that capacity for the purposes of this section by reason of his having ceased to be a judge or acting judge or if such person has died or if it is inconvenient for such person to act in the said capacity by reason of his absence or illness or for some other reason, the Judge President of the provincial division of the High Court having jurisdiction in the area for which the tax court has been constituted may nominate and second another judge or acting judge to act as President of the tax court for the purposes of this section in the place of the said person.

[Sub-s. (6) amended by s. 31 (f) of Act 28 of 1997 and substituted by s. 58 (1) (f) of Act 60 of 2001.]

(7) (a) Where in any case leave to appeal to the Supreme Court of Appeal has been granted under subsection (5), any appeal which any party is entitled to note against any decision given in that case shall, unless the parties otherwise agree, be noted to the said Court.

[Para. (a) amended by s. 31 (g) of Act 28 of 1997.]

(b) Where such leave has been refused, the party by whom the notice of intention to appeal was lodged, may, subject to the provisions of this section, note an appeal to the appropriate provincial division of the High Court.

[Para. (b) amended by s. 31 (h) of Act 28 of 1997.]

(8) Any person who was entitled under this section to appeal against a decision of the tax court but has not within the time allowed by subsection (3) lodged a notice of his intention to appeal against such decision as required by that subsection, shall be deemed to have abandoned his right of appeal against such decision: Provided that he shall be entitled as the respondent in an appeal noted by the opposite party in the same case, to note in the manner hereinafter provided a cross-appeal in that case.

[Sub-s. (8) substituted by s. 58 (1) (g) of Act 60 of 2001.]

(9) Any person who has in terms of subsection (3) lodged a notice of his intention to appeal against a decision of the tax court but has subsequently withdrawn such notice shall be deemed to have abandoned his right to note any appeal or cross-appeal against such decision.

[Sub-s. (9) substituted by s. 58 (1) (g) of Act 60 of 2001.]

(10) (a) After the expiry of the time allowed under subsection (3) for the lodging of a notice of intention to appeal against a decision of the tax court the registrar of that court shall-

- (i) give notice to any person who has lodged a notice of intention in terms of the said subsection and has not withdrawn such notice, that if it is decided to appeal the appeal should be noted within 21 days after the date of the registrar's notice;  
[Sub-para. (i) substituted by s. 58 (1) (i) of Act 60 of 2001.]
- (ii) supply to such person a certified copy of any order made by the President of the tax court under subsection (5) in relation to the intended appeal against the said decision; and  
[Sub-para. (ii) substituted by s. 58 (1) (i) of Act 60 of 2001.]
- (iii) where the opposite party is not also an intending appellant in the same case, supply to the opposite party a copy of the notice given under subparagraph (i) and a copy of any order

referred to in subparagraph (ii).

[Para. (a) amended by s. 58 (1) (h) of Act 60 of 2001.]

(b) Where it appears that an order be made by the President of the tax court under subsection (5) or where an intending appellant requires a transcript of evidence given at the hearing of the case by the tax court to enable him to prepare the record on appeal, the registrar of that court shall not give notice under paragraph (a) (i) until such order has been made and such transcript has been completed.

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

(11) Any appeal under this section against a decision of a tax court shall be noted by lodging a written notice of such appeal with the registrar of the tax court, the opposite party or his attorney and the registrar of the appeal court.

[Sub-s. (11) substituted by s. 58 (1) (k) of Act 60 of 2001.]

(12) Such notice of appeal shall be lodged within the period referred to in subsection (10) (a) (i) or within such longer period as may be allowed under the rules of the appeal court.

(13) Any cross-appeal against a decision of the tax court in any case in which an appeal has been lodged under this section shall be noted by lodging a written notice of such cross-appeal with the registrar of the tax court, the opposite party or his attorney and the registrar of the appeal court.

[Sub-s. (13) substituted by s. 58 (1) (l) of Act 60 of 2001.]

(14) Such notice of cross-appeal shall be lodged within 21 days after the date of the noting of the appeal or within such longer period as may be allowed under the rules of the appeal court.

[Sub-s. (14) substituted by s. 58 (1) (l) of Act 60 of 2001.]

(15) A notice of appeal or cross-appeal lodged under this section shall state-

- (a) whether the whole or part only of the judgment is appealed against, and if part only, then what part;
- (b) the grounds of appeal or cross-appeal specifying the findings of fact or rulings of law appealed against; and
- (c) any further particulars that may be required under the rules of the appeal court.

(16) (a) A party may, by notice in writing lodged with the opposite party or his attorney or agent and the registrar of the tax court, abandon the whole or any part of a judgment of that court in his favour.

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

(b) Such notice of abandonment shall become part of the record.

(17) The record lodged with an appeal court in an appeal against a decision of a tax court shall include any documents placed before the tax court in terms of the rules: Provided that merely formal documents and, if the parties consent, such other documents as do not relate to the matters in dispute in the appeal, may be excluded from the record.

[Sub-s. (17) substituted by s. 58 (1) (n) of Act 60 of 2001.]

(18) Any application or notice which may in terms of this section be lodged with the registrar of the tax court shall be delivered to the registrar of that court during office hours.

[Sub-s. (18) substituted by s. 58 (1) (n) of Act 60 of 2001.]

(19) Service of any notice which the registrar of the tax court is required to give to any person under this section or of any notice which any party may under this section lodge with an opposite party or his or her attorney or agent shall be effected by the registrar or the party lodging the notice, as the case may be, or by some person acting on the instructions of the registrar or such party, in the manner prescribed by law for the service of process of the High Court, or by dispatching such notice to the person to whom it is addressed by registered post addressed to such person's residential or business address.

[Sub-s. (19) amended by s. 31 (i) of Act 28 of 1997 and substituted by s. 58 (1) (n) of Act 60 of 2001.]

(20) For the purposes of this section-

- (a) any application or notice duly despatched by registered post as contemplated in subsection (18) or (19) shall be deemed to have been given or lodged at the time of posting;
- (b) any notice served by or on behalf of the Commissioner or the registrar of the tax court upon the public officer of a company in his capacity as such shall be deemed to have been served upon the company;

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

(c) .....

[Para. (c) deleted by s. 39 (b) of Act 113 of 1993.]

[S. 86A inserted by s. 24 (1) of Act 103 of 1976 and amended by s. 58 (1) (a) of Act 60 of 2001.]

**87 Members of courts not disqualified from adjudicating**

A member of any tax court or a judge of any division of the High Court of South Africa shall not solely on account of his or her liability to be assessed under this Act be deemed to be interested in any matter upon which he or she may be called upon to adjudicate thereunder.

[S. 87 amended by s. 32 of Act 28 of 1997 and substituted by s. 59 (1) of Act 60 of 2001.]

**88 Payment of tax pending appeal****■ Cases**

(1) The obligation to pay and the right to receive and recover any tax chargeable under this Act shall not, unless the Commissioner so directs, be suspended by any appeal or pending the decision of a court of law under section 86A, but if any assessment is altered on appeal or in conformity with any such decision or a decision by the Commissioner to concede the appeal to the tax board or the tax court or such court of law, a due adjustment shall be made, amounts paid in excess being refunded with interest at the prescribed rate, such interest being calculated from the date proved to the satisfaction of the Commissioner to be the date on which such excess was received and amounts short-paid being recoverable with interest calculated as provided in section 89.

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

(2) The payment by the Commissioner of any interest under the provisions of this section shall be deemed to be a drawback from revenue charged to the National Revenue Fund.

[Sub-s. (2) added by s. 14 (1) of Act 140 of 1993 and amended by s. 41 of Act 36 of 1996.]

[S. 88 amended by s. 12 of Act 6 of 1963, substituted by s. 44 of Act 85 of 1974, amended by s. 25 of Act 103 of 1976 and by s. 24 (1) of Act 91 of 1982 and substituted by s. 30 (1) of Act 121 of 1984, by s. 17 (1) of Act 70 of 1989 and by s. 40 of Act 113 of 1993.]

**Part IIIA****Settlement of Dispute (ss 88A-88H)**

[Part IIIA inserted by s. 74 of Act 45 of 2003.]

**88A Definitions**

For the purposes of this Part-

'dispute' means a disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or of both the facts and the law;

'settle' means to resolve a dispute by compromising any disputed liability, otherwise than by way of either the Commissioner or the person concerned accepting the other party's interpretation of the facts or the law applicable to those facts, or of both the facts and the law; and

'settlement' shall be construed accordingly.

[S. 88A inserted by s. 74 of Act 45 of 2003.]

**88B Purpose of Part**

(1) The basic principle in law is that it is the duty of the Commissioner to assess and collect taxes, duties, levies, charges and other amounts according to the laws enacted by Parliament and not to forgo any such taxes, duties, levies, charges or other amounts properly chargeable and payable.

(2) Circumstances may, however, require that the strictness and rigidity of this basic principle be tempered where it would be to the best advantage of the state.

(3) The purpose of this Part is to prescribe the circumstances whereunder it would be inappropriate and whereunder it would be appropriate that the basic rule be tempered and for a decision to be taken to settle a dispute.

[S. 88B inserted by s. 74 of Act 45 of 2003.]

**88C Circumstances where inappropriate to settle**

It will be inappropriate and not to the best advantage of the state to settle a dispute, where, in the opinion of the Commissioner-

- (a) the action on the part of the person concerned which relates to the dispute, constitutes intentional tax evasion or fraud and no circumstances contemplated in section 88D exist;
- (b) the settlement would be contrary to the law or a clearly established practice of the Commissioner on the matter, and no exceptional circumstances exist to justify a departure from the law or practice;
- (c) it is in the public interest to have judicial clarification of the issue and the case is appropriate for this purpose;
- (d) the pursuit of the matter through the courts will significantly promote compliance of the



- (e) tax laws and the case is suitable for this purpose; or
- (e) the person concerned has not complied with the provisions of any Act administered by the Commissioner and the Commissioner is of the opinion that the non-compliance is of a serious nature.

[S. 88C inserted by s. 74 of Act 45 of 2003.]

#### **88D Circumstances where appropriate to settle**

The Commissioner may, where it will be to the best advantage of the state, settle a dispute, in whole or in part, on a basis that is fair and equitable to both the person concerned and the Commissioner, having regard to *inter alia*-

- (a) whether that settlement would be in the interest of good management of the tax system, overall fairness and the best use of the Commissioner's resources;
- (b) the cost of litigation in comparison to the possible benefits with reference to-
  - (i) the prospects of success in a court;
  - (ii) the prospects of the collection of the amounts due; and
  - (iii) the costs associated with collection;
- (c) whether there are any-
  - (i) complex factual or quantum issues in contention; or
  - (ii) evidentiary difficulties,
 which are sufficient to make the case problematic in outcome or unsuitable for resolution through the alternative dispute resolution procedures or the courts;
- (d) a situation where a participant or a group of participants in a tax avoidance arrangement has accepted the Commissioner's position in the dispute, in which case the settlement may be negotiated in an appropriate manner required to unwind existing structures and arrangements; or
- (e) whether the settlement of the dispute will promote compliance of the tax laws by the person concerned or a group of taxpayers or a section of the public in a cost-effective way.

[S. 88D inserted by s. 74 of Act 45 of 2003.]

#### **88E Power to settle and disclosure**

(1) A dispute may be settled, as contemplated in section 88D, by the Commissioner personally or any official delegated by the Commissioner for that purpose.

(2) The Commissioner or the relevant delegated official must ensure that he or she does not have, or did not at any stage have, a personal, family, social, business, professional, employment or financial relationship with the person concerned.

[S. 88E inserted by s. 74 of Act 45 of 2003.]

#### **88F Procedure for settlement**

(1) The person concerned should at all times disclose all relevant facts in discussions during the process of settling a dispute.

(2) Any settlement will be conditional upon full disclosure of material facts known to the person concerned at the time of settlement.

(3) All disputes settled in whole or in part, as contemplated in section 88D, must be evidenced by a written agreement between the parties in the format as may be prescribed by the Commissioner and must include details on-

- (a) how each particular issue was settled;
- (b) relevant undertakings by the parties;
- (c) treatment of that issue in future years;
- (d) withdrawal of objections and appeals; and
- (e) arrangements for payment.

(4) The written agreement will represent the final agreed position between the parties and will be in full and final settlement of all or the specified aspects of the dispute in question between the parties.

(5) The Commissioner must, where the dispute is not ultimately settled, explain the further rights of objection and appeal to the person concerned.

(6) Subject to section 88G, the Commissioner and delegated official must adhere to the secrecy provisions with regard to the information relating to the person concerned and may not disclose the terms of any agreement to third parties unless authorised by law or by the person concerned.

(7) The Commissioner must adhere to the terms of the agreement, unless it emerges that material

facts were not disclosed to it or there was fraud or misrepresentation of the facts.

(8) The Commissioner has the right to recover any outstanding amounts involved in the settlement in full where the person concerned fails to adhere to any agreed payment arrangement.

[S. 88F inserted by s. 74 of Act 45 of 2003.]

### **88G Register of settlements and reporting**

(1) The Commissioner must-

- (a) maintain a register of all disputes settled in the circumstances contained in this Part; and  
[Para. (a) substituted by s. 20 of Act 16 of 2004.]
- (b) fully document the process in terms of which each dispute was settled, which document must be signed on behalf of the Commissioner and the person concerned.

(2) The Commissioner must on an annual basis provide to the Auditor-General and to the Minister of Finance a summary of all disputes which were settled in whole or in part during the period of 12 months covered by that summary, which must-

- (a) be in such format which, subject to section 4 (1) (b), does not disclose the identity of the person concerned, and be submitted at such time as may be agreed between the Commissioner and the Auditor-General or Minister of Finance, as the case may be; and
- (b) contain details of the number of disputes settled or part settled, the amount of revenue forgone and estimated amount of savings in costs of litigation, which must be reflected in respect of main classes of taxpayers or sections of the public.

[S. 88G inserted by s. 74 of Act 45 of 2003.]

### **88H Alteration of assessment on settlement**

(1) Where any dispute between the Commissioner and the person aggrieved by an assessment has been settled in terms of this Part, the Commissioner may, notwithstanding anything to the contrary contained in this Act, alter that assessment for purposes of giving effect to that settlement.

(2) Any altered assessment contemplated in subsection (1) shall not be subject to objection and appeal.

[S. 88H inserted by s. 74 of Act 45 of 2003.]

## **Part IV**

### **Payment and Recovery of Tax (ss 89-94A)**

### **89 Appointment of day for payment of tax and interest on overdue payments**

#### **Cases**

(1) Subject to the provisions of section *eighty-nine bis* any tax chargeable shall be paid on such days and at such places as may be notified by the Commissioner or as specified in this Act, and may be paid in one sum or in instalments of equal or varying amounts as may be determined by the Commissioner having regard to the circumstances of the case.

(2) If the taxpayer fails to pay any tax in full within the period for payment notified by the Commissioner in the notice of assessment or within the period for payment prescribed by this Act, as the case may be, interest shall, unless the Commissioner having regard to the circumstances of the case grants an extension of such period and otherwise directs, be paid by the taxpayer at the prescribed rate on the outstanding balance of such tax in respect of each completed month (reckoned from the date for payment specified in the notice of assessment or the date on which the tax has become payable in terms of this Act, as the case may be) during which any portion of the tax has remained unpaid.

[Sub-s. (2) substituted by s. 25 (1) (a) of Act 91 of 1982, by s. 31 (1) of Act 121 of 1984 and by s. 20 (1) of Act 65 of 1986.]

(3) .....

[Sub-s. (3) deleted by s. 25 (1) (b) of Act 91 of 1982.]

[S. 89 substituted by s. 13 of Act 6 of 1963.]

### **89bis Payments of employees' tax and provisional tax and interest on overdue payments of such taxes**

#### **Cases**

(1) Payments by way of employees' tax and provisional tax shall be made in accordance with the provisions of the Fourth Schedule and shall be made at such place as may be notified by the Commissioner, and any such payments which relate to a taxpayer shall, for the purposes of this Act and subject to the provisions of paragraph 28 of the said Schedule, be deemed to have been made in respect of his liability for taxes as defined in subsection (3), whether or not such liability has been ascertained or determined at the

date of any payment.

[Sub-s. (1) amended by s. 21 of Act 95 of 1967 and substituted by s. 28 of Act 88 of 1971, by s. 45 (a) of Act 85 of 1974 and by s. 35 of Act 94 of 1983.]

(2) If any amount of employees' tax is not paid in full within the period of seven days prescribed for payment of such amount by paragraph 2 (1) of the Fourth Schedule, or if any amount of provisional tax is not paid in full within the relevant period prescribed for payment of such amount by paragraph 21, 22, 23, 23A or 25 (1) of that Schedule, interest shall, unless the Commissioner having regard to the circumstances of the case otherwise directs, be paid by the person liable to pay the amount in question at the prescribed rate (but subject to the provisions of section 89quin) on so much of such amount as remains unpaid in respect of the period (reckoned from the end of the relevant period prescribed as aforesaid for payment of such amount) during which the amount underpaid remains unpaid.

[Sub-s. (2) amended by s. 26 (1) of Act 91 of 1982, by s. 32 (1) of Act 121 of 1984 and by s. 21 of Act 65 of 1986.]

(3) For the purposes of this section 'taxes' means the taxes comprehended in the definition of 'tax' in section 1, excluding donations tax.

[Sub-s. (3) added by s. 45 (b) of Act 85 of 1974 and amended by s. 48 of Act 59 of 2000.]

[S. 89bis inserted by s. 14 of Act 6 of 1963.]

### **89ter Accounts and recovery proceedings in respect of certain taxes**

(1) Where any taxes as defined in subsection (3) are owing by the taxpayer in respect of more than one year of assessment or more than one of such taxes are owing by the taxpayer, whether for one or more years of assessment, the Commissioner shall not be required to maintain a separate account in respect of each year of assessment or each of such taxes, but may maintain one tax account for the taxpayer recording details of the assessed amounts of the said taxes and the interest payable in respect of such taxes in terms of section 89 (2) or 89quat for which the taxpayer has from time to time become liable, the amounts of the payments made in respect of such taxes or interest (excluding payment made by way of provisional tax in terms of the Fourth Schedule), any credit in respect of any amount of employees' tax or provisional tax which the taxpayer is under that Schedule entitled to have set off against his liability for such taxes and such other details as may be required to establish the total amount owing by the taxpayer from time to time in respect of such taxes or interest, and any such payment or credit shall be deemed to have been made or to have accrued in respect of the total amount reflected in such tax account as owing by the taxpayer at the time such payment is made or such credit is passed.

[Sub-s. (1) amended by s. 33 (a) of Act 121 of 1984.]

(1A) Where, in addition to any amount of tax or additional tax which is payable by any person in terms of this Act, an amount of penalty is payable by him in terms of the provisions of the Fourth or Seventh Schedule, or interest is payable by him in terms of any provision of this Act, any payment made by that person on or after 1 April 1994 in respect of such tax, additional tax, penalty or interest which is less than the total amount due by him in respect of such tax, additional tax, penalty and interest shall for the purposes of this Act be deemed to be made-

- (a) in respect of such penalty;
- (b) to the extent to which such payment exceeds the amount of such penalty, in respect of such interest; and
- (c) to the extent to which such payment exceeds the sum of the amounts of such penalty and interest, in respect of such tax or additional tax.

[Sub-s. (1A) inserted by s. 41 of Act 113 of 1993.]

(1B) (a) Any practice generally applied by the Commissioner prior to 1 April 1994 in the allocation of payments shall be deemed to have had the force of law.

(b) Any agreement concluded prior to 1 April 1994 between the Commissioner and a taxpayer which provides for the allocation of any payment contemplated in subsection (1A) to be made on or after that date otherwise than in accordance with the provisions of subsection (1A) shall, in so far as it provides for such allocation, cease to have effect.

[Sub-s. (1B) inserted by s. 41 of Act 113 of 1993.]

(2) The total amount owing by the taxpayer after the deduction of the relevant payments or other credits in respect of any taxes as defined in subsection (3) and of interest in respect of such taxes payable by the taxpayer in terms of section 89 (2) or 89quat shall for the purposes of any proceedings for recovery (including proceedings under section 91) be deemed to be a debt due to the State, and in any such proceedings the Commissioner shall not be required to furnish particulars of the amount claimed: Provided

that the Commissioner shall at the request of the taxpayer furnish the taxpayer with copies of any notices of assessments relating to the taxpayer as the taxpayer may require.

[Sub-s. (2) amended by s. 33 (b) of Act 121 of 1984.]

(3) For the purposes of subsections (1) and (2) 'taxes' means the taxes comprehended in the definition of 'tax' in section 1, excluding donations tax and secondary tax on companies.

[Subs-s. (3) amended by s. 36 of Act 94 of 1983, by s. 33 (c) of Act 121 of 1984, by s. 28 (1) of Act 21 of 1994 and by s. 49 of Act 59 of 2000.]

[S. 89ter inserted by s. 14 of Act 6 of 1963, amended by s. 22 (1) of Act 90 of 1964 and by s. 22 (1) of Act 95 of 1967 and substituted by s. 37 of Act 89 of 1969.]

### 89quat Interest on underpayments and overpayments of provisional tax

#### ■ Cases

(1) For the purposes of this section-

'credit amount', in relation to any year of assessment of any provisional taxpayer, means the sum of-

- (a) the provisional tax paid by the taxpayer under the provisions of paragraph 21 or 23 of the Fourth Schedule in respect of such year;  
[Para. (a) substituted by s. 17 of Act 34 of 2004.]
- (b) any additional provisional tax paid by the taxpayer in respect of such year under the provisions of paragraph 23A of that Schedule;
- (c) any amounts of employees' tax deducted or withheld by the taxpayer's employer during such year; and
- (d) any amount of foreign taxes which may be deducted from the tax payable by such taxpayer in respect of the relevant year of assessment in terms of the provisions of section 6quat;

[Para. (d) deleted by s. 42 (1) (b) of Act 113 of 1993 and added by s. 50 (b) of Act 59 of 2000.]

'effective date', in relation to any year of assessment of a provisional taxpayer, means-

- (a) where the provisional taxpayer is a company which has a year of assessment which ends on the last day of February or is a person (other than a company) who has not been granted permission by the Commissioner under the provisions of section 66 (13A) to render accounts for a period ending on a date other than the last day of February, the date falling seven months after the last day of such year; or  
[Para. (a) substituted by s. 49 of Act 74 of 2002.]
- (b) in any other case, the date falling six months after the last day of such year as applicable for the purposes of the provisions of paragraph 21 or 23 of the Fourth Schedule;  
[Para. (b) substituted by s. 49 of Act 74 of 2002.]

[Definition of 'effective date' substituted by s. 33 (1) of Act 21 of 1995.]

'normal tax' includes any additional amounts payable in terms of section 76 and paragraphs 20 and 20A of the Fourth Schedule.

[Definition of 'normal tax' added by s. 42 (1) (c) of Act 113 of 1993.]

(2) If the taxable income of any provisional taxpayer as finally determined for any year of assessment exceeds-

- (a) R20 000 in the case of a company; or
- (b) R50 000 in the case of any person other than a company,

and the normal tax payable by him in respect of such taxable income exceeds the credit amount in relation to such year, interest shall, subject to the provisions of subsection (3), be payable by the taxpayer at the prescribed rate on the amount by which such normal tax exceeds the credit amount, such interest being calculated from the effective date in relation to the said year until the date of assessment of such normal tax.

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

or exclusion.

[Sub-s. (3) substituted by s. 24 (1) of Act 36 of 1996 and by s. 29 of Act 5 of 2001.]

(3A) Where any natural person has, in respect of the year of assessment during which he for the first time became a provisional taxpayer, become liable for the payment of interest under subsection (2), the Commissioner may, subject to the provisions of section 103 (6), if he is satisfied that the circumstances warrant such action, direct that interest shall not be paid by such person in respect of such year of assessment.

[Sub-s. (3A) inserted by s. 42 (1) (d) of Act 113 of 1993 and substituted by s. 24 (1) of Act 36 of 1996.]

(4) If in the case of any provisional taxpayer the credit amount in relation to any year of assessment exceeds the normal tax payable in respect of his taxable income as finally determined for that year and-

- (a) the amount of that excess exceeds R10 000; or
- (b) such taxable income exceeds R20 000 in the case of a company or R50 000 in the case of any person other than a company,

interest shall be payable to the taxpayer at the prescribed rate on the difference between the credit amount and such normal tax, such interest being calculated from the effective date in relation to the said year until the date on which such difference is refunded to the taxpayer: Provided that where any interest is payable to the taxpayer on any amount in respect of any period in terms of the provisions of section 88, no interest shall be payable to the taxpayer in terms of the provisions of this subsection in respect of the said amount and period.

[Sub-s. (4) amended by s. 18 (1) of Act 70 of 1989 and by s. 42 (1) (e) of Act 113 of 1993.]

(5) Any decision of the Commissioner in the exercise of his discretion under subsection (3) or (3A) shall be subject to objection and appeal.

[Sub-s. (5) added by s. 42 (1) (f) of Act 113 of 1993.]

(6) The payment by the Commissioner of any interest under the provisions of this section shall be deemed to be a drawback from revenue charged to the National Revenue Fund.

[Sub-s. (6) added by s. 15 (1) of Act 140 of 1993 and amended by s. 41 of Act 36 of 1996.]

[S. 89*quat* inserted by s. 46 of Act 85 of 1974, repealed by s. 37 of Act 94 of 1983, inserted by s. 34 (1) of Act 121 of 1984 and substituted by s. 22 (1) of Act 65 of 1986.]

### **89quin Calculation of interest payable under this Act**

Where-

- (a) any interest is payable under the provisions of section 88, 89, 89*bis* or 89*quat*;  
[Para. (a) substituted by s. 25 of Act 36 of 1996.]
- (b) the rate at which such interest is payable has with effect from any date been altered; and
- (c) such interest is payable in respect of any period or any number of completed months which commenced before the said date,

the interest to be determined in respect of that portion of such period which ended immediately before the said date or in respect of any such completed months which commenced before the said date shall be calculated as if the said rate had not been so altered.

[S. 89*quin* inserted by s. 34 (1) of Act 121 of 1984.]

### **89sex Determination of day and time for payment of tax, interest or penalties**

(1) Where any day specified for any payment to be made under the provisions of this Act, or the last day of any period within which payment under any provision of this Act shall be made, falls on a Saturday, Sunday or a public holiday, such payment shall be made not later than the last business day falling prior to such Saturday, Sunday or public holiday.

(2) The Commissioner may prescribe the time by which any payment made on any business day must be received by the Commissioner and any payment received after that time shall be deemed to have been made on the first business day following that day.

[S. 89*sex* inserted by s. 33 of Act 28 of 1997 and substituted by s. 75 of Act 45 of 2003.]

### **90 Persons by whom normal tax payable**

Subject to the provisions of this Act, any tax (other than donations tax ) and any interest payable in terms of section 89 (2) or 89*quat*, shall be payable-

- (a) by any representative taxpayer, liable to assessment or for the payment of such tax or interest under this Act or under any previous Income Tax Act;  
[Para. (a) substituted by s. 43 of Act 30 of 1998.]

- (b) .....

[Para. (b) deleted by s. 38 of Act 129 of 1991.]

- (c) in respect of any other income and in all other cases, by the person by whom the income is received or to whom or in whose favour it accrues or who is legally entitled to the receipt thereof:

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

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

Provided further that nothing herein contained shall be construed as relieving any person required to make any payment by way of employees' tax under the provisions of the Fourth Schedule from any liability, responsibility or duty imposed upon him by this Act.

[S. 90 amended by s. 15 of Act 6 of 1963, by s. 23 of Act 95 of 1967, by s. 35 of Act 121 of 1984, by s. 20 of Act 96 of 1985, by s. 51 of Act 59 of 2000 and by s. 30 of Act 5 of 2001.]

## 91 Recovery of tax

### Cases

(1) (a) Any tax or any interest payable in terms of section 89 (2) or *89quat* shall, when such tax or interest becomes due or is payable, be deemed to be a debt due to the State and shall be payable to the Commissioner in the manner and at the place prescribed.

[Para. (a) amended by s. 16 (a) of Act 6 of 1963 and by s. 36 of Act 121 of 1984.]

(b) If any person fails to pay any tax or any interest payable in terms of section 89 (2) or *89quat* when such tax or interest becomes due or is payable by him, the Commissioner may file with the clerk or registrar of any competent court a statement certified by him as correct and setting forth the amount of the tax or interest so due or payable by that person, and such statement shall thereupon have all the effects of, and any proceedings may be taken thereon as if it were, a civil judgment lawfully given in that court in favour of the Commissioner for a liquid debt of the amount specified in the statement.

[Para. (b) amended by s. 16 (b) of Act 6 of 1963 and by s. 36 of Act 121 of 1984.]

(bA) The Commissioner may by notice in writing addressed to the aforesaid clerk or registrar, withdraw the statement referred to in paragraph (b) and such statement shall thereupon cease to have any effect: Provided that, in the circumstances contemplated in the said paragraph, the Commissioner may institute proceedings afresh under that paragraph in respect of any tax or interest referred to in the withdrawn statement.

[Para. (bA) inserted by s. 26 (a) of Act 55 of 1966.]

(c) The Commissioner may institute proceedings for the sequestration of the estate of any taxpayer and shall for the purposes of such proceedings be deemed to be the creditor in respect of any tax due by such taxpayer or any interest payable by him in terms of section 89 (2) or *89quat*.

[Para. (c) amended by s. 16 (c) of Act 6 of 1963 and by s. 36 of Act 121 of 1984.]

(2) Notwithstanding anything contained in the Magistrates' Courts Act, 1944 (Act 32 of 1944), a statement for any amount whatsoever may be filed in terms of subsection (1) (b) with the clerk of the court of the magistrate having jurisdiction in respect of the person by whom such amount is payable in accordance with the provisions of this Act.

[Sub-s. (2) substituted by s. 38 of Act 89 of 1969 and by s. 26 of Act 36 of 1996.]

(3) .....

[Sub-s. (3) amended by s. 16 (d) and (e) of Act 6 of 1963, substituted by s. 26 (b) of Act 55 of 1966 and deleted by s. 39 of Act 129 of 1991.]

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

[Sub-s. (4) amended by s. 16 (f) of Act 6 of 1963 and substituted by s. 31 (a) of Act 5 of 2001.]

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

[Sub-s. (4A) inserted by s. 31 (b) of Act 5 of 2001.]

(5) So much of any interest payable in terms of section *eighty-nine* as relates to such portion of any tax as is in terms of subsection (4) recoverable from the assets referred to in that subsection may also be recovered from such assets.

[Sub-s. (5) added by s. 16 (g) of Act 6 of 1963.]

## 92 Correctness of assessment cannot be questioned

### Cases

It shall not be competent for any person in any proceedings in connection with any statement filed in terms of paragraph (b) of subsection (1) of section *ninety-one* to question the correctness of any assessment on which such statement is based, notwithstanding that objection and appeal may have been lodged thereto.

## 93 Collection of taxes under arrangements made under section 108

### Cases

(1) If the Commissioner has, in accordance with any arrangements made with the government of any other country by an agreement entered into in accordance with section 108 or the corresponding provisions of any previous Income Tax Act with a view to rendering reciprocal assistance in the collection of taxes, received a request for the collection from any person in the Republic of an amount alleged to be due by him under the income tax laws of such other country, the Commissioner may, by notice in writing, call upon such person to state, within a period specified in the notice, whether or not he admits liability for the said amount or for any lesser amount.

[Sub-s. (1) substituted by s. 34 (1) (a) of Act 28 of 1997.]

(2) The Commissioner may -

- (a) if such person so admits liability; or
- (b) if such person fails to comply with the notice or in answer to the notice denies his liability for the said amount or for any part thereof, and the President of the special court has certified that he has afforded the person concerned an opportunity of presenting his case, and that on the information submitted to him by the Commissioner and by such person (if any), the amount specified in the certificate appears to be payable by such person in terms of a final determination under the income tax laws of such other country,

[Para. (b) substituted by s. 34 (1) (b) of Act 28 of 1997.]

by notice in writing require such person to pay the amount for which he has admitted liability or the amount so specified, as the case may be, on a date, at a place and to a person specified in the notice, for transmission to the proper authority in such other country .

[Sub-s. (2) amended by s. 34 (1) (b) of Act 28 of 1997.]

(3) If such person fails to comply with the notice under subsection (2) the amount in question may, subject, in the case of any amount to which any such certificate relates, to the outcome of any proceedings which such person may institute in such other country for determining his liability for the said amount, be recovered for transmission to the said authority as if it were a tax payable by such person under this Act.

[Sub-s. (3) substituted by s. 34 (1) (c) of Act 28 of 1997.]

(4) No steps taken in any other country under any arrangements referred to in subsection (1), for the collection of an amount alleged to be due by any person under the income tax laws of the Republic, and no judgment given against any such person in pursuance of such arrangements in such other country for any such amount, shall affect his right to have his liability for any such amount determined in the Republic in accordance with the provisions of the relevant law.

[Sub-s. (4) substituted by s. 34 (1) (c) of Act 28 of 1997.]

## 93bis .....

[S. 93bis inserted by s. 17 of Act 6 of 1963 and repealed by s. 8 of Act 6 of 1972.]

## 94 Evidence as to assessments

### Cases

The production of any document under the hand of the Commissioner purporting to be a copy of

or an extract from any notice of assessment shall be conclusive evidence of the making of such assessment and, except in the case of proceedings on appeal against the assessment, shall be conclusive evidence that the amount and all the particulars of such assessment appearing in such document are correct.

**94A** .....

[S. 94A inserted by s. 39 of Act 89 of 1969 and repealed by s. 38 of Act 94 of 1983.]

**Part V**

**Representative Taxpayers (ss 95 to 101)**

**95 Liability of representative taxpayer**

(1) Every representative taxpayer shall as regards the income to which he is entitled in his representative capacity, or of which in such capacity he has the management, receipt, disposal, remittance, payment or control, be subject in all respects to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially and shall be liable to assessment in his own name in respect of that income, but any such assessment shall be deemed to be made upon him in his representative capacity only.

(1)*bis* Every representative taxpayer referred to in paragraphs (e) and (f) of the definition of 'representative taxpayer' in section 1 shall as regards the income received by or accrued to any -

(a) deceased person during his lifetime; or

(b) insolvent person prior to the date of sequestration of his estate,

be subject in all respects to the same duties, responsibilities and liabilities as if the income were income received by or accrued to or in favour of him beneficially and shall be liable to assessment in his own name in respect of that income, but any such assessment shall be deemed to be made upon him in his representative capacity only.

[Sub-s. (1)*bis* inserted by s. 27 of Act 90 of 1962 and substituted by s. 35 of Act 28 of 1997.]

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

[Sub-s. (2) substituted by s. 32 (a) of Act 5 of 2001.]

(3) Any tax payable in respect of any such assessment shall, save in the case of an assessment upon the public officer of a company, be recoverable from the representative taxpayer, but to the extent only of any assets belonging to the person whom he represents which may be in his possession or under his management, disposal or control.

(4) Any tax payable in respect of any assessment made upon a public officer of a company in his capacity as such shall be recoverable from the company of which he is the public officer.

(5) For the purposes of this section the word 'income' shall be construed as including the amount received or accrued or deemed to have been received or accrued in consequence of the disposal of any asset contemplated in the Eighth Schedule.

[Sub-s. (5) added by s. 32 (b) of Act 5 of 2001.]

**96 Right of representative taxpayer to indemnity**

(1) Every representative taxpayer who, as such, pays any tax shall be entitled to recover the amount so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the amount so paid.

(2) Every representative taxpayer referred to in paragraphs (e) and (f) of the definition of 'representative taxpayer' in section 1 who, as such, pays any tax in respect of the taxable income of any -

(a) deceased person; or

(b) insolvent person prior to the date of sequestration of his estate,

shall be entitled to recover the amount so paid from the estate of such deceased or insolvent person or to retain out of any moneys of the estate of such deceased or insolvent person that may be in his possession or that may come to him as executor or trustee of such estate, an amount equal to the amount so paid.

[Sub-s. (2) added by s. 28 of Act 90 of 1962 and substituted by s. 36 of Act 28 of 1997.]

**97 Personal liability of representative taxpayer**

Every representative taxpayer shall be personally liable for any tax payable by him in his representative capacity, if, while it remains unpaid-

(a) he alienates, charges or disposes of the income in respect of which the tax is chargeable; or

(b) he disposes of or parts with any fund or money, which is in his possession or comes to him after the tax is payable, if the tax could legally have been paid from or out of such



fund or money.

**98 Company regarded as agent for absent shareholder**

Where a shareholder or a member of a company is absent from the Republic, such company shall for the purposes of this Act be deemed to be the agent for such shareholder or member, and shall as regards such shareholder or member and in respect of any income received by or accruing to him or in his favour as a shareholder or member, have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from the Republic.

**99 Power to appoint agent**

 **Cases**

The Commissioner may, if he thinks necessary, declare any person to be the agent of any other person, and the person so declared an agent shall be the agent for the purposes of this Act and may be required to make payment of any tax, interest or penalty due from any moneys, including pensions, salary, wages or any other remuneration, which may be held by him or due by him to the person whose agent he has been declared to be.

[S. 99 substituted by s. 48 of Act 30 of 2000.]

**100 Remedies of Commissioner against agent or trustee**

The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or trustee as he would have against the property of any person liable to pay any tax and in as full and ample a manner.

**101 Public officers of companies**

(1) Every company carrying on business or having an office in the Republic and every portfolio of a collective investment scheme constituting a company in terms of paragraph (e) (i) of the definition of 'company' in section one, shall at all times be represented by an individual residing therein.

[Sub-s. (1) amended by s. 29 (a) of Act 90 of 1962 and substituted by s. 49 (1) of Act 30 of 2000 and by s. 50 (1) (a) of Act 74 of 2002.]

(2) Such individual shall be a person approved by the Commissioner and shall be appointed by the company or by an agent or attorney who has authority to appoint such a representative for the purposes of this Act: Provided that in the event of any company being placed in voluntary or compulsory liquidation the liquidator or liquidators duly appointed shall be required to exercise in respect of that company all the functions and assume all the responsibilities of a public officer under this Act during the continuance of the liquidation: Provided further that in the case of any portfolio referred to in subsection (1) the public officer of the relevant manager registered in terms of section 42 of the Collective Investment Schemes Control Act, 2002, shall be the public officer except in the event of the winding-up of the portfolio, in which event the manager, trustee or custodian appointed by the Registrar as defined in section 1 of that Act or any competent division of the court, to wind-up the portfolio shall be the public officer.

[Sub-s. (2) amended by s. 29 (b) of Act 90 of 1962 and by s. 50 (1) (b) of Act 74 of 2002.]

(3) The representative shall be called the public officer of the company and shall be appointed within one month after the company begins to carry on business or acquires an office in the Republic.

(4) In default of any such appointment the public officer of any company shall be such managing director, director, secretary or other officer of the company, as the Commissioner may designate for that purpose.

(5) Every company shall also within the period prescribed by subsection (3) appoint a place within the Republic approved by the Commissioner at which any notices or other documents under this Act affecting the company may be served or delivered or to which any such notices or documents may be sent: Provided that in the case of any portfolio referred to in subsection (1) the place at which any such notice or other document may be served or delivered or to which any such notice or document may be sent shall be the place appointed by the relevant manager in regard to any notice or other document affecting itself, or, in the event of the manager, trustee or custodian under the relevant collective investment scheme becoming the public officer, the place within the Republic appointed by the manager, trustee or custodian and approved by the Commissioner: Provided further that such trustee shall appoint such place within one month after becoming the public officer.

[Sub-s. (5) amended by s. 29 (c) of Act 90 of 1962 and by s. 50 (1) (c) of Act 74 of 2002.]

(6) No appointment shall be deemed to have been made under subsection (3) or (5), until notice thereof specifying the name of the public officer and an address for service or delivery of notices and documents has been given to the Commissioner.

(7) Every company shall keep the office of public officer constantly filled and shall at all times maintain a place for the service or delivery of notices in accordance with subsection (5), and every change of public officer or of the place for the service or delivery of notices shall be notified to the Commissioner within fourteen days of such change taking effect and every trustee referred to in subsection (5) shall at all times maintain a place for the service or delivery of such notices and shall within fourteen days of any change in such place taking effect notify the Commissioner thereof.

[Sub-s. (7) amended by s. 29 (d) of Act 90 of 1962.]

(8) Any company which makes default in appointing a public officer or appointing a place for service or delivery of notices in accordance with this Act, or in keeping the office of public officer constantly filled, or in maintaining a place for the service or delivery of notices, or which fails to notify to the Commissioner any change of public officer or of the place for the service or delivery of notices, and every person who acts within the Republic as agent or manager or representative of such company, shall incur a penalty not exceeding R25 for every day during which the default continues, and any such penalty shall be recoverable by the Commissioner by action in any competent court.

[Sub-s. (8) amended by s. 40 of Act 129 of 1991 and by s. 27 (1) of Act 36 of 1996.]

(9) Every notice, process or proceeding which under this Act may be given to, served upon or taken against any company, may be given to, served upon or taken against its public officer, or if at any time there is no public officer, any officer or person acting or appearing to act in the management of the business or affairs of such company or as agent for such company.

(10) Every public officer shall be answerable for the doing of all such acts, matters or things as are required to be done under this Act by a taxpayer and in case of default shall be liable to the penalties provided in respect of defaults by a taxpayer.

(11) Everything done by a public officer which he is required to do in his representative capacity shall be deemed to have been done by the company which he represents.

(12) The absence or non-appointment of a public officer shall not exonerate any company from the necessity of complying with the provisions of this Act, but the company shall in all respects be subject to and liable to comply with the provisions of the Act as if there were no requirement to appoint such officer.

(13) Any public officer appointed or deemed to have been appointed under the provisions of the Income Tax Act, 1941, and holding office at the commencement of this Act shall, provided no objection to his continuance in office is raised by the Commissioner, be deemed to be a public officer appointed under this Act.

(14) .....

[Sub-s. (14) added by s. 22 of Act 52 of 1970 and deleted by s. 39 of Act 94 of 1983.]

#### *Part VI*

#### *Miscellaneous (ss 102 to 112)*

### **102 Refunds and set off**

#### **▣ Cases**

(1) Any amount paid by any person in terms of the provisions of this Act shall be refundable to the extent that such amount exceeds-

- (a) in the case where that amount was paid in respect of any assessment, the amount so assessed; or
- (b) in any other case, the amount properly chargeable under this Act.

(2) The Commissioner shall not authorize a refund under subsection (1) (b), where-

- (a) that amount was paid in accordance with the practice generally prevailing at the date of the payment; or
- (b) the refund is claimed by that person-
  - (i) after a period of three years after the end of that year of assessment, in the case where-
    - (aa) that amount constitutes an amount of employees' tax deducted or withheld during any year of assessment from the remuneration of that person under the provisions of the Fourth Schedule;
    - (bb) that person's income for that year of assessment consisted solely of remuneration as defined in the Fourth Schedule; and
    - (cc) that person was not required under any provision of this Act to furnish a return of income for that year of assessment and did not render such a

return during the period of three years since the end of that year of assessment; or

- (ii) in any other case, after a period of three years from the date of the official receipt acknowledging such payment or, where more than one such payment was made, the date of the official receipt acknowledging the latest of such payments.

(3) Where any refund contemplated in subsection (1) is due to any person who has failed to pay any amount of tax, additional tax, duty, levy, charge, interest or penalty levied or imposed under this Act or any other Act administered by the Commissioner, within the period prescribed for payment of the amount, the Commissioner may set off against the amount which the person has failed to pay, any amount which has become refundable to the person under this section.

[S. 102 substituted by s. 28 (1) of Act 69 of 1975, amended by s. 27 of Act 91 of 1982, by s. 44 of Act 30 of 1998 and by s. 61 (1) of Act 60 of 2001 (date of commencement not proclaimed) and substituted by s. 30 of Act 30 of 2002.]

#### **102A Treatment of certain small tax claims and refunds**

Notwithstanding anything to the contrary in this Act, if in the case of any person (other than a company)-

- (a) whose taxable income for the year of assessment consists entirely of remuneration (as defined in paragraph 1 of the Fourth Schedule) the amount of which does not exceed the amount referred to in section 66 (1) (b) (i), as applicable in respect of the said year; and
- (b) who was not in terms of section 66 (l) required to furnish a return for the assessment of tax in respect of the said year (whether or not he did in fact furnish such a return),

the amount of his liability for normal tax for the said year either exceeds or falls short of the aggregate of the amounts of employees tax deducted or withheld from the said remuneration under the provisions of the Fourth Schedule, such excess shall not be recoverable by the Commissioner from the said person if the amount thereof is less than R25 or such shortfall shall not be refundable by the Commissioner to the said person if the amount thereof is less than R2.

[S. 102A inserted by s. 40 of Act 94 of 1983 and amended by s. 28 (1) of Act 36 of 1996.]

#### **103 Transactions, operations or schemes for purposes of avoiding or postponing liability for or reducing amounts of taxes on income**

##### **Cases**

(1) Whenever the Commissioner is satisfied that any transaction, operation or scheme (whether entered into or carried out before or after the commencement of this Act, and including a transaction, operation or scheme involving the alienation of property)-

- (a) has been entered into or carried out which has the effect of avoiding or postponing liability for the payment of any tax, duty or levy imposed by this Act or any previous Income Tax Act, or of reducing the amount thereof; and
- (b) having regard to the circumstances under which the transaction, operation or scheme was entered into or carried out-
  - (i) was entered into or carried out-
    - (aa) in the case of a transaction, operation or scheme in the context of business, in a manner which would not normally be employed for *bona fide* business purposes, other than the obtaining of a tax benefit; and
    - (bb) in the case of any other transaction, operation or scheme, being a transaction, operation or scheme not falling within the provisions of item (aa), by means or in a manner which would not normally be employed in the entering into or carrying out of a transaction, operation or scheme of the nature of the transaction, operation or scheme in question;
  - (ii) has created rights or obligations which would not normally be created between persons dealing at arm's length under a transaction, operation or scheme of the nature of the transaction, operation or scheme in question; and
- (c) was entered into or carried out solely or mainly for the purposes of obtaining a tax benefit,

[Para. (c) substituted by s. 29 (b) of Act 36 of 1996.]

the Commissioner shall determine the liability for any tax, duty or levy imposed by this Act, and the

amount thereof, as if the transaction, operation or scheme had not been entered into or carried out, or in such manner as in the circumstances of the case he deems appropriate for the prevention or diminution of such avoidance, postponement or reduction.

[Sub-s. (1) substituted by s. 14 (1) (a) of Act 101 of 1978.]

(2) Whenever the Commissioner is satisfied that-

- (a) any agreement affecting any company or trust; or
- (b) any change in-
  - (i) the shareholding in any company; or
  - (ii) the members' interests in any company which is a close corporation; or
  - (iii) the trustees or beneficiaries of any trust, as a direct or indirect result of which-
    - (A) income has been received by or has accrued to that company or trust during any year of assessment; or
    - (B) any proceeds received by or accrued to or deemed to have been received by or to have accrued to that company or trust in consequence of the disposal of any asset, as contemplated in the Eighth Schedule, result in a capital gain during any year of assessment,

has at any time been entered into or effected by any person solely or mainly for the purpose of utilising any assessed loss, any balance of assessed loss, any capital loss or any assessed capital loss, as the case may be, incurred by the company or trust, in order to avoid liability on the part of that company or trust or any other person for the payment of any tax, duty or levy on income, or to reduce the amount thereof-

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

[Para. (b) amended by s. 33 (a) of Act 5 of 2001.]

[Sub-s. (2) substituted by s. 14 (1) (a) of Act 101 of 1978, by s. 37 (a) of Act 121 of 1984 and by s. 45 (1) (a) of Act 30 of 1998.]

(3) For the purposes of subsection (1) any transaction, operation or scheme (whether entered into or carried out before or after the commencement of this Act) whereby any resident has disposed of shares held by such resident in any company which is a resident to any person who is not a resident, shall unless it is proved to the satisfaction of the Commissioner that the parties are independent persons dealing at arm's length with each other, be deemed to be a transaction, operation or scheme entered into or carried out by means or in a manner not normally employed in the entering into or carrying out of such a transaction, operation or scheme of the nature of the transaction, operation or scheme in question.

[Sub-s. (3) substituted by s. 52 of Act 59 of 2000.]

(4) Any decision of the Commissioner under subsection (1), (2) or (3) shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the transaction, operation, scheme, agreement or change in shareholder or members' interests or trustees or beneficiaries of the trust in question would result in the avoidance or the postponement of liability for payment of any tax, duty or levy imposed by this Act or any previous Income Tax Act or any other law administered by the Commissioner, or in the reduction of the amount thereof, it shall be presumed, until the contrary is proved-

- (a) in the case of any such transaction, operation or scheme, that it was entered into or carried out solely or mainly for the purposes of the avoidance or the postponement of such liability or the reduction of the amount of such liability; or
- (b) in the case of any such agreement or change in shareholding or members' interests or trustees or beneficiaries of such trust, that it has been entered into or effected solely or mainly for the purpose of utilising the assessed loss, balance of assessed loss, capital loss or assessed capital loss in question in order to avoid or postpone such liability or to reduce the amount thereof.

[Para. (b) substituted by s. 37 (c) of Act 121 of 1984, by s. 45 (1) (c) of Act 30 of 1998 and by s. 33 (b) of Act 5 of 2001.]

[Sub-s. (4) substituted by s. 14 (1) (b) of Act 101 of 1978 and amended by s. 37 (b) of Act 121 of 1984 and by s. 45 (1) (b) of Act 30 of 1998.]

(5) (a) Where under any transaction, operation or scheme-

- (i) any taxpayer has ceded the right to receive any amount of income in exchange for any amount of dividends; and
  - (ii) in consequence of that cession the liability for normal tax of the taxpayer or any other party to the transaction, operation or scheme, as determined before applying the provisions of this subsection, has been reduced or extinguished,
- the Commissioner shall determine the liability for normal tax of the taxpayer and any other party to the transaction, operation or scheme as if that cession had not been effected.

[Para. (a) substituted by s. 42 (1) of Act 32 of 2004.]

(b) Paragraph (a) shall be deemed to have come into operation on 22 December 1988 and shall apply -

- (i) to any transaction, operation or scheme concluded on or after that date; and
- (ii) to any transaction, operation or scheme concluded before that date, if the taxpayer is at liberty to terminate the operation of such transaction, operation or scheme without incurring liability for damages, compensation or similar relief.

[Sub-s. (5) added by s. 19 of Act 70 of 1989.]

(6) Where the Commissioner has applied the provisions of this section in the determination of any taxpayer's liability for any tax, duty or levy imposed in terms of this Act, the Commissioner shall not exercise his discretion in terms of the provisions of section 89 *quat* (3) or (3A) so as to direct that interest shall not be payable in respect of that portion of any tax which is attributable to the application of this section.

[Sub-s. (6) added by s. 29 (c) of Act 36 of 1996.]

(7) For the purposes of subsection (1) 'tax benefit' includes any avoidance, postponement or reduction of liability for payment of any tax, duty or levy imposed by this Act or by any other law administered by the Commissioner.

[Sub-s. (7) added by s. 29 (c) of Act 36 of 1996.]

## 104 Offences and penalties

### Cases

(1) Any person who with intent to evade or to assist any other person to evade assessment or taxation-

- (a) makes or causes or allows to be made any false statement or entry in any return rendered in terms of this Act, or signs any statement or return so rendered without reasonable grounds for believing the same to be true; or
- (b) gives any false answer, whether verbally or in writing, to any request for information made under this Act by the Commissioner or any person duly authorized by him or any officer referred to in section *three*; or
- (c) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or falsifies or authorizes the falsification of any books of account or other records; or
- (d) makes use of any fraud, art or contrivance whatsoever, or authorizes the use of any such fraud, art or contrivance,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

[Sub-s. (1) amended by s. 50 of Act 30 of 2000 and by s. 51 of Act 74 of 2002.]

(2) Whenever in any proceedings under this section it is proved that any false statement or entry is made in any return rendered under this Act by or on behalf of any taxpayer or in any books of account or other records of any taxpayer, that taxpayer shall be presumed, until the contrary is proved, to have made that false statement or entry or to have caused that false statement or entry to be made or to have allowed it to be made with intent to evade assessment or taxation, and any other person who made any such false statement or entry shall be presumed, until the contrary is proved, to have made such false statement or entry with intent to assist the taxpayer to evade assessment or taxation.

## 105 Jurisdiction of courts

Any person charged with an offence under this Act may be tried in respect of that offence by any court having jurisdiction within any area in which he resides or carries on business, in addition to any jurisdiction conferred upon any court by any law.

[S. 105 is substituted by s. 52 of Act 74 of 2002.]

### **105A Reporting of unprofessional conduct**

(1) For the purposes of this section "controlling body" means any professional association, body or board which has been established, whether voluntarily or by or under any law, for the purpose of exercising control over the carrying on of any profession, calling or occupation and which has power to take disciplinary action against any person who in the carrying on of such profession, calling or occupation fails to comply with or contravenes any rules or code of conduct laid down by such association, body or board.

(2) Where any person who carries on any profession, calling or occupation in respect of which a controlling body has been established has, in relation to the affairs of any taxpayer, done or omitted to do anything which in the opinion of the Commissioner-

- (a) was intended to enable or assist such taxpayer to avoid or unduly postpone the performance of any duty or obligation imposed on such taxpayer by or under this Act, or by reason of negligence on the part of such person resulted in the avoidance or undue postponement of the performance of any such duty or obligation; and
- (b) constitutes a contravention of any rule or code of conduct laid down by the controlling body which may result in disciplinary action being taken against such person by that body,

the Commissioner may lodge a complaint with the said controlling body.

(3) (a) Notwithstanding the provisions of section 4 of this Act the Commissioner may in lodging any complaint under subsection (2) disclose such information relating to the taxpayer's affairs as in the opinion of the Commissioner it is necessary to lay before the controlling body to which the complaint is made.

(b) Before lodging any such complaint or disclosing such information the Commissioner shall deliver or send to the taxpayer and the person against whom the complaint is to be made a written notification of his intended action setting forth particulars of the said information.

(c) The taxpayer or the said person may within 30 days after the date of such written notification lodge in writing with the Commissioner any objection he may have to the lodging of the said complaint.

(d) If on the expiry of the said period of 30 days no objection has been lodged as contemplated in paragraph (c) or, if an objection has been lodged and the Commissioner is not satisfied that the objection should be sustained, the Commissioner may thereupon lodge the complaint as contemplated in subsection (2).

(4) The complaint shall be considered by the controlling body to which it is made and may be dealt with by it in such manner as the controlling body in terms of its rules sees fit: Provided that any hearing of the matter shall not be public and may only be attended by persons whose attendance, in the opinion of the controlling body, is necessary for the proper consideration of the complaint.

(5) The controlling body with which a complaint is lodged and its members shall at all times preserve and aid in preserving secrecy in regard to such information as to the affairs of the taxpayer as may be conveyed to them by the Commissioner or as may otherwise come to their notice in the investigation of the Commissioner's complaint and shall not communicate such information to any person whomsoever other than the taxpayer concerned or the person against whom the complaint is lodged, unless the disclosure of such information is ordered by a competent court of law.

[S. 105A inserted by s. 23 of Act 65 of 1986.]

### **106 Authentication and service of documents**

(1) Any form, notice, demand or other document issued or given by or on behalf of the Commissioner or any other officer under this Act shall be sufficiently authenticated if the name or official designation of the Commissioner or officer by whom the same is issued or given is stamped or printed thereon.

(2) Any form, notice, demand, document or other communication required or authorized under this Act to be issued, given or sent to or served upon any person by the Commissioner or any other officer under this Act shall, except as otherwise provided in this Act, be deemed to have been effectually issued, given, sent or served-

- (a) if delivered to him; or
- (b) if left with some adult person apparently residing at or occupying or employed at his last

- known abode or office or place of business in the Republic; or
- (c) if despatched by registered or any other kind of post addressed to him at his last known address, which may be any such place or office as is referred to in paragraph (b) or his last known post office box number or that of his employer; or
- (cA) if transmitted to that person by electronic means to that person's last known electronic address;
  - [Para. (cA) inserted by s. 76 (b) of Act 45 of 2003.]
- (d) in the case of a company-
  - (i) if delivered to the public officer of the company; or
  - (ii) if left with some adult person apparently residing at or occupying or employed at the place appointed by the company under subsection (5) of section 101 or, in the case of any portfolio of a collective investment scheme referred to in paragraph (e) (i) of the definition of 'company' in section 1, the public officer of which is the manager, trustee or custodian referred to in the said subsection (5), by such manager, trustee or custodian, or where no such place has been appointed by the company, manager, trustee or custodian, as the case may be, if left with some adult person apparently residing at or occupying or employed at the last known office or place of business of the company, manager, trustee or custodian, as the case may be, in the Republic; or

[Sub-para. (ii) substituted by s. 51 (1) of Act 30 of 2000 and by s. 53 (1) of Act 74 of 2002.]

- (iii) if despatched by registered or any other kind of post addressed to the company or its public officer at its or his last known address, which may be any such office or place as is referred to in subparagraph (ii) or its or his last known post office box number or that of his employer; or
- (iv) if transmitted to the company or its public officer by electronic means to that company's or public officer's last known electronic address;

[Sub-para. (iv) added by s. 76 (d) of Act 45 of 2003.]

[Sub-s. (2) amended by s. 26 (a) of Act 103 of 1976.]

(3) Any form, notice, demand, document or other communication referred to in subsection (2) which has been issued, given, sent or served in the manner contemplated in paragraph (c) or (d) (iii) of that subsection shall be deemed to have been received by the person to whom it was addressed at the time when it would, in the ordinary course of post, have arrived at the place to which it was addressed, unless the Commissioner is satisfied that it was not so received or was received at some other time or, where the time at which it was received or the fact that it was received is in dispute in proceedings under this Act in any court having jurisdiction to decide the matter, the court is so satisfied: Provided that the preceding provisions of this subsection shall not apply where any person is in criminal proceedings charged with the commission of an offence under this Act by reason of his failure, refusal or neglect to do anything which he is required to do in terms of the said form, notice, demand, document or other communication, unless it was despatched to such person by registered or certified post.

[Sub-s. (3) substituted by s. 26 (b) of Act 103 of 1976.]

(4) If the Commissioner is satisfied that any form, notice, demand, document or other communication (other than a notice of assessment) issued, given, sent or served in a manner contemplated in paragraph (b), (c) or (d) (ii) or (iii) of subsection (2), has not been received by the person to whom it was addressed or has been received by such person considerably later than it should have been received by him and that such person has in consequence been placed at a disadvantage, the Commissioner may, if he is satisfied that the circumstances warrant such action, direct that such form, notice, demand, document or other communication be withdrawn and be issued, given, sent or served anew.

[S. 106 amended by s. 30 of Act 90 of 1962 and substituted by s. 29 of Act 69 of 1975.]

## 107 Regulations

- (1) The Minister of Finance may make regulations-
  - (a) prescribing the duties of all persons engaged or employed in the administration of this Act;
  - (b) defining the limits of areas within which such persons are to act;
  - (c) prescribing the nature and contents of the accounts to be rendered by any taxpayer in support of any returns rendered under this Act and the manner in which such accounts shall be authenticated;

[Para. (c) substituted by s. 46 of Act 30 of 1998.]

(d) prescribing the method of valuation of annuities or of fiduciary, usufructuary or other limited interests in property referred to in section *sixty-two*;

(dA) .....

[Para. (dA) inserted by s. 26 (1) of Act 65 of 1973 and deleted by s. 29 of Act 21 of 1994.]

(e) .....

[Para. (e) deleted by s. 62 of Act 60 of 2001.]

(f) .....

[Para. (f) added by s. 34 (a) of Act 5 of 2001 and deleted by s. 54 of Act 74 of 2002.]

and generally for giving effect to the objects and purposes of this Act.

[Sub-s. (1) amended by s. 46 of Act 97 of 1986.]

(2) The regulations may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine of R2 000.

[Sub-s. (2) amended by s. 37 of Act 28 of 1997 and substituted by s. 34 (b) of Act 5 of 2001.]

(3) Any regulation made under the Income Tax Act, 1941, and in force at the date of commencement of this Act, shall be deemed to have been made under this Act.

#### **107A Rules of tax court**

(1) The Minister may, after consultation with the Minister of Justice, promulgate rules prescribing the procedures to be observed in lodging an objection and noting appeal against an assessment and the conduct and hearing of an appeal before a tax court.

(2) The rules contemplated in subsection (1) may provide for alternative dispute resolution procedures in terms of which the Commissioner and the person aggrieved by an assessment may resolve a dispute.

[S. 107A inserted by s. 63 (1) of Act 60 of 2001.]

#### **107B .....**

[S. 107B inserted by s. 63 (1) of Act 60 of 2001, amended by s. 31 (1) of Act 30 of 2002 and repealed by s. 77 of Act 45 of 2003.]

#### **108 Prevention of or relief from, double taxation**

(1) The National Executive may enter into an agreement with the government of any other country, whereby arrangements are made with such government with a view to the prevention, mitigation or discontinuance of the levying, under the laws of the Republic and of such other country, of tax in respect of the same income, profits or gains, or tax imposed in respect of the same donation, or to the rendering of reciprocal assistance in the administration of and the collection of taxes under the said laws of the Republic and of such other country.

[Sub-s. (1) substituted by s. 15 (1) (a) of Act 101 of 1978 and by s. 38 (1) (a) of Act 28 of 1997.]

(2) As soon as may be after the approval by Parliament of any such agreement, as contemplated in section 231 of the Constitution, the arrangements thereby made shall be notified by publication in the *Gazette* and the arrangements so notified shall thereupon have effect as if enacted in this Act.

[Sub-s. (2) substituted by s. 15 (1) (a) of Act 101 of 1978 and by s. 38 (1) (a) of Act 28 of 1997.]

(3) .....

[Sub-s. (3) deleted by s. 38 (1) (b) of Act 28 of 1997.]

(4) .....

[Sub-s. (4) amended by s. 25 of Act 96 of 1981 and deleted by s. 38 (1) (b) of Act 28 of 1997.]

(5) The duty imposed by any law to preserve secrecy with regard to such tax shall not prevent the disclosure to any authorized officer of the country contemplated in subsection (1), of the facts, knowledge of which is necessary to enable it to be determined whether immunity, exemption or relief ought to be given or which it is necessary to disclose in order to render or receive assistance in accordance with the arrangements notified in terms of subsection (2).

[Sub-s. (5) substituted by s. 15 (1) (b) of Act 101 of 1978 and by s. 38 (1) (c) of Act 28 of 1997.]

#### **109 .....**

[S. 109 amended by s. 13 of Act 72 of 1963 and repealed by s. 31 of Act 141 of 1992.]

#### **110 Determination of increase in the scale of taxation for purposes of certain leases of the right to mine for gold**

For the purposes of any lease of the right to mine for gold in which provision is made for the set-off of the whole or a portion of the amount payable by the lessee by reason of any increase in the scale of taxation leviable upon incomes derived from mining for gold against the annual consideration payable by



the lessee in respect of such lease, and which has as the basis for determining whether or not such an increase has been effected the taxation which was leviable at the rates prescribed by either-

- (a) the Income Tax Act, 1933 (Act 31 of 1933), and the Gold Mines Excess Profits Duty Act, 1933 (Act 33 of 1933); or
- (b) the Gold Mines Excess Profits Duty Act, 1933 (Act 33 of 1933), as amended by the Gold Mines Excess Profits Duty (Amendment) Act, 1934 (Act 43 of 1934), and the Income Tax Act, 1934 (Act 44 of 1934),

the amount to be so set off in respect of any year shall be the amount by which the amount of normal tax leviable for that year upon the income derived from mining for gold, including excess recoupsments of capital expenditure, together with an amount equal to the amount of gold profits surtax which would have been payable for that year by the lessee concerned, if the provisions of section *two* of the Gold Mines Excess Profits Duty Amendment Act, 1935 (Act 51 of 1935), had still been in force and had applied in respect of that year, exceeds the amount of normal tax which would have been payable for such year on the same income, if the provisions of section *one* of the Income Tax Act, 1936 (Act 34 of 1936), had still been in force and had applied in respect of that year.

**110bis .....**

[S. 110bis inserted by s. 18 of Act 6 of 1963, amended by s. 14 of Act 72 of 1963, by s. 29 (1) of Act 88 of 1971, by s. 27 of Act 103 of 1976 and by s. 41 of Act 36 of 1996 and repealed by s. 39 of Act 28 of 1997.]

**111 Repeal of laws**

(1) Subject to the provisions of subsection (2), the laws specified in the Third Schedule are hereby repealed to the extent set out in the third column of that Schedule: Provided that any tax or other amount which but for such repeal would have been capable of being levied, assessed or recovered and which has not been levied, assessed or recovered at the commencement of this Act, may be levied, assessed or recovered as if such repeal had not been effected.

(2) Any notice or proclamation issued or regulation made or anything done under any provision of a law repealed by subsection (1) shall be deemed to have been issued, made or done under the corresponding provision of this Act.

**111A .....**

[S. 111A inserted by s. 40 of Act 89 of 1969 and repealed by s. 41 of Act 94 of 1983.]

**112 Short title and commencement**

This Act shall be called the Income Tax Act, 1962, and shall come into operation on the first day of July, 1962.

**First Schedule**

**COMPUTATION OF TAXABLE INCOME DERIVED FROM PASTORAL, AGRICULTURAL OR OTHER FARMING OPERATIONS (paras. 1-19)**

(Section *twenty-six* of this Act)

**Cases**

1. In this Schedule-

- (a) a reference to a year of assessment shall in the case of any taxpayer who has under the provisions of section 66 (13A) of this Act been permitted to furnish accounts in respect of the income derived by him from pastoral, agricultural or other farming operations made up to a date other than the last day of the relevant year of assessment, be construed as a reference to the period covered by such accounts; and

[Item (a) substituted by s. 78 of Act 45 of 2003.]

- (b) a reference to the end of a year of assessment includes, where the period assessed ends on a date other than the last day of the year of assessment, a reference to the end of that period.

[Para. 1 substituted by s. 15 of Act 72 of 1963.]

2. Every farmer shall include in his return rendered for income tax purposes the value of all livestock or produce held and not disposed of by him at the beginning and the end of each year of assessment.

3. (1) Subject to the provisions of subparagraphs (2) and (3), the value of livestock or produce held and not disposed of at the end of the year of assessment shall be included in income for such year of assessment, and there shall be allowed as a deduction from such income the value of livestock or produce, as determined in accordance with the provisions of paragraph 4, held and not disposed of at the beginning of the year of assessment.

[Sub-para. (1) amended by s. 16 of Act 72 of 1963.]

(2) For the purposes of subparagraph (1), the value of livestock or produce held and not disposed of at the end of any year of assessment by any person who discontinued farming operations during such year, shall be included in his income for such year and for all subsequent years of assessment so long as such livestock or produce, or any portion thereof, is so held and not disposed of.

[Sub-para. (2) amended by s. 16 of Act 72 of 1963 and substituted by s. 16 of Act 101 of 1978.]

(3) Any livestock which is the subject of any 'sheep lease' or similar agreement concerning livestock, and any produce which is the subject of a similar agreement, shall be deemed to be held and not disposed of by the grantor of such lease or agreement.

[Sub-para. (3) substituted by s. 16 of Act 101 of 1978.]

4. (1) The values of livestock and produce held and not disposed of at the beginning of any year of assessment shall, subject to the provisions of subparagraph (2), be deemed to be-

[Sub-para. (1) amended by s. 17 (a) of Act 72 of 1963.]

(a) in the case of a farmer who was carrying on farming operations on the last day of the year immediately preceding the year of assessment, the sum of-

(i) the values of livestock and produce held and not disposed of by him at the end of the year immediately preceding the year of assessment; and

[Sub-item (i) amended by s. 17 (b) of Act 72 of 1963.]

(ii) the market value of livestock or produce-

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

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

[Sub-item (ii) substituted by s. 43 (a) of Act 113 of 1993 and by s. 35 (a) of Act 5 of 2001.]

(b) in the case of any person commencing or recommencing farming operations during the year of assessment, the sum of-

(i) the value of any livestock or produce held and not disposed of by him at the end of the day immediately preceding the date of such commencement or recommencement; and

(ii) the market value of livestock or produce (other than livestock or produce to which subitem (i) refers)-

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

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

[Sub-item (ii) substituted by s. 43 (b) of Act 113 of 1993 and by s. 35 (b) of Act 5 of 2001.]

(2) .....

[Sub-para. (2) added by s. 17 (c) of Act 72 of 1963 and deleted by s. 30 of Act 36 of 1996.]

(3) .....

[Sub-para. (3) added by s. 41 of Act 89 of 1969 and deleted by s. 42 of Act 94 of 1983.]

5. (1) The value to be placed upon livestock for the purposes of this Schedule shall, subject to the provisions of paragraph 4 (1) as respects livestock held and not disposed of at the end of the year of assessment, be the standard value applicable to the livestock.

[Sub-para. (1) amended by s. 30 of Act 88 of 1971 and substituted by s. 28 (a) of Act 103 of 1976, by s. 26 of Act 96 of 1981, by s. 31 (a) of Act 36 of 1996 and by s. 55 of Act 74 of 2002.]

(1A) .....

[Sub-para. (1A) inserted by s. 28 (b) of Act 103 of 1976, amended by s. 23 of Act 104 of 1980 and deleted by s. 31 (b) of Act 36 of 1996.]

(2) .....

[Sub-para. (2) substituted by s. 23 of Act 52 of 1970 and by s. 28 (c) of Act 103 of 1976 and deleted by s.

36 of Act 5 of 2001.]

(3) .....

[Sub-para. (3) deleted by s. 28 (d) of Act 103 of 1976.]

[Para. 5 substituted by s. 18 of Act 72 of 1963.]

6. (1) The standard value applicable to any class of livestock shall be-

- (a) in the case of any farmer (other than a company or the estate of a deceased person) who on or after the first day of July, 1955, and before the first day of July, 1962, rendered returns of income in respect of farming operations, the standard value which in relation to such farmer applied to that class of livestock in accordance with the provisions of paragraph 13 of the Third Schedule to the Income Tax Act, 1941;
- (b) in the case of any other farmer (other than a company or the estate of a deceased person) or in the case of any farmer (other than a company or the estate of a deceased person) who on or after 1 July 1962 includes that class of livestock in his return of income for the first time, either-
  - (i) such standard value as may be fixed for that class of livestock by regulation made under this Act; or
  - (ii) such other standard value as the farmer may, subject to the provisions of subparagraphs (2) and (3), adopt for that class of livestock when rendering his first return of income on or after the said date in respect of farming operations, or when so including in any return of income such a class of livestock for the first time;
- (c) in the case of any company or estate of a deceased person the return of income of which in respect of farming operations for the first year of assessment of that company or estate ending on or after 1 January 1977 includes that class of livestock, either-
  - (i) such standard value as may be fixed for that class of livestock by regulation made under this Act; or
  - (ii) such other standard value as such company or the executor of such estate, as the case may be, may, subject to the provisions of subparagraphs (2) and (3), adopt for that class of livestock when rendering the said return of income;
- (d) in the case of any company or estate of a deceased person the return of income of which in respect of farming operations for a year of assessment subsequent to the year of assessment referred to in item (c), includes that class of livestock for the first time, either-
  - (i) such standard value as may be fixed for that class of livestock by regulation made under this Act; or
  - (ii) such other standard value as such company or the executor of such estate, as the case may be, may subject to the provisions of subparagraphs (2) and (3), adopt for that class of livestock when rendering the said return of income.

(2) No standard value adopted under subparagraph (1) (b) (ii), (1) (c) (ii) or (1) (d) (ii) in respect of any class of livestock shall be more than twenty per cent higher or lower than the standard value fixed by regulation under this Act in respect of livestock of that class.

(3) Any farmer who classifies any kind of his livestock on a basis other than that applied by a regulation referred to in subparagraph (1) (b) (i), (1) (c) (i) or (1) (d) (i), may adopt in respect of any class into which he so classifies that livestock such a standard value as may be approved by the Commissioner with due regard to the values fixed by regulation.

[Para. 6 substituted by s. 29 of Act 103 of 1976.]

7. The exercise of an option under subparagraph (1) (b) (ii), (1) (c) (ii) or (1) (d) (ii) of paragraph 6 shall be binding upon the farmer in respect of all subsequent returns for income tax purposes, and no standard value fixed by any farmer whether under this Act or any previous Income Tax Act may be varied by him in respect of any subsequent year of assessment, save with the consent and approval of the Commissioner and upon such terms as the Commissioner may require.

[Para. 7 amended by s. 23 (1) of Act 113 of 1977.]

8. (1) Where any farmer has during any year of assessment incurred expenditure in respect of the acquisition of livestock, the deduction which may be allowed to him under section 11 (a) of this Act in respect of the cost price of such livestock shall be limited to an amount which, together with the value of livestock held and not disposed of by him at the beginning of such year, does not exceed the income received by or accrued to him from farming during such year and the value of livestock held and not disposed of by him at the end of such year.

[Sub-para. (1) substituted by s. 79 of Act 45 of 2003.]

(2) Any amount which has been disallowed under the provisions of subparagraph (1) shall be carried forward and be deemed to be expenditure incurred by the farmer in respect of the acquisition of livestock during the succeeding year of assessment.

(3) The provisions of this paragraph shall not apply -

- (a) in any case where it is shown by the farmer that livestock the cost of which falls to be dealt with under such provisions is no longer held and not disposed of by him; and
- (b) to so much of any expenditure (including any amount which has been carried forward under the provisions of subparagraph (2) which falls to be disallowed under subparagraph (1) as, together with the value of livestock held and not disposed of by him at the beginning of the year of assessment, exceeds such amount as is shown by him to be market value of all livestock held and not disposed of by him at the end of such year.

[Para. 8 deleted by s. 19 of Act 72 of 1963 and inserted by s. 38 (1) of Act 90 of 1988.]

9. The value to be placed upon produce included in any return shall be such fair and reasonable value as the Commissioner may fix.

10. ....

[Para. 10 deleted by s. 19 of Act 72 of 1963.]

11. If during any year of assessment livestock or produce-

- (a) has been applied by the farmer for his private or domestic use or consumption;
- (b) has, for purposes other than that of the production to the farmer of income from sources within the Republic, been removed by him from the Republic; or
- (c)
  - (i) has been donated by the farmer;
  - (ii) has been disposed of by the farmer, other than in the ordinary course of his farming operations, for a consideration less than the market value thereof;
  - (iii) where the farmer is a company, has on or after 21 June 1993 been distributed *in specie* (whether such distribution occurred by means of a dividend, including a liquidation dividend, a total or partial reduction of capital (including any share premium), a redemption of redeemable preference shares or an acquisition of shares in terms of section 85 of the Companies Act, 1973 (Act 61 of 1973)), to a shareholder of such company; or

[Item (iii) substituted by s. 41 (1) of Act 53 of 1999.]

- (iv) has been applied by the farmer for any other purpose other than the disposal thereof in the ordinary course of his farming operations and under circumstances other than those contemplated in subparagraph (a) or (b) or item (i), (ii) or (iii) of this subparagraph,

there shall be included in the income of such farmer for that year of assessment -

- (A) where such livestock or produce has been applied in a manner contemplated in subparagraph (a), an amount equal to the cost price to him of such livestock or produce, or where the cost price cannot be readily determined, the market value of such livestock or produce; or
- (B) where such livestock or produce has been applied, disposed of or distributed in a manner contemplated in subparagraph (b) or (c), an amount equal to the market value of such livestock or produce:

Provided that where -

- (a) any livestock or produce so applied, is used or consumed by the farmer in the ordinary course of his farming operations, the amount included in his income under this paragraph shall for the purposes of this Act be deemed to be expenditure incurred in respect of the acquisition by him of such livestock or produce; or
- (b) the provisions of subparagraph (c) (ii) are applicable and an amount of consideration as contemplated in such subparagraph has been received by or accrued to the farmer, the amount included in his income in terms of this paragraph shall be reduced by such consideration.

[Para. 11 substituted by s. 42 of Act 101 of 1990, by s. 44 (1) of Act 113 of 1993 and by s. 32 of Act 36 of 1996.]

12. (1) Subject to the provisions of subparagraphs (2) to (6), inclusive, there shall be allowed as

deductions in the determination of the taxable income derived by any farmer the expenditure incurred by him during the year of assessment in respect of-

- (a) the eradication of noxious plants;
- (b) the prevention of soil erosion;
- (c) dipping tanks;
- (d) dams, irrigation schemes, boreholes and pumping plants;
- (e) fences;
- (f) the erection of, or extensions, additions or improvements (other than repairs) to, buildings used in connection with farming operations, other than those used for the domestic purposes of persons who are not employees of such farmer;  
[Item (f) substituted by s. 27 (1) (b) of Act 96 of 1981.]
- (g) the planting of trees, shrubs or perennial plants for the production of grapes or other fruit, nuts, tea, coffee, hops, sugar, vegetable oils or fibres, and the establishment of any area used for the planting of such trees, shrubs or plants;  
[Item (g) substituted by s. 27 of Act 55 of 1966.]
- (h) the building of roads and bridges used in connection with farming operations;
- (i) the carrying of electric power from the main transmission lines to the farm apparatus or under an agreement concluded with the Electricity Supply Commission in terms of which the farmer has undertaken to bear a portion of the cost incurred by the said Commission in connection with the supply of electric power consumed by the farmer wholly or mainly for farming purposes;  
[Item (i) substituted by s. 28 (1) (a) of Act 91 of 1982.]
- (j) .....

[Item (j) added by s. 24 (a) of Act 113 of 1977, substituted by s. 27 (1) (c) of Act 96 of 1981, amended by s. 39 of Act 90 of 1988 and deleted by s. 45 (a) of Act 113 of 1993.]

[Sub-para. (1) amended by s. 27 (1) (a) of Act 96 of 1981.]

(1A) .....

[Sub-para. (1A) inserted by s. 24 (b) of Act 113 of 1977 and deleted by s. 45 (b) of Act 113 of 1993.]

(1B) (a) Where any asset in respect of which any deduction has been allowed to a farmer under the provisions of subparagraph (1) or (1A) (whether in the current or any previous year of assessment) and which is or has become a movable asset, is disposed of by the farmer, there shall be included in his income so much of the amounts received by or accrued to or in favour of the farmer in respect of such disposal as does not exceed the expenditure in respect of such asset allowed under subparagraph (1) or the original cost to him of such asset taken into account under subparagraph (1A), as the case may be, less any amounts which in terms of item (c) of this subparagraph are not allowable as deductions under subparagraph (1A) in respect of such asset in respect of the succeeding year or years of assessment referred to in the said item.

(b) Where any allowance was granted in respect of such asset under the provisions of section 11 (e) of this Act the provisions of section 8 (4) (a) of this Act shall not apply in respect of any amount recovered or recouped in respect of such allowance.

(c) .....

[Item (c) deleted by s. 45 (c) of Act 113 of 1993.]

[Sub-para. (1B) inserted by s. 24 (b) of Act 113 of 1977.]

(1C) For the purposes of this paragraph, where any asset in respect of which any deduction has been allowed to a farmer under the provisions of subparagraph (1) or (1A) (whether in the current or any previous year of assessment) and which is or has become a movable asset, is disposed of by the farmer to any other person by way of donation or for a consideration which is not an adequate consideration or is not readily capable of valuation, a consideration equal in value to the fair value of such asset shall be deemed to have been received by the farmer in respect of his disposal of the asset and to have been paid by such other person in respect of his acquisition of the asset: Provided that the lastmentioned consideration shall not exceed the cost to the farmer of such asset.

[Sub-para. (1C) inserted by s. 24 (b) of Act 113 of 1977 and substituted by s. 45 (d) of Act 113 of 1993.]

(2) No deduction under section 11 (e) or (o) of this Act shall be allowed in respect of any machinery, implements, utensils or articles for which a deduction is allowable under subparagraph (1) or (1A) of this paragraph or the corresponding provisions of a previous Income Tax Act and no deduction under section 11 (q) of this Act shall be allowed in respect of expenditure of a capital nature for which a deduction is allowable under subparagraph (1) or (1A) of this paragraph or the said corresponding

provisions.

[Sub-para. (2) substituted by s. 42 of Act 89 of 1969, by s. 24 (c) of Act 113 of 1977 and by s. 27 (1) (d) of Act 96 of 1981.]

(3) The amount by which the total expenditure incurred by any farmer during any year of assessment in respect of the matters referred to in items (c) to (j), inclusive, of subparagraph (1) exceeds the taxable income (as calculated before allowing the deduction of such expenditure and before the inclusion as hereinafter provided of the said amount in the farmer's income) derived by him from farming operations during that year of assessment shall be included in his income from such operations for that year and be carried forward and be deemed for the purposes of subparagraph (1) to be expenditure which has been incurred by him during the next succeeding year of assessment in respect of the matters referred to in the said items.

[Sub-para. (3) substituted by s. 42 of Act 89 of 1969, amended by s. 24 (d) of Act 113 of 1977 and substituted by s. 27 (1) (e) of Act 96 of 1981.]

(3A) For the purposes of subparagraph (3) any amount which has been carried forward from the year of assessment ended 30 June 1961 in terms of the proviso to paragraph 17 (3) of the Third Schedule to the Income Tax Act, 1941 shall be deemed to be an amount which has been so carried forward in terms of the said subparagraph.

[Sub-para. (3A) inserted by s. 27 (1) (e) of Act 96 of 1981.]

(3B) Where an amount (hereinafter referred to as the recoupment) falls to be included in a farmer's income for any year of assessment under the provisions of subparagraph (1B) and an amount (hereinafter referred to as the qualifying balance) has in terms of subparagraph (3) been carried forward to the year of assessment in question from the preceding year of assessment the recoupment shall to the extent that it does not exceed the qualifying balance be deducted therefrom, and in such case-

- (a) the recoupment shall, to the extent that it has been deducted from the qualifying balance, not be included in the farmer's income under subparagraph (1B); and
- (b) only so much of the qualifying balance as remains after the deduction therefrom of the recoupment shall be taken into account for the purposes of subparagraph (3) as expenditure incurred during the year of assessment in question in respect of the matters mentioned in that subparagraph.

[Sub-para. (3B) inserted by s. 27 (1) (f) of Act 96 of 1981.]

(3C) The amount of any expenditure carried forward and deemed to be incurred by a person in the next succeeding year in terms of subparagraph (3) must be reduced by any amount of expenditure in respect of which an election has been made in terms of paragraph 20A (1) of the Eighth Schedule.

[Sub-para. (3C) inserted by s. 80 of Act 45 of 2003.]

(4)(a) For the purposes of this paragraph 'employees', in relation to any farmer, means persons employed by that farmer in connection with his farming operations, but does not include his relatives or, where the farmer, the shareholders (or the relatives of shareholders) in that company or in any company which is associated with it by virtue of shareholding.

(b) For the purposes of item (a) 'shareholders' in relation to any company does not include persons who hold all their shares in that company solely because they are employed by that company and who, will, in terms of the articles of association of that company, not be entitled to hold those shares after they cease to be so employed.

(5) The aggregate of all the deductions allowed under item (f) of subparagraph (1) or the corresponding provisions of any previous Income Tax Act to any farmer in respect of the erection of, or extensions, addition or improvements (other than repairs) to, any buildings used for the domestic purposes of any one of his employees shall not exceed the sum of R6 000.

[Sub-para. (5) amended by s. 24 of Act 104 of 1980, substituted by s. 27 (1) (g) of Act 96 of 1981 and amended by s. 28 (1) (b) of Act 91 of 1982.]

(6) If in any year of assessment any building in relation to which a deduction has been allowed to any farmer under item (f) of subparagraph (1) of this paragraph or item (f) of subparagraph (1) of paragraph 17 of the Third Schedule to the Income Tax Act, 1941, whether in the current or in any previous year of assessment, is used for the domestic purposes of any person other than an employee of that farmer, there shall be included in the income of that farmer for the current year of assessment the amount of such deduction less one-tenth of the said amount in respect of each completed period of one year, but not exceeding ten years, during which such building was used by the said farmer in connection with his farming operations other than for the domestic purposes of persons who are not his employees.

13. (1) If it is proved to the satisfaction of the Commissioner-

(a) that any farmer-

- (i) has in any year of assessment sold livestock on account of drought, stock disease or damage to grazing by fire or plague; and  
[Sub-item (i) substituted by s. 17 (1) of Act 101 of 1978.]
- (ii) has within four years after the close of the said year of assessment purchased livestock to replace the livestock so sold; or

(b) that any farmer-

- (i) has in any year of assessment (other than a year of assessment in respect of which the normal tax chargeable in the case of such farmer is required to be determined under paragraph 19) sold livestock by reason of his participation in a livestock reduction scheme organized by the Government; and
- (ii) has within nine years after the close of the said year of assessment purchased livestock to replace the livestock so sold, the cost of the livestock so purchased shall, notwithstanding anything in this Schedule contained, be allowed, at the option of such farmer, as a deduction in the determination of his taxable income for the year of assessment during which the livestock was so sold, provided the claim for such deduction is made within five years after the close of that year of assessment in the case of a farmer referred to in item (a), or within ten years after the close of that year of assessment in the case of a farmer referred to in item (b).

(2) The cost of livestock so allowed as a deduction shall not be allowed as a deduction in the year of assessment in which the purchases were made.

(3) Every farmer who desires to claim a deduction in terms of subparagraph (1), shall with his return of income for the year of assessment in which he sold livestock on account of conditions of drought or stock disease or by reason of his participation in a livestock reduction scheme organized by the Government, or within such period as the Commissioner may allow, notify the Commissioner accordingly and furnish full particulars in regard to the livestock so sold.

(4) Notwithstanding anything contained in the preceding provisions of this paragraph, the Commissioner shall, until proof has been submitted to him as provided in subitem (ii) of item (a) or subitem (ii) of item (b) of subparagraph (1), assess and recover any tax payable by a farmer in respect of any year of assessment in which livestock has been sold as aforesaid, as if the said item had not been enacted: Provided that if proof is submitted to the satisfaction of the Commissioner in terms of the said item (a) or (b) he shall revise the assessment concerned and refund to the farmer so much of the amount paid by him as exceeds the amount found to be payable after allowing the deduction referred to in the said item (a) or item (b), whichever is applicable.

(5) The provisions of this paragraph shall not apply to the cost of any livestock purchased to replace livestock sold if the proceeds derived from the sale of such lastmentioned livestock have been dealt with under the provisions of paragraph 13A.

[Sub-para. (5) added by s. 43 of Act 94 of 1983.]

[Para. 13 substituted by s. 21 (1) of Act 90 of 1972.]

13A. (1) If any farmer has on or after 1 March 1982 disposed of any livestock on account of drought, and the whole or any portion of the proceeds of such disposal has as soon as possible, but in any case within three months after the receipt thereof by the farmer, been deposited by him in an account in his name with the Land and Agricultural Bank of South Africa, so much of such proceeds as has been so deposited by him shall, notwithstanding the provisions of section 23 (e) of this Act but subject to the provisions of subparagraph (3), be deemed not to be gross income derived by such farmer.

[Sub-para. (1) substituted by s. 46 (1) (a) of Act 113 of 1993.]

(2) Every farmer who desires that the proceeds derived by him from the disposal of livestock shall be dealt with under the provisions of this paragraph shall with his return of income for the year of assessment during which such livestock was disposed of, or within such period as the Commissioner may allow, notify the Commissioner accordingly and submit a certificate containing such information in connection with the disposal as the Commissioner may require.

(3) Any amount, being the whole or any portion of a sum deposited in an account following the disposal of livestock as contemplated in subparagraph (1), shall-

- (a) if it is withdrawn from such account before the expiration of a period of six months after the last day of the year of assessment in which such disposal took place, be deemed to be

gross income derived by the taxpayer from the disposal of livestock on the date of such disposal; or

[Item (a) amended by s. 24 of Act 85 of 1987 and substituted by s. 46 (1) (b) of Act 113 of 1993.]

- (aA) if it is withdrawn from such account after the expiration of a period of six months but before the expiration of a period of six years after the last day of the year of assessment in which such disposal took place, be deemed to be gross income derived by the taxpayer from the disposal of livestock on the date of such withdrawal; or

[Item (aA) inserted by s. 46 (1) (b) of Act 113 of 1993.]

- (b) in the event of the taxpayer's death or insolvency before the expiration of the said period, be deemed to be gross income so derived on the day before the date of his death or insolvency, as the case may be; or
- (c) if it is not so withdrawn and the taxpayer does not die or become insolvent before the expiration of such period, be deemed to be gross income so derived on the last day of such period.

(4) .....

[Sub-para. (4) deleted by s. 46 (1) (c) of Act 113 of 1993.]

[Para. 13A inserted by s. 44 (1) of Act 94 of 1983.]

14. (1) Any amount received by or accrued to a farmer in respect of the disposal of any plantation shall, whether such plantation is disposed of separately or with the land on which it is growing, be deemed not to be a receipt or accrual of a capital nature and shall form part of such farmer's gross income.

(2) Where any plantation is disposed of by a farmer with the land on which it is growing the amount to be included in such farmer's gross income in terms of subparagraph (1) shall-

- (a) if the amount representing the consideration payable in respect of the disposal of the plantation is agreed to between the parties to the transaction, be the amount so agreed to; or
- (b) failing such agreement, be such portion of the consideration payable in respect of the disposal of the land and the plantation as in the opinion of the Commissioner represents the consideration payable for the plantation.

15. (1) In the determination of the taxable income of any farmer there shall be allowed as a deduction-

- (a) any expenditure incurred by such farmer during the year of assessment in respect of the establishment and maintenance of plantations;
- (b) any expenditure incurred by such farmer prior to the first day of July, 1948, in respect of the establishment and maintenance of any plantation or the cost of acquisition of any plantation purchased by such farmer whether before or after the first day of July, 1948: Provided that-
- (i) any deductions allowed under this item in respect of any plantation shall not in respect of any year of assessment exceed the gross income derived by such farmer in that year from the said plantation;
- (ii) the aggregate of the deductions allowed in terms of this item or the corresponding provisions of the Income Tax Act, 1941, or by virtue of any other provision of the last-mentioned Act or the Income Tax Act, 1925 (Act 40 of 1925), in respect of plantations shall not exceed the amount of such expenditure or such cost of acquisition.

(2) For the purpose of calculating the cost of acquisition of any plantation the provisions of subparagraph (2) of paragraph 14 shall apply *mutatis mutandis* in the case of any plantation acquired by any farmer with the land on which it is growing.

(3) If in any year of assessment the income of any farmer other than a company includes income derived from the disposal of plantations or forest produce and the taxable income derived by him in that year from the disposal of plantations and forest produce (determined as though the income derived by him from that source were his only income) exceeds the annual average taxable income derived by him from that source (as so determined) over the three years of assessment immediately preceding the said year of assessment, the normal tax chargeable in the case of such farmer for the said year of assessment shall, subject to the provisions of section 5 of this Act, be determined in accordance with the provisions of subsection (10) of that section: Provided that-

- (i) the provisions of this subparagraph shall not apply unless the disposal of plantations or



forest produce forms part of the normal farming operations of the farmer concerned;

[Para. (i) substituted by s. 47 of Act 113 of 1993.]

- (ii) for the purposes of this subparagraph, where the farmer has in respect of any of the aforesaid years of assessment derived any excess plantation farming profits determined under paragraph 20 (3) (g) such excess plantation farming profits shall-
  - (aa) where such excess plantation farming profits have been derived during the first-mentioned year of assessment, be excluded from the farmer's taxable income derived in that year from the disposal of plantations and forest produce;
  - (bb) where such excess plantation farming profits have been derived during any of the aforesaid three years of assessment, not be taken into account in the determination of the aforesaid average taxable income derived by the farmer over those years;
- (iii) the Commissioner's determination as to what portion of a farmer's taxable income is derived from the disposal of plantations and forest produce shall be final;
- (iv) nothing in this paragraph contained shall be construed as relieving any farmer from liability for taxation under this Act upon any portion of his taxable income;
- (v) the provisions of this subparagraph shall not apply if the normal tax chargeable in the case of such farmer in respect of the first-mentioned year of assessment is required to be determined under the provisions of paragraph 19.

[Sub-para. (3) substituted by s. 25 of Act 88 of 1965, by s. 26 of Act 95 of 1967, by s. 31 (1) of Act 88 of 1971 and by s. 30 (1) of Act 69 of 1975.]

16. For the purposes of paragraphs 14, 15 and 20-

'plantation' means any artificially established tree as ordinarily understood (not being a tree of the nature described in paragraph 12 (1) (g) or any forest of such trees and includes any natural extension of such trees;

'forest produce' means trees (other than trees of the nature described in paragraph 12 (1) (g)) and anything derived from such trees, including timber, wood, bark, leaves, seeds, gum, resin and sap.

[Para. 16 substituted by s. 28 of Act 55 of 1966 and amended by s. 31 (1) of Act 69 of 1975.]

17. Where the sugar cane fields of any farmer other than a company have been damaged by fire and the taxable income of such farmer for any year of assessment includes taxable income derived from the disposal of sugar cane as a result of such fire which but for such fire would not have been derived by him in such year, the normal tax chargeable in the case of such farmer in respect of such year shall, subject to the provisions of section 5 of this Act, be determined in accordance with the provisions of subsection (10) of that section, but nothing in this paragraph contained shall be construed as relieving such farmer from liability for taxation under this Act upon any portion of his taxable income: Provided that the provisions of this paragraph shall not apply if the normal tax chargeable in the case of such farmer in respect of the said year of assessment is required to be determined under the provisions of paragraph 19.

[Para. 17 substituted by s. 26 of Act 88 of 1965, by s. 27 of Act 95 of 1967 and by s. 32 (1) of Act 88 of 1971 and amended by s. 41 of Act 129 of 1991.]

18. ....

[Para. 18 deleted by s. 33 of Act 36 of 1996.]

19. (1) If any taxpayer has made an election as provided in subparagraph (5) which is binding upon him in respect of any period of assessment (hereinafter referred to as the relevant period) during which he or his spouse has carried on farming operations or has derived income from farming operations, and his taxable income derived during the relevant period from farming exceeds his average taxable income from farming as determined in relation to the relevant period in accordance with subparagraph (2), the normal tax chargeable in respect of his taxable income for the relevant period shall, subject to the provisions of section 5 of this Act, be determined in accordance with section 5 (10).

[Sub-para. (1) substituted by s. 33 (a) of Act 88 of 1971 and by s. 22 of Act 90 of 1972, amended by s. 32 (1) (a) of Act 69 of 1975, by s. 30 of Act 103 of 1976 and by s. 16 of Act 104 of 1979, substituted by s. 25 of Act 104 of 1980, amended by s. 29 (1) of Act 91 of 1982 and substituted by s. 45 (a) of Act 94 of 1983 and by s. 34 (a) of Act 21 of 1995.]

(2) For the purposes of subparagraph (1) the taxpayer's average taxable income from farming in relation to the relevant period shall be deemed to be-

- (a) where the taxpayer or his spouse carried on farming operations before the commencement of the relevant period, such amount as the Commissioner may determine as representing the taxpayer's annual average taxable income (if any) from farming in

respect of the periods of assessment-

- (aa) for which the taxpayer was assessable under this Act and which fall within the period of five years ending on the last day of the relevant period; and
- (bb) during which such farming operations were carried on or farming income was derived by the taxpayer:

Provided that any excess farming profits derived by the taxpayer in any of the said periods of assessment, as determined by the Commissioner under paragraph 20 (3) (a), shall not be taken into account in the determination of such annual average taxable income: Provided further that in the case of the estate of a deceased or insolvent person any farming operations carried on by such person prior to his death or insolvency, any income derived by him from such operations and any deductions allowable against such income under this Act shall, so far as such estate is concerned, be deemed for the purposes of this item to be respectively operations, income or deductions of such estate, and the annual average taxable income derived by such estate from farming shall be determined accordingly, but subject to such adjustments as the Commissioner may make; or

[Item (a) substituted by s. 32 (1) (b) of Act 69 of 1975 and amended by s. 34 (b) of Act 21 of 1995.]

- (b) where the taxpayer is a person referred to in subparagraph (5) (a) and did not carry on farming operations before the commencement of the relevant period and-
  - (i) the taxpayer's taxable income from farming for the relevant period does not exceed R5 000, the amount of such taxable income; or
  - (ii) the taxpayer's taxable income from farming for the relevant period exceeds R5 000 but not R7 500, the amount of R5 000; or
  - (iii) the taxpayer's taxable income from farming for the relevant period exceeds R7 500, an amount equal to two-thirds of such taxable income.

[Item (b) amended by s. 34 (c) of Act 21 of 1995 and by s. 40 of Act 28 of 1997.]

(3) Where the taxpayer's assessment for a relevant period has in terms of section 81 (5) of this Act become final and conclusive, the Commissioner shall not, merely by reason of the fact that the amount determined under subparagraph (2) (a), as the taxpayer's annual average taxable income from farming in relation to such period is incorrect, be required to make a further assessment upon the taxpayer for such period in terms of section 79 of this Act or to authorize a refund under section 102 of this Act of any tax overpaid in respect of such period, unless it appears that such annual average taxable income from farming should be increased or reduced by at least six hundred rand.

[Sub-para. (3) substituted by s. 32 (1) (c) of Act 69 of 1975.]

(4) In determining under this paragraph any amount of normal tax which is or would be chargeable no regard shall be had to the deductions provided for in section 6 of this Act, and nothing in this paragraph contained shall be construed as relieving any person from liability for taxation under this Act upon any portion of that person's taxable income.

[Sub-para. (4) substituted by s. 42 of Act 129 of 1991 and by s. 81 of Act 45 of 2003.]

(5) Any person-

- (a) who is a natural person and whose taxable income for any period of assessment consists of or includes taxable income derived from farming operations carried on by him for his own benefit or by his spouse for such spouse's own benefit; or

[Item (a) substituted by s. 34 (d) of Act 21 of 1995.]

- (b) who is the executor of the estate of any deceased person or the trustee of the insolvent estate of a natural person and who in his capacity as such has during the period of assessment commencing immediately after the death or insolvency of the said person continued farming operations commenced by such deceased or insolvent person prior to his death or insolvency,

may, within three months after the end of such period of assessment or within such further time as the Commissioner may approve and in such form as the Commissioner may prescribe, elect that the normal tax chargeable in respect of his taxable income if item (a) is applicable or the taxable income of such estate if item (b) is applicable, be determined as provided in subparagraph (1), and such election shall be binding upon such natural person or estate, as the case may be, in respect of the said period of assessment and every succeeding period of assessment: Provided that-

- (i) no election may be made under this subparagraph by any person in respect of any period

of assessment referred to in item (a) if during such period such person was married and such person's income for such period is in terms of section 7 (2) of this Act deemed to be income accrued to such person's spouse;

- (ii) where an election has been made by such person in respect of any period of assessment referred to in item (a) and such person's income for any succeeding period of assessment is in terms of section 7 (2) of this Act deemed to be income accrued to such person's spouse, such election shall, with effect from such succeeding period, cease to have any force or effect.

[Sub-para. (5) amended by s. 34 (e) of Act 21 of 1995.]

(6) .....

[Sub-para. (6) added by s. 33 (b) of Act 88 of 1971 and deleted by s. 45 (b) of Act 94 of 1983.]

[Para. 19 added by s. 28 of Act 95 of 1967.]

20.(1) If any taxpayer (other than a company) who derives income from farming operations submits an application to the Commissioner as provided in subparagraph (6) and proves to the satisfaction of the Commissioner-

- (a) that his income was in whole or in part derived from farming operations carried on on any land acquired-
- (i) by the State (including the Railways Administration and any provincial administration) or any local authority as defined in section 1 of the Expropriation Act, 1975 (Act 63 of 1975); or

**[NB: In terms of s. 36 (2) of the Legal Succession to the South African Transport Services Act 9 of 1989, the reference to 'the State' and to 'the Railways Administration' in the above provision is to be construed as including the Company (Transnet Limited) and the Corporation (the South African Rail Commuter Corporation Limited).]**

- (ii) by any juristic person or body mentioned in section 3 (2) of the said Act, if such juristic person or body acquired the land by expropriation or, where the owner of the land agreed to dispose of it, the Minister referred to in subparagraph (6) (b) (ii) has given a certificate as contemplated therein;
- [Item (a) substituted by s. 31 (1) (a) of Act 103 of 1976.]

- (b) that in consequence of the acquisition of such land as aforesaid the farming undertaking on such land (hereinafter referred to as the undertaking) has been or is being wound up; and

[Item (b) amended by s. 31 (1) (b) of Act 103 of 1976.]

- (c) that the taxpayer's income for any year of assessment (being the year of assessment during which the said land was acquired as aforesaid or the first or the second year of assessment succeeding the first-mentioned year of assessment) includes any abnormal farming receipts or accruals referred to in subparagraph (2) which relate to the aforesaid farming operations,

[Item (c) amended by s. 31 (1) (c) of Act 103 of 1976.]

the normal tax chargeable (as determined before the deduction of any rebate or the addition of any loan portion of such tax) in respect of the taxpayer's taxable income for such year of assessment shall, notwithstanding any other provisions of this Act to the contrary, be determined at an amount equal to the sum of-

- (i) an amount equal to the taxpayer's excess farming profits for the year of assessment (as determined in accordance with subparagraph (3) (a)) multiplied by the relevant rate of tax fixed for the year of assessment in terms of section 5 (2) in respect of the first rand of taxable income; and

[Item (i) substituted by s. 43 of Act 129 of 1991.]

- (ii) an amount equal to the amount of normal tax (as determined before the deduction of any rebate or the addition of any loan portion of such tax) which would have been payable by the taxpayer in respect of the year of assessment if his taxable income for that year had been an amount equal to the balance of his taxable income for that year (as determined in accordance with subparagraph (4)).

[Sub-para. (1) amended by s. 26 (a) of Act 104 of 1980 and by s. 30 of Act 91 of 1982.]

(1A) Where it is shown by the taxpayer to the satisfaction of the Commissioner that the land referred to in subparagraph (1) was acquired as contemplated in item (a) of that subparagraph within the

period of twelve months after the owner accepted an offer to purchase the land, it shall be deemed for purposes of that subparagraph that such land was acquired on the date on which the offer was accepted.

[Sub-para. (1A) inserted by s. 25 of Act 113 of 1977.]

(2) For the purposes of subparagraph (1) (c), the taxpayer's abnormal farming receipts or accruals for any year of assessment referred to in subparagraph (1) (c) shall be deemed to be such amounts as are proved to the satisfaction of the Commissioner to consist of-

- (a) any amounts derived from disposals, in the course of the winding-up of the undertaking, of livestock normally held for the purposes of the undertaking; or
- (b) any amounts derived from the disposal of any plantation together with the land referred to in subparagraph (1) (a) or from the disposal in the course of the winding-up of the undertaking of any plantation on such land or any forest produce from such plantation.

(3) (a) For the purposes of this paragraph the taxpayer's excess farming profits for any year of assessment referred to in subparagraph (1) (c) shall be deemed to be the sum of the taxpayer's excess livestock profits (if any) for such year, as determined under item (b), and the taxpayer's excess plantation farming profits (if any) for such year, as determined under item (g): Provided that the amount of such excess farming profits shall not be determined at an amount exceeding the amount of the taxpayer's taxable income for such year.

(b) The taxpayer's excess livestock profits for such year shall be so much of the sum of the amounts referred to in subparagraph (2) (a) which have been derived by the taxpayer during such year as does not exceed the taxpayer's abnormal livestock profits for such year, as determined under item (c).

(c) The taxpayer's abnormal livestock profits for such year shall be the amount by which his livestock profits for such year, as determined under item (d) or (f), exceed his average livestock profits (as determined under item (e) or (f)) for the years of assessment (but not exceeding five years of assessment) which immediately precede the said year and during which the undertaking was carried on.

(d) For the purposes of this subparagraph, the taxpayer's livestock profits for any year of assessment shall be the amount by which the sum of the amounts included in his income from farming for such year in respect of disposals of livestock during such year and the value (as determined under this Schedule) of the livestock held and not disposed of by him at the end of such year exceeds the sum of the amounts allowed to be deducted from such income in respect of livestock acquired by him during such year and the value (as determined under this Schedule) of the livestock held and not disposed of by him at the beginning of such year, and the taxpayer's livestock loss for such year shall be determined accordingly.

(e) The taxpayer's average livestock profits for the years of assessment referred to in item (c) shall be the sum of his livestock profits for the said years, as determined under item (d) (reduced by any livestock loss as determined under that item in respect of any such years), divided by the number of such years of assessment.

(f) If by reason of disposals of livestock otherwise than in the ordinary course of farming or because of any unusual circumstances the Commissioner is of opinion that the taxpayer's livestock profits or loss for any year of assessment cannot be determined in a satisfactory manner under item (d) or that the taxpayer's average livestock profits for the years of assessment referred to in item (c) cannot be determined in a satisfactory manner under item (e), the Commissioner shall determine such livestock profits or loss or such average livestock profits in such other manner as he may consider appropriate.

(g) The taxpayer's excess plantation farming profits for any year of assessment referred to in item (a) shall be so much of the sum of the amounts referred to in subparagraph (2) (b) which have been derived by the taxpayer during such year, as does not exceed the amount by which the taxpayer's taxable income (as determined under subparagraph (3) of paragraph 15 before applying paragraph (ii) of the proviso to the said subparagraph) derived during such year from the disposal of plantations and forest produce exceeds the annual average taxable income (as determined under paragraph 15 (3)) derived by him from that source over the three years of assessment immediately preceding the said year of assessment.

(4) For the purposes of this paragraph, the balance of the taxpayer's taxable income for a year of assessment referred to in subparagraph (1) (c) shall be deemed to be the amount remaining after deducting the taxpayer's excess farming profits for that year (as determined under subparagraph (3) (a)) from the full amount of the taxpayer's taxable income for such year, as determined under this Act.

(5) .....

[Sub-para. (5) deleted by s. 26 (b) of Act 104 of 1980.]

(6) (a) Any taxpayer (other than a company) may, at his option, make written application to the Commissioner for the normal tax payable by him to be determined under this paragraph.

- (b) Any such application shall be submitted to the Commissioner and shall be accompanied by-
- (i) a certificate by the head of the department of State or the administration concerned in the acquisition by the State or such administration of the land referred to in item (a) of subparagraph (1), or where such land was acquired by a local authority, juristic person or body referred to in the said item, by the chief executive officer of such local authority, juristic person or body, to the effect that the State or such administration, local authority, juristic person or body, as the case may be, has acquired such land; and
  - (ii) where such land was acquired by such juristic person or body, a certificate by a Minister referred to in section 3 (1) of the Expropriation Act, 1975, to the effect that the land was acquired by such juristic person or body by expropriation or, where the owner of the land agreed to dispose of it, to the effect that, if the owner had not so agreed, steps would have been taken for the expropriation of the land.

[Item (b) substituted by s. 31 (1) (d) of Act 103 of 1976.]

[Para. 20 added by s. 33 (1) of Act 69 of 1975.]

### Second Schedule

#### COMPUTATION OF GROSS INCOME DERIVED BY WAY OF LUMP SUM BENEFITS FROM PENSION, PROVIDENT AND RETIREMENT ANNUITY FUNDS (paras. 1-4)

(Paragraph (e) of the definition of 'gross income' in section one of this Act.)

#### ■ Cases

1. For the purposes of this Schedule-  
'formula A', in relation to a pension fund or provident fund, means the formula-

$$Y = \frac{15}{1} \times \frac{N}{50} \times \frac{1}{3} \times \text{Average Salary}$$

in which formula 'Y' represents the amount which has to be determined, 'N' represents the number of completed years (not exceeding fifty) in the period of employment of the taxpayer which, in terms of the rules of the fund in question, is taken into account for the purpose of determining the amount of the benefits payable to him under the fund, or, if the period of employment is not taken into account for that purpose, in the period of his membership of the fund during which contributions thereto were made in respect of his membership, and 'average salary' means the highest annual average salary (not exceeding R60 000) actually earned by the taxpayer during any five consecutive years in the service of the employer by whom he was employed during his membership of the fund: Provided that-

- (a) the period of employment or membership to be taken into account in applying the formula in relation to any such fund shall be reduced by any period of employment or membership which is common to such fund and any other such fund, if such common period has been included in the period of employment or membership taken into account in applying the formula in relation to such other fund;
- (b) unless, not later than the date on which he submits his first return of income in which is included or should have been included any lump sum benefit referred to in subparagraph (1) of paragraph 5, or within such further period as the Commissioner in the circumstances of the case may allow, any taxpayer who is a member of two or more such funds having a common period of employment or membership informs the Commissioner in writing in relation to which fund such common period shall be applied, the said common period shall be applied to such fund as the Commissioner may, with the object of achieving the best result for the taxpayer, determine;
- (c) in the case of a member of a pension fund who was permitted to retain his membership of such fund in the circumstances contemplated in paragraph (ii) (ee) of the proviso to paragraph (c) of the definition of 'pension fund' in section 1 of this Act, the period of employment of such member shall be deemed to include the period during which he continued to be a member after becoming a partner, and for the purpose of determining his average salary he shall be deemed to have earned during the last-mentioned period a salary calculated at the rate at which the amount of his pensionable emoluments contemplated in the said paragraph (ii) (ee) was payable during the 12 months referred to

in that paragraph;

[Para. (c) added by s. 17 (1) (a) of Act 104 of 1979 and substituted by s. 24 (b) of Act 65 of 1986.]

[Definition of 'formula A' amended by s. 34 (a) of Act 88 of 1971, by s. 34 (a) of Act 69 of 1975, by s. 26 (a) of Act 113 of 1977, by s. 27 (a) of Act 104 of 1980, by s. 28 (1) of Act 96 of 1981, by s. 46 (1) (a) of Act 94 of 1983 and by s. 24 (a) of Act 65 of 1986.]

'**formula B**', in relation to a pension fund, provident fund or retirement annuity fund means the formula-

$$Z = C + E - D,$$

in which formula-

- (a) 'Z' represents the amount which has to be determined;
- (b) 'C' represents an amount equal to the sum of the amounts calculated in accordance with formula A in relation to the taxpayer in respect of the different pension and provident funds of which he is or was a member and from which any lump sum benefits were or may be derived in consequence of or following upon his retirement or death on or after 15 March 1961, and the aggregate of the lump sum benefits received by or accrued to him from retirement annuity funds in the circumstances described in paragraph 5 (1) on or after 15 March 1961 and whether in the current or any previous year of assessment: Provided that-

- (i) the amount determined under this paragraph shall not exceed the greater of R120 000 or an amount equal to R4 500 multiplied by the number of completed years referred to in paragraph 5 (6);  
[Sub-para. (i) amended by s. 24 (c) of Act 65 of 1986.]
- (ii) the lump sum benefits in respect of any retirement annuity fund taken into account for the purpose of this calculation shall not exceed the amount received or accrued in commutation of not more than one-third of the taxpayer's annuity from such fund, or, in the case of the death of a member before his retirement in relation to such fund, an amount equal to one-third of the member's own contributions to such fund (including so much of any amount paid into such fund for his benefit by another approved retirement annuity fund, or any approved pension or provident fund, as represented his own contributions to the fund by which such amount was so paid) together with reasonable interest on one-third of the said contributions calculated from the dates of payment of the respective contributions to the date of death of such member;

[Para. (b) amended by s. 34 (b) of Act 88 of 1971, by s. 34 (b) of Act 69 of 1975, by s. 26 (b) of Act 113 of 1977 and by s. 27 (b) of Act 104 of 1980 and substituted by s. 46 (1) (b) of Act 94 of 1983.]

- (c) 'D' represents the sum of the deductions which may have been allowed to the taxpayer in terms of subparagraph (1) of paragraph 5 of this Schedule or subparagraph (1) of paragraph 5 of the Fourth Schedule to the Income Tax Act, 1941, in respect of previous years of assessment; and
- (d) 'E' represents the sum of the taxpayer's own contributions to any pension funds, provident funds and retirement annuity funds of which he is or was a member and from which any lump sum benefits were or may be derived in consequence of or following upon his retirement or death on or after the fifteenth day of March, 1961, including so much of the amounts paid into such funds for his benefit by other pension funds, provident funds or retirement annuity funds as represented his own contributions to such other funds, but excluding so much of any such contributions or amounts representing contributions as ranked for deduction against the taxpayer's income in terms of section 11 (k) or (n) of this Act or the corresponding provisions of any previous Income Tax Act: Provided that for the purposes of this definition the surrender value of any policy of insurance ceded or otherwise made over to the taxpayer by any pension, provident or retirement annuity fund and ceded or otherwise made over by the taxpayer to any other pension, provident or retirement annuity fund, or any amount paid by the taxpayer into the latter fund in lieu of or as representing such surrender value or a portion thereof, shall be deemed to be an amount paid into the latter fund by the former fund for the benefit of the taxpayer:

[Para. (d) added by s. 31 (a) of Act 90 of 1962 and substituted by s. 23 (a) of Act 90 of 1964 and by s. 17 (1) (b) of Act 104 of 1979.]

Provided that, notwithstanding the provisions of section 37D, any lump sum benefit which was received by or accrued to a married woman and which was taken into account for the purposes of this definition in the determination of her husband's taxable income, shall for the purposes of this definition in relation to any lump sum subsequently received by or accrued to either spouse be deemed to be a lump sum which was received by or accrued to the husband;

[Definition of 'formula B' amended by s. 31 (a) of Act 90 of 1962 and by s. 43 of Act 101 of 1990.]

'**formula C**', in relation to any fund referred to in paragraphs (a) and (b) of the definition of 'pension fund' in section 1 of this Act, means the formula-

$$A = \frac{B}{C} \times D$$

in which formula-

- (a) 'A' represents the amount which has to be determined;
- (b) 'B' represents-
  - (i) where the number of completed years of employment are in terms of the rules of the fund in question taken into account for the purpose of determining the amount of the benefit payable to him by the fund, the number of completed years of employment of the taxpayer after 1 March 1998, including previous or other periods of service approved as pensionable service in terms of the rules of any fund after 1 March 1998, other than completed years of employment representing-
    - (aa) any benefit of a member of any fund referred to in paragraph (a) or (b) of the definition of 'pension fund' in section 1, hereinafter referred to as a 'public sector fund', which is after 1 March 1998 paid for the benefit of such member into another public sector fund in respect of any previous or other periods of service or membership accounted for prior to 1 March 1998 in terms of the rules of any public sector fund; or
    - (bb) years of pensionable service purchased after 1 March 1998 by a 'former member of a non-statutory force or service' as defined in the Government Employees' Pension Law, 1996 (Proclamation 21 of 1996), in respect of any previous or other periods of service accounted for prior to 1 March 1998; or

[Item (bb) substituted by s. 43 of Act 32 of 2004.]  
[Item (i) substituted by s. 82 of Act 45 of 2003.]
  - (ii) where the number of completed years of employment is not taken into account for that purpose, the number of completed years after 1 March 1998 during which the taxpayer had, until the date of accrual of any benefit, been a member of any public sector fund or funds;  
[Para. (b) substituted by s. 47 (1) (a) of Act 30 of 1998.]
- (c) 'C' represents-
  - (i) where the number of completed years of employment are in terms of the rules of the fund in question taken into account for the purpose of determining the amount of the benefits payable to him by the fund, the total number of completed years of employment taken into account for the purpose of determining the amount of the benefits payable to the taxpayer by the fund; or
  - (ii) where the number of completed years of employment is not taken into account for that purpose, the number of completed years during which the taxpayer had, until the date of accrual of any benefit, continuously been a member of any public sector fund or funds;  
[Para. (c) substituted by s. 47 (1) (a) of Act 30 of 1998.]
- (d) 'D' represents the lump sum benefit payable to the taxpayer;  
[Formula 'C' inserted by s. 41 (1) (a) of Act 28 of 1997.]

'**lump sum benefit**' includes any amount determined by the commutation of any annuity or portion of an annuity and any fixed or ascertainable amount (other than an annuity) payable by or provided in consequence of membership or past membership of any fund referred to in paragraph (e) of the definition of 'gross income' in section one of this Act whether in one amount or in instalments;

[Definition of 'lump sum benefit' substituted by s. 47 (1) (b) of Act 30 of 1998.]

**'pension fund'**, in relation to any taxpayer, means-

- (a) a fund which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a pension fund under paragraph (c) of the definition of 'pension fund' in section 1 or a corresponding definition in any previous Income Tax Act; or
- (b) a fund referred to in paragraph (a) or (b) of the definition of 'pension fund' in section 1 of this Act (other than a fund referred to in paragraph (b) of the definition of 'provident fund'), the rules of which wholly or mainly provide for annuities on retirement to its members,

if during any such year the taxpayer was a member of such fund;

[Definition of 'pension fund' amended by s. 31 (b) of Act 90 of 1962 and substituted by s. 46 (1) (c) of Act 94 of 1983 and s. 41 (1) (b) of Act 28 of 1997.]

**'provident fund'**, in relation to any taxpayer, means-

- (a) a fund which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a provident fund as defined in section one of this Act or the corresponding provisions of any previous Income Tax Act, if during any such year the taxpayer was a member of such fund;
- (b) a fund referred to in paragraph (a) or (b) of the definition of 'pension fund' in section 1, the rules of which provides the benefits in a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments and annuities) to its members on retirement,

if during any such year the taxpayer was a member of such fund;

[Definition of 'provident fund' substituted by s. 41 (1) (c) of Act 28 of 1997.]

**'retire'** means in relation to a member of-

- (a) a pension fund, to retire from employment and become entitled to the payment of an annuity from such fund;
- (b) a provident fund, to retire from employment and become entitled to the payment of full benefits in terms of the rules of the fund: Provided that for the purposes of this paragraph 'full benefits' shall in the case of a member who retires from employment on the grounds of ill-health or who retires from employment after attaining the age of 55 years, include the surrender value of any policy of insurance which is in terms of subparagraph (2) *bis* of paragraph 4 deemed to be a lump sum benefit.

[Para. (b) amended by s. 23 (b) of Act 90 of 1964 and by s. 35 (1) of Act 21 of 1995.]

- (c) a retirement annuity fund, to become entitled to the payment of an annuity from such fund, and 'retirement' in relation to a member of any of the said funds bears a corresponding meaning;

**'retirement annuity fund'** in relation to any taxpayer, means a fund which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a retirement annuity fund as defined in section one of this Act or the corresponding provisions of any previous Income Tax Act, if during any such year the taxpayer was a member of such fund.

2. Subject to the provisions of paragraph 2A, the amount to be included in the gross income of any person in terms of paragraph (e) of the definition of 'gross income' in section 1 of this Act shall be the aggregate of the amounts received by or accrued to such person by way of lump sum benefits during any year of assessment from or in consequence of membership or past membership of any pension funds, provident funds or retirement annuity funds, less the deductions permitted under the provisions of this Schedule.

[Para. 2 substituted by s. 42 of Act 28 of 1997 and by s. 48 of Act 30 of 1998.]

2A. For the purposes of paragraph 2, where any lump sum benefit is received or accrues from a fund referred to in paragraph (a) or (b) of the definition of 'pension fund' in section 1 of this Act, the amount of such lump sum benefit shall be deemed to be an amount equal to the amount determined in accordance with formula C: Provided that the determination of the deemed amount of the lump sum benefit in terms of this paragraph shall only apply if the person was a member of a fund referred to in paragraph (a) or (b) of the definition of 'pension fund' in section 1 of this Act on 1 March 1998 and thereafter uninterruptedly continued to be a member of any such fund until the date of accrual of the lump sum benefit.



[Para. 2A inserted by s. 43 (1) of Act 28 of 1997 and amended by s. 49 of Act 30 of 1998 and by s. 44 (1) of Act 32 of 2004.]

2B. For the purposes of paragraphs 2 and 2A, where a court has made an order that any part of the pension interest of a member of a pension fund, provident fund or retirement annuity fund shall be paid to the former spouse of that member, as provided for in the Divorce Act, 1979 (Act 70 of 1979), the amount of that part is deemed to be an amount that accrues to that member on the date on which the pension interest, of which that amount forms part, accrues to that member: Provided that so much of any tax payable as is due to the inclusion in the income of such person of any amount in accordance with the provisions of this paragraph, may be recovered by such person from the former spouse to whom or in whose favour the part in question is paid or becomes payable.

[Para. 2B inserted by s. 42 (1) of Act 53 of 1999 and amended by s. 64 (1) of Act 60 of 2001 and by s. 45 of Act 32 of 2004.]

3. Any lump sum benefit which becomes recoverable in consequence of or following upon the death of a member or past member of a pension fund, provident fund or retirement annuity fund shall be deemed to be a lump sum benefit which accrued to such member or past member immediately prior to his death: Provided that so much of any tax payable as is due to the inclusion in the income of such member or past member of any amount in accordance with the provisions of this paragraph, may be recovered from the person to whom or in whose favour the lump sum benefit in question accrues: Provided further that where any annuity which became payable or may become payable or which is provided or may be provided on or in consequence of or following upon the death of a member or past member of any such fund has on or after 1 July 1983 been commuted for a lump sum, such lump sum shall for the purposes of this paragraph be deemed to be a lump sum which has become recoverable in consequence of or following upon the death of such member or past member.

[Para. 3 amended by s. 47 of Act 94 of 1983 and substituted by s. 50 of Act 30 of 1998.]

4. (1) If in terms of the rules of a pension, provident or retirement annuity fund any lump sum benefit arising out of a member's withdrawal or resignation is payable at a fixed or ascertainable future date, such benefit shall be deemed to have accrued to such member on that date or on the date of his death, whichever is earlier, and shall be assessed to tax in respect of the year of assessment during which such benefit is deemed to accrue as though it were a lump sum benefit derived by him upon his withdrawal or resignation from the fund or upon his retirement or immediately prior to his death, as the case may be.

(2) If upon a member's withdrawal or resignation from or the winding up of a pension fund, provident fund or retirement annuity fund on or after the fifteenth day of March, 1961, a policy of insurance is ceded or otherwise made over to or in favour of such member before the date of promulgation of the Income Tax Act, 1964, any lump sum due in respect of such policy upon its maturity or surrender before such date shall be deemed to be a lump sum benefit accruing to such member from a pension fund, provident fund or retirement annuity fund, as the case may be, on the date of such maturity or surrender, or, if such member dies before such last-mentioned date, on the date of his death, and shall be assessed to tax in respect of the year of assessment during which such benefit is deemed to accrue as though it were a lump sum benefit derived by him upon his withdrawal or resignation from the fund or upon his retirement or immediately prior to his death, as the case may be: Provided that if after the cession or making over of such policy any premiums are paid thereon by such member, there shall be deducted from such lump sum, in addition to any other deduction to which such member may be entitled in terms of this Schedule, an amount which bears to such lump sum the same ratio as the sum of the premiums paid by him after such cession or making over bears to the sum of all the premiums paid on such policy.

[Sub-para. (2) amended by s. 20 of Act 72 of 1963 and substituted by s. 24 (a) of Act 90 of 1964.]

(2)*bis* If a policy of insurance is ceded or otherwise made over to or in favour of a member of a pension fund, provident fund or retirement annuity fund by the fund in question on or after the date of commencement of the Income Tax Act, 1964, the surrender value of such policy shall, provided such member retired or ceased to be a member of such fund on or after the fifteenth day of March, 1961, be deemed for the purposes of this Schedule to be a lump sum benefit accruing to such member from such fund on the date of such cession or making over.

[Sub-para. (2)*bis* inserted by s. 24 (b) of Act 90 of 1964.]

(3) If a member of a provident fund retires from such fund before he reaches the age of 55 years on grounds other than ill-health, any lump sum benefits received by or accrued to such member in consequence of or following upon such retirement shall, unless the Commissioner having regard to the circumstances of the case otherwise directs, be assessed to tax not in accordance with the provisions of

paragraph 5 but in accordance with the provisions of paragraph 6 as though it were a lump sum benefit derived by such member in consequence of or following upon such member's withdrawal or resignation from such fund.

[Sub-para. (3) substituted by s. 36 (1) of Act 21 of 1995.]

**BENEFITS ACCRUING UPON RETIREMENT AND BENEFITS DEEMED TO HAVE ACCRUED IMMEDIATELY PRIOR TO THE TAXPAYER'S DEATH: DEDUCTIONS (para. 5)**

5. (1) The deduction to be allowed in determining the amount required to be included in the taxpayer's gross income for any year of assessment in terms of paragraph 2 shall, if the lump sum benefits in question have been derived in consequence of or following upon the taxpayer's retirement or are deemed to have accrued to him immediately prior to his death, be an amount (not exceeding the aggregate value of such lump sum benefits) equal to the greater of the following amounts, namely-

- (a) an amount determined in accordance with formula B in relation to such taxpayer, but subject to the provisions of subparagraph (2); or
- (b) an amount equal to the sum of the amounts which would have been allowed to be deducted in terms of paragraph (b)ter of the definition of 'gross income' in section seven of the Income Tax Act, 1941, prior to its amendment by the Income Tax Act, 1961 (Act 80 of 1961), if such lump sum benefits had been received by or had accrued to such taxpayer on the fourteenth day of March, 1961, and had been required to be included in his gross income in terms of the said paragraph, less the aggregate of any deductions which may have been allowed to the taxpayer under this subparagraph or subparagraph (1) of paragraph 5 of the Fourth Schedule to the Income Tax Act, 1941, in respect of any years of assessment preceding the year of assessment in question.

(2) Notwithstanding anything to the contrary contained in the definition of 'formula B' in paragraph 1, the amount that shall be taken into account as represented by the symbol C in that formula for the purpose of determining the amount of the deduction to be allowed in terms of item (a) of subparagraph (1) in the circumstances described in any of the items of this subparagraph shall not be less than the amount stated in the relevant item, namely-

- (a) R24 000 if the taxpayer is or was a member of a provident fund (other than a provident fund which has become a pension fund) from which any lump sum benefit was or may be derived in consequence of or following upon his retirement on or after the fifteenth day of March, 1961;

[Item (a) amended by s. 25 of Act 90 of 1964, by s. 35 (a) of Act 88 of 1971, by s. 35 (a) of Act 69 of 1975, by s. 27 (a) of Act 113 of 1977, by s. 28 (a) of Act 104 of 1980, by s. 48 (a) of Act 94 of 1983 and by s. 25 (a) of Act 65 of 1986.]

- (b) in respect of lump sum benefits deemed to have accrued immediately prior to the taxpayer's death R60 000 or, if such benefits consist of or include benefits from any pension or provident fund, the greater of the following amounts namely R60 000 or an amount equal to twice so much of the salary actually earned by the taxpayer during the period of twelve months ending at his death from the employer by whom he was employed during his membership of such fund, as does not exceed R60 000;

[Item (b) amended by s. 31 (c) of Act 90 of 1962, by s. 21 of Act 72 of 1963, by s. 35 (b) of Act 88 of 1971, by s. 35 (b) of Act 69 of 1975, by s. 27 (b) of Act 113 of 1977, by s. 28 (b) of Act 104 of 1980, by s. 48 (b) of Act 94 of 1983 and by s. 25 (b) of Act 65 of 1986.]

- (c) .....

[Item (c) deleted by s. 31 (d) of Act 90 of 1962.]

- (d) in respect of lump sum benefits deemed to have accrued to the taxpayer immediately prior to his death and consisting of or including lump sum benefits derived from retirement annuity funds in any case in which the death has occurred before the taxpayer's retirement in relation to such funds, an amount (not exceeding the aggregate value of such lump sum benefits) equal to so much of the sum of the amounts the taxpayer could have derived in respect of the commutation of one-third of all annuities to which he would have become entitled from such funds if the date of his retirement in relation to such funds had fallen on the day preceding his death, as does not exceed the greater amount which is applicable in relation to the said lump sum benefits under paragraph (i) of the proviso in paragraph (b) of the definition of 'formula B' in paragraph 1 of this Schedule.

[Item (d) amended by s. 35 (c) of Act 88 of 1971, by s. 35 (c) of Act 69 of 1975, by s. 27 (c) of Act 113 of 1977 and by s. 28 (c) of Act 104 of 1980 and substituted by s. 48 (c) of Act 94 of 1983.]

(3) Where in respect of any year of assessment an amount has to be determined in accordance with formula A for the purposes of formula B in relation to any taxpayer in regard to any pension fund or provident fund prior to the date of his retirement in relation to such fund, it shall be assumed for the purposes of such determination that such taxpayer will survive the date of his retirement in relation to the fund in question and that until that date he will continue to be employed on the scale of salary at which he is employed at the date on which the determination is made, and, in regard to any provident fund, will continue to contribute to such fund at the rate at which he is contributing at the last-mentioned date.

[Sub-para. (3) amended by s. 31 (e) of Act 90 of 1962 and substituted by s. 48 (d) of Act 94 of 1983.]

(4) For the purposes of any calculation in accordance with formula B no regard shall be had to any lump sum benefit from any retirement annuity fund which has not yet been received by or accrued to the taxpayer.

(5) For the purposes of calculating any amount which would have been allowed to be deducted in terms of paragraph (b)ter of the definition of 'gross income' in section seven of the Income Tax Act, 1941, in the circumstances described in item (b) of subparagraph (1), regard shall be had to the contributions actually made by the taxpayer to the fund or funds in question and the period or periods of his employment before the fifteenth day of March, 1961, and no cognizance shall be taken of any contributions or of any employment on or after that date.

(6) The number of completed years referred to in paragraph (i) of the proviso to paragraph (b) of the definition of 'formula B' in paragraph 1 of this Schedule shall be the number of completed years during the whole of which the taxpayer concerned had, until the date of accrual of any lump sum benefit to which the provisions of subparagraph (1) of this paragraph apply, been a member of one or more pension funds, provident funds or retirement annuity funds (other than a fund from which he had withdrawn or resigned or a fund which had been wound up): Provided that for the purposes of this paragraph-

- (i) where the taxpayer was a member of a pension fund or provident fund the benefits under which are in terms of the rules of such fund determinable according to the periods of employment of the members thereof, the period during which the taxpayer was a member of such fund shall be deemed to be so much of his period of employment (including any period which under the said rules is required to be taken into account for the purpose of determining the amount of such benefits) as had elapsed before the aforesaid date of accrual;
- (ii) where the taxpayer was a member of a retirement annuity fund, he had discontinued his contributions to such fund prematurely and he had not been reinstated as a full member in respect of the contributions so discontinued, he shall for the purposes of this paragraph be deemed not to have been a member of such fund during the period in respect of which the contributions in question were not made by him to the fund.

[Sub-para. (6) added by s. 48 (e) of Act 94 of 1983.]

#### **WITHDRAWAL OR RESIGNATION: WINDING UP: DEDUCTIONS (paras. 6-7)**

6. The deduction to be allowed in determining the amount required to be included in the taxpayer's gross income for any year of assessment in terms of paragraph 2 shall, if the lump sum benefits in question have been derived in consequence of or following upon his withdrawal or resignation from any pension funds, provident funds or retirement annuity funds or the winding up of any such funds, be the sum of the following amounts, namely-

- (a) so much of any lump sum benefit so derived by the taxpayer from any pension fund as is paid for the benefit of such taxpayer into any other pension fund or retirement annuity fund;  
[Para. (a) substituted by s. 51 (1) (a) of Act 30 of 1998.]
- (b) so much of any lump sum benefit so derived by the taxpayer from any provident fund as is paid for the benefit of such taxpayer into any pension fund, provident fund or retirement annuity fund;  
[Para. (b) substituted by s. 51 (1) (a) of Act 30 of 1998.]
- (c) so much of any lump sum benefit so derived by the taxpayer from any retirement annuity fund as is applied in accordance with the provisions of subparagraph (xi) of paragraph (b) of the definition of 'retirement annuity fund' in section one of this Act; and
- (cA) so much of any lump sum benefit so derived by the taxpayer from any retirement annuity

fund as is paid for the benefit of the taxpayer into any other retirement annuity fund;  
[Para. (cA) inserted by s. 32 of Act 141 of 1992.]

- (d) so much of the excess of the aggregate value of the lump sum benefits in question so derived by the taxpayer from all the funds over the sum of the amounts allowed to be deducted by the taxpayer under the preceding items as does not exceed R1 800:  
[Sub-para. (d) amended by s. 5 of Act 30 of 1984.]

Provided that-

- (i) in respect of any lump sum benefits so derived by the taxpayer from any pension fund, provident fund or retirement annuity fund the sum of the deductions under this paragraph shall not be less than the lesser of either the aggregate value of such lump sum benefits or the sum of the taxpayer's own contributions to such fund, including so much of any amounts paid into such fund for his benefit by any other pension fund, provident fund or retirement annuity fund as represented his own contributions to such other fund, but excluding so much of such contributions and amounts representing contributions as ranked for deduction against the taxpayer's income in terms of section 11 (k) or (n) of this Act or the corresponding provisions of any previous Income Tax Act;
- (ii) for the purposes of this paragraph the surrender value of any policy of insurance ceded or otherwise made over to the taxpayer by any aforesaid fund and ceded or otherwise made over by the taxpayer to another such fund in the appropriate circumstances contemplated by this paragraph or any amount paid in such circumstances by the taxpayer into such other fund in lieu of or as representing such surrender value or a portion thereof, shall, if such surrender value is in terms of subparagraph (2)*bis* of paragraph 4 deemed to be a lump sum benefit accruing to the taxpayer, be deemed to have been paid for the benefit of the taxpayer into such other fund; and
- (iii) where the lump sum benefit in question has been derived in consequence of or following upon the taxpayer's withdrawal or resignation from a fund referred to in paragraph (a) or (b) of the definition of 'pension fund' in section 1 of this Act, the deduction to be allowed in terms of subparagraph (a) or (b) of this paragraph shall be limited to the amount determined in accordance with 'formula C'.

[Para. 6 substituted by s. 26 of Act 90 of 1964 and amended by s. 18 of Act 104 of 1979 and by s. 51 (1) (b) of Act 30 of 1998.]

7. The normal tax payable in respect of any year of assessment by any person whose income for that year includes an amount determined in accordance with the provisions of this Schedule, shall, subject to the provisions of section 5 of this Act, be determined in accordance with the provisions of section 5 (10) of this Act, but nothing herein contained shall be construed as relieving any person from liability for taxation under this Act upon any portion of his taxable income.

[Para. 7 substituted by s. 27 of Act 88 of 1965, by s. 29 of Act 95 of 1967 and by s. 36 of Act 88 of 1971 and amended by s. 25 of Act 85 of 1987.]

**Third Schedule**  
**LAWS REPEALED**

Number and year of Law	Short title	Extent of repeal
Act 29 of 1939	Co-operative Societies Act, 1939	Subsections (2) and (3) of section <i>ninety-nine</i>
Act 31 of 1941	Income Tax Act, 1941	The whole
Act 46 of 1941	Special Taxation Act, 1941	The whole
Act 34 of 1942	Income Tax Act, 1942	The whole
Act 26 of 1943	Income Tax act, 1943	The whole
Act 31 of 1943	Special Taxation Amendment Act, 1943	The whole
Act 47 of 1944	Income Tax Act, 1944	The whole
Act 39 of 1945	Income Tax Act, 1945	The whole
Act 55 of 1946	Income Tax Act, 1946	The whole
Act 52 of 1947	Income Tax Act, 1947	The whole
Act 40 of 1948	Income Tax Act, 1948	The whole
Act 45 of 1949	Income Tax Act, 1949	The whole

Act 35 of 1950	Income Tax Act, 1950	The whole
Act 64 of 1951	Income Tax Act, 1951	The whole
Act 56 of 1952	Income Tax Act, 1952	The whole
Act 34 of 1953	Income Tax Act, 1953	The whole, except section <i>two</i>
Act 55 of 1954	Income Tax Act, 1954	The whole
Act 43 of 1955	Income Tax Act, 1955	The whole except sections <i>fourteen</i> and <i>fifteen</i>
Act 55 of 1956	Income Tax Act, 1956	The whole
Act 61 of 1957	Income Tax Act, 1957	The whole, except section <i>three</i>
Act 36 of 1958	Income Tax Act, 1958	The whole, except sections <i>three</i> and <i>nineteen</i>
Act 78 of 1959	Income Tax Act, 1959	The whole, except section <i>three</i>
Act 58 of 1960	Income Tax Act, 1960	The whole
Act 80 of 1961	Income Tax Act, 1961	The whole, except sections <i>thirty-two</i> and <i>thirty-three</i>

#### Fourth Schedule

### AMOUNTS TO BE DEDUCTED OR WITHHELD BY EMPLOYERS AND PROVISIONAL PAYMENTS IN RESPECT OF NORMAL TAX AND PROVINCIAL TAXES (paras1-34)

[Fourth Schedule added by s. 19 of Act 6 of 1963.]

#### Cases

(Section *eighty-nine bis* of this Act)

#### PART I

#### DEFINITIONS (para. 1)

1. For the purposes of this Schedule, unless the context otherwise indicates -  
**'Black person'** .....

[Definition of 'Black Person' substituted by s. 47 (1) (a) of Act 85 of 1974 and deleted by s. 6 (a) of Act 30 of 1984.]

**'employee'** means-

- (a) any person (other than a company) who receives any remuneration or to whom any remuneration accrues;
- (b) any person who receives any remuneration or to whom any remuneration accrues by reason of any services rendered by such person to or on behalf of a labour broker;
- (c) any labour broker; and
- (d) any person or class or category of person whom the Minister of Finance by notice in the *Gazette* declares to be an employee for the purposes of this definition;
- (e) any personal service company;
- (f) any personal service trust; and
- (g) any director of a private company who is not otherwise included in terms of paragraph (a);

[Para. (e) added by s. 52 (1) (a) of Act 30 of 2000.]

[Para. (f) added by s. 52 (1) (a) of Act 30 of 2000.]

[Para. (g) added by s. 19 (1) (c) of Act 19 of 2001.]

[Definition of 'employee' substituted by s. 44 (1) (a) of Act 101 of 1990.]

**'employees' tax'** means the tax required to be deducted or withheld by an employer in terms of paragraph 2 from remuneration paid or payable to an employee;

**'employees' tax certificate'** means a certificate required to be issued by an employer in terms of paragraph 13;

**'employer'** means any person (excluding any person not acting as a principal, but including any person acting in a fiduciary capacity or in his capacity as a trustee in an insolvent estate, an executor or an administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund) who pays or is liable to pay to any person any amount by way of remuneration, and any person responsible for the payment of any amount by way of remuneration to any person under the provisions of any law or out of public funds (including the funds of any provincial council or any administration or undertaking of the State) or out of funds voted by Parliament or a provincial council;

[Definition of 'employer' amended by s. 22 of Act 72 of 1963 and substituted by s. 44 (1) (b) of Act 101 of 1990.]

**'labour broker'** means any person who conducts or carries on any business whereby such person for reward provides a client of such business with other persons to render a service or perform work for such client, or procures such other persons for the client, for which services or work such other persons are remunerated by such person;

[Definition of 'labour broker' inserted by s. 44 (1) (c) of Act 101 of 1990 and substituted by s. 52 (1) (a) of Act 30 of 1998 and by s. 52 (1) (b) of Act 30 of 2000.]

**'month'** means any of the twelve portions into which any calendar year is divided;

[Definition of 'month' inserted by s. 19 (1) (d) of Act 19 of 2001.]

**'personal service company'** means any company (other than a company which is a labour broker), where any service rendered on behalf of such company to a client of such company is rendered personally by any person who is a connected person in relation to such company, and-

- (a) such person would be regarded as an employee of such client if such service was rendered by such person directly to such client, other than on behalf of such company; or
- (b) such person or such company is subject to the control or supervision of such client as to the manner in which, or hours during which, the duties are performed or are to be performed in rendering such service; or
- (c) the amounts paid or payable in respect of such service consist of, or include, earnings of any description which are payable at regular daily, weekly, monthly or other intervals; or
- (d) where more than 80 per cent of the income of such company during the year of assessment, from services rendered, consists of or is likely to consist of amounts received directly or indirectly from any one client of such company, or any associated institution as defined in the Seventh Schedule to this Act, in relation to such client,

except where such company throughout the year of assessment, employs more than three full-time employees who are on a full-time basis engaged in the business of such company of rendering any such service, other than any employee who is a shareholder or member of the company or is a connected person in relation to such person;

[Definition of 'personal service company' inserted by s. 52 (1) (c) of Act 30 of 2000.]

**'personal service trust'** means any trust (other than a trust which is a labour broker), where any service rendered on behalf of such trust to a client of such trust is rendered personally by any person who is a connected person in relation to such trust, and-

- (a) such person would be regarded as an employee of such client if such service was rendered by such person directly to such client other than on behalf of such trust; or
- (b) such person or such trust is subject to the control or supervision of such client as to the manner in which, or hours during which, the duties are performed or are to be performed in rendering such service; or
- (c) the amounts paid or payable in respect of such service consist of, or include, earnings of any description which are payable at regular daily, weekly, monthly or other intervals; or
- (d) where more than 80 per cent of the income of such trust during the year of assessment, from services rendered, consists of or is likely to consist of amounts received directly or indirectly from any one client of such trust, or associated institution as defined in the Seventh Schedule to this Act, in relation to such client,

except where such trust throughout the year of assessment, employs more than three full-time employees who are on a full-time basis engaged in the business of such trust of rendering any such service, other than any employee who is a connected person relation to such person or such trust;

[Definition of 'personal service trust' inserted by s. 52 (1) (c) of Act 30 of 2000.]

**'provincial income tax'** .....

[Definition of 'provincial income tax' deleted by s. 37 of Act 88 of 1971.]

**'provincial taxes'** .....

[Definition of 'provincial taxes' deleted by s. 37 of Act 88 of 1971.]

**'provisional tax'** means any payment required to be made in terms of paragraph 17;

**'provisional taxpayer'** means-

- (a) any person (other than a company or a person referred to in subparagraph (1) of paragraph 18) who derives by way of income any amount which does not constitute remuneration in terms of the definition of that expression in this paragraph;

- (b) unless the Commissioner in the particular case otherwise directs, any director of a private company if such director or such company is a resident;

[Para. (b) substituted by s. 47 (1) (b) of Act 85 of 1974 and by s. 53 (1) (a) of Act 59 of 2000.]

- (bA) unless the Commissioner in the particular case otherwise directs, any member of a close corporation if such member is a resident;

[Para. (bA) inserted by s. 38 of Act 121 of 1984 and substituted by s. 53 (1) (a) of Act 59 of 2000.]

- (c) any company; and

[Para. (c) substituted by s. 44 (1) (a) of Act 129 of 1991.]

- (d) any person who is notified by the Commissioner that he or she is a provisional taxpayer;

[Para. (d) substituted by s. 44 (1) (a) of Act 129 of 1991 and by s. 46 (1) (a) of Act 32 of 2004.]

**'remuneration'** means any amount of income which is paid or is payable to any person by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, whether in cash or otherwise and whether or not in respect of services rendered, including-

- (a) any amount referred to in paragraph (a), (c), (cA), (d), (e), (eA) or (f) of the definition of 'gross income' in section 1 of this Act;

[Sub-para. (a) substituted by s. 44 (1) (a) of Act 28 of 1997 and by s. 53 (1) (b) of Act 59 of 2000.]

- (b) any amount required to be included in such person's gross income under paragraph (i) of that definition;

[Para. (b) substituted by s. 44 of Act 89 of 1969.]

- (bA) any allowance or advance, which must be included in the taxable income of that person in terms of section 8 (1) (a) (i), other than-

- (i) an allowance in respect of which paragraph (c) applies; or
- (ii) an allowance or advance paid or granted to that person in respect of accommodation, meals or other incidental costs while that person is obliged to spend at least one night away from his or her usual place of residence in the Republic;

[Para. (bA) inserted by s. 32 (1) (b) of Act 30 of 2002.]

- (c) 50 per cent of-

- (i) the amount of any allowance or advance in respect of transport expenses referred to in section 8 (1) (b), other than any such allowance or advance contemplated in section 8 (1) (b) (iii) which is based on the actual distance travelled by the recipient, and which is calculated at a rate per kilometre which does not exceed the appropriate rate per kilometre fixed by the Minister of Finance under the said section 8 (1) (b) (iii); and
- (ii) the amount of any allowance referred to in section 8 (1) (d) granted to the holder of a public office contemplated in section 8 (1) (e);

[Para. (c) inserted by s. 44 (1) (b) of Act 129 of 1991, substituted by s. 33 (b) of Act 141 of 1992, amended by s. 48 (1) of Act 113 of 1993, substituted by s. 16 of Act 140 of 1993 and by s. 37 (1) of Act 21 of 1995 and amended by s. 44 (1) (b) of Act 28 of 1997, by s. 52 (1) (b) of Act 30 of 1998 and by s. 32 (1) (a) of Act 30 of 2002.]

- (d) the market value of any qualifying equity share contemplated in section 8B, determined on the date of disposal, which has been disposed of by that person and where the receipts and accruals from that disposal must be included in that person's income under that section;

[Para. (d) inserted by s. 46 (1) (b) of Act 32 of 2004.]

- (e) any gain determined in terms of section 8C which is required to be included in the income of that person;

[Para. (e) inserted by s. 46 (1) (b) of Act 32 of 2004.]

but not including-

- (i) .....

[Para. (i) amended by s. 6 (b) of Act 30 of 1984 and deleted by s. 34 of Act 36 of 1996.]

- (ii) any amount paid or payable in respect of services rendered or to be rendered by any person (other than a person who is not a resident or an employee contemplated in paragraph (b), (c), (d), (e) or (f) of the definition of 'employee') in the course of any trade carried on by him independently of the person by whom such amount is paid or payable

and of the person to whom such services have been or are to be rendered: Provided that for the purposes of this paragraph a person shall not be deemed to carry on a trade independently as aforesaid-

- (aa) if he is subject to the control or supervision of any other person as to the manner in which his duties are performed or to be performed or as to his hours of work; or
- (bb) if the amounts paid or payable for his services consist of or include earnings of any description which are payable at regular daily, weekly, monthly or other intervals;

[Para. (ii) substituted by s. 47 (1) (c) of Act 85 of 1974 and amended by s. 44 (1) (e) of Act 101 of 1990 and by s. 53 (1) (c) of Act 59 of 2000.]

- (iii) any pension or additional pension under the Aged Persons Act, 1967 (Act 81 of 1967), or the Blind Persons Act, 1968 (Act 26 of 1968), any disability grant or additional or supplementary allowance under the Disability Grants Act, 1968 (Act 27 of 1968), or any grant or contribution under the provisions of section 89 of the Children's Act, 1960 (Act 33 of 1960);

[Para. (iii) substituted by s. 47 (1) (c) of Act 85 of 1974.]

- (iv) .....

[Para. (iv) deleted by s. 44 (1) (f) of Act 101 of 1990.]

- (v) .....

[Para. (v) substituted by s. 24 of Act 52 of 1970 and deleted by s. 6 (c) of Act 30 of 1984.]

- (vi) any amount paid or payable to any employee wholly in reimbursement of expenditure actually incurred by such employee in the course of his employment;

[Para. (vi) substituted by s. 20 of Act 70 of 1989.]

- (vii) .....

[Para. (vii) substituted by s. 44 (1) (g) of Act 101 of 1990 and by s. 33 (c) of Act 141 of 1992 and deleted by s. 19 (1) (e) of Act 19 of 2001]

- (viii) any annuity under an order of divorce or decree of judicial separation or under any agreement of separation;

[Definition of 'remuneration' amended by s. 44 (1) (d) of Act 101 of 1990, by s. 33 (a) of Act 141 of 1992 and by s. 32 (1) (a) of Act 30 of 2002.]

**'representative employer'** means-

- (a) in the case of any company, the public officer of that company, or, in the event of such company being placed in liquidation or under judicial management, the liquidator or judicial manager, as the case may be;
- (b) in the case of any divisional council, municipal council, village management board or like authority or any body corporate or unincorporate (other than a company or a partnership) any manager, secretary, officer or other person responsible for paying remuneration on behalf of such council, board, authority or body;
- (c) in the case of a person under legal disability, any guardian, curator, administrator or other person having the management or control of the affairs of the person under legal disability; or
- (d) in the case of any employer who is not ordinarily resident in the Republic, any agent of such employer having authority to pay remuneration,

who is a resident, but nothing in this definition shall be construed as relieving any person from any liability, responsibility or duty imposed upon him by this Schedule.

[Definition of 'representative employer' amended by s. 53 (1) (d) of Act 59 of 2000.]

## PART II

### EMPLOYEES' TAX (paras. 2-16)

#### EMPLOYERS TO DEDUCT TAX (paras. 2-11A)

2. (1) Every-

- (a) employer who is a resident; or
- (b) representative employer in the case of any employer who is not a resident,

(whether or not registered as an employer under paragraph 15), who pays or becomes liable to pay any amount by way of remuneration to any employee shall, unless the Commissioner has granted authority to the contrary, deduct or withhold from that amount by way of employees' tax an amount which shall be determined as provided in paragraph 9, 10, 11 or 12, whichever is applicable, in respect of the liability for



normal tax of that employee, or, if such remuneration is paid or payable to an employee who is married and such remuneration is under the provisions of section 7 (2) of this Act deemed to be income of the employee's spouse, in respect of such liability of that spouse, and shall pay the amount so deducted or withheld to the Commissioner within seven days after the end of the month during which the amount was deducted or withheld, or in the case of a person who ceases to be an employer before the end of such month, within seven days after the day on which he ceased to be an employer, or in either case within such further period as the Commissioner may approve.

[Sub-para. (1) amended by s. 23 (a) of Act 72 of 1963 and substituted by s. 29 (1) (a) of Act 55 of 1966, by s. 38 of Act 88 of 1971, by s. 45 (a) of Act 129 of 1991 and by s. 54 of Act 59 of 2000.]

(2) Any employer may, at the written request of any employee, deduct or withhold from any amount of remuneration an amount by way of employees' tax greater than that required to be deducted or withheld in terms of subparagraph (1), and shall remit such amount to the Commissioner, and the provisions of this Schedule relating to employees' tax shall *mutatis mutandis* apply in respect of such amount.

(3) .....

[Sub-para. (3) deleted by s. 20 (1) of Act 19 of 2001.]

(4) The amount required to be deducted or withheld from any remuneration under this Schedule by way of employees' tax must be calculated on the balance of the remuneration remaining after deducting therefrom-

- (a) any contribution by the employee concerned to any pension fund or retirement annuity fund which the employer is entitled or required to deduct from that remuneration, but limited to the deduction to which the employee is entitled under section 11 (k) or (n), as the case may be, having regard to the remuneration and the period in respect of which it is payable;
- (b) at the option of the employer, any contribution to a retirement annuity fund by the employee in respect of which proof of payment has been furnished to the employer, but limited to the deduction to which the employee is entitled under section 11 (n) having regard to the remuneration and the period in respect of which it is payable;
- (c) at the option of the employer, any premium paid by the employee in respect of which proof of payment has been furnished to the employer, in terms of an insurance policy-
  - (i) to the extent that it covers that employee against the loss of income as a result of illness, injury, disability or unemployment; and
  - (ii) in respect of which all amounts payable in terms of that policy constitute or will constitute income as defined,
 but limited to the deduction to which the employee is entitled under section 11 (a); and
- (d) at the option of the employer, any contribution by the employee to a medical scheme as contemplated in section 18 (1) (a) in respect of which proof of payment has been furnished to the employer, if the employee is entitled to a rebate under section 6 (2) (b); and

[Sub-para. (4) amended by s. 23 (b) of Act 72 of 1963, substituted by s. 29 (1) (b) of Act 55 of 1966 and by s. 48 of Act 85 of 1974, amended by s. 28 of Act 113 of 1977, substituted by s. 40 of Act 90 of 1988, amended by s. 21 of Act 70 of 1989, by s. 45 (b) of Act 129 of 1991 and by s. 38 of Act 21 of 1995 and substituted by s. 21 (1) (a) of Act 16 of 2004.]

(5) (a) The Commissioner shall on application made to him by any person who is a labour broker or who is an employee by reason of the provisions of paragraph (d) of the definition of 'employee' in paragraph 1, issue to such person a certificate of exemption if-

- (i) such person carries on an independent trade and is registered as a provisional taxpayer under the provisions of paragraph 17;
- (ii) in the case of any such labour broker, he is registered as an employer under the provisions of paragraph 15; and
- (iii) such person has, subject to any extension granted by the Commissioner, submitted all such returns as are required to be submitted by him under this Act:

Provided that the Commissioner shall not issue a certificate of exemption if-

- (aa) more than 80 per cent of the gross income of such person during the year of assessment consists of, or is likely to consist of, an amount or amounts received from any one client of such person, or any associated institution as defined in the Seventh Schedule to this

Act in relation to such client, unless that person is a labour broker which throughout the year of assessment employs more than three full-time employees-

- (A) who are on a full-time basis engaged in the business of that labour broker of providing persons to or procuring persons for clients of that labour broker; and
- (B) who are not connected persons in relation to that labour broker;.

[Para. (aa) substituted by s. 21 (1) (b) of Act 16 of 2004.]

- (bb) such labour broker provides to any of its clients the services of any other labour broker; or
- (cc) such labour broker is contractually obliged to provide a specified employee of such labour broker to render any service to such client.

[Para. (a) amended by s. 53 (1) of Act 30 of 2000.]

(b) The certificate of exemption referred to in item (a) shall be issued in such form as the Commissioner may decide and shall be valid for such period as the Commissioner may indicate thereon.

(c) An employer shall not be required to deduct or withhold employees tax from any remuneration paid or payable by him to any person who produces to the employer a valid certificate of exemption issued by the Commissioner under item (a).

[Sub-para. (5) added by s. 45 of Act 101 of 1990.]

(6) Any amount included in gross income in terms of paragraph (eA) of the definition of 'gross income' shall for the purposes of this Schedule be deemed to be an amount which an employer pays or becomes liable to pay by way of remuneration to an employee.

[Sub-para. (6) added by s. 45 (1) of Act 28 of 1997.]

3. (1) The liability of any employer to deduct or withhold any amount of employees' tax in terms of paragraph 2 shall not be reduced or extinguished by reason of the fact that the employer has a right or is otherwise than in terms of any law under an obligation to deduct or withhold any other amount from the employees' remuneration, and such right or obligation shall notwithstanding anything to the contrary in any other law contained, for all purposes be deemed to have reference only to the amount of the remuneration remaining after the amount of employees' tax referred to in that paragraph has been deducted or withheld.

(2) The provisions of paragraph 2 shall apply in respect of all amounts payable by way of remuneration, notwithstanding the provisions of any law which provide that any such amount shall not be reduced or shall not be subject to attachment.

4. Any amount required to be deducted or withheld in terms of paragraph 2 shall be a debt due to the State and the employer concerned shall save as otherwise provided be absolutely liable for the due payment thereof to the Commissioner.

5. (1) Subject to the provisions of subparagraph (6) any employer who fails to deduct or withhold the full amount of employees' tax as provided in paragraph 2 shall be personally liable for the payment to the Commissioner of the amount which he fails to deduct or withhold, and shall, subject to the provisions of subparagraph (2), pay that amount to the Commissioner not later than the date on which payment should have been made if the employees' tax had in fact been deducted or withheld in terms of paragraph 2.

(2) Where the employer has failed to deduct or withhold employees' tax in terms of paragraph 2 and the Commissioner is satisfied that the failure was not due to an intent to postpone payment of the tax or to evade the employer's obligations under this Schedule, the Commissioner may, if he is satisfied that there is a reasonable prospect of ultimately recovering the tax from the employee, absolve the employer from his liability under subparagraph (1) of this paragraph.

(3) An employer who has not been absolved from liability as provided in subparagraph (2) shall have a right of recovery against the employee in respect of the amount paid by the employer in terms of subparagraph (1) in respect of that employee, and such amount may in addition to any other right of recovery be deducted from future remuneration which may become payable by the employer to that employee, in such manner as the Commissioner may determine.

(4) Until such time as an employee pays to his employer any amount which is due to the employer in terms of subparagraph (3), such employee shall not be entitled to receive from the employer an employees' tax certificate in respect of that amount.

(5) Any amount which an employer is required to pay in terms of subparagraph (1) and which he is entitled to recover from the employee in terms of subparagraph (3) shall, insofar as the employer only is concerned, be deemed to be a penalty due and payable by that employer.

(6) The provisions of subparagraph (1) shall not apply in respect of any amount or any portion of any amount of employees' tax which an employer has failed to deduct or withhold and in respect of which

the provisions of subparagraph (3) of paragraph 28 apply.

6. (1) If an employer fails to pay any amount of employees' tax for which he is liable within the period allowable for payment thereof in terms of paragraph 2 he shall, in addition to any other penalty or charge for which he may be liable under this Act, pay a penalty equal to ten per cent, of such amount.

(2) The Commissioner may having regard to the circumstances of the case remit the whole or any part of the penalty imposed under subparagraph (1).

[Sub-para. (2) substituted by s. 83 (1) (a) of Act 45 of 2003.]

(2A) If an employer fails to pay an amount of employees' tax with intent to evade that employer's or any employee's obligations under this Act, the employer may be liable to pay a penalty not exceeding an amount equal to twice the amount of employees' tax which that employer so failed to pay.

[Sub-para. (2A) inserted by s. 83 (1) (b) of Act 45 of 2003.]

(2B) Any penalty contemplated in subparagraph (2A)-

(a) must be determined by the Commissioner and must be paid within such period as the Commissioner may determine; and

(b) shall be deemed to be a tax for purposes of-

(i) the determination of any interest payable in terms of section 89; and

(ii) the application of the provisions relating to the allocation of payments by the employer in terms of section 89*ter* (1A).

[Sub-para. (2B) inserted by s. 83 (1) (b) of Act 45 of 2003.]

(3) The penalty imposed under subparagraph (1) shall be paid to the Commissioner when payment is made of the amount of employees' tax to which it refers or within such further period as the Commissioner may approve.

(4) Any decision by the Commissioner not to remit any penalty under subparagraph (2) or to impose any penalty under subparagraph (2A), shall be subject to objection and appeal.

[Sub-para. (4) added by s. 18 (1) of Act 34 of 2004.]

7. Any agreement between an employer and an employee whereby the employer undertakes not to deduct or withhold employees' tax shall be void.

8. An employee shall not be entitled to recover from an employer any amount deducted or withheld by the employer from the employee's remuneration in terms of paragraph 2.

9. (1) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister in his budget statement or as varied by the Minister under section 5 (3) of this Act, to the rebates applicable in terms of section 6 and section 6*quat* of this Act and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe deduction tables applicable to such classes of employees as he may determine, and the manner in which such tables shall be applied, and the amount of employees' tax to be deducted from any amount of remuneration shall, subject to the provisions of subparagraphs (3), (4) and (5) of this paragraph and paragraphs 10, 11 and 12, be determined in accordance with such tables or where subparagraph (3), (4) or (5) is applicable, in accordance with that subparagraph.

[Sub-para. (1) substituted by s. 39 of Act 88 of 1971 and by s. 32 (a) of Act 103 of 1976, amended by s. 29 of Act 104 of 1980 and by s. 46 of Act 101 of 1990 and substituted by s. 55 of Act 59 of 2000 and by s. 21 (1) (a) of Act 19 of 2001.]

(2) Any tables prescribed by the Commissioner in accordance with subparagraph (1) shall come into force on such date as may be notified by the Commissioner in the *Gazette*, and shall remain in force until withdrawn by the Commissioner.

(3) The amount to be deducted or withheld in respect of employees' tax from any lump sum to which paragraph (d) or (e) of the definition of 'gross income' in section 1 of this Act or section 7A thereof applies, shall be ascertained by the employer from the Commissioner before paying out such lump sum, and the Commissioner's determination of the amount to be so deducted or withheld shall be final.

[Sub-para. (3) substituted by s. 32 (b) of Act 103 of 1976.]

(4) The amount to be deducted or withheld in respect of any amount contemplated in paragraph (eA) of the definition of 'gross income' in section 1 of this Act, shall be ascertained by the employer on inquiry from the Commissioner before the date of transfer or conversion of any amount for the benefit or ultimate benefit of any member as contemplated in such paragraph and the Commissioner's determination of the amount to be so deducted or withheld shall be final.

[Sub-para. (4) added by s. 46 (1) of Act 28 of 1997.]

(5) The amount to be deducted or withheld in respect of employees' tax from any amount paid or

payable to any director of any private company during any year of assessment of that director, in respect of services rendered or to be rendered by that director to that company, shall be determined after taking into account any amount of employees' tax paid or payable to the Commissioner by that company during that year of assessment, in respect of that director in terms of paragraph 11C (2).

[Sub-para. (5) added by s. 21 (1) (b) of Act 19 of 2001.]

10. (1) If the Commissioner is satisfied that the circumstances warrant a variation of the basis provided in paragraph 9 for the determination of amounts of employees' tax to be deducted or withheld from remuneration of employees in the case of any employer he may agree with such employer as to the basis of determination of the said amounts to be applied by that employer, and the amounts to be deducted or withheld by that employer in terms of paragraph 2 shall, subject to the provisions of paragraphs 11 and 12, be determined accordingly.

(2) Any agreement made in terms of subparagraph (1) shall remain in force indefinitely, but the Commissioner or the employer concerned may give notice of termination thereof and upon the expiration of a period of three months from the date of such notice such agreement shall terminate.

11. The Commissioner may, having regard to the circumstances of the case, issue a directive-

- (a) to an employer authorising that employer-
  - (i) to refrain from deducting or withholding any amount under paragraph 2 by way of employees' tax from any remuneration due to any employee of that employer; or
  - (ii) to deduct or withhold by way of employees' tax from any remuneration in terms of paragraph 2, a specified amount or an amount to be determined in accordance with a specified rate or scale,
 

in order to alleviate hardship to that employee due to circumstances outside the control of the employee or where the remuneration constitutes commission or to correct any error in regard to the calculation of employees' tax and the employer must comply with that directive; or
- (b) to an employer which is a private company, authorising that employer-
  - (i) to refrain from paying any amount under paragraph 11C (2); or
  - (ii) to pay under that paragraph a specified amount or an amount to be determined in accordance with a specified rate or scale,
 

in order to alleviate hardship to an employer which is a private company and the employer must comply with that directive.

[Para. 11 substituted by s. 39 of Act 21 of 1995 and by s. 84 of Act 45 of 2003.]

11A (1) Where by virtue of the provisions of paragraph (b), (d) or (e) of the definition of 'remuneration' in paragraph 1, the remuneration of an employee includes -

- (a) any gain made by the exercise, cession, or release of any right to acquire any marketable security as contemplated in section 8A;
- (b) the market value of any qualifying equity share as defined in section 8B; or
- (c) any gain made as a result of the vesting of any equity instrument as contemplated in section 8C, the amount of that gain or that market value must for the purposes of this Schedule be deemed to be an amount of remuneration which is payable to that employee by the employer by whom that right was granted or from whom that equity instrument or qualifying equity share was acquired, as the case may be.

(2) Employees' tax in respect of the amount of remuneration contemplated in subparagraph (1) must, unless the Commissioner has granted authority to the contrary, be deducted or withheld by that employer from any consideration paid or payable by him or her to that employee in respect of the cession, or release of that right or the disposal of that equity instrument or qualifying equity share, as the case may be, or from any cash remuneration paid or payable by that employer to that employee after that right has to the knowledge of that employer been exercised, ceded, or released or that equity instrument has to the knowledge of that employer vested or that qualifying equity share has to the knowledge of that employer been disposed of.

(3) The provisions of this Schedule apply in relation to the amount of employees' tax deducted or withheld under subparagraph (2) as though that amount had been deducted or withheld from the amount of the gain or in respect of the market value, as the case may be, referred to in subparagraph (1).

(4) Before deducting or withholding employees tax under subparagraph (2) in respect of remuneration contemplated in subparagraph (1) (a) or (c), the employer must ascertain from the Commissioner the amount to be so deducted or withheld.

(5) If that employer is, by reason of the fact that the amount to be deducted or withheld by way of employees' tax exceeds the amount from which the deduction or withholding is to be made, unable to deduct or withhold the full amount of employees' tax during the year of assessment during which the gain arises or the qualifying equity share is disposed of, as the case may be, he or she must immediately notify the Commissioner of the fact.

(6) Where an employee has under any transaction to which the employer is not a party made any gain or an employee has disposed of any qualifying equity share as contemplated in subparagraph (1), that employee must immediately inform the employer thereof and of the amount of that gain or the market value of that qualifying equity share, as the case may be.

(7) Any employee who without just cause shown by him or her fails to comply with the provisions of subparagraph (6), shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000. [Para. 11A inserted by s. 45 of Act 89 of 1969, amended by s. 47 of Act 28 of 1997 and substituted by s. 19 of Act 34 of 2004.]

### **STANDARD INCOME TAX ON EMPLOYEES (para. 11B)**

[Heading inserted by s. 41 of Act 90 of 1989.]

11B. (1) For the purposes of this paragraph-

'annual equivalent', in relation to any net remuneration, means an amount equal to the sum of such net remuneration multiplied by the ratio which a full year bears to the period in respect of which such net remuneration is payable: Provided that where the Commissioner has in relation to the employment of any employee issued a directive as contemplated in paragraph (c) of the definition of 'standard employment', he may further direct that the annual equivalent of the net remuneration derived by such employee from such standard employment be determined in such manner as the Commissioner may consider reasonable in the circumstances.

[Definition of 'annual equivalent' amended by s. 22 (a) of Act 70 of 1989.]

'annual tax', in relation to any amount of net remuneration, means an amount equal to the normal tax payable in accordance with the rates of tax fixed in respect of the relevant year of assessment under section 5 (2) of this Act in respect of a taxable income equal to such net remuneration, less a deduction equal to the sum of the rebates to which the employee would have been entitled under section 6 (2) and (3) had the relevant year of assessment ended on the last day of the relevant tax period;

[Definition of 'annual tax' substituted by s. 22 (b) of Act 70 of 1989 and by s. 47 (a) of Act 101 of 1990.]

'net remuneration' means the balance of any remuneration as determined by an employer under paragraph 2 (4) or by the Commissioner under subparagraph (4), but excluding-

- (a) any amounts which, when included in the taxpayer's income, will result in the normal tax payable by him being determined under the provisions of section 5 (10);
- (b) any amount, if the taxpayer has in the production of such amount incurred expenditure which is deductible in the determination of the taxable income derived by him from such amount, or if he is entitled to an allowance under section 11 (e) which is so deductible, and such expenditure or allowance, or the sum of such expenditure and allowance, as the case may be, exceeds 1 per cent of such amount;

[Para. (b) substituted by s. 47 (b) of Act 101 of 1990.]

- (c) any remuneration derived by any person which is under the provisions of section 7 (2) deemed to be income accrued to such person's spouse;

[Para. (c) substituted by s. 47 (b) of Act 101 of 1990 and by s. 46 (a) of Act 129 of 1991.]

- (d) .....

[Para. (d) deleted by s. 22 (c) of Act 70 of 1989.]

- (e) .....

[Para. (e) deleted by s. 47 (c) of Act 101 of 1990.]

- (f) any remuneration not derived-

- (i) from standard employment; or
- (ii) by way of an annuity provided or payable by a pension fund, provident fund or benefit fund;

[Subitem (ii) substituted by s. 56 (1) of Act 59 of 2000.]

[Para. (f) substituted by s. 22 (d) of Act 70 of 1989, by s. 46 (b) of Act 129 of 1991 and by s. 34 (1) of Act 141 of 1992.]

- (g) any remuneration paid or payable to any director of any company in respect of services rendered or to be rendered by such director to such company;

[Para. (g) added by s. 46 (c) of Act 129 of 1991.]

- (h) the amount of any allowance or advance contemplated in paragraph (c) of the definition of 'remuneration' in paragraph (1);

[Para. (h) added by s. 46 (c) of Act 129 of 1991 and substituted by s. 33 (1) of Act 30 of 2002 and by s. 56 (1) of Act 74 of 2002.]

- (i) remuneration derived by the taxpayer during any year of assessment in respect of which he is entitled to set off an assessed loss under section 20 (1);

[Para. (i) added by s. 46 (c) of Act 129 of 1991.]

'standard employment' means-

- (a) any employment in terms of which an employee is required to render service to any one employer for a period of at least 22 hours in every full week falling within the period of such employment: Provided that for the purposes of this paragraph no regard shall be had to-
- (i) periods of temporary absence of an employee due to leave or exceptional circumstances; or
  - (ii) any temporary reduction in working hours imposed by the employer; or
- (b) the employment of any employee with an employer if such employee declares in writing that he does not and will not during the period in which he holds such employment render services (other than such casual services as may be determined by the Commissioner in the deduction tables prescribed by him under paragraph 9) to any other employer; or

[Para. (b) substituted by s. 47 (d) of Act 101 of 1990 and by s. 40 (a) of Act 21 of 1995.]

- (c) where any employer conducts his business in such manner that employees are regularly or frequently employed for such periods as may be required by the employer, the employment of any such employee if the Commissioner, after consultation with the employer or with any body or association representing any group of employers, so directs;

[Definition of 'standard employment' inserted by s. 22 (e) of Act 70 of 1989.]

'tax period', in relation to any employee, means any unbroken period in the year of assessment during which the employee was employed in the Republic in standard employment by any one employer or during which any annuity was paid or became payable to him by any one employer or, where the Commissioner has in relation to the employment of any employee issued a directive as contemplated in paragraph (c) of the definition of 'standard employment', such period as the Commissioner considers appropriate in the circumstances: Provided that where any employer has for the purposes of paragraph 15 applied for separate registration of branches of his undertaking, each such branch shall for the purposes of this definition be deemed at the option of the employer to be a separate employer;

[Definition of 'tax period' substituted by s. 22 (a) of Act 70 of 1989 and amended by s. 47 (a) of Act 101 of 1990, by s. 40 (a) of Act 21 of 1995 and by s. 35 (a) of Act 36 of 1996.]

(2) Notwithstanding the provisions of paragraphs 9 and 10, the amount of employees tax required to be deducted or withheld from any net remuneration paid or payable by an employer to an employee during any tax period shall-

- (a) to the extent that the annual equivalent of all such net remuneration so paid or payable during the tax period does not exceed R60 000; or

[Item (a) substituted by s. 47 (f) of Act 101 of 1990 and amended by s. 48 of Act 28 of 1997.]

- (b) where such net remuneration includes any annual payment (being an amount of net remuneration which in terms of the employee's service conditions or in accordance with the employer's practice is payable to the employee once annually or which is determined without reference to any period), to the extent that the sum of all such annual payments and the annual equivalent of all other net remuneration so paid or payable during the tax period does not exceed R60 000,

[Item (b) substituted by s. 47 (f) of Act 101 of 1990 and amended by s. 48 of Act 28 of 1997.]

be an amount (to be known as Standard Income Tax on Employees) which shall, subject to the provisions of subparagraphs (2A) and (4), be finally determined by the employer at the end of the tax period under the provisions of subparagraph (3).

[Sub-para. (2) substituted by s. 22 (g) of Act 70 of 1989 and amended by s. 46 (d) of Act 129 of 1991.]

(2A) Where at the end of a tax period the total amount of employees tax which has been deducted or withheld by an employer from the net remuneration paid or payable by him to an employee during such

tax period exceeds or falls short of the amount of Standard Income Tax on Employees determinable under subparagraph (3) in relation to such net remuneration by an amount not exceeding R5, the said total amount of employees tax shall at the option of the employer be deemed to be the amount of Standard Income Tax on Employees determinable in relation to such net remuneration under the said subparagraph.

[Sub-para. (2A) inserted by s. 22 (h) of Act 70 of 1989.]

(3) The amount of Standard Income Tax on Employees to be deducted or withheld from any net remuneration under the provisions of subparagraph (2) shall-

- (a) in the case of any net remuneration other than an annual payment referred to in subparagraph (2) (b), be an amount equal to the annual tax determined in relation to so much of the annual equivalent of such net remuneration as does not exceed R60 000 divided by the ratio which a full year bears to the tax period; and

[Item (a) substituted by s. 22 (i) of Act 70 of 1989 and by s. 47 (g) of Act 101 of 1990 and amended by s. 48 of Act 28 of 1997.]

- (b) in the case of any annual payment referred to in subparagraph (2) (b), be an amount determined in accordance with the formula-

$$S = T1 - T2$$

in which formula-

- (i) 'S' represents the amount of Standard Income Tax on Employees to be determined;
- (ii) 'T1' represents the annual tax determined in relation to an amount (not exceeding R60 000) equal to the sum of all such annual payments and the annual equivalent of all other net remuneration paid or payable by the employer to the employee during the tax period; and
- (iii) 'T2' represents the annual tax determined in relation to an amount (not exceeding R60 000) equal to the said annual equivalent.

[Item (b) amended by s. 22 (j) of Act 70 of 1989, substituted by s. 47(g) of Act 101 of 1990 and amended by s. 48 of Act 28 of 1997.]

[Sub-para. (3) amended by s. 46 (d) of Act 129 of 1991.]

(4) Where the taxpayer is entitled to-

- (a) a deduction under section 11 (k) or (n) of this Act in respect of any contribution to a pension fund or retirement annuity fund or a deduction in respect of any premium paid in terms of an insurance policy contemplated in paragraph 2 (4), which has not been taken into account by his or her employer in the determination of the balance contemplated in the definition of 'net remuneration' in subparagraph (1); or
- (b) a deduction under section 18 of this Act, and the taxpayer's taxable income derived otherwise than from net remuneration cannot be reduced by the full amount of any such deduction, the Commissioner shall on application made by the taxpayer amend-
- (i) the determination of the amount of any net remuneration derived by the taxpayer; and
- (ii) the amount of Standard Income Tax on Employees payable by the taxpayer in respect of such net remuneration.

[Sub-para. (4) amended by s. 47 (h) of Act 101 of 1990 and by s. 53 (1) of Act 30 of 1998 and substituted by s. 22 of Act 16 of 2004.]

(4A) Where in respect of any tax period falling within a year of assessment which ended on the last day of February 1991, 1992 or 1993 any employee failed to furnish his employer with a return of personal particulars or a fresh return as required in terms of paragraph 12 (1) and in consequence of such failure the employer determined an amount of Standard Income Tax on Employees in relation to such employee which exceeded the amount of Standard Income Tax on Employees which would have been determined had such return or fresh return been duly furnished, the Commissioner may, notwithstanding the provisions of subparagraph (6), amend the determination of the amount of Standard Income Tax on Employees payable by the employee in respect of such tax period and may, notwithstanding the provisions of section 102 (2), make a refund of the amount paid in excess: Provided that the provisions of this subparagraph shall not apply in respect of any application for amendment of the determination of the amount of Standard Income Tax on Employees received by the Commissioner on or after 1 December 1996.

[Sub-para. (4A) inserted by s. 3 of Act 168 of 1993 and amended by s. 35 (b) of Act 36 of 1996.]

- (5) (a) Where at the end of any tax period the employees tax required to be deducted or withheld

from any net remuneration paid or payable by an employer to an employee during the tax period consists solely of an amount of Standard Income Tax on Employees and the total amount of employees tax actually deducted or withheld by the employer from such net remuneration exceeds such Standard Income Tax on Employees required to be deducted or withheld from such net remuneration, the employer shall repay to the employee the amount of such excess.

[Item (a) substituted by s. 22 (k) of Act 70 of 1989.]

(b) Any amount of employees tax which has been repaid by an employer to an employee under the provisions of item (a) may be deducted by the employer from any subsequent payment of employees tax due by him, or shall be refunded to the employer by the Commissioner.

(6) For the purposes of determining the amount of Standard Income Tax on Employees required to be deducted or withheld from any net remuneration paid or payable by an employer to an employee, the employer shall not allow the deduction of the rebate contemplated in section 6 (2) (b) unless he is in possession of a written declaration by the employee that he would be over the age of 65 years on the last day of the year of assessment: Provided that-

- (a) where the employee has failed, or is deemed to have failed in terms of paragraph (b), to furnish such written declaration and in consequence of such failure the amount of Standard Income Tax on Employees determined by the employer is greater than the amount which would have been determined had the employee submitted such written declaration, the amount so determined by the employer shall for the purposes of this paragraph be deemed to have been correctly determined; and
- (b) where an employee has not furnished such written declaration in sufficient time to enable the employer to take account thereof for the purpose of determining such amount of annual tax, the employee shall be deemed for the said purpose to have failed to render such written declaration.

[Sub-para. (6) substituted by s. 40 (c) of Act 21 of 1995.]

(7) Any amount of employees tax which-

- (a) has been determined by an employer as representing the amount of Standard Income Tax on Employees required to be determined by him under the provisions of this paragraph in relation to any net remuneration paid or payable by him to an employee;
- (b) has been deducted or withheld by the employer from such net remuneration; and
- (c) is not more than 2 per cent greater or less than the amount of Standard Income Tax on Employees required to be determined in relation to such net remuneration,

[Item (c) amended by s. 46 (e) of Act 129 of 1991.]

shall be deemed to be an amount of Standard Income Tax on Employees correctly determined under those provisions.

(8) Every employer shall on any employees tax certificate furnished by him in terms of paragraph 13 (1), indicate separately the amount of Standard Income Tax on Employees determined by him and deducted or withheld from remuneration payable to the employee concerned.

(9) (a) For the purposes of determining the amount of Standard Income Tax on Employees for which any employee has become liable at the end of any tax period, an employer shall, subject to any variation referred to in paragraph 10, have regard to the latest tax deduction tables, and the manner in which such tables shall be applied, which have been prescribed by the Commissioner under paragraph 9 and which are in force on the date upon which such tax period ends.

(b) Any determination made by an employer in accordance with the provisions of item (a) shall be deemed to have been correctly made in accordance with the rates of tax fixed for the relevant year of assessment under section 5 (2) and in accordance with the provisions of this Act as applicable to the tax period, notwithstanding that the rates of tax so fixed may differ from the rates of tax upon which such deduction tables are based or that any provision of this Act taken into account by the Commissioner in prescribing the manner in which such tables shall be applied, is amended with effect from a date falling before the end of such tax period.

[Sub-para. (9) deleted by s. 22 (l) of Act 70 of 1989 and added by s. 47 (i) of Act 101 of 1990.]

[Para. 11B inserted by s. 41 of Act 90 of 1988.]

### **EMPLOYEES' TAX PAYABLE IN RESPECT OF DIRECTORS OF PRIVATE COMPANIES (para. 11C)**

(1) Every director of a private company shall, for purposes of this paragraph, be deemed to have received from that private company during any month, an amount of remuneration determined in



accordance with the formula-

$$Y = \frac{T}{N}$$

in which formula-

- (a) 'Y' represents the amount to be determined;
- (b) 'T' represents the balance of remuneration determined in terms of paragraph 2 (4) (excluding any amount which was deemed to be remuneration in terms of this paragraph), paid or payable to that director by that company in respect of the last year of assessment of that director which ended before that month, less any amount -
  - (i) contemplated in paragraph (d), (e) or (f) of the definition of 'gross income' which is included therein; or
  - (ii) which is included therein in terms of paragraph 11A; and
- (c) 'N' represents the number of completed months which that director was employed by that company during that last year of assessment;

Provided that-

- (i) the balance of remuneration determined in respect of the last year of assessment of a director which ended on or before 28 February 2002, shall, for the purposes of paragraph (b), be determined on an amount which would, but for the provisions of paragraph (vii) of the definition of 'remuneration', have constituted remuneration under that definition;
- (ii) where the remuneration paid or payable to that director in respect of -
  - (aa) the last year of assessment, contemplated in paragraph (b), has not yet been determined-
    - (A) 'T' shall be determined based on the balance of remuneration paid or payable by that company to that director in respect of the year of assessment preceding that last year of assessment, increased by an amount equal to 20 per cent (or such other percentage as the Minister may from time to time determine by notice in the *Gazette*) of that remuneration; and; [Subitem (A) substituted by s. 85 (1) (a) of Act 45 of 2003.]
    - (B) 'N' shall represent the number of completed months which that director was employed by that company during that preceding year of assessment; or
  - (bb) the preceding year of assessment, contemplated in sub-item (aa), has not yet been determined, the company must request the Commissioner to determine the amount of remuneration which is deemed to have been received for the purpose of this subparagraph.

(2) Subject to subparagraph (6), every private company shall on a monthly basis, in respect of every director of that company, pay to the Commissioner an amount determined in accordance with subparagraph (3), which shall for the purposes of sections 79, 89*bis*, 89*ter*, 89*quat*, 90, 102 and 102A of the Act and paragraphs 1, 4, 6, 11, 12, 13 and 14 and Parts III and IV of this Schedule, be deemed to be an amount of employees' tax which was required to be deducted or withheld by the company as an employer in terms of paragraph 2 of this Schedule.

[Sub-para. (2) substituted by s. 85 (1) (b) of Act 45 of 2003.]

(3) The amount of employees' tax to be paid by the private company to the Commissioner in terms of subparagraph (2) in respect of any director shall be determined in accordance with paragraph 9, 10 or 11 in respect of an amount of remuneration deemed to have been received by that director as contemplated in subparagraph (1).

(4) A company shall have a right of recovery against a director in respect of any amount paid by that company in terms of subparagraph (2), in respect of that director and that amount may, in addition to any other right of recovery, be deducted from any amount which is or may become payable by that company to that director.

[Sub-para. (4) substituted by s. 85 (1) (c) of Act 45 of 2003.]

(5) Until such time as a director pays to the company the amount which is due to the company in terms of subparagraph (4), such director shall not be entitled to receive from the company an employees' tax certificate in respect of that amount.

(6) Subparagraph (2) does not apply to a private company in respect of a director where more than

75 per cent of the amount contemplated in 'T' in subparagraph (1)(b) in respect of the last year of assessment of that director as contemplated in 'T', represents fixed monthly payments of remuneration paid by that company to that director during that year of assessment.

[Sub-para. (6) added by s. 85 (1) (d) of Act 45 of 2003.]

[Para. 11C inserted by s. 22 (1) of Act 19 of 2001.]

#### **ESTIMATED ASSESSMENTS (para. 12)**

(1) Where any employer who is required to deduct or withhold employees' tax in terms of the provisions of paragraph 2, has failed to so deduct or withhold such tax, or has failed to pay over any amount of employees' tax deducted or withheld, and such employer has not been absolved from his liabilities in terms of the provisions of this Schedule, the Commissioner may make a reasonable estimate of the amount of employees' tax which is required to be deducted or withheld and issue to the employer a notice of assessment of the unpaid amount.

(2) An employer shall be liable to the Commissioner for the payment of the amount of employees' tax so estimated as if such amount was deducted or withheld as contemplated in paragraph 2.

(3) Any estimate of the amount of employees' tax payable by an employer in terms of the provisions of subparagraph (1), shall be subject to objection and appeal.

[Para. 12 amended by s. 42 of Act 90 of 1988, by s. 48 of Act 101 of 1990 and by s. 47 of Act 129 of 1991, deleted by s. 41 of Act 21 of 1995 and inserted by s. 43 of Act 53 of 1999.]

12A. ....

[Para. 12A inserted by s. 49 of Act 113 of 1993 and deleted by s. 42 of Act 21 of 1995.]

#### **FURNISHING AND OBTAINING OF EMPLOYEES' TAX CERTIFICATES (para. 13)**

13. (1) Subject to the provisions of paragraphs 5, 11C (5) and 28, every employer who during any period contemplated in subparagraph (1A) deducts or withholds any amount by way of employees tax as required by paragraph 2 shall within the time allowed by subparagraph (2) of this paragraph deliver to each employee or former employee to whom remuneration has during the period in question been paid or become due by such employer, an employees tax certificate in such form as the Commissioner may prescribe or approve, which shall show the total remuneration of such employee or former employee and the sum of the amounts of employees tax deducted or withheld by such employer from such remuneration during the said period, excluding any amount of remuneration or employees tax included in any other employees tax certificate issued by such employer unless such other certificate has been surrendered to such employer by the employee or former employee and has been cancelled by such employer and dealt with by him as provided in subparagraph (10).

[Sub-para. (1) amended by s. 24 (a) of Act 72 of 1963 and substituted by s. 49 (a) of Act 101 of 1990 and by s. 23 (1) of Act 19 of 2001.]

(1A) The period referred to in subparagraph (1) shall be the period of 12 months ending on the last day of February of any year or, at the option of the employer which may be exercised by him in relation to all his employees or any class of his employees, the period, whether of 12 months or not (to be known as an alternate period), commencing on the day following the last day of the preceding alternate period in relation to the employer and ending on a date falling not more than 14 days (or such greater number of days as the Commissioner having regard to the circumstances of the case may allow) before or after the last day of February of any year.

[Sub-para. (1A) inserted by s. 49 (b) of Act 101 of 1990.]

(1B) Where any employer has in relation to any employee exercised an option as contemplated in subparagraph (1A), any remuneration which is paid or becomes payable to the employee by the employer during an alternate period shall for the purposes of this Act be deemed to have been paid or to have become payable to the employee during the year of assessment ended on the last day of February of the calendar year in which such alternate period ended.

[Sub-para. (1B) inserted by s. 49 (b) of Act 101 of 1990.]

(2) The employees' tax certificate referred to in subparagraph (1) shall be delivered-

- (a) if the employer who is required to deliver the certificate has not ceased to be an employer in relation to the employee concerned, within 60 days after the end of the period to which the certificate relates;

[Item (a) amended by s. 24 (a) of Act 72 of 1963 and by s. 49 (c) of Act 101 of 1990.]

- (b) if the said employer has ceased to be an employer in relation to the employee concerned but has continued to be an employer in relation to other employees, within fourteen days of the date on which he has so ceased; or

[Sub-item (b) amended by s. 24 (a) of Act 72 of 1963.]

- (c) if the said employer has ceased to be an employer, within seven days of the date on which he has so ceased,

[Sub-item (c) amended by s. 24 (a) of Act 72 of 1963.]

or in any particular case within such further period as the Commissioner may approve.

(3) For the purposes of subparagraph (2) an employer shall, if the Commissioner having regard to the circumstances of the case so directs be deemed not to have ceased to be an employer in relation to any of his casual employees who is likely from time to time to be re-employed by such employer.

[Sub-para. (3) amended by s. 24 (a) of Act 72 of 1963.]

(4) Notwithstanding the provisions of subparagraphs (1) and (2) any employer who has deducted or withheld employees' tax from the remuneration of any employee shall as and when required by the Commissioner deliver to such employee an employees' tax certificate in such form as the Commissioner may prescribe or approve, which shall show the total remuneration of such employee or former employee and the sum of the amounts of employees' tax deducted or withheld by such employer from such remuneration during any period specified by the Commissioner but excluding any amount of remuneration or employees' tax included in any other employees' tax certificate issued by such employer unless such other certificate has been surrendered to such employer by the employee or former employee and has been cancelled by such employer and dealt with by him as provided in subparagraph (10).

[Sub-para. (4) amended by s. 24 (a) of Act 72 of 1963.]

(5) It shall be the duty of any employee or former employee who has not received an employees' tax certificate within the time allowed by subparagraph (2) forthwith to apply to the employer for such certificate.

[Sub-para. (5) amended by s. 29 (1) of Act 113 of 1977.]

(6) Every taxpayer shall when rendering a return of income under the provisions of section *sixty-six* of this Act, attach to such return all employees' tax certificates in his possession which disclose information in respect of the year of assessment to which the return relates.

(7) It shall be sufficient compliance with the provisions of subparagraph (1) or (4) in regard to the delivery of any employees' tax certificate to any employee or former employee if such certificate is delivered to the employees' authorized agent or the representative taxpayer in respect of the remuneration shown in such certificate or, where delivery cannot conveniently be effected by personal delivery, if such certificate is sent to the employee or former employee or such agent or representative taxpayer by registered post.

(8) An employer may at the request of the employee or former employee issue a duplicate employees' tax certificate but any such duplicate shall be clearly marked as such and shall disclose full details of the original certificate.

(9) Unless authorized thereto by the Commissioner no duplicate employees' tax certificate may be issued by an employer otherwise than as provided in subparagraph (8).

(10) Any cancelled or spoiled employees' tax certificate shall not be destroyed by the employer concerned but shall be retained by him until the Commissioner requires it to be surrendered to him.

(11) The Commissioner shall control the issue to employers of stocks of unused employees' tax certificates and may prescribe conditions in regard to the manner in which such unused certificates may be used or as to the surrender of unused stocks of such certificates and every employer shall account to the Commissioner for used, unused, cancelled or spoiled certificates as and when required by the Commissioner.

(12) In the case of any employer who has a mechanized accounting system the Commissioner may subject to such conditions as he may impose approve the use by such employer of employees' tax certificates in a form other than the form prescribed for general use and if any such employer fails to comply with the conditions imposed by the Commissioner the Commissioner may withdraw his consent for the use of such certificates and the employer shall forthwith or from any date specified by the Commissioner cease to use such certificates and shall within such period as the Commissioner may prescribe surrender to the Commissioner all unused stocks of such certificates.

(13) Every person who ceases to be an employer shall, unless the Commissioner otherwise directs, within fourteen days of his ceasing to be an employer surrender to the Commissioner all unused employees' tax certificates in his possession.

(14) If any person fails to surrender any unused employees' tax certificates as required by subparagraph (12) or (13), any officer engaged in carrying out the provisions of this Act who has in relation

to such person been authorized thereto by the Commissioner in writing or by telegram may without previous notice, at any time during the day enter any premises whatsoever and on such premises search for and seize such certificates and in carrying out such search, open or cause to be removed and open any article in which he suspects any such certificates to be contained.

(15) For the purposes of this Schedule any employees' tax certificate on which appears the name or any trade name of any employer shall until the contrary is proved be deemed to have been issued by such employer if such certificate is in a form prescribed by the Commissioner for general use and was supplied by the Commissioner to such employer for use by him or is in a form approved by the Commissioner under subparagraph (12) for use by such employer.

[Sub-para. (15) amended by s. 24 (b) of Act 72 of 1963.]

**EMPLOYERS TO KEEP RECORDS AND FURNISH RETURNS (para. 14)**

14. (1) Every employer shall in respect of each employee maintain a record showing the amounts of remuneration paid or due by him to such employee and the amount of employees' tax deducted or withheld from each such amount of remuneration, and such record shall be retained by the employer and shall be available for scrutiny by the Commissioner.

(2) Every employer shall when making any payment of employees' tax submit to the Commissioner a declaration in such form as the Commissioner may prescribe.

[Sub-para. (2) substituted by s. 40 of Act 88 of 1971.]

(3) Every employer shall-

(a) within 60 days after the end of each period contemplated in paragraph 13 (1A); and

(b) if during any such period he ceases to carry on any business or other undertaking in respect of which he has paid or becomes liable to pay remuneration to any employee or otherwise ceases to be an employer, within 14 days after the date on which he has so

ceased to carry on such business or undertaking or to be an employer, as the case may be, or within such longer time as the Commissioner may approve, render to the Commissioner a return in such form as the Commissioner may prescribe showing the names and addresses of all the persons who during such period were employees in relation to such employer and the total remuneration paid to or accrued to each employee in respect of such period and the total amount of employees tax deducted or withheld from the remuneration of each such employee during such period.

[Sub-para. (3) substituted by s. 50 of Act 101 of 1990.]

(4) The records contemplated in subparagraph (1) must be maintained in such form, including any electronic form, as may be prescribed by the Commissioner.

[Sub-para. (4) added by s. 57 of Act 74 of 2002.]

**REGISTRATION OF EMPLOYERS (para. 15)**

15. (1) Every person who is an employer shall apply to the Commissioner in such form as the Commissioner may prescribe for registration as an employer within 14 days after becoming an employer, or within such further period as the Commissioner may approve: Provided that where no one of such employer's employees is liable for normal tax, the provisions of this paragraph shall not apply to such employer.

[Sub-para. (1) substituted by s. 36 of Act 36 of 1996.]

(1A) .....

[Sub-para. (1A) inserted by s. 7 of Act 30 of 1984 and deleted by s. 43 of Act 21 of 1995.]

(2) Any person who has furnished a declaration to the Commissioner under the provisions of section *thirty-six* of the Income Tax Amendment Act, 1962 (Act 90 of 1962), shall be deemed to have applied for registration as an employer under this paragraph.

(3) Every person who has applied or is deemed to have applied for registration under subparagraph (1) shall within fourteen days after changing his address or ceasing to be an employer, notify the Commissioner in writing of his new address or of the fact of his having ceased to be an employer, as the case may be.

(4) The Commissioner may at such times as he may decide issue public notices drawing attention to the provisions of this paragraph.

**LIABILITY OF REPRESENTATIVE EMPLOYERS AND OTHERS (para. 16)**

16. (1) Every representative employer shall, as regards the remuneration which the employer whom he or she represents pays or is liable to pay to any employee or which is paid or payable by the representative employer in his or her representative capacity, be subject in all respects to the same duties, responsibilities and liabilities under this Schedule as if that remuneration were remuneration paid or liable to be paid by

him or her in his or her personal capacity.

[Sub-para. (1) substituted by s. 86 (a) of Act 45 of 2003.]

(2) Any liability for employees' tax or interest on employees' tax or any penalty imposed under this Part of any person who in terms of the definition of 'employer' in paragraph 1 is an employer by virtue of his having paid or become liable to pay remuneration in a fiduciary capacity or in his capacity as a trustee in an insolvent estate, an executor, or an administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund, or from the representative employer, shall be limited to the extent only of any assets belonging to the person, body, trust, estate or fund represented or administered by him which may be in his possession or under his management, disposal or control.

[Sub-para. (2) substituted by s. 86 (a) of Act 45 of 2003.]

(2A) Every representative employer or other person who is personally liable as contemplated in subparagraphs (2), (2B) or (2C), who, as such, pays any employees' tax, additional tax, penalty or interest due under this Act shall be entitled to recover the amount so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his or her possession or may come to the representative employer in his or her representative capacity, an amount equal to the amount so paid.

[Sub-para. (2A) inserted by s. 86 (b) of Act 45 of 2003.]

(2B) Every representative employer and person contemplated in subparagraph (2) shall be personally liable for the payment of any employees' tax, additional tax, penalty or interest payable by that representative employer or person in his or her representative capacity to the extent that the representative employer or person, while it remains unpaid-

- (a) alienates, charges or disposes of any money received or accrued in respect of which the tax is chargeable; or
- (b) disposes of or parts with any fund or money belonging to the employer whom he or she represents which is in his or her possession or comes to him or her after the employees' tax, additional tax, penalty or interest has become payable, if such employees' tax, additional tax, penalty or interest could legally have been paid from or out of such fund or money.

[Sub-para. (2B) inserted by s. 86 (b) of Act 45 of 2003 and amended by s. 23 of Act 16 of 2004.]

(2C) Where an employer is a company, every shareholder and director who controls or is regularly involved in the management of the company's overall financial affairs shall be personally liable for the employees' tax, additional tax, penalty or interest for which the company is liable.

[Sub-para. (2C) inserted by s. 86 (b) of Act 45 of 2003.]

(2D) Notwithstanding subparagraph (2), the employees' tax, additional tax, penalty or interest for which any representative employer or other person is liable in terms of subparagraph (2B) or (2C) shall be fully recoverable by the Commissioner from that representative employer or other person to the extent that it remains unpaid by the employer.

[Sub-para. (2D) inserted by s. 86 (b) of Act 45 of 2003.]

(3) The executor of the estate of any deceased employer or the trustee of the insolvent estate of any employer shall fulfill such obligations of the deceased or insolvent employer under paragraphs 13 and 14 as arise in consequence of that employer ceasing to be an employer because of his death or insolvency, or as have not been fulfilled by such employer before his death or insolvency.

### **PART III**

#### **PROVISIONAL TAX (paras. 17-27)**

#### **PAYMENT OF PROVISIONAL TAX (para. 17)**

17. (1) Every provisional taxpayer shall in the manner provided in this Part make payments (called provisional tax) to the Commissioner in respect of his liability for normal tax in respect of every year of assessment.

[Sub-para. (1) substituted by s. 41 (a) of Act 88 of 1971.]

(2) .....

[Sub-para. (2) deleted by s. 41 (b) of Act 88 of 1971.]

(3) Where for the purpose of determining any amount of provisional tax required to be paid by any provisional taxpayer in respect of any year of assessment the liability of such taxpayer for normal tax is required to be estimated in respect of such year, such liability shall be deemed to be the amount of normal tax which, calculated at the relevant rate referred to in subparagraph (4), would be payable by the provisional taxpayer in respect of the amount of taxable income estimated by such taxpayer in terms of paragraph 19 (1) during the period prescribed by this Schedule for the payment of the said amount of

provisional tax, or any extension of such period granted in terms of paragraph 25 (2), or if the amount so estimated has been increased by the Commissioner in terms of paragraph 19 (3), the amount of normal tax which, calculated at the said rate, would be payable by the provisional taxpayer in respect of the amount of taxable income as so increased, or if the Commissioner has estimated the provisional taxpayer's taxable income in terms of paragraph 19 (2), the amount of normal tax which, calculated at the said rate, would be payable by the provisional taxpayer in respect of the amount of taxable income so estimated.

[Sub-para. (3) substituted by s. 41 (c) of Act 88 of 1971.]

(4) For the purposes of any calculation of normal tax under subparagraph (3) the rate at which such tax is to be calculated shall be the relevant rate which on the date of payment of the provisional tax in question is in force in respect of the year of assessment in respect of which such provisional tax is required to be paid under this Schedule, or if at the said date the rate has not been fixed, the relevant rate in respect of that year foreshadowed by the Minister of Finance in his budget statement, or if at that date the rate has not been fixed or so foreshadowed, the relevant rate which is in force in respect of the latest preceding year of assessment in respect of which rates have been fixed by Parliament.

[Sub-para. (4) substituted by s. 41 (c) of Act 88 of 1971 and by s. 33 of Act 103 of 1976.]

(5) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister in his budget statement or as varied by the Minister under section 5 (3) of this Act, to the rebates applicable in terms of section 6 (2) and (3) (a) and section 6quat of this Act and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe tables for optional use by provisional taxpayers falling within any category specified by the Commissioner, or by provisional taxpayers generally, for the purpose of estimating the liability of such taxpayers for normal tax, and the Commissioner may prescribe the manner in which such tables shall be applied.

[Sub-para. (5) added by s. 27 of Act 90 of 1964, substituted by s. 41 (c) of Act 88 of 1971 and by s. 33 of Act 103 of 1976, amended by s. 30 of Act 104 of 1980 and substituted by s. 57 of Act 59 of 2000.]

(6) Any tables prescribed by the Commissioner in accordance with subparagraph (5) shall come into force on such date as may be notified by the Commissioner in the *Gazette*, and shall remain in force until withdrawn by the Commissioner.

[Sub-para. (6) added by s. 27 of Act 90 of 1964.]

(7) The provisions of subparagraphs (3) and (4) shall not apply where the liability of a provisional taxpayer for normal tax is estimated in accordance with any tables prescribed for his use under the provisions of subparagraph (5) and not withdrawn under the provisions of subparagraph (6).

[Sub-para. (7) added by s. 27 of Act 90 of 1964 and substituted by s. 41 (d) of Act 88 of 1971.]

(8) Every person who is a provisional taxpayer shall within 30 days after the date upon which he becomes a provisional taxpayer, apply to the Commissioner for registration as a provisional taxpayer.

[Sub-para. (8) added by s. 51 of Act 101 of 1990.]

#### **EXEMPTIONS (para. 18)**

18. (1) There shall be exempt from payment of provisional tax-

- (a) in respect of any year of assessment in respect of which provisional tax would but for the provisions of this item be payable by him or her, any person (other than a company or a director of a private company) who satisfies the Commissioner that apart from any taxable income which he or she may derive by way of remuneration, or any amount referred to in paragraph (iii) of the definition of 'remuneration' in paragraph 1, he or she will not during that year of assessment derive any taxable income in excess of R10 000;

[Item (a) substituted by s. 28 of Act 90 of 1964, amended by s. 19 of Act 104 of 1979 and by s. 24 (a) of Act 19 of 2001 and substituted by s. 34 (a) of Act 30 of 2002 and by s. 47 of Act 32 of 2004.]

- (b) any person in respect of whose liability for normal tax for the relevant year of assessment payments are required to be made under section thirty-three of this Act;

[Item (b) substituted by s. 24 (a) of Act 16 of 2004.]

- (c) .....

[Item (c) deleted by s. 24 (b) of Act 16 of 2004.]

- (d) any natural person (other than a director of a private company) who on the last day of the year of assessment will be over the age of 65 years, if the Commissioner is satisfied that such person's taxable income for that year-

- (i) will not exceed R80 000;

[Sub-item (i) amended by s. 23 of Act 70 of 1989, by s. 50 of Act 113 of 1993, by s. 37 (1) of Act 36 of

1996 and by s. 24 (b) of Act 19 of 2001.]

- (ii) will not be derived wholly or in part from the carrying on of any business; and
- (iii) will not be derived otherwise than from remuneration, interest, dividends, dividends on shares in any mutual building society or rental from the letting of fixed property.

[Sub-item (iii) substituted by s. 9 (1) of Act 108 of 1986.]

[Item (d) added by s. 42 of Act 88 of 1971, deleted by s. 49 (1) of Act 85 of 1974 and added by s. 26 (1) of Act 65 of 1986.]

(2) .....

[Sub-para. (2) deleted by s. 58 of Act 74 of 2002.]

(3) .....

[Sub-para. (3) amended by s. 34 (b) of Act 30 of 2002 and deleted by s. 58 of Act 74 of 2002.]

(4) .....

[Sub-para. (4) deleted by s. 58 of Act 74 of 2002.]

(5) .....

[Sub-para. (5) deleted by s. 58 of Act 74 of 2002.]

### **ESTIMATES OF TAXABLE INCOME TO BE MADE BY PROVISIONAL TAXPAYERS (para. 19)**

19. (1) (a) Every provisional taxpayer (other than a company) shall, during every period within which provisional tax is or may be payable by him as provided in this Part, or any extension of such period granted in terms of paragraph 25 (2), submit to the Commissioner, in such form as the Commissioner may prescribe, an estimate of the total taxable income which will be derived by the taxpayer in respect of the year of assessment in respect of which provisional tax is or may be payable by him.

(b) Every company which is a provisional taxpayer shall, during every period within which provisional tax is or may be payable by it as provided in this Part or any extension of such period granted in terms of paragraph 25 (2), submit to the Commissioner, in such form as the Commissioner may prescribe, an estimate of the total taxable income which will be derived by the company in respect of the year of assessment in respect of which provisional tax is or may be payable by the company.

[Item (b) substituted by s. 49 (a) of Act 94 of 1983.]

(c) The amount of any estimate so submitted by a provisional taxpayer (other than a company) during the period referred to in paragraph 21 (1) (a) or any extension of such period granted in terms of paragraph 25 (2), or by a company (as a provisional taxpayer) during the period referred to in paragraph 23 (a) or any extension of such period granted in terms of paragraph 25 (2), shall, unless the Commissioner, having regard to the circumstances of the case, agrees to accept an estimate of a lower amount, not be less than the basic amount applicable to the estimate in question, as contemplated in item (d).

[Item (c) substituted by s. 49 (b) of Act 94 of 1983.]

(d) The basic amount applicable to any estimate submitted by a provisional taxpayer under this paragraph shall, for the purposes of this paragraph and paragraph 20, be deemed to be-

- (i) as respects an estimate submitted by a provisional taxpayer (other than a company) under item (a), the taxpayer's taxable income, as assessed by the Commissioner, for the latest preceding year of assessment in relation to such estimate, less the amount of any taxable capital gain included therein in terms of section 26A; or

[Sub-item (i) substituted by s. 37 of Act 5 of 2001.]

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

[Sub-item (ii) substituted by s. 49 (c) of Act 94 of 1983 and by s. 37 of Act 5 of 2001.]

(iii) .....

[Sub-item (iii) deleted by s. 49 (d) of Act 94 of 1983, added by s. 52 (1) (a) of Act 101 of 1990 and deleted by s. 44 (c) of Act 21 of 1995.]

(e) For the purposes of item (d), the latest preceding year of assessment in relation to any estimate under this paragraph shall be deemed to be the latest of the years of assessment-

- (i) preceding the year of assessment in respect of which the estimate is made; and
- (ii) in respect of which a notice of assessment relevant to the estimate has been issued by the Commissioner not less than 60 days before the date on which the estimate is submitted to

the Commissioner: Provided that where the Commissioner has in respect of any estimate required to be made by a provisional taxpayer issued to the taxpayer a return for the payment of provisional tax upon which the Commissioner has indicated the taxpayer's taxable income for the latest preceding year of assessment, in respect of which a notice of assessment was issued prior to the issue of such return, such taxable income shall at the option of the taxpayer be deemed to be the basic amount applicable to such estimate.

[Sub-item (ii) amended by s. 52 (1) (b) of Act 101 of 1990 and by s. 87 of Act 45 of 2003.]

[Sub-para. (1) substituted by s. 28 (1) of Act 88 of 1965, by s. 46 (1) of Act 89 of 1969 and by s. 50 (1) (a) of Act 85 of 1974.]

(1A) .....

[Sub-para. (1A) inserted by s. 43 (1) of Act 88 of 1971 and deleted by s. 49 (e) of Act 94 of 1983.]

(2) If any provisional taxpayer fails to submit any estimate as required by subparagraph (1), the Commissioner may estimate the taxable income which is required to be estimated, and such estimate shall be final and conclusive.

[Sub-para. (2) substituted by s. 50 (1) (b) of Act 85 of 1974.]

(3) The Commissioner may call upon any provisional taxpayer to justify any estimate made by him in terms of subparagraph (1), or to furnish particulars of his income and expenditure or any other particulars that may be required, and, if the Commissioner is dissatisfied with the said estimate, he may increase the amount thereof to such amount as he considers reasonable, and the estimate as increased shall be final and conclusive.

(4) .....

[Sub-para. (4) deleted by s. 50 (1) (c) of Act 85 of 1974.]

(5) Any estimate made by the Commissioner under the provisions of subparagraph (2) or (3) shall be deemed to take effect in respect of the relevant period within which the provisional taxpayer is required to make any payment of provisional tax in terms of this Part, or within any extension of such period granted in terms of subparagraph (2) of paragraph 25.

#### **ADDITIONAL TAX IN THE EVENT OF TAXABLE INCOME BEING UNDERESTIMATED (para. 20)**

20. (1) If the final or last estimate of his taxable income submitted in terms of paragraph 19 (1) (a) by a provisional taxpayer other than a company, or the estimate of his taxable income in respect of the period contemplated in paragraph 23 (b) submitted in terms of paragraph 19 (1) (b) by a company which is a provisional taxpayer, in respect of any year of assessment discloses an estimated amount of taxable income which is less than 90 per cent of the amount of the actual taxable income in respect of which the estimate was made, as finally determined for that year under this Act, and which is also less than the basic amount applicable to the estimate in question, as contemplated in paragraph 19 (1) (d), the taxpayer shall, subject to the provisions of subparagraphs (2), (3) and (4), be required to pay to the Commissioner, in addition to the normal tax chargeable in respect of his taxable income for such year of assessment, an amount by way of additional tax equal to 20 per cent of the difference between the amount of normal tax as calculated in respect of the amount of taxable income as so disclosed and the lesser of the following amounts, namely-

- (a) the amount of normal tax calculated, at the rates applicable in respect of the said year of assessment, in respect of a taxable income equal to ninety per cent of the said actual taxable income; and
- (b) the amount of normal tax calculated in respect of a taxable income equal to the said basic amount, at the rates applicable in respect of that year.

[Sub-para. (1) amended by s. 25 of Act 72 of 1963, substituted by s. 29 (1) of Act 88 of 1965, by s. 47 (1) (a) of Act 89 of 1969, by s. 44 of Act 88 of 1971 and by s. 51 (1) (a) of Act 85 of 1974 and amended by s. 36 of Act 69 of 1975, by s. 50 of Act 94 of 1983 and by s. 39 (1) of Act 121 of 1984.]

(1A) .....

[Sub-para. (1A) inserted by s. 47 (1) (b) of Act 89 of 1969 and deleted by s. 51 (1) (b) of Act 85 of 1974.]

(2) Where the Commissioner is satisfied that the amount of any estimate referred to in subparagraph (1) was not deliberately or negligently understated and was seriously calculated with due regard to the factors having a bearing thereon, or if the Commissioner is partly so satisfied, the Commissioner may in his discretion remit the additional tax or a part thereof.

[Sub-para. (2) substituted by s. 51 (1) (c) of Act 85 of 1974.]

(3) The provisions of subparagraph (1) of this paragraph shall not apply in relation to any final or last estimate referred to in that subparagraph if the Commissioner has under the provisions of subparagraph



(3) of paragraph 19, increased such final or last estimate.

[Sub-para. (3) substituted by s. 51 (1) (c) of Act 85 of 1974.]

(4) Any decision of the Commissioner in the exercise of his discretion under subparagraph (2) shall be subject to objection and appeal.

**ADDITIONAL TAX IN THE EVENT OF FAILURE TO SUBMIT AN ESTIMATE OF TAXABLE INCOME TIMEOUSLY (para. 20A)**

20A. (1) Subject to the provisions of subparagraphs (2) and (3), where any provisional taxpayer is liable for the payment of normal tax in respect of any amount of taxable income derived by that provisional taxpayer during any year of assessment and the estimate of his or her taxable income for that year required to be submitted by him or her under paragraph 19 (1) during the period contemplated in paragraph 21 (1) (b), 22 (1) or 23 (b), as the case may be, was not submitted by him or her on or before the last day of that year or, if the period for the payment of provisional tax due by him or her in respect of such period has under paragraph 25 (2) been extended to a date later than the end of such year, on or before such date, the taxpayer shall, unless the Commissioner has estimated the said taxable income under paragraph 19 (2) or has increased the amount thereof under paragraph 19 (3), be required to pay to the Commissioner, in addition to the normal tax chargeable in respect of such taxable income, an amount by way of additional tax equal to 20 per cent of the amount by which the normal tax payable by him or her in respect of such taxable income exceeds the sum of any amounts of provisional tax paid by him or her in respect of such taxable income within any period allowed for the payment of such provisional tax under this Part or within any extension of such period under paragraph 25 (2) and any amounts of employees' tax deducted or withheld from his or her remuneration by his or her employer during such year.

[Sub-para. (1) substituted by s. 45 of Act 88 of 1971, by s. 52 (1) of Act 85 of 1974, by s. 40 (1) of Act 121 of 1984 and by s. 88 of Act 45 of 2003.]

(2) The Commissioner may, if he is satisfied that the provisional taxpayer's failure to submit such an estimate timeously was not due to an intent to evade or postpone the payment of provisional tax or normal tax, remit the whole or any part of the additional tax imposed under subparagraph (1).

(3) Any decision of the Commissioner in the exercise of his discretion under subparagraph (2) shall be subject to objection and appeal.

[Para. 20A inserted by s. 25 of Act 52 of 1970.]

**PAYMENT OF PROVISIONAL TAX BY PROVISIONAL TAXPAYERS (OTHER THAN COMPANIES) (para. 21)**

[Heading substituted by s. 59 (a) of Act 74 of 2002]

21. (1) Subject to the provisions of subparagraph (2), provisional tax shall be paid by every provisional taxpayer (other than a company) in the following manner, namely -

(a) within the period of six months reckoned from the commencement of the year of assessment in question, one half of an amount equal to the total estimated liability of such taxpayer (as determined in accordance with paragraph 17) for normal tax in respect of that year, less the total amount of -

- (i) any employees' tax deducted by the taxpayer's employer from the taxpayer's remuneration during such period; and
- (ii) any tax proved to be payable to the government of any other country which will qualify as a rebate under section 6*quat*; and

[Item (a) substituted by s. 89 of Act 45 of 2003.]

(b) not later than the last day of the year of assessment in question, an amount equal to the total estimated liability of such taxpayer (as finally determined in accordance with paragraph 17) for normal tax in respect of that year, less the total amount of -

- (i) any employees' tax deducted by the taxpayer's employer from the taxpayer's remuneration during such year and the amount paid in terms of item (a); and
- (ii) any tax proved to be payable to the government of any other country which will qualify as a rebate under section 6*quat*.

[Item (b) substituted by s. 89 of Act 45 of 2003.]

[Sub-para. (1) substituted by s. 46 of Act 88 of 1971.]

(2) If the Commissioner has in terms of section 66 (13A) of this Act agreed to accept accounts from any provisional taxpayer in respect of any year of assessment drawn to a date falling after the end of such year, the period referred to in item (a) of subparagraph (1) shall, notwithstanding the provisions of that subparagraph, be reckoned from such date as the Commissioner upon application of the taxpayer and

having regard to the circumstances of the case may approve, and in such case the last day of such year of assessment shall for the purposes of item (b) of that subparagraph be deemed to be the day preceding the first anniversary of the said date.

[Sub-para. (2) substituted by s. 59 (b) of Act 74 of 2002.]

(3) .....

[Sub-para. (3) deleted by s. 59 (c) of Act 74 of 2002.]

[Para. 21 substituted by s. 30 (1) of Act 88 of 1965.]

**PROVISIONAL TAX PAYMENTS BY PROVISIONAL TAXPAYERS (OTHER THAN COMPANIES) WHOSE INCOME IS NORMALLY DERIVED WHOLLY OR MAINLY FROM FARMING, FISHING OR DIAMOND DIGGING (para. 22)**

22. ....

[Para. 22 amended by s. 26 of Act 72 of 1963, substituted by s. 30 (1) of Act 88 of 1965 and repealed by s. 60 (1) of Act 74 of 2002.]

**PROVISIONAL TAX PAYMENTS BY COMPANIES (para. 23)**

23. Provisional tax shall be paid by every company which is a provisional taxpayer in the following manner, namely -

(a) within the period ending 6 months after the commencement of the year of assessment in question, one half of an amount equal to the total estimated liability of such company (as determined in accordance with paragraph 17) for normal tax in respect of that year;

[Item (a) substituted by s. 41 (1) of Act 121 of 1984.]

(b) within the period ending on the last day of that year, an amount equal to the total estimated liability of such company (as so determined) for normal tax in respect of that year less the amount paid in terms of item (a),

[Item (b) substituted by s. 41 (1) of Act 121 of 1984.]

(c) .....

[Item (c) added by s. 41 (1) of Act 121 of 1984 and deleted by s. 27 (1) (b) of Act 65 of 1986.]

less, in either case, the total amount of employees tax deducted by the taxpayer's employer from the taxpayer's remuneration during the relevant period.

[Para. 23 substituted by s. 30 (1) of Act 88 of 1965, by s. 53 (1) of Act 85 of 1974 and by s. 51 of Act 94 of 1983 and amended by s. 53 of Act 101 of 1990.]

**ADDITIONAL PROVISIONAL TAX PAYMENTS (paras. 23A-24)**

[Heading inserted by s. 42 (1) of Act 121 of 1984 and substituted by s. 28 (1) of Act 65 of 1986.]

23A. (1) Any provisional taxpayer may for the purpose of avoiding or reducing his liability for any interest which may become payable by him in respect of any year of assessment under section 89*quat*, elect to make an additional payment of provisional tax in respect of such year.

(2) If any additional payment of provisional tax contemplated in subparagraph (1) is paid after the end of the period ending on the effective date in relation to the said year as determined under section 89*quat* (1), such payment shall be deemed for the purposes of section 89*bis* (2) to be an amount of provisional tax which was payable within the said period.

[Para. 23A inserted by s. 42 (1) of Act 121 of 1984 and substituted by s. 28 (1) of Act 65 of 1986.]

24. The Commissioner may absolve any provisional taxpayer from making payment of any amount of provisional tax payable in terms of paragraph 21 (1) (a) or paragraph 22 or paragraph 23 (a), if he is satisfied that the taxable income which may be derived by such taxpayer for the year of assessment in question cannot be estimated on the facts available at the time when payment of the amount in question has to be made.

[Para. 24 amended by s. 27 of Act 72 of 1963 and substituted by s. 30 (1) of Act 88 of 1965, by s. 54 of Act 85 of 1974 and by s. 52 of Act 94 of 1983.]

**EXTENSION OF TIME FOR PAYMENT OF PROVISIONAL TAX (para. 25)**

25. (1) If after the end of any period within which provisional tax is payable in terms of this Schedule the Commissioner has under the provisions of subparagraph (3) of paragraph 19 increased the amount of any estimate of taxable income submitted by any provisional taxpayer during such period, any additional provisional tax payable as a result of the Commissioner having made such increase shall, notwithstanding the provisions of paragraphs 21, 22 and 23, be payable within such period as the Commissioner may determine.

(2) The Commissioner may, having regard to the circumstances of the case, extend the period within which any amount of provisional tax is to be paid, or may agree to accept payment of any such

amount in equal or varying amounts.

**CERTAIN MATTERS TO BE DECIDED BY THE COMMISSIONER (para. 26)**

26. ....

[Para. 26 repealed by s. 61 of Act 74 of 2002.]

**PENALTY ON LATE PAYMENT OF PROVISIONAL TAX (para. 27)**

27. (1) If any provisional taxpayer fails to pay any amount of provisional tax for which he or she is liable within the period allowed for payment thereof in terms of paragraph 21 or 23, or paragraph 25 (1), or within such extended period as the Commissioner may allow in terms of paragraph 25 (2), he or she must, in addition to any other penalty or charge incurred by him or her under this Act, pay to the Commissioner a penalty equal to ten per cent of the amount not paid.

[Sub-para. (1) substituted by s. 48 of Act 32 of 2004.]

(2) The Commissioner may, if he is satisfied that the provisional taxpayer's failure to pay the amount of provisional tax was not due to an intent to evade or postpone payment of the tax, or otherwise evade his obligations under this Act, remit the whole or any part of the penalty imposed under subparagraph (1).

(3) .....

[Sub-para. (3) added by s. 43 (1) of Act 121 of 1984 and deleted by s. 29 of Act 65 of 1986.]

**PART IV**

**GENERAL (paras. 28-34)**

**EMPLOYEES' TAX AND PROVISIONAL TAX TO BE SET OFF AGAINST TAX LIABILITY (para. 28)**

[Heading substituted by s. 55 (1) of Act 85 of 1974 and by s. 53 (a) of Act 94 of 1983.]

28. (1) There shall be set off against the liability of the taxpayer in respect of any taxes (as defined in subparagraph (8) due by the taxpayer, the amounts of employees tax deducted or withheld by the taxpayer's employer during any year of assessment for which the taxpayer's liability for normal tax has been assessed by the Commissioner and the amounts of provisional tax paid by the taxpayer in respect of any such year, and if-

- (a) the sum of the said amounts of employees tax and provisional tax exceeds the amount of the taxpayer's total liability for the said taxes, the excess amount shall be refunded to the taxpayer; or
- (b) the taxpayer's total liability for the aforesaid taxes exceeds the sum of the said amounts of employees tax and provisional tax, the amount of the excess shall be payable by the taxpayer to the Commissioner.

[Sub-para. (1) amended by s. 30 of Act 95 of 1967 and substituted by s. 48 of Act 89 of 1969, by s. 48 (a) of Act 88 of 1971, by s. 55 (1) of Act 85 of 1974, by s. 53 (a) of Act 94 of 1983 and by s. 30 (1) (a) of Act 65 of 1986.]

(1)*bis* .....

[Sub-para. (1)*bis* inserted by s. 29 (1) (a) of Act 90 of 1964, substituted by s. 48 (a) of Act 88 of 1971, by s. 23 (1) of Act 90 of 1972, by s. 55 (1) of Act 85 of 1974 and by s. 53 (a) of Act 94 of 1983 and deleted by s. 30 (1) (b) of Act 65 of 1986.]

(2) The burden of proof that any amount of employees' tax has been deducted or withheld by his employer shall be upon the taxpayer and any employees' tax certificate shall be *prima facie* evidence that the amount of employees' tax reflected therein has been deducted by the employer.

(3) If the Commissioner is satisfied that the amount or any portion of the amount of employees' tax shown in any employees' tax certificate has not been deducted or withheld by the employer and the amount of employees' tax shown in such tax certificate has been applied as provided in subparagraph (1), the employer and the employee shall be jointly and severally liable to pay to the Commissioner the amount which should not have been so applied and such amount shall be recoverable under this Act as if it were a tax.

(4) An employer who has under subparagraph (3) paid to the Commissioner an amount which has but should not have been applied under the provisions of subparagraph (1), may, if the amount was shown or included in the certificate because of a *bona fide* error, recover the amount so paid from the employee concerned, and in that case the provisions of subparagraph (3) of paragraph 5 shall *mutatis mutandis* apply.

(5) No employees' tax certificate shall be issued by the employer in respect of any amount recovered by him from the employee in terms of subparagraph (4) nor shall any such amount be included in any return rendered in terms of subparagraph (3) of paragraph 14.

(6) If the Commissioner is satisfied that the employee to whom an employees' tax certificate refers was directly or indirectly responsible for an incorrect amount being shown on such certificate he may absolve the employer from the liability imposed upon him by subparagraph (3), and in that case the employee shall be solely liable under that subparagraph.

(7) If the Commissioner, purporting to act under the provisions of this paragraph, pays to any person by way of a refund any amount which was not properly payable to that person under those provisions or which was in excess of the amount due to such person by way of a refund under those provisions, such amount or the excess, as the case may be, shall forthwith be repaid by the person concerned to the Commissioner and shall be recoverable by the Commissioner under this Act as if it were a tax.

[Sub-para. (7) added by s. 29 (1) (b) of Act 90 of 1964.]

(8) For the purposes of this paragraph, 'taxes' means the normal tax levied under this Act.

[Sub-para. (8) added by s. 48 (b) of Act 88 of 1971 and substituted by s. 53 (b) of Act 94 of 1983, by s. 44 of Act 121 of 1984 and by s. 49 of Act 32 of 2004.]

[Heading preceding para. 28A inserted by s. 56 (1) of Act 85 of 1974 and deleted by s. 38 of Act 36 of 1996.]

28A. ....

[Para. 28A inserted by s. 56 (1) of Act 85 of 1974 and deleted by s. 54 of Act 94 of 1983.]

29. No refund of any amount of employees tax or provisional tax shall be made to the taxpayer concerned otherwise than as provided in paragraph 11B or 28 or in such circumstances as may be determined by the Commissioner in any deduction tables prescribed by him under paragraph 9.

[Para. 29 substituted by s. 57 of Act 85 of 1974, by s. 55 of Act 94 of 1983, by s. 43 of Act 90 of 1988 and by s. 54 of Act 101 of 1990.]

#### **OFFENCES (para. 30)**

30. (1) Any person who-

- (a) makes or becomes liable to make any payment of remuneration and who fails to deduct or withhold therefrom any amount of employees' tax or to pay such amount to the Commissioner as and when required by paragraph 2; or
- (b) uses or applies any amount deducted or withheld by him by way of employees' tax for purposes other than the payment of such amount to the Commissioner; or
- (c) makes or issues or causes or allows to be made or issued or knowingly possesses or uses or causes to be used any employees' tax certificate which is false; or
- (d) without just cause shown by him fails to comply with any directive issued to him by the Commissioner in terms of paragraph 11; or
- (e) gives any false information or misleads his employer in relation to any matter affecting the amount of employees' tax to be deducted in his case; or  
[Para. (e) substituted by s. 45 of Act 21 of 1995.]
- (f) fails or neglects to deliver to any employee or former employee any employees' tax certificate as required by paragraph 13; or
- (g) fails to comply with any condition prescribed by the Commissioner in terms of subparagraph (11) of paragraph 13 in regard to the manner in which employees' tax certificates may be used or as to the surrender of unused stocks of such certificates, or to account for used, unused or spoiled employees' tax certificates when required by the Commissioner under that paragraph or on ceasing to be an employer fails to surrender unused employees' tax certificates in his possession as required by subparagraph (13) of that paragraph; or
- (h) fails to comply with any condition prescribed by the Commissioner by which he is bound in terms of subparagraph (12) of paragraph 13; or
- (i) fails or neglects to maintain any record as required by paragraph 14 or to retain such record for a period of five years from the date of the last entry therein or to furnish to the Commissioner any declaration as required by that paragraph; or
- (j) fails or neglects to apply to the Commissioner for registration as an employer as required by subparagraph (1) of paragraph 15, or having so applied fails or neglects to notify the Commissioner of any change of his address or the fact of his having ceased to be an employer as required by subparagraph (3) of that paragraph; or
- (k) alters any employees' tax certificate made or issued by any other person or falsely

pretends to be the employee named in any employees' tax certificate or for his own advantage or benefit obtains credit with respect to or payment of the whole or any part of any amount of employees' tax deducted or withheld from remuneration received by another person; or

- (l) not being an employer and without being duly authorized by any person who is an employer, issues or causes to be issued any document purporting to be an employees' tax certificate; or
- (m) fails to submit to the Commissioner any estimate of his taxable income as required under paragraph 19,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

[Sub-para. (1) amended by s. 44 of Act 53 of 1999.]

(2) For the purposes of item (b) of subparagraph (1) an amount which has been deducted or withheld by any person from remuneration shall until the contrary is proved be deemed to have been used or applied by such person for purposes other than the payment of such amount to the Commissioner if such amount is not paid to the Commissioner within the period allowed for payment under paragraph 2.

**RECOVERY OF EMPLOYEES' TAX, PROVISIONAL TAX, PENALTY, ADDITIONAL TAX AND INTEREST (para. 31)**

31. Any amount of employees' tax, provisional tax, penalty or additional tax payable in terms of this Schedule, and any amount of interest payable in terms of section *eighty-nine bis* of this Act shall when it becomes due or is payable be a debt due to the State and may be recovered by the Commissioner in the manner prescribed in section *ninety-one* for the recovery of tax and interest due or payable under this Act.

**EXTENSION OF SCOPE OF CERTAIN PROVISIONS OF ACT FOR PURPOSES OF THIS SCHEDULE (para. 32)**

32. For the purposes of this Schedule-

- (a) any reference in subsection (1) or (2) of section *seventy-four* of this Act to the income of any person shall be deemed to include a reference to any remuneration paid or payable by any employer and to any employees' tax required to be deducted or withheld and paid by any employer;
- (b) any reference in subsection (3) of section *ninety-five* of this Act to any tax payable in respect of any assessment shall be deemed to include a reference to any provisional tax payable in terms of this Schedule and any reference in subsection (4) of that section to any tax payable in respect of any assessment made upon any public officer in his capacity as such shall be deemed to include a reference to any provisional tax payable by any public officer in his capacity as such;
- (c) any reference in sections *ninety-six* to *one hundred*, inclusive, of this Act, to tax shall be deemed to include a reference to provisional tax.

[Para. 32 amended by s. 28 of Act 72 of 1963.]

[Headings following para. 32 deleted by s. 39 of Act 36 of 1996.]

33. ....

[Para. 33 amended by s. 29 of Act 72 of 1963, by s. 30 of Act 55 of 1966 and by s. 31 of Act 95 of 1967 and deleted by s. 49 of Act 88 of 1971.]

[Heading deleted by s. 39 of Act 36 of 1996.]

34. ....

[Para. 34 added by s. 30 of Act 72 of 1963, amended by s. 32 of Act 95 of 1967 and deleted by s. 49 of Act 89 of 1969.]

**Fifth Schedule**

**LOAN PORTIONS OF THE NORMAL TAX (paras. 1-10)**

[Fifth Schedule added by s. 26 (1) of Act 52 of 1970.]

(Section 5 (2B) of this Act)

1. For the purposes of this Schedule 'loan portion' means the portion of the normal tax in respect of any year of assessment which is a loan portion of such tax as contemplated in section 5 (2B) of this Act, and the provisions of this Schedule shall where relevant apply in respect of such loan portion.

2. (1) A person shall not be liable for the payment of the loan portion chargeable in respect of any period of assessment if, before any notice of assessment is issued by the Commissioner in respect of his taxable income for such period or any amount is appropriated to such loan portion as contemplated in

paragraph 8 (1)-

- (a) such person dies or his estate is sequestrated or, in the case of a company, the winding-up or liquidation thereof has commenced; or
- (b) such person, if she is a woman, marries; or
- (c) such person (not being a company) departs from the Republic or ceases to carry on business in the Republic and the Commissioner is satisfied that such person will thereafter not be ordinarily resident nor carrying on business in the Republic; or
- (d) such person proves to the satisfaction of the Commissioner that owing to old age, continued ill health or infirmity or for any other reason, his financial circumstances are permanently reduced and that he will probably not be liable for normal tax in the future.

[Sub-para. (1) substituted by s. 24 (1) (a) of Act 90 of 1972.]

(1A) The estate of a deceased or insolvent person shall not be liable for the payment of any loan portion in respect of any income received by or accrued to or in favour of such estate: Provided that nothing in this paragraph contained shall be construed as relieving any person from liability for the payment of any loan portion in respect of any taxable income of any trust which is assessable in the hands of such person.

[Sub-para. (1A) inserted by s. 24 (1) (a) of Act 90 of 1972.]

(2) A person to whom the provisions of section 33 of this Act apply and who has no recognized agent in the Republic other than the master of the ship concerned or the pilot of the aircraft concerned, shall not be liable for the payment of any loan portion of the normal tax in respect of his taxable income determined in accordance with the said provisions.

(3) Any person who is not a resident and is not carrying on business in the Republic, shall not be liable for the payment of any loan portion: Provided that any person (other than a company) who proves to the satisfaction of the Commissioner that his business operations in the Republic are of a temporary and non-recurrent nature shall for the purposes of this paragraph not be deemed to be carrying on business in the Republic.

[Sub-para. (3) substituted by s. 58 of Act 85 of 1974 and amended by s. 58 of Act 59 of 2000.]

(4) A natural person who is over the age of seventy years on the last day of any year of assessment shall not be liable for the payment of any loan portion in respect of such year if his taxable income for that year does not exceed R15 000.

[Sub-para. (4) added by s. 50 of Act 88 of 1971 and substituted by s. 34 of Act 103 of 1976 and by s. 31 of Act 91 of 1982.]

(5) and (6) .....

[Sub-paras. (5) and (6) added by s. 50 of Act 88 of 1971 and deleted by s. 56 of Act 94 of 1983.]

3. The provisions of section 76 of this Act and paragraphs 20 and 20A of the Fourth Schedule to this Act shall not apply in relation to any loan portion.

4. (1) .....

[Sub-para. (1) deleted by s. 35 (1) (a) of Act 103 of 1976.]

(2) The amounts accruing from time to time under any law to the Transkeian Revenue Fund, the Rehoboth Revenue Fund or a Revenue Fund referred to in section 6 of the National States Constitution Act, 1971 (Act 21 of 1971), in respect of normal tax shall, notwithstanding the provisions of such law, be reduced by so much of such amounts as the Commissioner determines to have been collected in respect of loan portions, whether by way of employees' tax, provisional tax or otherwise.

[Sub-para. (2) substituted by s. 25 (1) of Act 90 of 1972 and by s. 35 (1) (b) of Act 103 of 1976.]

(3) .....

[Sub-para. (3) substituted by s. 25 (1) of Act 90 of 1972 and by s. 59 (1) of Act 85 of 1974 and deleted by s. 35 (1) (c) of Act 103 of 1976.]

5. (1) The Commissioner shall, at such time as he may decide, but not later than the date referred to in paragraph 6, issue to every person who has paid any loan portion, a statement of the amount so paid by such person: Provided that such statement need not be issued if such loan portion has been repaid before such date.

(2) A statement issued in terms of subparagraph (1) shall not be redeemable or transferable.

6. (1) The Minister of Finance shall in respect of each relevant year of assessment determine a date, not being later than the last day of February in the seventh calendar year commencing after the end of such year of assessment, after which the loan portion in respect of such year of assessment shall be repaid to the person by whom it was paid: Provided that-

- (a) if in the opinion of the Commissioner the circumstances of the case warrant such action,

- he may, subject to such conditions as he may impose, make such repayment to a person other than the person by whom such loan portion was paid;
- (b) the Commissioner may, before the date so determined, repay to any person (or if such person has died or his estate has been sequestrated, to his estate) the amount paid by that person in respect of such loan portion, together with simple interest determined as hereinafter provided, if, before such date-
- (i) such person dies or his estate is sequestrated or, in the case of a company, the winding-up or liquidation thereof has commenced; or
  - (ii) such person, if she is a woman, marries; or
  - (iii) such person (not being a company) departs from the Republic or ceases to carry on business in the Republic and the Commissioner is satisfied that such person will thereafter not be ordinarily resident nor carrying on business in the Republic; or
  - (iv) such person proves to the satisfaction of the Commissioner that owing to old age, continued ill-health or infirmity or for any other reason, his financial circumstances are permanently reduced and that he will probably not be liable for normal tax in the future; or
  - (v) the Commissioner is satisfied that such person's taxable income will in future consist solely of remuneration (as defined in paragraph 1 of the Fourth Schedule) not exceeding the amount contemplated in section 66 (1) (b) (i) of this Act, and that such person will consequently not be required in future to render a return of income under the provisions of the said section;
- (c) the date so determined in the case of persons other than companies may be a date other than the date so determined in the case of companies.

[Sub-para. (1) amended by s. 31 (1) of Act 104 of 1980 and substituted by s. 57 of Act 94 of 1983.]

(2) Any moneys repaid under the provisions of subparagraph (1) shall be deemed to have been appropriated by law.

[Sub-para. (2) added by s. 18 (1) of Act 101 of 1978.]

[Para. 6 amended by s. 26 (1) of Act 90 of 1972 and by s. 60 of Act 85 of 1974.]

7. (1) Where any loan portion is repaid as provided in paragraph 6, simple interest at the rate specified in subparagraph (2) shall be paid for the period from the date on which such loan portion is paid to the date determined by the Minister of Finance under paragraph 6 or, if repayment is made under the second or third proviso to that paragraph, the date of repayment, but such interest shall not be payable until such time as the loan portion is repaid to the person concerned.

(2) Interest payable under subparagraph (1) shall be calculated-

- (a) where the loan portion was chargeable in respect of a year of assessment other than a year of assessment referred to in item (b), at the rate of 5 per cent per annum; or
- (b) where the loan portion is chargeable in respect of a year of assessment ending on or after 28 February 1983, at the rate of 8 per cent per annum.

[Para. 7 substituted by s. 61 of Act 85 of 1974 and by s. 32 of Act 91 of 1982.]

8. (1) The Commissioner may appropriate to the loan portion for which any person is liable in respect of any year of assessment so much of-

- (a) any employees' tax deducted or withheld from such person's remuneration and set off in whole or in part against his liability for normal and provincial taxes in respect of the said year under the provisions of paragraph 28 of the Fourth Schedule to this Act; and
- (b) any payments made by such person by way of provisional tax in respect of such year and set off in whole or in part against his said liability under the provisions of the said paragraph; and
- (c) any other payments made by such person in respect of normal, provincial income or personal tax, whether for the said year or any other year of assessment, to the extent that the Commissioner deems it necessary to appropriate such other payments in order to discharge in whole or in part the said person's liability for the said loan portion,

as does not exceed such loan portion: Provided that the Commissioner may adjust any appropriation made by him under this paragraph if the said person's liability for such loan portion is increased or reduced on assessment of such liability by the Commissioner or in order to rectify any calculation or accounting error.

(2) A person shall for the purposes of this Schedule be deemed to have paid the amounts finally

appropriated to the loan portion for which he is liable in respect of any year of assessment -

- (a) if employees' tax has during such year of assessment been deducted or withheld from his remuneration as required by the Fourth Schedule to this Act and he either is not required under that Schedule to pay provisional tax in respect of such year of assessment or has made arrangements to the satisfaction of the Commissioner for increased deductions by way of employees' tax to cover his liability for provisional tax in respect of such year, on the first day of September during such year; or
- (b) if during such year of assessment he has paid directly by way of provisional tax in respect of such year of assessment the amount payable by him in terms of paragraph 21 (1) (a), 22 (1) or 23 (a) (i) or 23 (b) (i) of the Fourth Schedule to this Act, on the first day of the month during which he paid such amount: Provided that this item shall not apply in the case of a company whose taxable income is derived wholly or mainly in the form of dividends; or

[Item (b) amended by s. 51 (1) of Act 88 of 1971 and by s. 62 of Act 85 of 1974.]

- (c) if the provisions of item (a) or (b) do not apply, on such date as the Commissioner, having regard to the payments made by the said person, may determine.

8A. (1) Where-

- (a) any amount in respect of any of the taxes as defined in paragraph 28 (8) of the Fourth Schedule is owing by any taxpayer and the period allowed under this Act for the payment of that amount has expired, or any interest payable under this Act in respect of the late payment of any such tax or any portion thereof is owing by any taxpayer;
- (b) by reason of the fact that the taxpayer's whereabouts are unknown, the Commissioner is unable to take action for the recovery of the said amount of tax or the said interest;
- (c) a period of at least two years has elapsed since the expiration of the period referred to in item (a) or since the date on which the said interest commenced to run;
- (d) the Commissioner is satisfied that every reasonable attempt has been made to trace the taxpayer; and
- (e) an amount stands to the credit of the taxpayer in respect of any loan portion,

the Secretary may, on a date determined by him-

- (i) calculate the interest which is due and has become payable to the taxpayer in respect of the said loan portion or, if the loan portion has not by the said date become repayable to the taxpayer, the interest which would have been payable to the taxpayer under the provisions of paragraph 7 in respect of the said loan portion if he had under the second proviso to paragraph 6 become entitled to a repayment of the loan portion on the said date; and
- (ii) set off against the amounts owing by the taxpayer as contemplated in item (a) so much of the amount of the said loan portion and the interest referred to in item (i) as does not exceed the aggregate of the amounts owing.

(2) Where any loan portion or interest thereon has under the provisions of subparagraph (1) been set off against any amount owing by the taxpayer, such loan portion or interest shall be deemed to have been repaid or paid to the taxpayer as though the repayment of the loan portion had been made in accordance with the provisions of paragraph 6 and the payment of such interest had been made in accordance with the provisions of paragraph 7.

(3) If, before any relevant date on which any loan portion has become repayable under the provisions of paragraph 6 such loan portion and the interest calculated thereon under subparagraph (1) (i) have been set off only in part against amounts owing by the taxpayer, so much of the excess amount standing to the taxpayer's credit as does not exceed the amount of the said loan portion shall be deemed to be a loan portion paid by the taxpayer on the date determined under subparagraph (1) in respect of the year of assessment in respect of which the first-mentioned loan portion was paid.

(4) If the taxpayer's whereabouts become known to the Commissioner, the Commissioner shall issue a notification to the taxpayer informing him of what has been done under subparagraph (1) in the case of that taxpayer.

[Para. 8A inserted by s. 27 (1) of Act 90 of 1972.]

9. The Minister of Finance may make regulations as to all matters which he considers it necessary or expedient to prescribe in order that the objects of this Schedule may be achieved, and may in such regulations prescribe penalties for any contravention thereof or failure to comply therewith not exceeding a



fine of fifty rand.

[Para. 9 amended by s. 46 of Act 97 of 1986.]

10. The Minister of Finance may by notice in the *Gazette* determine a date after which assessments for the payment of the loan portion in respect of any year of assessment shall not be issued by the Commissioner.

[Para. 10 amended by ss. 46 and 47 of Act 97 of 1986.]

#### Sixth Schedule

##### Cases

[Sixth Schedule added by s. 28 (1) of Act 90 of 1972 and repealed by s. 51(1) of Act 113 of 1993.]

#### Seventh Schedule

### BENEFITS OR ADVANTAGES DERIVED BY REASON OF EMPLOYMENT OR THE HOLDING OF ANY OFFICE (paras. 1-20)

##### Cases

[Seventh Schedule added by s. 46 of Act 121 of 1984.]

(Paragraph (i) of the definition of 'gross income' in section 1 of this Act)

#### DEFINITIONS (para. 1)

1. For the purposes of this Schedule, unless the context otherwise indicates -
- 'associated institution'**, in relation to any single employer, means -
- (a) where the employer is a company, any other company which is associated with the employer company by reason of the fact that both companies are managed or controlled directly or indirectly by substantially the same persons; or
  - (b) where the employer is not a company, any company which is managed or controlled directly or indirectly by the employer or by any partnership of which the employer is a member; or
  - (c) any fund established solely or mainly for providing benefits for employees or former employees of the employer or for employees or former employees of the employer and any company which is in terms of paragraph (a) or (b) an associated institution in relation to the employer, but excluding any fund established by a trade union or industrial council and any fund established for post-graduate research otherwise than out of moneys provided by the employer or by any associated institution in relation to the employer;

**'consideration'**, as respects any reference in this Schedule to any consideration given by an employee, does not include any consideration in the form of services rendered or to be rendered by the employee;

**'employee'**, in relation to any employer, means a person who is an employee in relation to such employer for the purposes of the Fourth Schedule, excluding any person who prior to 1 March 1992 by reason of superannuation, ill-health or other infirmity retired from the employ of such employer, but including, in relation to any company, any director of such company and any person who was previously employed by, or was a director of, such company if such person is or was the sole shareholder or one of the controlling shareholders in such company and, for the purposes of paragraphs 2 (h) and 13, including any person who has retired as aforesaid and who, after his retirement, is released by his employer from an obligation which arose before the employee's retirement to reimburse the employer for an amount paid by the employer on behalf of the employee or to pay any amount which became owing by the employee to the employer before the employee's retirement;

[Definition of 'employee' substituted by s. 49 of Act 129 of 1991.]

**'employer'** means any person who is an employer as defined in paragraph 1 of the Fourth Schedule and includes -

- (a) any company; and
- (b) for the purpose of paragraph 2 and the determination of the cash equivalent of the value of any taxable benefit granted to any person who derives remuneration as defined in the said paragraph from employment in the public service or any administration or undertaking of the State or who holds office under the Republic, the State;

**'employment'** means any office or employment;

**'loan'** includes any form of credit and any loan applied directly towards the replacement of any other loan;

**'month'** means any of the twelve portions into which any calendar year is divided;

**'official rate of interest'** means-

- (a) in the case of a loan which is denominated in the currency of the Republic, the rate of interest<sup>4\*</sup> fixed by the Minister from time to time by notice in the *Gazette*; or
- (b) in the case of a loan which is denominated in any other currency, a market related rate of interest;

[Definition of 'official rate of interest' amended by s. 26 (a) of Act 96 of 1985, by GN R2706 of 29 November 1985, by s. 33 (1) of Act 65 of 1986, by GN 2683 of 19 December 1986, by s. 28 of Act 85 of 1987, by GN R714 of 14 April 1989, by s. 24 (1) of Act 70 of 1989, by GN R763 of 29 March 1990, by s. 55 (1) of Act 101 of 1990, by s. 35 (1) of Act 141 of 1992, by GN R3353 of 11 December 1992, by s. 52 (1) of Act 113 of 1993, by GN 57 of 14 January 1994, by s. 30 (1) of Act 21 of 1994, by GN R1154 of 4 August 1995, by s. 40 (1) of Act 36 of 1996, by GN 1504 of 20 November 1998, by GN 539 of 22 April 1999, by GN R1022 of 27 August 1999 and by GN 183 of 25 February 2000, substituted by s. 54 of Act 30 of 2000, by s. 59 of Act 59 of 2000 and by s. 62 (a) of Act 74 of 2002 and amended by GN 1024 of 1 September 2004.]

**'taxable benefit'** means a taxable benefit contemplated in paragraph 2, whether the grant of such benefit is voluntary or otherwise, but excluding-

- (a) any benefit the amount or value of which is exempt from normal tax under the provisions of section 10 of this Act; or
- (b) any benefit provided by any benefit fund in respect of medical, dental and similar services, hospital services, nursing services and medicines; or
- (c) any lump sum benefit payable by a benefit fund, pension fund or provident fund, being a benefit referred to in the definition of 'benefit fund' in section 1 of this Act or in paragraph (i) of the proviso to paragraph (c) of the definition of 'pension fund' in that section or in paragraph (a) of the definition of 'provident fund' in that section.  
[Para. (c) substituted by s. 26 (b) of Act 96 of 1985.]
- (d) any benefit or privilege received by or accrued to a person contemplated in section 9 (1) (e) stationed outside the Republic which is attributable to that person's services rendered outside the Republic.

[Para. (d) added by s. 62 (b) of Act 74 of 2002.]

#### **TAXABLE BENEFITS (para. 2)**

#### **Cases**

2. For the purposes of this Schedule and of paragraph (i) of the definition of 'gross income' in section 1 of this Act, a taxable benefit shall be deemed to have been granted by an employer to his employee in respect of the employee's employment with the employer, if as a benefit or advantage of or by virtue of such employment or as a reward for services rendered or to be rendered by the employee to the employer-

- (a) any asset consisting of any goods, commodity, financial instrument or property of any nature (other than money) has been acquired by the employee from the employer or any associated institution in relation to the employer or from any person by arrangement with the employer, either for no consideration or for a consideration given by the employee which is less than the value of such asset, as determined under paragraph 5 (2): Provided that the provisions of this subparagraph shall not apply in respect of-
  - (i) any meal, refreshment, voucher, board, fuel, power or water with which the employee has been provided as contemplated in subparagraph (c) or (d);
  - (ii) any marketable security acquired by the exercise by the employee, as contemplated in section 8A, of any right to acquire any marketable security;
  - (iii) any qualifying equity share acquired by an employee as contemplated in section 8B; or
  - (iv) any equity instrument contemplated in section 8C; or  
[Sub-para. (a) substituted by s. 50 (1) (a) of Act 32 of 2004.]
- (b) the employee has been granted the right to use any asset (other than any residential accommodation or household goods supplied with such accommodation) for his private or domestic purposes either free of charge or for a consideration payable by the employee which is less than the value of such use, as determined under paragraph 6 (2) in the case of an asset other than a motor vehicle or under paragraph 7 (4) or (7) in the case of a motor vehicle; or

- (c) the employee has been provided with any meal or refreshment or voucher entitling him to any meal or refreshment (other than any board or meals referred to in item (d)), either free of charge or for a consideration less than the value of such meal, refreshment or voucher, as the case may be, as determined under paragraph 8 (2); or
- (d) the employee has been provided with residential accommodation (whether furnished or unfurnished and with or without board, meals, fuel, power or water) either free of charge or for a rental consideration payable by the employee which is less than the rental value of such accommodation as determined under the applicable provisions of paragraph 9; or  
[Sub-para. (d) substituted by s. 49 of Act 28 of 1997.]
- (e) any service (other than a service to which the provisions of paragraph 9 (4) (a) apply) has at the expense of the employer been rendered to the employee (whether by the employer or by some other person), such service has been utilized by the employee for his private or domestic purposes and no consideration has been given by the employee to the employer in respect of such service or, if any such consideration has been given, the amount thereof is less than the amount of the lowest fare referred to in item (a) of subparagraph (1) of paragraph 10, or the cost referred to in item (b) of the said subparagraph, as the case may be; or
- (f) a loan (other than a loan for purposes of the payment by the employee of any consideration in respect of any qualifying equity share contemplated in section 8B to comply with the minimum requirements of the Companies Act, 1973 (Act 61 of 1973), or the payment of any stamp duties or uncertificated securities tax payable in respect of that share, or a loan in respect of which a subsidy is payable as contemplated in subparagraph (gA)) has been granted to the employee, whether by the employer or by any other person by arrangement with the employer or any associated institution in relation to the employer, and either no interest is payable by the employee on such loan or interest is payable by him thereon at a rate of lower than the official rate of interest; or

[Sub-para. (f) substituted by s. 27 (a) of Act 96 of 1985, by s. 56 of Act 101 of 1990 and by s. 50 (1) (b) of Act 32 of 2004.]

- (g) the employer has paid any subsidy in respect of the amount of interest or capital repayments payable by the employee in terms of any loan; or  
[Sub-para. (g) substituted by s. 27 (b) of Act 96 of 1985.]
- (gA) the employer has in respect of any loan granted to the employee by any lender, paid to such lender any subsidy, being an amount which, together with any interest payable by the employee on such loan, exceeds the amount of the interest which, if calculated at the official rate of interest, would have been payable on such loan; or  
[Sub-para. (gA) inserted by s. 27 (c) of Act 96 of 1985.]
- (h) the employer has, whether directly or indirectly, paid any amount owing by the employee to any third person, without requiring the employee to reimburse the employer for the amount paid or the employer has released the employee from an obligation to pay any amount owing by the employee to the employer: Provided that where any debt owing by the employee to the employer has been extinguished by prescription the employer shall be deemed to have released the employee from his obligation to pay the amount of such debt if the employer could have recovered the amount owing or caused the running of the prescription to be interrupted, unless it is shown to the satisfaction of the Commissioner that the employer's failure to recover the amount owing or to cause the running of the prescription to be interrupted was not due to any intention of the employer to confer a benefit on the employee; or  
[Sub-para. (h) amended by s. 27 (d) of Act 96 of 1985.]
- (i) the employer has during any period, directly or indirectly, made any contribution or payment to any fund contemplated in paragraph (b) of the definition of 'benefit fund' in section 1 of this Act, for the benefit of any employee or the dependants of any such employee, which exceeds two thirds of the total contribution or payment in relation to such employee or dependants to such fund during such period.

[Sub-para. (i) added by s. 54 (1) (b) of Act 30 of 1998.]

### **DETERMINATION OF CASH EQUIVALENT OF VALUE OF TAXABLE BENEFIT (para. 3)**

3. (1) The cash equivalent of the value of a taxable benefit shall, for the purposes of paragraph (i) of

the definition of 'gross income' in section 1 of this Act, be determined in accordance with the provisions of this Schedule by the employer by whom the taxable benefit has been granted.

(2) The Commissioner may, if such determination appears to him to be incorrect, re-determine such cash equivalent upon the assessment of the liability for normal tax of the employee to whom such taxable benefit has been granted.

(3) If the employee concerned is dissatisfied with any determination or proposed determination by his employer of the cash equivalent of the value of any taxable benefit included in the remuneration of the employee for employees tax purposes, the employee or the employer may refer the matter to the Commissioner and the Commissioner may, if it appears to him that the determination or proposed determination should be adjusted, issue a directive to the employer as to the manner in which such determination should be made and the employer shall be obliged to act upon such directive: Provided that nothing in this subparagraph contained shall be construed as preventing the Commissioner from making a re-determination of such cash equivalent under the provisions of subparagraph (2).

**TAXABLE BENEFITS GRANTED BY ASSOCIATED INSTITUTIONS (para. 4)**

4. Where any associated institution in relation to any employer has given any employee of that employer, by reason of the fact that the employee is in the employment of the employer, or as a benefit or advantage of such employment or as a reward for services rendered or to be rendered by the employee to the employer any benefit or advantage which, if such benefit or advantage had been given to the employee directly by the employer in the circumstances contemplated in paragraph 2, would have constituted a taxable benefit, such benefit or advantage shall for the purposes of this Schedule be deemed to be a taxable benefit granted by the employer to the employee and the cash equivalent of the value of such taxable benefit shall be determined accordingly.

**ACQUISITION OF AN ASSET AT LESS THAN ACTUAL VALUE (para. 5)**

5. (1) Where an asset has been acquired by an employee as contemplated in paragraph 2 (a), the cash equivalent of the value of the taxable benefit shall be so much of the value of such asset (as determined under subparagraph (2) of this paragraph) as exceeds the value of any consideration given by the employee for such asset.

(2) The value to be placed on such asset shall be the market value thereof at the time the asset is acquired by the employee: Provided that where the asset in question is movable property (other than marketable securities or an asset which the employer had the use of prior to acquiring ownership thereof) and was acquired by the employer in order to dispose of it to the employee or the asset in question (other than marketable securities) was held by the employer as trading stock, the value to be placed thereon shall be the cost thereof to the employer or, where such asset was held as trading stock and the market value thereof was less than such cost, such market value: Provided further that where-

(a) any asset is presented by an employer to an employee as an award for bravery, such value to be placed thereon shall be reduced by the lesser of the cost to the employer of all such assets so awarded to the employee during the year of assessment and R5 000; or  
[Para. (a) amended by s. 35 of Act 30 of 2002.]

(b) any asset is given by an employer to an employee for long service, such value to be placed thereon shall be reduced by the lesser of the cost to the employer of all such assets so given to the employee during the year of assessment and R5 000.

[Para. (a) amended by s. 35 of Act 30 of 2002.]

[Sub-para. (2) amended by s. 57 (1) (a) of Act 101 of 1990, by s. 31 (a) of Act 21 of 1994 and by s. 46 of Act 21 of 1995.]

(3) No value shall be placed under this paragraph on fuel or lubricants supplied by an employer to his employee for use in a motor vehicle where the value of the private use of such vehicle has been determined under paragraph 7.

[Sub-para. (3) amended by s. 57 (1) (b) of Act 101 of 1990 and substituted by s. 31 (b) of Act 21 of 1994.]

(4) For the purposes of this paragraph, 'long service' means an initial unbroken period of service of not less than 15 years or any subsequent unbroken period of service of not less than 10 years.

[Sub-para. (4) added by s. 28 of Act 96 of 1985 and substituted by s. 31 (c) of Act 21 of 1994.]

**RIGHT OF USE OF ANY ASSET (OTHER THAN RESIDENTIAL ACCOMMODATION OR ANY MOTOR VEHICLE) (para. 6)**

6. (1) Where an employee has been granted the right to use any asset (other than residential accommodation or any motor vehicle) as contemplated in paragraph 2 (b), the cash equivalent of the value of the taxable benefit shall be so much of the value of the private or domestic use of such asset (as

determined under subparagraph (2) of this paragraph for the period of use) as exceeds any consideration given by the employee for the use of such asset during such period or any amount expended by the employee on the maintenance or repair of such asset.

(2) The value to be placed on the private or domestic use of such asset shall be-

- (a) where the asset is held by the employer as the lessee under a lease or hiring agreement, the amount of the rental payable by the employer in respect of the period during which the employee has the use of the asset; or
- (b) where the asset is owned by the employer, an amount calculated for the period during which the employee has the use of the asset at the rate of 15 per cent per annum on the lesser of the cost of such asset to the employer or the market value thereof at the date of commencement of the period of use: Provided that where an employee is granted the sole right of the use of the asset for a period extending over the useful life of the asset or over a major portion thereof, the value to be placed on the private or domestic use of the asset shall be the cost thereof to the employer, and in such case the taxable benefit in respect of such use shall be deemed to have accrued to the employee on the date on which he was first granted the right of use of such asset.

[Item (b) amended by s. 29 of Act 96 of 1985.]

(3) For employees tax purposes an appropriate portion of the said cash equivalent shall be apportioned to each period during the year of assessment in respect of which any cash remuneration is paid or becomes payable by the employer to the employee.

(4) No value shall be placed under this paragraph on the private or domestic use of an asset by an employee, if-

- (a) such use is incidental to the use of the asset for the purposes of the employer's business or the asset is provided by the employer as an amenity to be enjoyed by the employee at his place of work or for recreational purposes at that place or a place of recreation provided by the employer for the use of his employees in general; or
- (b) the asset consists of any equipment or machine which the employer concerned allows his employees in general to use from time to time for short periods and the Commissioner is satisfied that the value of the private or domestic use of the asset, as determined under subparagraph (2), is negligible; or
- (c) the asset consists of books, literature, recordings or works of art.

#### **RIGHT OF USE OF MOTOR VEHICLE (para. 7)**

7. (1) For the purposes of this paragraph, 'determined value', in relation to a motor vehicle, means-

- (a) where such motor vehicle (not being a vehicle in respect of which paragraph (b) (ii) of this definition applies) was acquired by the employer under a *bona fide* agreement of sale or exchange concluded by parties acting at arm's length, the original cost thereof to him (excluding any finance charge, interest or sales tax payable by him, or value-added tax borne by him, in respect of his acquisition thereof); or

[Item (a) substituted by s. 50 (1) (a) of Act 129 of 1991.]

- (b) where such motor vehicle-
  - (i) is held by the employer under a lease; or
  - (ii) was held by the employer under a lease and the ownership thereof was acquired by him on the termination of the lease, the retail market value thereof at the time the employer first obtained the right of use of the vehicle or, where at such time such lease was a financial lease for the purposes of the Sales Tax Act, 1978 (Act 103 of 1978), the cash value thereof as determined under Schedule 4 to that Act or, where at such time the lease was a lease contemplated in paragraph (b) of the definition of 'instalment credit agreement' in section 1 of the Value-Added Tax Act, 1991 (Act 89 of 1991), the cash value thereof as contemplated in the definition of 'cash value' in the said section, but excluding the tax referred to therein; or

[Item (b) amended by s. 50 (1) (b) of Act 129 of 1991 and by s. 36 (1) of Act 141 of 1992.]

- (c) in any other case, the market value of such motor vehicle at the time when the employer first obtained the vehicle or the right of use thereof:

Provided that-

- (a) where an employee has been granted the right of use of such motor vehicle as contemplated in subparagraph (2) and such vehicle, or the right of use thereof, was

acquired by the employer not less than 12 months before the date on which the employee was granted such right of use, there shall be deducted from the amount determined under the foregoing provisions of this subparagraph a depreciation allowance calculated according to the reducing balance method at the rate of 15 per cent for each completed period of 12 months from the date on which the employer first obtained such vehicle or the right of use thereof to the date on which the said employee was first granted the right of use thereof; and

- (b) where such motor vehicle was acquired by the employer from an associated institution in relation to the employer and the employee concerned had, prior to such acquisition, enjoyed the right of use of such motor vehicle, the determined value shall be the determined value as at the date on which the employee was granted the right of use of such motor vehicle for the first time.

[Sub-para. (1) amended by s. 32 (a) of Act 21 of 1994 and by s. 47 (1) (a) of Act 21 of 1995.]

(1A) .....

[Sub-para. (1A) inserted by s. 32 (b) of Act 21 of 1994 and deleted by s. 47 (1) (b) of Act 21 of 1995.]

(2) Where an employee has been granted the right to use any motor vehicle as contemplated in paragraph 2 (b), the cash equivalent of the value of the taxable benefit shall be so much of the value of the private use of such vehicle (as determined under this paragraph in respect of the period of use) as exceeds any consideration given by the employee to the employer for the use of such vehicle during such period: Provided that where the employee receives an allowance or advance contemplated in section 8 (1) (b), such value of the private use of such vehicle shall not be reduced by any such consideration.

[Sub-para. (2) amended by s. 47 (1) (c) of Act 21 of 1995.]

(3) (a) Where an employer's rights and obligations under a lease in respect of a motor vehicle are transferred to his employee the employer shall for the purposes of this Schedule be deemed to have granted the employee the right to use such vehicle for the remainder of the period of the lease.

(b) In such case-

- (i) any rentals becoming payable by the employee under the lease shall be deemed to be a consideration payable by him for the said right; and
- (ii) the determined value of the vehicle shall be deemed to be an amount determined in accordance with the provisions of subparagraph (1) (b);

(4) Subject to the provisions of subparagraphs (9) and (10), the value to be placed on the private use of such vehicle shall be determined for each month or part of a month during which the employee was entitled to use the vehicle for private purposes (including travelling between the employee's place of residence and his place of employment) and the said value shall-

- (a) as respects each such month, be an amount equal to 1,8 per cent of the determined value of such motor vehicle: Provided that-
- (i) where more than one motor vehicle is made available by an employer to a particular employee at the same time and the provisions of subparagraph (6) are not applicable in the case of such vehicles, the said value shall be an amount equal to 1,8 per cent of the determined value of the motor vehicle having the highest determined value and 4 per cent of the determined value of every other such motor vehicle; and
- (ii) where the employee has in addition to the right to use a vehicle also been granted an allowance in respect of transport expenses in respect of another vehicle for the same period (excluding any allowance or advance contemplated in section 8 (1) (b) (iii)), such vehicle shall be deemed to be a vehicle in respect of which the rate of 4 per cent shall apply for the purposes of subitem (i):

Provided further that where the employee-

- (i) bears the cost of all fuel used for the purposes of the private use of the vehicle (including travelling between the employee's place of residence and his place of employment), the value of private use for each such month as determined in accordance with the foregoing provisions of this subparagraph shall be reduced by an amount of R120;
- (ii) bears the full cost of maintaining the vehicle (including the cost of repairs, servicing, lubrication and tyres), the value of private use for each such month as determined in accordance with the foregoing provisions of this subparagraph shall

be reduced by an amount of R85; and

[Item (a) amended by s. 30 of Act 96 of 1985, substituted by s. 10 (1) (a) of Act 108 of 1986, amended by GN 956 of 1988 and s. 44 (1) of Act 90 of 1988, substituted by GN R715 of 1989, by s. 25 (1) of Act 70 of 1989, by GN R764 of 29 March 1990, by s. 58 (1) of Act 101 of 1990 and by s. 50 (1) (c) of Act 129 of 1991 and amended by s. 47 (1) (d) of Act 21 of 1995 and by s. 50 (1) of Act 28 of 1997.]

(b) as respects any such part of a month, be an amount which bears to the appropriate amount determined in accordance with item (a) for a month the same ratio as the number of days in such part of a month bears to the number of days in the month in which such part falls.

(5) Subject to the provisions of subparagraph (7), no reduction in the value determined under subparagraph (4) shall be made by reason of the fact that the vehicle in question was during any period for any reason temporarily not used by the employee for private purposes.

(6) Where more than one motor vehicle is made available by an employer to a particular employee at the same time and the Commissioner is satisfied that each such vehicle was used by the employee during the year of assessment primarily for business purposes, the value to be placed on the private use of all the said vehicles shall be deemed to be the value of the private use of the vehicle having the highest value of private use or such other vehicle as the Commissioner may direct: Provided that the preceding provisions of this subparagraph shall not apply where the provisions of subparagraph (7) or (8) are applied.

[Sub-para. (6) substituted by s. 10 (1) (b) of Act 108 of 1986.]

(7) Where it is proved to the satisfaction of the Commissioner that accurate records of distances travelled in such vehicle for private purposes (including travelling between the employee's place of residence and his place of employment) are kept, the Commissioner may upon the assessment of the employee's liability for normal tax reduce the value placed on the private or domestic use of the vehicle to such amount as appears to the Commissioner to be fair and reasonable in the circumstances of the case if the total distance so travelled during the year of assessment was less than 10 000 kilometres or, where the period in that year during which the vehicle was available for the employee's use was less than 12 months, a distance which bears to 10 000 kilometres the same ratio as the said period bears to 12 months.

(8) If-

- (a) the cash equivalent of the value of a taxable benefit in respect of a motor vehicle falls to be included in the income of an employee;
- (b) the employee was required by his employer to bear any portion of the cost of the licence for the vehicle, the insurance thereof, the fuel used therein or the maintenance thereof;
- (c) no compensation in the form of an allowance or reimbursement was payable by the employer to the employee in respect of the expenditure borne by the employee in respect of the said cost; and
- (d) where the cost of fuel for or of maintenance of the vehicle was borne by the employee, the value determined under subparagraph (4) included an amount in respect of fuel or the maintenance thereof, as the case may be,

the said cash equivalent shall, on assessment of the employee's liability for normal tax, be reduced by the amount actually incurred by the employee during the relevant year of assessment in respect of the said cost and any such reduction shall, in so far as the amount thereof includes any amount which would otherwise qualify for deduction from the employee's income, be deemed to be in lieu of such deduction in respect of fuel or maintenance, as the case may be.

(9) Any decision of the Commissioner in the exercise of his discretion under subparagraph (6) or (7) shall be subject to objection and appeal.

(10) For the purposes of this paragraph the private use by an employee of a motor vehicle shall be deemed to have no value, if-

- (a) (i) the vehicle is available to and is in fact used by employees of the employer in general;
- (ii) the private use of the vehicle by the employee concerned is infrequent or is merely incidental to its business use; and
- (iii) the vehicle is not normally kept at or near the residence of the employee concerned when not in use outside of business hours; or
- (b) the nature of the employee's duties are such that he is regularly required to use the vehicle for the performance of such duties outside his normal hours of work, and he is not permitted to use such vehicle for private purposes other than travelling between his place of residence and his place of work.

**MEALS, REFRESHMENTS AND MEAL AND REFRESHMENT VOUCHERS (para. 8)**

8. (1) Where an employee has been provided with any meal, refreshment or voucher as contemplated in paragraph 2 (c), the cash equivalent of the taxable benefit shall be so much of the value of such meal, refreshment or voucher (as determined under subparagraph (2) of this paragraph) as exceeds any consideration given by the employee in respect of such meal, refreshment or voucher.

(2) The value to be placed on such meal, refreshment or voucher shall be the cost to the employer of such meal, refreshment or voucher.

(3) No value shall be placed under this paragraph on-

- (a) any meal or refreshment supplied by an employer to his employee in any canteen, cafeteria or dining room operated by or on behalf of the employer and patronised wholly or mainly by his employees or on the business premises of the employer;
- (b) any meal or refreshment supplied by an employer to an employee during business hours or extended working hours or on a special occasion; or
- (c) any meal or refreshment enjoyed by an employee in the course of providing a meal or refreshment to any person whom the employee is required to entertain on behalf of the employer.

**RESIDENTIAL ACCOMMODATION (para. 9)**

9. (1) For the purposes of this paragraph-

'remuneration', in relation to any employee, means the aggregate of the amounts of remuneration (as determined in accordance with the definition of 'remuneration' in paragraph 1 of the Fourth Schedule but excluding any amounts referred to in paragraph (c) and including any amounts referred to in paragraph (vii) of that definition) which have been derived by him from his employer and any companies and funds which are associated institutions in relation to the employer, but excluding-

- (a) the value of any benefit or taxable benefit derived from the private use of any motor vehicle or the occupation of residential accommodation;
- (b) the amount of any remuneration derived by any employee who is not the controlling shareholder or one of the controlling shareholders of the employer company, from an associated institution in relation to the employer if it is shown to the satisfaction of the Commissioner that the employee's employment with the employer is not and was not in any way connected with the employee's employment with such associated institution (any decision of the Commissioner under this paragraph being subject to objection and appeal); and
- (c) any amount referred to in paragraph (iii) of the proviso to paragraph (c) of the definition of 'gross income' in section 1 of this Act;

[Definition of 'remuneration' amended by s. 53 of Act 113 of 1993 and by s. 33 of Act 21 of 1994.]

'remuneration factor', in relation to a year of assessment during which an employee has occupied residential accommodation, means the remuneration derived by him during the year of assessment immediately preceding the firstmentioned year of assessment: Provided that-

- (i) where during a portion of such preceding year the employee was not in the employment of the employer or any associated institution in relation to the employer, the remuneration factor shall as respects that employee be deemed to be an amount which bears to the amount of his remuneration for the portion of such preceding year during which he was in such employment the same ratio as the period of 365 days bears to the number of days in such lastmentioned portion;
- (ii) where during the whole of such preceding year, the employee was not in the employment of the employer or of any associated institution in relation to the employer, the remuneration factor shall as respects that employee be deemed to be an amount which bears to the employee's remuneration during the first month during which he was in the employment of the employer the same ratio as 365 days bears to the number of days during which he was in such employment.

(2) The cash equivalent of the value of the taxable benefit derived from the occupation of residential accommodation as contemplated in paragraph 2 (d) shall be the rental value of such accommodation (as determined under subparagraph (3), (3A), (4) or (5) of this paragraph in respect of the year of assessment) less any rental consideration given by the employee for such accommodation in respect of such year, any rental consideration given by him in respect of household goods supplied with such accommodation and any charge made to the employee by the employer in respect of power or fuel provided



with the accommodation.

[Sub-para. (2) substituted by s. 31 (a) of Act 96 of 1985 and by s. 55 (1) (a) of Act 30 of 1998.]

(3) Subject to the provisions of subparagraph (3A), the rental value to be placed on such accommodation (other than accommodation referred to in subparagraph (4)) for any year of assessment shall be the greater of-

(a) an amount determined in accordance with the formula

$$(A - B) \times \frac{C}{100} \times \frac{D}{12},$$

in which formula-

- (i) 'A' represents the remuneration factor as determined in relation to the year of assessment;
- (ii) 'B' represents an abatement equal to an amount of R20 000: Provided that in any case where-
  - (aa) the employer is a private company and the employee or his spouse controls the company or is one of the persons controlling the company, whether control is exercised directly as a shareholder in the company or as a shareholder in any other company; or
  - (bb) the employee, his spouse or minor child has a right of option or pre-emption granted by the employer or by any other person by arrangement with the employer or any associated institution in relation to the employer whereby the employee, his spouse or minor child may become the owner of the accommodation, whether directly or indirectly by virtue of a controlling interest in a company or otherwise, the said abatement shall be reduced to zero;
- (iii) 'C' represents a quantity of 17: Provided that where the accommodation consists of a house, flat or apartment consisting of at least four rooms-
  - (aa) 'C' represents a quantity of 18 if-
    - (A) such accommodation is unfurnished and power or fuel is supplied by the employer; or
    - (B) such accommodation is furnished but power or fuel is not supplied; or
  - (bb) 'C' represents a quantity of 19 if such accommodation is furnished and power or fuel is supplied by the employer; and
- (iv) 'D' represents the number of months in relation to a year of assessment during which the employee was entitled to occupation of such accommodation; or
- (b) the total amount of the rentals payable for such accommodation by the employer or associated institution in relation to the employer and any other expenditure defrayed by the employer or associated institution in respect of such accommodation.

[Sub-para. (3) amended by s. 34 (1) (a) of Act 65 of 1986, by s. 29 (a) of Act 85 of 1987 and by s. 51 (1) (a) of Act 28 of 1997 and substituted by s. 55 (1) (b) of Act 30 of 1998.]

(3A) Subject to subparagraph (3B), the value determined in accordance with the formula contemplated in subparagraph (3) (a) shall apply where-

- (a) the full ownership of such accommodation vests in the employer or associated institution in relation to the employer; or
- (b) the full ownership does not so vest in the employer or associated institution, and-
  - (i) it is customary for an employer in the industry concerned to provide free or subsidised accommodation to its employees; and
  - (ii) it is necessary for the particular employer, having regard to the particular kind of employment, to provide free or subsidised accommodation-
    - (aa) for the proper performance by the employees of their duties; or
    - (bb) as a result of the frequent movement of employees; or
    - (cc) as a result of the lack of employer-owned accommodation; and
  - (iii) the benefit is provided solely for *bona fide* business purposes, other than the obtaining of a tax benefit.

[Sub-para. (3A) inserted by s. 55 (1) (c) of Act 30 of 1998.]

(3B) Where the employee has an interest in the accommodation in question, subparagraph (3) shall apply.

[Sub-para. (3B) inserted by s. 55 (1) (c) of Act 30 of 1998.]

(4) The rental value to be placed on accommodation occupied temporarily for the purposes of a holiday shall be-

- (a) where such accommodation is hired by the employer from a person other than an associated institution in relation to the employer, so much of the rental payable and any amounts chargeable in respect of meals, refreshments or any services relating to such accommodation as have been borne by the employer and are connected with the period during which the accommodation was so occupied; or
- (b) in any other case, an amount calculated at the prevailing rate per day at which such accommodation could normally be let to any person who is not an employee of the employer or of any associated institution in relation to the employer .

[Item (b) amended by s. 59 (a) of Act 101 of 1990 and by s. 51 (1) (b) of Act 28 of 1997 and substituted by s. 55 of Act 30 of 2000.]

(5) Where, by reason of the situation, nature or condition of the accommodation or any other factor, the Commissioner is satisfied that the rental value of such accommodation is less than the rental value thereof determined in accordance with the formula contemplated in subparagraph (3) (a) or the rental value determinable under subparagraph (4), he may determine such rental value at such lower amount as to him appears fair and reasonable.

[Sub-para. (5) substituted by s. 55 (1) (d) of Act 30 of 1998.]

(6) Where any employee has been provided by his employer with residential accommodation consisting of two or more residential units situated at different places which the employee is entitled to occupy from time to time while performing his duties the cash equivalent of the value of the benefit of such units which shall be included in the gross income of the employee shall be the value of the unit with the highest rental value determined under subparagraph (2) over the full period during which the employee was entitled to occupy more than one unit.

[Sub-para. (6) substituted by s. 51 (1) (c) of Act 28 of 1997.]

(7) No rental value shall be placed under this paragraph on any accommodation away from an employee's usual place of residence provided by his employer while such employee is absent from his usual place of residence for the purposes of performing the duties of his employment: Provided that the preceding provisions of this subparagraph shall not apply in respect of any residential unit referred to in subparagraph (6).

(8) For employees' tax purposes an appropriate portion of the cash equivalent referred to in subparagraph (2) shall be apportioned to each period during the year of assessment in respect of which any cash remuneration is paid or becomes payable by the employer to the employee.

(9) Where the employee has been provided with residential accommodation by his employer or any associated institution in relation to the employer and such employee has an interest in the accommodation in question, as contemplated in subparagraph (10), and the accommodation has been let to the employer or to any associated institution in relation to the employer, the said rental shall for the purposes of this Act (excluding this subparagraph) be deemed not to have been received by or to have accrued to the employee or any connected person in relation to the employee.

[Sub-para. (9) added by s. 31 (b) of Act 96 of 1985 and substituted by s. 34 (1) (b) of Act 65 of 1986, by s. 29 (b) of Act 85 of 1987, by s. 59 (b) of Act 101 of 1990, by s. 51 (1) (d) of Act 28 of 1997 and by s. 55 (1) (e) of Act 30 of 1998.]

(10) For the purposes of subparagraphs (3B) and (9), an employee shall be deemed to have an interest in accommodation if-

- (a) such accommodation is owned by the employee or a connected person in relation to such employee;
- (b) any increase in the value of the accommodation in any manner whatsoever, whether directly or indirectly, accrues for the benefit of the employee or a connected person in relation to such employee; or
- (c) such employee or a connected person in relation to such employee, has a right to acquire the accommodation from his employer.

[Sub-para. (10) added by s. 59 (c) of Act 101 of 1990, substituted by s. 51 (1) (d) of Act 28 of 1997 and amended by s. 55 (1) (f) of Act 30 of 1998.]

**FREE OR CHEAP SERVICES (para. 10)**

10. (1) The cash equivalent of the value of any taxable benefit derived from the rendering of a service

to any employee as contemplated in paragraph 2 (e) shall be-

- (a) in the case of any travel facility granted by an employer who is engaged in the business of conveying passengers for reward by sea or by air to enable any employee or any relative of such employee to travel to any destination outside the Republic for his private or domestic purposes, if the lowest fare payable by a passenger utilizing such facility (had he paid the full fare) at the relevant time in respect of any such journey exceeds R500, an amount equal to such lowest fare, less the amount of any consideration given by the employee or his relative in respect of such facility: Provided that for the purposes hereof a forward journey and a return journey shall be regarded as one journey; or
  - (b) in the case of the rendering of any other service as contemplated in the said paragraph, the cost to the employer in rendering such service or having such service rendered, less the amount of any consideration given by the employee in respect of such service.
- (2) No value shall be placed under this paragraph on-
- (a) any travel facility granted by any employer who is engaged in the business of conveying passengers for reward by land, sea or air to enable any employee in his employment or such employee's spouse or minor child to travel-
    - (i) to any destination in the Republic or to travel overland to any destination outside the Republic; or
    - (ii) to any destination outside the Republic if such travel was undertaken on a flight or voyage made in the ordinary course of the employer's business and such employee, spouse or minor child was not permitted to make a firm advance reservation of the seat or berth occupied by him, or if the lowest fare in respect of such travel facility, as contemplated in subparagraph (1) (a), did not exceed R500;
  - (b) any transport service rendered by any employer to his employees in general for the conveyance of such employees from their homes to the place of their employment and *vice versa*;
  - (c) any services rendered by an employer to his employees at their place of work for the better performance of their duties or as a benefit to be enjoyed by them at that place or for recreational purposes at that place or a place of recreation provided by the employer for the use of his employees in general; or
  - (d) .....

[Para. (d) deleted by s. 36 of Act 30 of 2002.]

10A. (1) Where-

- (a) any employee has been granted the right to occupy residential accommodation owned by his employer or by any associated institution in relation to his employer;
- (b) the employee, his spouse or minor child is in terms of an agreement entered into with such employer or associated institution, entitled or obliged to acquire such residential accommodation at a future date at a price stated in such agreement; and
- (c) the employee is required to pay in respect of his occupation of such residential accommodation a rental which is calculated wholly or partly as a percentage of the price referred to in item (b),

it shall be deemed for the purposes of this Schedule that the employer or, where the residential accommodation is owned by such associated institution, the associated institution, has granted to the employee a loan equal to the price referred to in item (b) and that interest is payable on such loan at a rate equal to the percentage referred to in item (c).

(2) The provisions of paragraph 2 (d) shall not apply to any residential accommodation with which an employee has been provided in the circumstances contemplated in subparagraph (1), and the provisions of paragraph 2 (a) shall not apply where any such residential accommodation is acquired by the employee in terms of an agreement referred to in item (b) of that subparagraph at a price which is not lower than the market value of such residential accommodation on the date such agreement is concluded.

[Sub-para. (2) substituted by s. 60 (1) of Act 101 of 1990.]

[Para. 10A inserted by s. 32 of Act 96 of 1985.]

#### **BENEFITS IN RESPECT OF INTEREST ON LOANS (para. 11)**

11. (1) The cash equivalent of the value of the taxable benefit derived in consequence of the grant of a loan to an employee in the circumstances contemplated in paragraph 2 (f) shall be the amount of interest that would have been payable on the amount owing in respect of the loan in respect of the year of

assessment if the employee had been obliged to pay interest on such amount during such year at the official rate of interest, less the amount of interest (if any) actually incurred by the employee in respect of the loan in respect of such year.

[Sub-para. (1) amended by s. 33 of Act 96 of 1985 and substituted by s. 48 of Act 21 of 1995.]

(2) For the purposes of this Act-

- (a) a portion of the said cash equivalent shall be deemed to have accrued to the employee-
  - (i) where interest on the loan in question becomes payable by the employee at regular intervals, on each date during the year of assessment on which interest becomes so payable for a portion of such year;
  - (ii) where interest on the loan in question becomes payable by the employee at irregular intervals or where interest on the loan is not payable by him, on the last day of each period during the year of assessment in respect of which any cash remuneration becomes payable by the employer to the employee; and
- (b) the said portion shall be determined by calculating interest at the official rate of interest for the portion of the year referred to in subparagraph (2) (a) (i) or the period referred to in subparagraph (2) as the case may be, and deducting therefrom so much of the amount of interest (if any) payable by him on the loan as relates to the said portion of a year or the said period, as the case may be: Provided that where the official rate of interest has been altered with effect from any date, any cash equivalent which is under item (a) deemed to have accrued to the employee on any date falling before the date on which such interest rate was so altered shall be determined as though such rate of interest had not been so altered.

[Item (b) amended by s. 35 (1) (b) of Act 65 of 1986.]

[Sub-para. (2) amended by s. 35 (1) (a) of Act 65 of 1986.]

(3) With the consent of the Commissioner a different method of calculation of the said cash equivalent or portions thereof may be employed if the Commissioner is satisfied that such method achieves substantially the same result as the methods provided in subparagraphs (1) and (2).

(4) No value shall be placed under this paragraph on the taxable benefit derived in consequence of-

- (a) the grant by any employer to his employee of any casual loan or loans if such loan or the aggregate of such loans does not exceed the sum of R3 000 at any relevant time; or
- (b) the grant by any employer to his employee of any loan for the purpose of enabling that employee to further his own studies.

(5) Where any amount, being the cash equivalent as determined under the provisions of this paragraph, of the value of a taxable benefit derived by any taxpayer in consequence of a loan granted to him, has been included in such taxpayer's taxable income in any year of assessment, such amount shall for the purposes of section 11 (a) of this Act be deemed to be interest actually incurred by him in that year of assessment in respect of the said loan where such amount, had it been actually incurred as interest, would have been incurred by the taxpayer in the production of his income.

#### **SUBSIDIES IN RESPECT OF LOANS (para. 12)**

[Heading substituted by s. 34 of Act 96 of 1985.]

12. The cash equivalent of the value of the taxable benefit consisting of any subsidy in respect of the amounts of interest or capital repayments referred to in paragraph 2 (g) or any subsidy contemplated in paragraph 2 (gA) shall be the amount of such subsidy.

[Para. 12 substituted by s. 34 of Act 96 of 1985 and by s. 49 of Act 21 of 1995.]

#### **CONTRIBUTION TO BENEFIT FUND (para. 12A)**

12A (1) The cash equivalent of the value of the taxable benefit contemplated in paragraph 2 (i) shall be the amount by which the contribution or payment by the employer, directly or indirectly, to any fund, contemplated in paragraph (b) of the definition of 'benefit fund' in section 1 of this Act, for the benefit of any employee or dependants of such employee for any period, exceeds two thirds of the total contribution or payment in relation to such employee or dependants of such employee to such fund during such period.

(2) Where any contribution or payment made by an employer contemplated in subparagraph (1) is made in such a manner that an appropriate portion thereof cannot be attributed to the relevant employee or dependants of such employee for whose benefit it is made, the cash equivalent of the value of the taxable benefit contemplated in paragraph 2 (i) in relation to such employee shall be determined in accordance with

the formula

$$A - B + \frac{C}{3 \times D} - E,$$

in which formula-

- (a) 'A' represents the value of the taxable benefit in relation to an employee;
- (b) 'B' represents the total contribution or payment by the employer to the fund for the benefit of all employees or dependants of such employees in respect of whom such payment is made in such a manner that an appropriate portion thereof cannot be attributed to the relevant employees or their dependants;
- (c) 'C' represents the total contribution or payment by all employees contemplated in symbol 'B';
- (d) 'D' represents the number of employees contemplated in symbol 'B'; and
- (e) 'E' represents the contribution or payment by the relevant employee.

(3) If the Commissioner is in any case satisfied that the apportionment of the cash equivalent of the value of the benefit amongst all members of any fund in accordance with the formula contemplated in subparagraph (2) does not reasonably represent a fair apportionment of such value amongst the members, he may direct that such apportionment be made in such other manner as to him appears fair and reasonable.

(4) The exercise by the Commissioner of his discretion contemplated in subparagraph (3) shall be subject to objection and appeal.

(5) No value shall be placed in terms of this paragraph on the taxable benefit derived from an employer by-

- (a) a person who by reason of superannuation, ill-health or other infirmity retired from the employ of such employer; or
- (b) the dependants of a person after such person's death, if such person was in the employ of such employer on the date of death; or
- (c) the dependants of a person after such person's death, if such person retired from the employ of such employer by reason of superannuation, ill-health or other infirmity.

[Para. 12A inserted by s. 56 (1) of Act 30 of 1998.]

**PAYMENT OF EMPLOYEE'S DEBT OR RELEASE OF EMPLOYEE FROM OBLIGATION TO PAY A DEBT (para. 13)**

13. (1) The cash equivalent of the value of the taxable benefit derived by reason of the payment of any amount by an employer in the circumstances contemplated in paragraph 2 (h) shall be an amount equal to such amount and the cash equivalent of the benefit to an employee by reason of his release from the obligation to pay an amount owing, as contemplated in the said paragraph, shall be an amount equal to the amount that was owing.

(2) No value shall be placed under this paragraph on the value of any taxable benefit derived by reason of the fact that an employer-

- (a) has paid any contribution or made any payment to any fund as contemplated in paragraph 2 (i); or
- (b) has paid subscriptions due by his employee to a professional body, if membership of such body is a condition of the employee's employment.

[Sub-s. (2) amended by s. 51 (1) (a) and (b) of Act 129 of 1991 and substituted by s. 37 of Act 30 of 2002.]

(3) Where-

- (a) in consideration for the grant by any employer (hereinafter referred to as the former employer) to an employee of any bursary, study loan or similar assistance, the employee assumed an obligation to render services to the former employer for an agreed period;
- (b) in consequence of the employee having terminated his services with the former employer before the expiry of the said period and having taken up employment with another employer (hereinafter referred to as the present employer), the employee thereupon became liable to pay an amount to the former employer;
- (c) such amount was paid to the former employer on the employee's behalf by the present employer; and
- (d) the employee has in consideration for such payment by the present employer assumed an obligation to render services to the present employer for a period which is not shorter than the unexpired portion of the period during which he had been obliged to render

services to the former employer,  
no value shall be placed under this paragraph on the value of any taxable benefit derived by reason of the payment referred to in item (c).

[Sub-para. (3) added by s. 37 (1) of Act 141 of 1992.]

13A. ....

[Para. 13A inserted by s. 36 of Act 96 of 1985 and deleted by s. 50 of Act 21 of 1995.]

14. ....

[Para. 14 amended by s. 37 of Act 96 of 1985, by s. 36 (1) of Act 65 of 1986 and by s. 30 of Act 85 of 1987 and deleted by s. 51 of Act 21 of 1995.]

15. ....

[Para. 15 amended by s. 38 of Act 96 of 1985, by s. 37 (1) of Act 65 of 1986 and by s. 11 of Act 108 of 1986 and deleted by s. 52 of Act 21 of 1995.]

#### **BENEFITS GRANTED TO RELATIVES OF EMPLOYEES AND OTHERS (para. 16)**

16. (1) For the purposes of this Schedule and of paragraph (i) of the definition of 'gross income' in section 1 of this Act, an employee shall be deemed to have been granted a taxable benefit in respect of his employment with an employer if as a benefit or advantage of or by virtue of the employee's employment with the employer or as a reward for services rendered or to be rendered by the employee-

- (a) the employer has granted a benefit or advantage (whether directly or indirectly) to a relative of the employee; or
- (b) anything is done by the employer under any agreement, transaction or arrangement so as to confer any benefit or advantage upon any person other than the employee (whether directly or indirectly),

and such benefit or advantage, if it had been granted directly by the employer to the employee, would have constituted a taxable benefit contemplated in paragraph 2.

(2) The provisions of this Schedule shall apply in relation to the taxable benefit so deemed to have been granted as though the taxable benefit had in fact been granted to the employee.

#### **CERTIFICATES BY EMPLOYERS (para. 17)**

17. (1) Every employer shall, within 30 days after the end of any year or period of assessment during which an employee of that employer has enjoyed any taxable benefit granted by the employer, or, in any particular case, within such further period as the Commissioner may approve, deliver to such employee a certificate which shall show the nature of such taxable benefit and the full cash equivalent of the value thereof during such year or period.

(2) The provisions of subparagraph (1) shall also apply in respect of any taxable benefit referred to in paragraph 4 or 16.

(3) Such employer shall within the said period of 30 days or the said further period, deliver to the Commissioner a copy of such certificate.

(4) Any employer who fails to comply with the requirements of this paragraph shall pay to the Commissioner a penalty equal to 10 per cent of the cash equivalent of the value of the taxable benefit in question or where the said cash equivalent has been understated, of the amount by which the cash equivalent was understated: Provided that the Commissioner may, if he is satisfied that such failure was not due to any intention on the part of the employer to evade his obligations under this Act and was not designed to enable the employee concerned to evade such employee's obligations under this Act, remit the whole or any part of the penalty imposed under this subparagraph.

(5) Such penalty shall be assessable upon and recoverable from the employer concerned as though it were a tax chargeable under this Act: Provided that any refusal by the Commissioner to remit any part of such penalty shall be subject to objection and appeal.

(6) The preceding provisions of this paragraph shall not apply where the cash equivalent of such taxable benefit constituted remuneration in the hands of the employee concerned from which employees tax was deducted or withheld by the employer and such cash equivalent has been included in an employees tax certificate delivered to the employee in terms of paragraph 13 of the Fourth Schedule, except to the extent that such cash equivalent was understated in such certificate.

#### **ANNUAL STATEMENTS BY EMPLOYERS (para. 18)**

18. (1) Every employer shall on the return referred to in paragraph 14 of the Fourth Schedule declare that all taxable benefits enjoyed by employees of such employer during the period in respect of which such return was furnished, are declared on the employees tax certificates delivered to such employees or on the return to be furnished in terms of section 69.

(2) Every such return shall, in the case of a company, be certified as correct by a director of such company.

[Para. 18 repealed by s. 26 of Act 70 of 1989 and inserted by s. 61 of Act 101 of 1990.]

#### OFFENCES (para. 19)

19. Any person who makes or issues or causes to be made or issued or knowingly possesses or uses or causes to be used any certificate referred to in paragraph 17 (1) which is false, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding twelve months.

[Para. 19 substituted by s. 27 of Act 70 of 1989 and by s. 56 of Act 30 of 2000.]

#### AMENDMENTS TO THIS SCHEDULE (para. 20)

20. (1) The Minister of Finance may by notice in the *Gazette* amend-

(a) .....

[Item (a) deleted by s. 57 (a) of Act 30 of 2000.]

(b) the provisions of paragraph 5 (2) so as to vary the amount specified therein;

[Item (b) substituted by s. 34 of Act 21 of 1994.]

(c) the provisions of paragraph 7 (4) so as to substitute a different scale for the scale specified therein and so as to vary the amounts specified in the proviso thereto;

(d) the provisions of paragraph 7 (7) so as to vary the distance in kilometres specified therein;

(e) the provisions of paragraph 9 (3) (a) so as to vary the amount and quantities specified therein;

[Para. (e) substituted by s. 57 (b) of Act 30 of 2000.]

(f) and (g) .....

[Items (f) and (g) deleted by s. 57 (c) of Act 30 of 2000.]

(h) the provisions of paragraph 10 (1) (a) so as to vary the amount specified therein;

(i) the provisions of paragraph 10 (2) so as to vary the amount specified therein; and

[Item (i) substituted by s. 57 (d) of Act 30 of 2000.]

(j) the provisions of paragraph 11 (4) (a) so as to vary the amount specified therein.

[Sub-para. (1) amended by s. 39 of Act 96 of 1985.]

(2) Any amendment made in terms of subparagraph (1) which is in force immediately before the date of promulgation of the Act of Parliament fixing rates of normal tax for the said year of assessment shall, unless Parliament otherwise provides, lapse on that date, and in such case it shall as from that date cease to have the force of law.

#### 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.]

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

#### 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**' means the amount to be determined in terms of paragraph 6;

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

'**asset**' includes-

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

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

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

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

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

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

'**disposal**' means an event, act, forbearance or operation of law envisaged in paragraph 11 or an event, act, forbearance or operation of law which is in terms of this Schedule treated as the disposal of an asset, and '**dispose**' must be construed accordingly;

'**financial instrument**' .....

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

'**foreign currency**' means any currency which is not legal tender in the Republic;

[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 Securities Services Act, 2004;  
[Para. (a) substituted by s. 51 (1) (a) of Act 32 of 2004.]
- (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) or (b) and which has been recognised by the Minister for purposes of this Schedule by notice in the *Gazette*;

'**residence**' means a residence contemplated in paragraph 44;

'**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**' means the amount to be determined in terms of paragraph 10;

'**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

[Para. (a) substituted by s. 65 (1) (c) of Act 60 of 2001.]

(b) a connected person in relation to that person acquires a direct or indirect interest in that company, trust or partnership.

[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 a direct or indirect interest of at least 20 per cent held by a person (alone or together with any connected person in relation to that person) in the equity share capital of a company or in any other entity, where 80 per cent or more of the value of the net assets of that company or other entity, determined on the market value basis, is, at the time of disposal of shares in that company or interest in that other entity, attributable directly or indirectly to immovable property situated in the Republic, other than immovable property held by that company or other entity as trading stock.

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

## 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;

[Sub-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 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

[Sub-item (ii) substituted by s. 53 (1) (b) of Act 32 of 2004.]

(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.

[Sub-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 R10 000.

(2) Where a person dies during the year of assessment, that person's annual exclusion for that year is R50 000.

#### 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.

[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

[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.

[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 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.

## **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, 25 per cent;

[Sub-para. (a) substituted by s. 66 of Act 74 of 2002.]

- (b) in the case of an insurer, in respect of its-
  - (i) individual policyholder fund, 25 per cent; and
  - (ii) untaxed policyholder fund, 0 per cent; or
- (c) in any other case, 50 per cent,

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

(2) There is no disposal of an asset-

- (a) by a person who transfers the asset as security for a debt or by a creditor who transfers that asset back to that person upon release of the security;
- (b) by a company in respect of the issue or cancellation of a share in the company, or by a company in respect of the granting of an option to acquire a share or debenture in that company;

[Item (b) substituted by s. 71 (1) (a) of Act 60 of 2001.]

- (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;

[Para. (c) substituted by s. 67 (1) (a) of Act 74 of 2002.]

(d) by a person in respect of the issue of any bond, debenture, note or other borrowing of money or obtaining of credit from another person;

(e) by a trustee in respect of the distribution of an asset of the trust to a beneficiary to the extent that that beneficiary has a vested right in that asset;

[Para. (e) substituted by s. 67 (1) (b) of Act 74 of 2002.]

(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;

[Para. (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

[Para. (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.]

## 12 Events treated as disposals and acquisitions

(1) Where an event described in subparagraph (2) occurs, a person will be treated for the purposes of this Schedule as having disposed of an asset described in that subparagraph for 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 and paid for the purposes of paragraph 20 (1) (a).

[Sub-para. (1) substituted by s. 72 (1) (a) of Act 60 of 2001 and by s. 93 (1) (a) of Act 45 of 2003.]

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

(a) a person who ceases to be a resident, in respect of all assets of that person other than-

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

(ii) any qualifying equity share contemplated in section 8B, which was granted to that person less than five years before the date on which that person so ceases to be a resident; and

(iii) any equity instrument contemplated in section 8C, which had not yet vested as contemplated in that section at the time that the person so ceases to be a resident;

[Item (a) substituted by s. 93 (1) (b) of Act 45 of 2003 and by s. 56 (1) of Act 32 of 2004.]

(b) an asset of a person who is not a resident, which asset-

(i) becomes an asset of that person's permanent establishment in the Republic otherwise than by way of acquisition; or

(ii) ceases to be an asset of that person's permanent establishment in the Republic otherwise than by way of a disposal contemplated in paragraph 11;

(c) assets that are held by a person otherwise than as trading stock, when they commence to be held by that person as trading stock;

(d) an asset which ceases to be held by a person as a personal-use asset otherwise than by way of a disposal contemplated in paragraph 11;

(e) an asset which is held by a person otherwise than as a personal-use asset, when that asset commences to be held by that person as a personal-use asset; or

(f) an asset transferred by an insurer contemplated in section 29A from one fund contemplated in section 29A (4) to any other such fund.

(3) Where assets that are held by a person as trading stock cease to be held by that person as trading stock, otherwise than by way of a disposal contemplated in paragraph 11, that person will be treated as having disposed of those assets for a consideration equal to the amount included in that person's income

in terms of section 22 (8) and to have immediately reacquired those assets for a cost equal to that amount, 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) A person who commences to be a resident must, subject to paragraph 24, be treated as having disposed of each of that person's assets, other than assets in the Republic listed in paragraph 2 (1) (b) (i) and (ii), and as having acquired each of those assets at a cost equal to the market value of each of those assets, which cost 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.]

(5) (a) Subject to paragraph 67, this subparagraph applies where a debt owed by a person to a creditor has been reduced or discharged by that creditor-

- (i) for no consideration; or
- (ii) for a consideration which is less than the amount by which the face value of the debt has been so reduced or discharged,

but does not apply where-

- (aa) the amount of that reduction or discharge-
  - (A) constituted a capital gain in terms of paragraph 3 (b) (ii); or
  - (B) has been taken into account in terms of section 8 (4) (m) or 20 (1) (a) (ii) or paragraph 20 (3); or
- (bb) that person and that creditor are members of the same group of companies unless-
  - (A) that debt (or any substituted debt) was acquired directly or indirectly from a person who is not a member of that group of companies; or
  - (B) that person or another person became members of that group of companies after that debt (or any substituted debt) arose,

and these transactions were part of a scheme to avoid any tax otherwise imposed by virtue of this subparagraph.

[Item (a) amended by s. 93 (1) (c) of Act 45 of 2003.]

(b) Where this subparagraph applies the person contemplated in item (a) shall be treated as having-

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

[Sub-para. (5) amended by s. 72 (1) (c) of Act 60 of 2001 and substituted by s. 68 (1) of Act 74 of 2002.]

### **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;
  - (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

[Sub-item (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) the vesting of an interest in an asset of a trust in a beneficiary, is the date on which that interest vests;
- (e) the distribution of an asset by a company to a shareholder, is the date on which that asset is so distributed as contemplated in paragraph 75;
- (f) the decrease of a person's interest in a company, trust or partnership as a result of a value shifting arrangement, is the date on which the value of that person's interest decreases; or
- (g) the happening of an event contemplated in-
  - (i) paragraph 12 (2) (a), (b), (c), (d) or (e), paragraph 12 (3) or 12 (4), is the date immediately before the day that the event occurs; or
  - (ii) paragraph 12 (2) (f) or 12 (5), is the date that that event occurs.

[Item (g) amended by s. 69 (1) (c) of Act 74 of 2002.]

[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, 1980 (Act 59 of 1980), with a fixed life, the value of which decreases over time; or
- [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).

[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, 1978 (Act 57 of 1978), or any design as defined in the Designs Act, 1993 (Act 195 of 1993), or any trade mark as defined in the Trade Marks Act, 1993 (Act 194 of 1993), or any copyright as defined in the Copyright Act, 1978 (Act 98 of 1978), any rights recognised under the Plant Breeders' Rights Act, 1996 (Act 15 of 1996), or any model, pattern, plan, formula or process or any other property or right of a similar nature;
  - (c) any intellectual property right or property or right of a similar nature in respect of which a proprietary interest may be established in terms of the common law of the Republic of South Africa; or
  - (d) any other intangible property except any financial instrument.

### 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 within two years after the acquisition by that person of that share, that person must disregard any capital loss resulting from the disposal to the extent of any extraordinary dividends received by or accrued to that person in respect of that share within that period.

(2) The provisions of subparagraph (1) shall not apply to the extent that dividends were declared by a company to a shareholder (as defined in Part III of the Act) which forms part of the same group of companies as the company declaring the dividend, where the controlling company and the company declaring the dividend are residents.

[Sub-para. (2) substituted by s. 94 (a) of Act 45 of 2003.]

(3) For the purposes of this paragraph-

- (a) the period of two years does not include any days during which the person disposing of a share-
  - (i) has an option to sell, is under a contractual obligation to sell, or has made (and not closed) a short sale of, substantially similar financial instruments;
  - (ii) is the grantor of an option to buy substantially similar financial instruments; or
  - (iii) has otherwise diminished risk of loss with respect to that share by holding one or more contrary positions with respect to substantially similar financial instruments;
- (b) 'dividend' means any dividend as defined in section 1, but excludes-
  - (i) any foreign dividend that has been included in the income of the person disposing of the share and any foreign dividend which is exempt from tax in terms of section 10 (1) (k) (ii) (cc);
    - [Subitem (i) substituted by s. 94 (b) of Act 45 of 2003.]
  - (ii) any dividend declared by a company contemplated in paragraph (e) of the definition of company; and
  - (iii) any dividend contemplated in section 11 (s);
- (c) 'extraordinary dividends' means so much of any dividends received or accrued within the period of two years contemplated in subparagraph (1), as exceed 15 per cent of the proceeds received or accrued from the disposal of the share; and
- (d) .....

[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) the following expenditure actually incurred which is directly related to the cost of ownership of that asset, which is used wholly and exclusively for business purposes or which constitutes a share listed on a recognised exchange or a participatory interest in a portfolio of a collective investment scheme-
  - (i) the cost of maintaining, repairing, protecting or insuring that asset;
  - (ii) where the asset is immovable property, rates or taxes on that property; and
  - (iii) interest as contemplated in section 24J on money borrowed to finance directly the expenditure contemplated in items (a) or (e) in respect of that asset (including money borrowed to refinance those borrowings):

Provided that if that asset constitutes a share listed on a recognised exchange or a participatory interest in a portfolio of a collective investment scheme, the expenditure contemplated in subitems (i) to (iii) in respect of that asset must for the purposes of this item be reduced by two-thirds;

[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.]

- (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 that was taken into account in determining the amount of that gain or loss (including where the gain and loss so determined was nil)

[Subitem (i) substituted by s. 26 (1) (c) of Act 19 of 2001 and by s. 58 (1) (c) of Act 32 of 2004.]

- (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 that 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; or
  - (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);

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

- (iii) a share in a controlled foreign company, an amount equal to the proportional amount of the net income of that company (or any other controlled foreign company in relation to that resident in which that controlled foreign company directly or indirectly has an interest) which was included in the income of that person in terms of section 9D during any year of assessment (other than such portion of that proportional amount which relates to the amount of any taxable capital gain included in that proportional amount) plus the proportional amount of the net capital gains of that controlled foreign company, less the amount of any foreign dividend distributed by that company to that person during any year of assessment which was exempt from tax in terms of section 10 (1) (k) (ii) (cc); or

[Subitem (iii) substituted by s. 75 (1) (c) of Act 60 of 2001, by s. 71 (1) (d) of Act 74 of 2002 and by s. 95 (1) (b) of Act 45 of 2003.]

- (iv) a value shifting arrangement, an amount determined in accordance with paragraph 23,  
which must for the purposes of this Part be treated as expenditure incurred in respect of that asset.

[Item (h) amended by s. 26 (1) (d) of Act 19 of 2001.]

[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) is or was allowable as a deduction in determining the taxable income of that person before the inclusion of any taxable capital gain; or  
(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 which such amount -  
(i) is not taken into account as a recoupment in terms of section 8 (4) (a) or paragraph (j) of the definition of 'gross income' of an amount contemplated in item (a); or  
(ii) does not represent the recovery or reduction of an amount contemplated in item (c).

[Para. (b) substituted by s. 75 (1) (e) of Act 60 of 2001.]

- (c) .....

[Para. (c) deleted by s. 58 (1) (e) of Act 32 of 2004.]

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

## **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  
[Subitem (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), 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 and by s. 72 (1) (a) of Act 74 of 2002.]

(2) Where an asset contemplated in paragraph 12 (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 in respect of that asset are each lower than the market value of that asset as at that date, that person must be treated as having acquired that asset at a cost equal to the higher of-

- (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.]

(3) Where an asset contemplated in paragraph 12 (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 at the date on which that person commenced to be a resident are each lower than the expenditure allowable in terms of paragraph 20 incurred prior to that date in respect of that asset, that person must be treated as having acquired that asset at a cost equal to the higher of-

- (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.]

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

[Sub-para. (4) added by s. 76 (1) (c) of Act 60 of 2001.]

[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 (1) (b) (iii) or 4 (1) (b) (iii).

[Sub-para. (3) added by s. 60 (1) (b)  
of Act 32 of 2004.]

[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- sub-item (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.]
- [Para. (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 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 valuation date at which a unit could be sold to the management company of the scheme or where there is not a management company the price which could have been obtained upon a sale of the asset between a willing buyer and a willing seller dealing at arm's length in an open market;
- (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-s. (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 established in terms of the Financial Services Board Act, 1990 (Act 97 of 1990), 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.]

(3) For the purposes of this paragraph-

- (a) the last price quoted for a specific day means the average of the buying and selling prices quoted at close of business on that day; and
- (b) 'controlling interest' in a company, means an interest in more than 35 per cent of the equity share capital of that company.

[Para. (b) amended by s. 81 (1) (f) of Act 60 of 2001.]

(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) that person has valued that asset within two years after valuation date;
- (b) the price of that asset has been published by the Commissioner in terms of this paragraph in the *Gazette*; or
- (c) 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.

[Item (c) added by s. 76 (1) (c) of Act 74 of 2002.]

[Sub-para. (4) substituted by s. 38 (1) of Act 30 of 2002.]

(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).

(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 submit proof of that valuation in a form prescribed by the Commissioner with the return

for the year of assessment during which that asset was disposed of.

[Sub-para. (6) amended by s. 76 (1) (d) of Act 74 of 2002.]

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

- (a) request any such further information or documents relating to that valuation; or
- (b) where the Commissioner is not satisfied with any value at which an asset has been valued, the Commissioner may adjust the value accordingly.

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

### 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 allowable in terms of paragraph 20 in respect of that asset that is attributable to the period from the date that the asset was acquired to the day before valuation date;  
[Item (b) substituted by s. 82 (1) (b) of Act 60 of 2001.]
- (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 allowable in terms of paragraph 20 in respect of that asset that is incurred before valuation date.

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

(3) Despite the provisions of paragraph 20 (3) (a) and 35 (3) (a), where in respect of a pre-valuation date asset-



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

that person must determine the time-apportionment base cost of that asset in terms of subparagraph (4).

[Sub-para. (3) added by s. 77 (1) (d) of Act 74 of 2002.]

(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) 'P<sub>1</sub>' represents the proceeds attributable to the expenditure in B<sub>1</sub>, disregarding the provisions of paragraph 35 (3) (a);
- (c) 'A<sub>1</sub>' represents the amount of expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred on or after valuation date, disregarding the provisions of paragraph 20 (3) (a);
- (d) 'B<sub>1</sub>' represents the amount of expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred before valuation date, disregarding the provisions of paragraph 20 (3) (a);
- (e) 'B', 'N' and 'T' bear the same meanings ascribed to those symbols in subparagraph (1); and
- (f) 'R<sub>1</sub>' represents the total amount of proceeds as determined in terms of paragraph 35 in respect of the disposal of the pre-valuation date asset, disregarding the provisions of paragraph 35 (3) (a).

[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.]

### 31 Market value

(1) The market value of-

- (a) an asset which is a financial instrument listed on a recognised exchange and for which a price was quoted on that exchange, is the ruling price in respect of that financial instrument on that recognised exchange at close of business on the last business day before disposal of that financial instrument;  
[Item (a) substituted by s. 83 (1) (a) of Act 60 of 2001.]
- (b) an asset which is a long-term insurance policy, being a policy as defined in section 1 of the Long-term Insurance Act, 1998 (Act 52 of 1998), the greater of-
  - (i) the amount which would be payable to the policyholder upon the surrender of that policy on that day; or
  - (ii) the amount which according to the insurer is the fair market value of that policy should it run its remaining policy term as determined on that day;
- (c) an asset which is not listed on a recognised exchange which constitutes a right of a holder of a participatory interest in-
  - (i) any company contemplated in paragraph (e) (i) of the definition of 'company' in section 1 of the Act, or any portfolio comprised in any collective investment

scheme in property contemplated in Part V of the Collective Investment Schemes Control Act, 2002, carried on in the Republic, the price at which a participatory interest can be sold to the management company of the scheme on the date of disposal; or

- (ii) any arrangement or scheme contemplated in paragraph (e) (ii) of the definition of 'company', the price at which a participatory interest can be sold to the management company of the scheme on the date of disposal or where there is not a management company the price which could have been obtained upon a sale of the asset between a willing buyer and a willing seller dealing at arm's length in an open market;

[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) in the case of any asset which constitutes immovable property on which a *bona fide* farming undertaking is being carried on, subject to subparagraph (4), either-
  - (i) the value of that property determined as contemplated in paragraph (b) of the definition of 'fair market value' in section 1 of the Estate Duty Act, 1955 (Act 45 of 1955); or
  - (ii) the price contemplated in item (g);
- (g) any other asset, the price which could have been obtained upon a sale of the asset between a willing buyer and a willing seller dealing at arm's length in an open market.

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

- (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, 1955, (Act 45 of 1955); and
  - (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 a greater extent *pro rata* to shareholding than other shareholders, the value of the shares held by that shareholder must not be less than the amount to which that shareholder would have been so entitled if the company had been in the course of winding-up and the said amount had been determined as at valuation date.

(4) The value contemplated in subparagraph (1) (f) (i) may only be used on the death of a person or when the immovable property is disposed of by way of donation or non-arm's length transaction, if-

- (a) that value was used for the purposes of paragraph 26 or 27; or
- (b) the person acquired the immovable property by way of donation or inheritance or non-arm's length transaction at that value.

### 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 subparagraph (3A), 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 and substituted by s. 84 (1) (b) of Act 60 of 2001.]

(3A) Despite the provisions of subparagraph (3), the weighted average method of determining base cost of assets, as contemplated in subparagraph (4), may be used for identical assets 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, 2002, 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, 2002, by the Registrar as defined in section 1 of the latter Act;

[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.]

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

- (a) the weighted 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

- (ii) 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; or
- (c) .....

[Item (c) deleted by s. 61 (1) (b) of Act 32 of 2004.]

- (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 35-43)**

### **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-s. (1) amended by s. 86 (1) of Act 60 of 2001.]

(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.

[S. 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 paragraphs 12 (5) and 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 and by s. 81 of Act 74 of 2002.]

(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;
- (d) an equity instrument contemplated in section 8C in respect of which that section applies and which had not yet vested as contemplated in that section at the time of that disposal; or
- (e) any asset in respect of which section 24B applies.

[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 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 in terms of section 29A (6) or (7).

[Sub-para. (3) substituted by s. 88 (1) of Act 60 of 2001.]

### **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) assets bequeathed to an approved public benefit organisation as contemplated in paragraph 62;
  - (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, provident or retirement annuity fund in the Republic or a fund, arrangement or instrument situated outside the Republic which provides benefits similar to a pension, provident 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.]

to his or her deceased estate for proceeds equal to the market value of those assets at the date of that person's death, and the deceased estate must be treated as having acquired those assets at a cost equal to that market value, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20 (1) (a).

[Sub-para. (1) amended by s. 89 (1) (b) of Act 60 of 2001 and by s. 82 (a) and (b) of Act 74 of 2002.]

(2) Subject to subparagraph 12 (5), where an asset is disposed of by a deceased estate to an heir or legatee (other than the surviving spouse of the deceased person as contemplated in paragraph 67 (2) (a) or an approved public benefit organisation as contemplated in paragraph 62) or a trustee of a trust-

- (a) the deceased estate must be treated as having disposed of that asset for proceeds equal to the base cost of the deceased estate in respect of that asset; and
- (b) the heir, legatee or trustee must be treated as having acquired that asset at a cost equal to the base cost of the deceased estate in respect of that asset, 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. 89 (1) (c) of Act 60 of 2001.]

[Sub-para. (2) amended by s. 82 of Act 74 of 2002.]

(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, 1955 (Act 45 of 1955), before taking into account the amount of that tax so determined; and

[Item (a) substituted by s. 83 of Act 74 of 2002.]

- (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 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.]

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

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

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

- (a) 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 in terms of section 29A (6) or (7).

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

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

(1) Subject to subparagraph (4), where a person during any year of assessment disposes of an asset for proceeds in a currency other than currency of the Republic 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 in accordance with the provisions of section 25D (2).

[Sub-para. (1) substituted by s. 101 (1) (a) of Act 45 of 2003.]

(2) Where a person disposes of an asset, (other than an asset contemplated in subparagraph (4)), for proceeds which are either received or accrued or denominated for purposes of financial reporting of a permanent establishment of that person in any currency (hereinafter referred to as the 'currency of disposal') after having incurred expenditure in respect of that asset which is either actually incurred or denominated for purposes of financial reporting in another currency (hereinafter referred to as the 'currency of expenditure'), that person must for purposes of determining the capital gain or capital loss on the disposal of that asset-

- (a) where the currency of expenditure is actually incurred or denominated in the local currency, translate the proceeds into the local currency at the average exchange rate for that year of assessment during which that asset was disposed of;
- (b) where the currency of disposal is received or accrued or denominated in the local currency, translate the expenditure which is allowable in terms of paragraph 20, into the local currency at the average exchange rate for the year of assessment during which that expenditure was incurred or treated as being incurred (or if the local currency did not exist at the time of expenditure, the first available exchange rate for that local currency); and
- (c) where neither the currency of disposal nor the currency of expenditure constitutes local currency-
  - (i) translate the amount of the expenditure, which is allowable in terms of paragraph 20, to the currency of disposal at the average exchange rate for the year of



- assessment during which that expenditure was incurred or treated as being incurred (or if the currency of disposal did not exist at the time of expenditure, the first available exchange rate for that currency of disposal); and
- (ii) translate the amount of the capital gain or capital loss determined in foreign currency to the local currency at the average exchange rate for the year of assessment during which the asset was disposed of, and must translate the amount of the capital gain or loss in accordance with the provisions of section 25D.  
[Sub-para. (2) substituted by s. 101 (1) (b) of Act 45 of 2003.]

(3) .....

(4) Where a person during any year of assessment disposes of any-

- (a) foreign equity instrument; or
- (b) asset the capital gain or capital loss from the disposal of which is derived or deemed to have been derived from a source in the Republic, as contemplated in section 9 (2) (other than an asset contemplated in paragraph (b) of the definition of 'foreign currency asset' in paragraph 84),

[Item (b) substituted by s. 101 (1) (d) of Act 45 of 2003.]

which was acquired or disposed of in any currency other than currency of the Republic, that person must for purposes of determining the capital gain or capital loss on the disposal of that asset, translate-

- (i) the proceeds into the currency of the Republic at the average exchange rate for that year of assessment; and
- (ii) the expenditure incurred in respect of that foreign equity instrument or that asset, as the case may be, into the currency of the Republic at the average exchange rate for the year of assessment during which that expenditure was incurred:

[Item (ii) substituted by s. 101 (1) (e) of Act 45 of 2003.]

Provided that the provisions of this subparagraph do not apply in respect of any exchange item in respect of which section 24I applies.

[Sub-para. (4) amended by s. 101 (1) (c) of Act 45 of 2003.]

(5) Where a person is treated as having derived an amount of proceeds from the disposal of any asset and the base cost of 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 base cost; and
- (b) the base cost of the person acquiring that asset must for purposes of paragraphs 12, 38 and 40 be treated as being denominated in that currency.

[Item (b) substituted by s. 101 (1) (f) of Act 45 of 2003.]

(5A) Where paragraph 12 (5) applies in respect of any debt owed by a person in any foreign currency, the base cost of the claim which is treated as having been acquired by that person in terms of paragraph 12 (5) (b) (i) must be treated as being denominated in that foreign currency.

[Sub-para. (5A) inserted by s. 101 (1) (g) of Act 45 of 2003.]

(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 expenditure of that asset and, in the case of an asset-

- (a) contemplated in subparagraph (2) (b) and (4), must be translated to the currency of the Republic at the ruling exchange rate on valuation date; or
- (b) contemplated in subparagraph (2) (c), must be translated to the currency of disposal at the ruling exchange rate on valuation date.

(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 currency used by that permanent establishment for purposes of financial reporting (other than the currency of any country in the common monetary area);

[Item (a) substituted by s. 101 (1) (h) of Act 45 of 2003.]

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

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

## PART VII

### PRIMARY RES IDENCE EXCLUSION (paras 44-51)

**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, 1980 (Act 59 of 1980) or a share or interest in a similar entity which is not a resident; or
- (c) a right of use or occupation,

but excluding-

- (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;
 [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) and (3), a natural person or a special trust must, when determining an aggregate capital gain or aggregate capital loss, disregard so much of a capital gain or capital loss determined in respect of the disposal of the primary residence of that person or that special trust as does not exceed R1 million.

[Sub-para. (1) substituted by s. 93 (1) of Act 60 of 2001.]

(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.

**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  
[Item (b) substituted by s. 30 (1) of Act 19 of 2001.]
- (c) is disposed of at the same time and to the same person as that residence.

**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,

[Item (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 kilometers from that residence.

#### **51 Transfer of a primary residence from a 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 treated as having disposed of that residence at market value on the valuation date; and
- (b) that natural person must be treated as having acquired that primary residence at market value on the valuation date.

(2) Subparagraph (1) applies where-

- (a) that natural person acquires that residence from the company or trust on or after the date of promulgation of the Taxation Laws Amendment Act, 2001 (Act 5 of 2001), but not later than 30 September 2002;

[Item (a) substituted by s. 85 of Act 74 of 2002.]

- (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 5 April 2001 to the date of registration in the deeds registry of that residence in the name of that natural person or his or her spouse or in their names jointly; or
  - (ii) disposed of that residence to that trust by way of donation, settlement or other

[Subitem (i) substituted by s. 96 (1) of Act 60 of 2001.]

- disposition or financed all the expenditure, as contemplated in paragraph 20, actually incurred by the trust to acquire and to improve the residence;
- (c) that natural person alone or together with his or her spouse personally and ordinarily resided in that residence and used it mainly for domestic purposes as his or her or their ordinary residence from 5 April 2001 to the date of that registration; and
  - (d) that registration in the deeds registry in the name of that person, his or her spouse or their names jointly takes place not later than 31 March 2003:

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

## PART VIII OTHER EXCLUSIONS (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, 1998 (Act 53 of 1998);  
[Item (g) substituted by s. 86 (1) (b) of Act 74 of 2002.]
- (h) any short-term policy contemplated in the Short-Term Insurance Act, 1998, 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.]
- (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, provident or retirement annuity fund approved in terms of this Act.

### 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 share or similar interest, for the purpose of enabling that person to acquire, upon the death, disability or severe illness of that person, the whole or part of-

[Para. (c) amended by s. 102 (b) of Act 45 of 2003.]

- (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; or

[Item (c) substituted by s. 87 (b) of Act 74 of 2002.]

- (d) in respect of a policy originally taken out on the life of a person, where that policy is provided to that person or dependant by or in consequence of that person's membership of a pension fund, provident fund or retirement annuity fund.

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

(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 claim owed by a debtor, to the extent that the amount of that claim so disposed of represents-

- (a) a capital gain which is included in the determination of the aggregate capital gain or aggregate capital loss of that debtor by virtue of paragraph 12 (5);  
 (b) an amount which the creditor proves must be or was included in the gross income of any acquirer of that claim;  
 (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) (ii); or  
 (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 claim.

[Item (d) added by s. 65 (b) of Act 32 of 2004.]

[Sub-para. (2) substituted by s. 88 (1) of Act 74 of 2002.]

[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 R5 million.

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

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

if that person at the time of that disposal held for his or her own benefit that active business asset, interest in the partnership, or interest in the company (as the case may be) for a continuous period of at least five years prior to that disposal and was substantially involved in the operations of the business of that small business during that period, and-

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

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

(4) A natural person must realise all capital gains qualifying in terms of subparagraph (2) within a period of 24 months commencing on the date of the first disposal contemplated in subparagraph (2).

(5) Where a natural person operates more than one small business either by way of a sole proprietorship, a partnership interest or a direct interest in the equity of a company consisting of at least 10 per cent, then he or she may subject to subparagraphs (4) and (6), include every such small business in the determination of the amount to be disregarded in terms of subparagraph (2).

(6) The provisions of this paragraph do not apply where a person owns more than one business either by way of a sole proprietorship, a partnership interest or a direct interest in the equity of a company consisting of at least 10 per cent, and the total market value of all assets in respect of all those businesses exceeds R5 million.

### **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 Collective Investment Schemes in Securities**

A portfolio in a collective investment scheme contemplated in paragraph (e) (i) of the definition of 'company' in section 1, must disregard any capital gain or capital loss.

[Para. 61 substituted by s. 102 (1) of Act 60 of 2001 and by s. 90 (1) of Act 74 of 2002.]

### **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 or any provincial administration;
- (b) a public benefit organisation exempt from tax in terms of section 10 (1) (cN);
- (c) a person approved by the Commissioner in terms of section 10 (1) (cA) or (d); or
- (d) a person referred to in section 10 (1) (b), (cE) or (e).

[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.]

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

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

#### **64A Awards in terms of the Restitution of Land Rights Act**

A person must disregard any capital gain or capital loss in respect of the disposal that resulted in that person receiving restitution of a right to land, an award or compensation in terms of the Restitution of Land Rights Act, 1994 (Act 22 of 1994).

[Para. 64A inserted by s. 92 (1) of Act 74 of 2002.]

#### **64B Disposal of interest in equity share capital of foreign company**

(1) For purposes of this paragraph-

'foreign company' means a foreign company as defined in section 9D;

'foreign financial instrument holding company' means a foreign financial instrument holding company as defined in section 41.

(2) A person must disregard any capital gain or capital loss determined in respect of the disposal of any interest in the equity share capital of any foreign company (other than a foreign financial instrument holding company), if-

- (a) that person (in the case of a company, together with any other company in the same group of companies as that company) immediately before that disposal-
  - (i) held more than 25 per cent of the equity share capital in that foreign company; and
  - (ii) held the interest contemplated in subitem (i) for a period of at least 18 months prior to that disposal, unless that person is a company and that interest was acquired by that company from any other company which forms part of the same group of companies and that company and other company in aggregate held that interest for more than 18 months: Provided that in determining the total equity share capital in a foreign company, there shall not be taken into account any share which would have constituted an affected instrument, as contemplated in section 8E, but for the three year period requirement contained in that section; and
- (b) in the case where that person is a resident, that interest is disposed of to a person who is not a resident.

[Para. 64B inserted by s. 105 (1) of Act 45 of 2003.]

## **PART IX**

### **ROLL-OVERS (paras 65-67C)**

#### **65 Involuntary disposal**

(1) A person may elect that this paragraph applies in respect of the disposal of an asset (other than a financial instrument), where-

- (a) that asset is disposed of by way of operation of law, theft or destruction;
- (b) proceeds accrue to that person by way of compensation in respect of that disposal;

- (c) those proceeds are equal to or exceed the base cost of that asset;
- (d) (i) an amount at least equal to the receipts and accruals from that disposal has been or will be expended to acquire one or more asset (hereinafter referred to as the 'replacement asset or assets');
- (ii) all the replacement assets constitute assets contemplated in section 9 (2);
- (iii) the contracts for the acquisition of the replacement asset or assets have all been or will be concluded within 12 months after the date of the disposal of that asset; and
- (iv) the replacement asset or assets will all be brought into use within three years of the disposal of that asset:

Provided that the Commissioner may extend the period within which the contract must be concluded or asset brought into use by no more than six months if all reasonable steps were taken to conclude those contracts or bring those assets into use; and

- (e) that asset is not deemed to have been disposed of and to have been reacquired by that person.

(2) Where a person has elected in terms of subparagraph (1) that this paragraph must apply in respect of the disposal of an asset, any capital gain determined in respect of that disposal must, subject to subparagraphs (4), (5) and (6) be disregarded when determining that person's aggregate capital gain or aggregate capital loss.

(3) Where a person acquires more than one replacement asset as contemplated in subparagraph (1), that person must, in applying subparagraphs (4) and (5), apportion the capital gain derived from the disposal of that asset to each replacement asset in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each of those replacement assets bear to the total amount of those receipts and accruals expended in acquiring all those replacement assets.

(4) Where a replacement asset contemplated in subparagraph (1) constitutes a depreciable asset, the person must treat as a capital gain for a year of assessment, so much of the disregarded capital gain contemplated in subparagraph (3), as bears to the total amount of that disregarded gain apportioned to that replacement asset as contemplated in subparagraph (3) the same ratio as the amount of any capital deduction or allowance allowed in that year in respect of the replacement asset bears to the total amount of the capital deduction or allowance (determined with reference to the cost or value of that asset at the time of acquisition thereof) which is allowable for all years of assessment in respect of that replacement asset.

[Sub-para. (4) substituted by s. 27 (1) (a) of Act 16 of 2004.]

(5) Where a person during any year of assessment disposes of a replacement asset and any portion of the disregarded capital gain which is apportioned to that asset, has not otherwise been treated as a capital gain in terms of this paragraph, that person must treat that portion of disregarded capital gain as a capital gain from the disposal of that replacement asset in that year of assessment.

[Sub-para. (5) substituted by s. 27 (1) (a) of Act 16 of 2004.]

(6) Where a person fails to conclude a contract or fails to bring any replacement asset into use within the period prescribed in subparagraph (1) (d) (iii) or (iv), subparagraph (2) shall not apply and that person must-

- (a) treat the capital gain contemplated in subparagraph (2) as a capital gain on the date on which the relevant period ends;
- (b) determine interest at the prescribed rate on that capital gain from the date of that disposal to the date contemplated in item (a); and
- (c) treat that interest as a capital gain on the date contemplated in item (a) when determining that person's aggregate capital gain or aggregate capital loss.

[Sub-para. (6) amended by s. 27 (1) (b) of Act 16 of 2004.]

(7) Where a replacement asset or assets constitute personal use assets, the provisions of this paragraph shall not apply.

[Sub-para. (7) substituted by s. 27 (1) (c) of Act 16 of 2004.]

[Para. 65 amended by s. 103 (1) of Act 60 of 2001 and substituted by s. 106 (1) of Act 45 of 2003.]

## **66 Reinvestment in replacement assets**

- (1) A person may elect that this paragraph applies in respect of the disposal of an asset, where-
  - (a) that asset qualified for a capital deduction or allowance in terms of section 11 (e), 12B, 12C, 12E, 14 or 14bis;
  - (b) the proceeds received or accrued from that disposal are equal to or exceed the base cost of that asset;



- (c) an amount at least equal to the receipts and accruals from that disposal has been or will be expended to acquire one or more assets (hereinafter referred to as the 'replacement asset or assets'), all of which will qualify for a capital deduction or allowance in terms of section 11 (e), 12B, 12C or 12E;
- (d) all the replacement assets constitute assets contemplated in section 9 (2)(b);
- (e) the contracts for the acquisition of a replacement asset or assets are or will be concluded within 12 months after the asset contemplated in item (a) is disposed of and are all brought into use within three years after that disposal: Provided that the Commissioner may extend the period by which the contracts must be concluded or assets brought into use by no more than six months if all reasonable steps were taken to conclude those contracts or bring those assets into use; and
- (f) that asset is not deemed to have been disposed of and to have been reacquired by that person.

(2) Where a person has elected in terms of subparagraph (1) that this paragraph must apply in respect of the disposal of an asset, any capital gain determined in respect of that disposal must, subject to subparagraphs (4), (5), (6) and (7), be disregarded when determining that person's aggregate capital gain or aggregate capital loss.

(3) Where a person acquires more than one replacement asset as contemplated in subparagraph (1), that person must, in applying subparagraphs (4), (5) and (6), apportion the capital gain derived from the disposal of that asset to each replacement asset in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each of those replacement assets bear to the total amount of those receipts and accruals expended in acquiring all those replacement assets.

(4) A person must treat as a capital gain for a year of assessment, so much of the disregarded capital gain contemplated in subparagraph (2), as bears to the total amount of that disregarded capital gain apportioned to that replacement asset as contemplated in subparagraph (3) the same ratio as the amount of any deduction or allowance allowed in that year in terms of section 11 (e), 12B, 12C or 12E in respect of the replacement asset bears to the total amount of the deduction or allowance in terms of that section (determined with reference to the cost or value of that asset at the time of acquisition thereof) which is allowable for all years of assessment in respect of that replacement asset.

(5) Where a person during any year of assessment disposes of a replacement asset and any portion of the disregarded capital gain which is apportioned to that asset as contemplated in subparagraph (3), has not been treated as a capital gain in terms of subparagraph (4) or (6), that person must treat that portion of disregarded capital gain as a capital gain from the disposal of that replacement asset in that year of assessment.

(6) Where during any year of assessment a person ceases to use a replacement asset for the purposes of that person's trade and any portion of the disregarded capital gain which is apportioned to that asset as contemplated in subparagraph (3), has not been treated as a capital gain in terms of subparagraph (4) or (5), that person must treat that portion of disregarded capital gain as a capital gain for that year of assessment.

(7) Where a person fails to conclude a contract or to bring any replacement asset into use within the period prescribed in subparagraph (1) (e), subparagraph (2) shall not apply and that person must-

- (a) treat the capital gain contemplated in subparagraph (2) as a capital gain on the date that the relevant period ends;
- (b) determine interest at the prescribed rate on that capital gain from the date of that disposal to the date contemplated in item (a); and
- (c) treat that interest as a capital gain on the date contemplated in item (a) when determining that person's aggregate capital gain or aggregate capital loss.

[Para. 66 amended by s. 33 (1) of Act 19 of 2001 and substituted by s. 107 (1) of Act 45 of 2003.]

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

(1) (a) Subject to subparagraph (3), a person (hereinafter referred to as the 'transferor') must disregard any capital gain or capital loss determined in respect of the disposal of an asset to his or her spouse (hereinafter referred to as the 'transferee').

[Para. (a) substituted by s. 108 (a) of Act 45 of 2003.]

(b) The transferee must be treated as having-

- (i) acquired the asset on the same date that such asset was acquired by the transferor;
- (ii) acquired the asset for an amount equal to the expenditure contemplated in paragraph 20

- that was incurred by that transferor prior to that disposal;
- (iii) incurred that expenditure on the same date and in the same currency that it was incurred by the transferor; and  
 [Subitem (iii) substituted by s. 108 (b) of Act 45 of 2003.]
- (iv) used the asset in the same manner that it was used by the transferor in respect of the period prior to that disposal.  
 [Sub-para. (1) substituted by s. 104 (1) (a) of Act 60 of 2001.]
- (2) For the purposes of subparagraph (1)-
- (a) a deceased person must be treated as having disposed of an asset to his or her surviving spouse, if that asset accrues to that surviving spouse upon the death of that person; or
- (b) a person must be treated as having disposed of an asset to his or her spouse, if that asset is transferred to that spouse in consequence of a divorce order or, in the case of a union contemplated in paragraph (b) or (c) of the definition of 'spouse' in section 1 of this Act, an agreement of division of assets which has been made an order of court.
- (3) Subparagraph (1) shall not apply in respect of the disposal of an asset by a person to his or her spouse who is not a resident, unless the asset disposed of is an asset contemplated in paragraph 2 (1) (b).  
 [Sub-para. (3) added by s. 104 (1) (b) of Act 60 of 2001.]

**67A Capital gains and capital losses in respect of interests in collective investment schemes in property**

- (1) A holder of a participatory interest in a portfolio comprised in any collective investment scheme managed or carried on by any company registered as a manager under section 42 of the Collective Investment Schemes Control Act, 2002, for the purposes of Part V of that Act must determine a capital gain or capital loss in respect of any participatory interest in that portfolio only upon the disposal of that interest.
- (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) For the purposes of subparagraph (2) proceeds include the amount of any cash received and the market value on the date of acquisition of any assets acquired by a holder of a participatory interest from the collective investment scheme prior to the disposal of his or her participatory interest to the extent that that amount and that market value do not constitute gross income in the hands of that holder.  
 [Sub-para. (3) added by s. 109 (1) of Act 45 of 2003.]
- (4) Any asset acquired by a holder of a participatory interest as contemplated in subparagraph (3) must be treated as having been acquired for expenditure equal to the market value of that asset on the date of acquisition, 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) added by s. 109 (1) of Act 45 of 2003.]

[Para. 67A inserted by s. 105 (1) of Act 60 of 2001 and substituted by s. 93 (1) of Act 74 of 2002.]

**67B Transfer of a unit by a share block company to its member**

- (1) Where any company which operates a share block scheme as contemplated in section 1 of the Share Blocks Control Act, 1980 (Act 59 of 1980), transfers a unit in immovable property in terms of Item 8 of Schedule 1 to that Act to a person who holds a share in that company-
- (a) that company must disregard any capital gain or capital loss determined in respect of that disposal of that unit to that person; and
- (b) that person must disregard any capital gain or capital loss determined in respect of the disposal of that share.
- (2) Where a person who held a share in a share block company acquires a unit in the circumstances contemplated in subparagraph (1), that person must be treated as having-
- (a) acquired that unit for an amount equal to the expenditure contemplated in paragraph 20 incurred by that person in acquiring that share;
- (b) effected improvements to that unit for an amount equal to the expenditure contemplated in paragraph 20 incurred by that person in effecting improvements to the immovable property in respect of which that person had a right of use as a result of the ownership of that share;
- (c) acquired that unit on the date that that share was acquired;
- (d) incurred the amount of expenditure contemplated in paragraph 20 on the same date that it was incurred by that person to acquire that share and improve that immovable property;
- (e) used that unit in the same manner as that person used the immovable property in respect

- (f) of which that person had a right of use as a result of the ownership of that share; and adopted or determined the market value as contemplated in paragraph 29 (4) as the valuation date value of that unit, for an amount equal to the market value adopted or determined by that person in terms of that paragraph for that share.

[Para. 67B inserted by s. 110 (1) of Act 45 of 2003.]

#### **67C Mineral rights conversions and renewals**

Notwithstanding paragraph 11, there is no disposal where-

- (a) any old order right or OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act (Act 28 of 2002), wholly or partially continues in force or is wholly or partially converted into a new right pursuant to the same Schedule; or
- (b) any prospecting right, mining right, exploration right, production right, mining permit, retention permit or reconnaissance permit, as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002), is wholly or partially renewed in terms of that Act,

[Para. (b) substituted by s. 28 (1) of Act 16 of 2004.]

and the continued, converted or renewed right or permit will be treated as one and the same asset as the right or permit before continuation, conversion or renewal for purposes of this Act.

[Para. 67C inserted by s. 111 (1) of Act 45 of 2003 and amended by s. 28 (1) of Act 16 of 2004.]

### **PART X**

#### **ATTRIBUTION OF CAPITAL GAINS (paras 68-73)**

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

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

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

made, entered into or carried out by that person's spouse mainly for purposes of reducing, postponing or avoiding that spouse's liability for any tax, duty or levy which would otherwise have become payable under any Act administered by the Commissioner, so much of the gain as can be so attributed must be disregarded when determining that person's aggregate capital gain or aggregate capital loss and taken into account when determining the aggregate capital gain or aggregate capital loss of that person's spouse.

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

- (a) any trade carried on by that person in partnership or association with that person's spouse or which is in any way connected with any trade carried on by that spouse; or
- (b) that person's spouse or any partnership or private company at a time when that spouse was a member of that partnership or the sole, main or one of the principal shareholders of that company,

so much of that gain as exceeds the amount to which that person would reasonably be entitled having regard to the nature of the relevant trade, the extent of that person's participation therein, the services rendered by that person or any other relevant factor, must be disregarded when determining that person's aggregate capital gain or aggregate capital loss and taken into account when determining the aggregate capital gain or aggregate capital loss of that person's spouse.

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

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

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

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

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

Where-

- (a) a person has made a donation, settlement or other disposition that is subject to a stipulation or condition imposed by that person or anyone else in terms of which a capital

gain or a portion of any capital gain attributable to that donation, settlement or other disposition shall not vest in the beneficiaries of that donation, settlement or other disposition or some of those beneficiaries until the happening of some fixed or contingent event;

- (b) a capital gain that is attributable to that donation, settlement or other disposition has arisen during a year of assessment throughout which the person who made that donation, settlement or other disposition has been a resident; and
- (c) that capital gain or a portion thereof has not vested during that year in any beneficiary who is a resident,

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

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

Where-

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

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

**72 Attribution of capital gain vesting in non-resident**

Where-

- (a) a resident has made a donation, settlement or other disposition to any person (other than an entity, which is not resident and which is similar to a public benefit organisation contemplated in section 30); and

[Item (a) substituted by s. 112 of Act 45 of 2003.]

- (b) a capital gain attributable to that donation, settlement or other disposition has arisen during a year of assessment and has during that year vested in or is treated as having vested in any person who is not a resident (other than a controlled foreign company, in relation to that resident),

[Item (b) substituted by s. 94 of Act 74 of 2002.]

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

**73 Attribution of income and capital gain**

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

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

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

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

**PART XI**

**COMPANY DISTRIBUTIONS (paras 74-79)**

**74 Definitions**

For the purposes of this Part, unless the context otherwise dictates -  
'capital distribution' means any distribution (or portion thereof) by a company that-

- (a) does not constitute a dividend; or

- (b) that constitutes a dividend which is exempt from secondary tax on companies by reason of section 64B (5) (c);

'company' .....

[Definition of 'company' substituted by s. 95 (1) of Act 74 of 2002 and deleted by s. 113 (1) (a) of Act 45 of 2003.]

'date of distribution' in relation to any distribution, means the date of approval of the distribution by the directors or by some other person or body of persons with comparable authority conferred under the memorandum and articles of association of the company making the distribution or under a law, regulation or rule to which that company is subject, except where the distribution is made-

- (a) by a company subject to the condition that it be payable to a shareholder of the company registered in that company's share register on a specified date, in which case it must be that date;
- (b) by a company to a shareholder of that company otherwise than by way of a formal declaration of a dividend, in which case it must be the date on which the shareholder became entitled to that distribution; or
- (c) by the liquidator of a company to a shareholder of that company in the course of the winding up or liquidation of that company, in which case it must be the date on which the shareholder became entitled to that distribution.

[Definition of 'date of distribution' inserted by s. 113 (1) (b) of Act 45 of 2003.]

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

'share' in relation to a company means-

- (a) any share capital of, or member's interest in, that company and any right or interest in or to such share capital or member's interest, whether or not that share capital or member's interest carries a right to participate in dividends or a capital distribution; or
- (b) a participatory interest in a portfolio of a collective investment scheme referred to in paragraph (e) of the definition of 'company'.

[Definition of 'share' substituted by s. 106 (1) of Act 60 of 2001 and by s. 113 (1) (c) of Act 45 of 2003.]

#### **75 Distributions in specie by company**

(1) Where a company makes a distribution of an asset in specie to a shareholder (including an interim dividend), that company must be treated as having disposed of that asset to that shareholder on the date of distribution for an amount received or accrued equal to the market value of that asset on that date.

[Sub-para. (1) substituted by s. 114 (1) (a) of Act 45 of 2003 and by s. 29 of Act 16 of 2004.]

(2) .....

[Sub-para. (2) deleted by s. 114 (1) (b) of Act 45 of 2003.]

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

(1) Subject to subparagraph (2), where a capital distribution of cash or an asset *in specie* is received by or accrues to a shareholder in respect of a share, that shareholder must where the date of distribution of that capital distribution occurs-

- (a) before valuation date, reduce the expenditure contemplated in paragraph 20 actually incurred before valuation date in respect of that share by the amount of that cash or the market value of that asset *in specie*; and
- (b) on or after valuation date, treat the amount of that cash or the market value of that asset *in specie* as proceeds when that share is disposed of.

[Sub-para. (1) substituted by s. 107 (1) (a) of Act 60 of 2001, by s. 96 (1) (a) of Act 74 of 2002 and by s. 115 (1) of Act 45 of 2003.]

(2) Where a shareholder uses the weighted average method in respect of shares that are identical assets as contemplated in paragraph 32 (3A) (a) and a capital distribution of cash or an asset in specie is received by or accrues to that shareholder in respect of those shares on or after valuation date, the weighted average base cost of those shares must be determined by -

- (a) deducting the amount of that cash or the market value of that asset in specie from the base cost of those shares held when that capital distribution was received or accrued; and
- (b) dividing the result by the number of those shares held when that capital distribution was received or accrued.

[Sub-para. (2) substituted by s. 96 (1) (a) of Act 74 of 2002.]

(3) Any distribution of an asset in specie received by or accrued to a shareholder must be treated as having been acquired on the date of distribution and for expenditure equal to the market value of that asset on that date, which expenditure 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. 96 (1) (b) of Act 74 of 2002 and by s. 30 of Act 16 of 2004.]

(4) .....

[Sub-para. (4) substituted by s. 107 (1) (b) of Act 60 of 2001 and deleted by s. 96 (1) (c) of Act 74 of 2002.]

#### **77 Distributions in liquidation or deregistration received by shareholder**

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

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

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

#### **78 Share distributions received by shareholder**

(1) Where a company issues capitalisation shares, those capitalisation shares must be treated as having been acquired on the date of distribution for expenditure incurred and paid of nil, except to the extent that the issue of those shares constitutes a dividend, in which case they must be treated as having been acquired on the date of distribution for expenditure incurred and paid equal to the amount of that dividend.

[Sub-para. (1) substituted by s. 97 (1) of Act 74 of 2002, by s. 116 (1) (a) of Act 45 of 2003 and by s. 31 of Act 16 of 2004.]

(2) Subject to paragraphs 11 (1) (g), 23 and 35 (2), where a company issues shares in substitution of previously held shares in that company by reason of a subdivision, consolidation, or similar arrangement or a conversion contemplated in section 40A or 40B-

- (a) the shareholder must disregard any capital gain or capital loss determined in respect of that substitution; and
- (b) those newly issued shares must be treated as-
  - (i) having been acquired for an amount of expenditure equal to the aggregate expenditure allowable in terms of paragraph 20 incurred in respect of those previously held shares which expenditure must be treated as having been incurred on the same date as the expenditure incurred in respect of those previously held shares;
  - (ii) having been acquired on the same date as those previously held shares; and
  - (iii) having a market value equal to any market value adopted or determined in respect of those previously held shares in terms of paragraph 29 (4),

with the aggregate expenditure or market value as the case may be allocated among all those newly issued shares in proportion to their relative market values.

[Item (b) substituted by s. 116 (1) (b) of Act 45 of 2003.]

[Sub-para. (2) substituted by s. 97 (1) of Act 74 of 2002.]

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

- (a) the shareholder must disregard any capital gain or capital loss determined in respect of that substitution but not in respect of the transfer of those previously held shares exchanged for that capital distribution; and
- (b) both the substitution and that capital distribution must be treated as separate transactions with the expenditure allowable in terms of paragraph 20 and any market value adopted or determined in terms of paragraph 29 (4) in respect of those previously held shares allocated between both transactions based on the relative market values of the newly issued shares on the date of distribution and that capital distribution received in exchange

therefor.

[Item (b) substituted by s. 116 (1) (c) of Act 45 of 2003.]

**79 Matching contributions and distributions**

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

- (a) the shareholder receiving the capital distribution is a connected person in relation to the company making that capital distribution;
- (b) the company making the capital distribution received consideration from a new or different shareholder in respect of the issue of one or more shares by that company within two years prior to the capital distribution contemplated in (a); and
- (c) the contribution and capital distribution contemplated in both (a) and (b) are part of a scheme to reduce, avoid, or postpone any tax payable under this Act or any other Act administered by the Commissioner on the disposal of shares by the shareholder contemplated in (a).

[Sub-para. (1) amended by s. 98 of Act 74 of 2002.]

(2) The reduction in base cost and addition to proceeds contemplated in subparagraphs (1) and (2) of paragraph 76 shall not apply in respect of any share that carries a right to a distribution contemplated in subparagraph (1).

**PART XII**

**TRUSTS, TRUST BENEFICIARIES AND INSOLVENT ESTATES (paras 80-83)**

**80 Capital gain attributed to beneficiary**

(1) Subject to paragraphs 68, 69, 71 and 72, where a capital gain is determined in respect of the vesting by a trust of an asset in a trust beneficiary who is a resident, that gain-

- (a) must be disregarded for the purpose of calculating the aggregate capital gain or aggregate capital loss of the trust; and
- (b) must be taken into account for the purpose of calculating the aggregate capital gain or aggregate capital loss of the beneficiary to whom that asset was so disposed of.

(2) Subject to paragraphs 68, 69, 71 and 72, where a capital gain arises in a trust in a year of assessment during which a trust beneficiary who is a resident has a vested interest or acquires a vested interest (including an interest caused by the exercise of a discretion) in that capital gain but not in the asset, the disposal of which gave rise to the capital gain, the gain-

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

(3) Where during any year of assessment any resident acquires a vested right to any amount representing capital of any trust which is not a resident, and-

- (a) that capital arose from-
  - (i) a capital gain of that trust determined in any previous year of assessment during which that resident had a contingent right to that capital; or
  - (ii) any amount which would have constituted a capital gain of that trust had that trust been a resident; and
- (b) that capital gain has not been subject to tax in the Republic in terms of the provisions of this Act,

that amount must be taken into account for the purposes of calculating the aggregate capital gain or aggregate capital loss of that resident that year of assessment.

[Sub-para. (3) added by s. 108 (1) of Act 60 of 2001.]

**81 Base cost of interest in discretionary trust**

Despite paragraph 38 (1) (b), a person's interest in a discretionary trust must be treated as having a base cost of nil.

[Para. 81 amended by s. 109 (1) of Act 60 of 2001 and substituted by s. 99 of Act 74 of 2002.]

**82 Death of beneficiary of special trust**

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

**83 Insolvent estate of person**

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

(2) No person whose estate has been voluntarily or compulsorily sequestrated may carry forward any assessed capital loss incurred prior to the date of sequestration.

**PART XIII****FOREIGN CURRENCY (paras 84-96)**

[Part 13 substituted by s. 100 (1) of Act 74 of 2002.]

**84 Definitions**

For purposes of this Part, unless the context otherwise indicates -

'foreign currency' means any currency other than the currency of the Republic;

[Definition of 'foreign currency' substituted by s. 117 of Act 45 of 2003.]

'foreign currency asset' in relation to a person means any amount in foreign currency -

(a) which constitutes a unit of foreign currency of that person; or

(b) owing to that person in respect of any loan, advance or debt payable to that person;

'foreign currency base cost' means the base cost in respect of a foreign currency asset, as determined in accordance with paragraph 91;

'foreign currency liability' means an amount in foreign currency owing by that person in respect of any loan, advance or debt incurred by that person;

'foreign currency proceeds' means the proceeds from the disposal of a foreign currency asset, as determined in accordance with paragraph 92;

'personal expenses' of a person means any -

(a) domestic or private expenses incurred outside the Republic in respect of foreign accommodation (excluding the acquisition of any immovable property) or foreign personal-use assets; or

(b) travelling or maintenance expenses;

'personal foreign currency asset' means any foreign currency asset of a person which constitutes -

(a) an amount which constitutes a unit of foreign currency in cash or cash equivalent, held primarily for the regular payment of personal expenses; or

(b) any one account held in the relevant foreign currency with a banking institution from which funds can be immediately withdrawn, which account is used primarily for the regular payment of personal expenses;

'valuation date' means -

(a) 1 March 2003; or

(b) where a person becomes a resident of the Republic after 1 March 2003, the date that such person becomes a resident.

[Para. 84 amended by s. 110 (1) of Act 60 of 2001, by s. 40 of Act 30 of 2001, by s. 34 of Act 19 of 2001 and by s. 40 of Act 30 of 2002, and substituted by s. 100 (1) of Act 74 of 2002.]

**85 Application of this Part**

This Part applies in respect of-

(a) the acquisition and disposal of any foreign currency asset; and

(b) the settlement or part settlement of any foreign currency liability,

by any person who is a resident (other than a resident in respect of whom section 24I of the Act applies in respect of any foreign currency asset of that person in the relevant foreign currency).

[Para. 85 repealed by s. 111 (1) of Act 60 of 2001 and added by s. 100 (1) of Act 74 of 2002.]

**86 Foreign currency capital gain and foreign currency capital loss**

(1) Despite anything to the contrary contained in the Act, a person's foreign currency capital gain for the year of assessment in respect of-

(a) the disposal of a foreign currency asset (other than a personal foreign currency asset), is so much of the amount by which the foreign currency proceeds exceed the foreign currency base cost, as has not otherwise been taken into account in determining the taxable income of that person (or of that person's spouse in the case of an asset transferred to that person as contemplated in paragraph 95) in respect of that foreign currency asset.

[Item (a) substituted by s. 118 (1) (a) of Act 45 of 2003.]

(b) the settlement or part settlement of any foreign currency liability due by that person, is



the amount determined in accordance with paragraph 93 (1).

(2) Despite anything to the contrary contained in the Act, a person's foreign currency capital loss for the year of assessment in respect of-

- (a) the disposal of a foreign currency asset (other than a personal foreign currency asset), is so much of the amount by which the foreign currency base cost exceed the foreign currency proceeds, as has not otherwise been taken into account in determining the taxable income of that person (or of that person's spouse in the case of an asset transferred to that person as contemplated in paragraph 95) in respect of that foreign currency asset.

[Item (a) substituted by s. 118 (1) (b) of Act 45 of 2003.]

- (b) any settlement or part settlement of any foreign currency liability due by that person, is the amount determined in accordance with paragraph 93 (2).

(3) The amount of any foreign currency capital gain or foreign currency capital loss of a person during any year of assessment, as contemplated in subparagraphs (1) and (2), respectively, shall be treated as a capital gain or capital loss, as the case may be, for purposes of determining the aggregate capital gain or aggregate capital loss of that person for that year in terms of this Schedule.

[Para. 86 added by s. 100 (1) of Act 74 of 2002.]

#### **87 Disposal of foreign currency asset**

A disposal of a foreign currency asset includes -

- (a) the conversion, sale, donation, expropriation, cession, exchange or any alienation or transfer of that foreign currency asset;
- (b) the forfeiture, termination, redemption, cancellation, surrender, discharge, relinquishment, release, waiver, renunciation, expiry, abandonment or loss of that foreign currency asset; or
- (c) the vesting of any foreign currency asset of a trust in a beneficiary of that trust.

[Para. 87 added by s. 100 (1) of Act 74 of 2002.]

#### **88 Events treated as acquisition or disposal of foreign currency asset**

(1) A person must for purposes of this Part be treated as having acquired on valuation date all foreign currency assets (other than personal foreign currency assets) of that person which were held and not disposed of by that person on that date.

[Sub-para. (1) substituted by s. 119 (a) of Act 45 of 2003.]

(2) Where a person ceases to be a resident that person must be treated as having disposed of all foreign currency assets (other than personal foreign currency assets) acquired and not disposed of by that person immediately before so ceasing to be a resident.

[Sub-para. (2) substituted by s. 119 (b) of Act 45 of 2003.]

(3) Where the provisions of section 24I become applicable to a person in respect of any foreign currency asset of that person, that person must, for the purposes of this Part, be treated as having disposed of all foreign currency assets (other than personal foreign currency assets) of that person which were not disposed of immediately before section 24I became applicable.

(4) Where the provisions of this Part become applicable to a person, that person must, for the purposes of this Part, be treated as having acquired all foreign currency assets (other than personal foreign currency assets) of that person which were not disposed of immediately before this Part became applicable.

(5) Where a person commences to hold a foreign currency asset which is included in the foreign currency asset pool, as a personal foreign currency asset, that person must be treated as having disposed of that foreign currency asset on the date that the person so commences to hold that foreign currency asset as a personal foreign currency asset.

(6) Where a person ceases to hold a foreign currency asset as a personal foreign currency asset, that person must be treated as having acquired that foreign currency asset on the date that the person so ceases to hold that foreign currency asset as a personal foreign currency asset.

[Sub-para. (6) substituted by s. 119 (c) of Act 45 of 2003.]

[Para. 88 added by s. 100 (1) of Act 74 of 2002.]

#### **89 Exchange of foreign currency assets denominated in same foreign currency**

(1) Subject to subparagraph (2), where a person exchanges one foreign currency asset for another foreign currency asset which is denominated in the same currency, there shall, for the purposes of this Part-

- (a) be no disposal by that person of the foreign currency asset which is surrendered in exchange for that other foreign currency asset, to the extent that the value in foreign

currency of that foreign currency asset so surrendered does not exceed the value in foreign currency of that other foreign currency asset; and

- (b) be no acquisition by that person of the foreign currency asset which is obtained in exchange for that other foreign currency asset, to the extent that the value in foreign currency of that foreign currency asset so obtained does not exceed the value in foreign currency of that other foreign currency asset.

(2) Subparagraph (1) does not apply to the extent that the foreign currency asset obtained or surrendered in exchange for the other foreign currency asset constitutes a personal foreign currency asset.

[Para. 89 added by s. 100 (1) of Act 74 of 2002.]

#### **90 Foreign currency asset pool**

(1) A person must maintain a foreign currency asset pool for each foreign currency in which any foreign currency asset of that person is denominated, which must-

- (a) include the total amount in foreign currency of all foreign currency assets (other than personal foreign currency assets) acquired on or after valuation date, (including any amount of interest which is deemed to have accrued for purposes of the Act in respect of any foreign currency asset); and
- (b) be reduced by the amount in foreign currency of any foreign currency asset included therein, which has been disposed of by that person on or after valuation date.

(2) The total asset pool base cost in respect of the foreign currency asset pool contemplated in subparagraph (1), is determined as the sum of the values in foreign currency of each foreign currency asset contemplated in subparagraph (1)(a), translated into the currency of the Republic at the average exchange rate for the year of assessment during which the relevant foreign currency asset was acquired, subject to paragraphs 95 and 96, reduced by the foreign currency base cost of any foreign currency assets disposed of as contemplated in subparagraph (1)(b).

[Para. 90 added by s. 100 (1) of Act 74 of 2002.]

#### **91 Foreign currency base cost of foreign currency asset**

The base cost of a foreign currency asset disposed of by a person is an amount which bears to the total asset pool base cost determined in terms of paragraph 90 (2) prior to that disposal, the same ratio as the value in foreign currency of that foreign currency asset so disposed of bears to the total value in foreign currency of the relevant foreign currency asset pool determined in terms of paragraph 90 (1) prior to that disposal.

[Para. 91 added by s. 100 (1) of Act 74 of 2002.]

#### **92 Foreign currency proceeds**

Subject to paragraphs 95 and 96, the proceeds from the disposal by a person of a foreign currency asset is an amount determined by translating the value in foreign currency of that asset into the currency of the Republic at the average exchange rate for the year of assessment during which that asset is disposed of and-

- (a) reducing that amount by any capital gain determined in terms of this Schedule in respect of the disposal of that foreign currency asset (otherwise than in terms of the application of this Part), which was included in that amount; or

[Sub-para. (a) substituted by s. 120 (1) of Act 45 of 2003.]

- (b) increasing that amount by any capital loss determined in terms of this Schedule in respect of the disposal of that foreign currency asset (otherwise than in terms of the application of this Part).

[Para. 92 added by s. 100 (1) of Act 74 of 2002.]

#### **93 Settlement of foreign currency liability**

(1) A person must be treated as having a foreign currency capital gain from the settlement or part settlement by that person of any foreign currency liability, to the extent that the amount settled or part settled, translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was incurred, exceeds that amount translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was settled or part settled.

(2) A person must be treated as having a foreign currency capital loss from the settlement or part settlement by that person of any foreign currency liability, to the extent that the amount settled or part settled, translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was settled or part settled, exceeds that amount translated into

the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was incurred.

(3) A person must disregard any foreign currency capital gain or foreign currency capital loss determined during any year of assessment in respect of the settlement of any foreign currency liability, to the extent that the amount of that foreign currency liability was utilised otherwise than to-

- (a) acquire any right in terms of a forward exchange contract or a foreign currency option contract;
- (b) acquire any foreign currency asset other than a personal foreign currency asset;
- (c) acquire any foreign equity instrument or any asset in local currency as contemplated in paragraph 43 (4); or  
[Item (c) substituted by s. 121 (a) of Act 45 of 2003.]
- (d) refinance any foreign currency liability which was utilised to acquire any asset contemplated in item (a), (b) or (c),

which was not disposed of by that person during any previous year of assessment.

(4) Where a person incurred any foreign currency liability before the valuation date, that person must, for purposes of this paragraph be treated as having incurred that foreign currency liability on the valuation date.

[Sub-para. (4) added by s. 121 (b) of Act 45 of 2003.]

[Para. 93 added by s. 100 (1) of Act 74 of 2002.]

#### **94 Involuntary disposal of foreign currency asset**

A person must disregard any foreign currency capital gain or foreign currency capital loss determined in respect of an involuntary disposal of any foreign currency asset by way of expropriation, theft or physical loss.

[Para. 94 added by s. 100 (1) of Act 74 of 2002 and substituted by s. 122 of Act 45 of 2003.]

#### **95 Transfer of foreign currency assets between spouses**

Where a person disposes of any foreign currency asset to his or her spouse-

- (a) that person must be treated as having disposed of that foreign currency asset for proceeds equal to the foreign currency base cost of that foreign currency asset; and
- (b) that spouse must, for purposes of paragraph 90 (2), treat that foreign currency base cost as the value of that asset in the currency of the Republic on the date of acquisition.

[Para. 95 added by s. 100 (1) of Act 74 of 2002.]

#### **96 Application of provisions of Eighth Schedule**

(1) The provisions of paragraphs 11 (2) (a), (e) and (i), 12 (1), 12 (2) (a), 13, 14, 36, 38, 39, 40, 56, 62, 63, 68, 69, 70, 71, 72, 73, 80, 82 and 83 of the Eighth Schedule to the Act, shall apply *mutatis mutandis* in respect of the determination of any foreign currency capital gain or foreign currency capital loss resulting from the disposal of any foreign currency asset.

[Sub-para. (1) substituted by s. 123 (a) of Act 45 of 2003.]

(2) For purposes of paragraph 96 (1), any reference in any provision referred to in that paragraph to-

- (a) the market value shall be treated as a reference to the relevant value in foreign currency translated to the currency of the Republic at the average exchange rate for the relevant year of assessment; and

[Item (a) substituted by s. 123 (b) of Act 45 of 2003.]

- (b) the base cost shall be treated as a reference to the foreign currency base cost..

[Para. 96 added by s. 100 (1) of Act 74 of 2002.]

### **PART XIV**

#### **MISCELLANEOUS (para 97)**

#### **97 Transactions during transitional period**

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

(2) Subject to subparagraph (3), where a person-

- (a) acquired an asset during the transitional period by means of a non-arm's length transaction, that person shall for purposes of paragraph 30 be treated as having acquired that asset-
  - (i) at the time when the person who disposed of that asset acquired that asset; and
  - (ii) at a cost equal to the base cost of that asset in the hands of the person who

- disposed of it; or
- (b) acquired an asset during the transitional period directly or indirectly from a person who was a connected person in relation to that person at-
- (i) the time of that acquisition; or
  - (ii) any time during the period from the date of that acquisition up to a subsequent disposal of that asset by that person within three years of that acquisition,
- that person shall for purposes of paragraph 30 be treated as having acquired that asset-
- (aa) at the time when that connected person acquired that asset, or is treated as having acquired that asset in terms of this paragraph; and
  - (bb) at a cost equal to the base cost of that asset in the hands of that connected person, or an amount which is treated as the base cost of that asset in the hands of that connected person in terms of this paragraph; or
- (c) reacquired an asset within a period of ninety days after its disposal during the transitional period-
- (i) by means of a non-arm's length transaction; or
  - (ii) directly or indirectly to a connected person in relation to that person,
- that person shall for the purposes of paragraph 30 be treated as having reacquired that asset-
- (aa) at the time when that person originally acquired that asset prior to that disposal; and
  - (bb) at a cost equal to the base cost of that asset at the time of that disposal; or
- (d) acquired an asset within a period of ninety days after the disposal, during the transitional period, of a substantially similar asset that was disposed of-
- (i) by means of a non-arm's length transaction; or
  - (ii) directly or indirectly to a connected person in relation to that person, in order to replace the asset so disposed of, that person shall for the purposes of paragraph 30 be treated as having acquired that asset-
- (aa) at the time when that person acquired the substantially similar asset; and
  - (bb) at a cost equal to the base cost of that substantially similar asset at the time of that disposal.

[Sub-para. (2) substituted by s. 35 (1) (a) of Act 19 of 2001 and amended by s. 112 (1) (a) of Act 60 of 2001.]

(3) The provisions of this paragraph do not apply to any disposal of an asset by a fund contemplated in section 29A (4) to any other such fund in terms of section 29A (6) or (7).

[Sub-para. (3) deleted by s. 35 (1) (b) of Act 19 of 2001 and added by s. 112 (1) (b) of Act 60 of 2001.]  
[Para.. 97, previously para. 86, renumbered by s. 101 of Act 74 of 2002.]

### **Ninth Schedule** **PUBLIC BENEFIT ACTIVITIES**

(Section 30)

[Ninth Schedule added by s. 41 of Act 30 of 2002.]

#### **Part I**

#### **1 Welfare and humanitarian**

- (a) The care or counseling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.
- (b) The care or counseling of poor and needy persons where more than 90 per cent of those persons to whom the care or counseling are provided are over the age of 60.
- (c) The care or counseling of, or the provision of education programmes relating to, physically or mentally abused and traumatized persons.
- (d) The provision of disaster relief.
- (e) The rescue or care of persons in distress.
- (f) The provision of poverty relief.
- (g) Rehabilitative care or counseling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.
- (h) The rehabilitation, care or counseling of persons addicted to a dependence-forming substance or the provision of preventative and education programmes regarding addiction to dependence-forming substances.

- (i) Conflict resolution, the promotion of reconciliation, mutual respect and tolerance between the various peoples of South Africa.
- (j) The promotion or advocacy of human rights and democracy.
- (k) The protection of the safety of the general public.
- (l) The promotion or protection of family stability.
- (m) The provision of legal services for poor and needy persons.
- (n) The provision of facilities for the protection and care of children under school-going age of poor and needy parents.
- (o) The promotion or protection of the rights and interests of, and the care of, asylum seekers and refugees.
- (p) Community development for poor and needy persons and anti-poverty initiatives, including-
  - (i) the promotion of community-based projects relating to self-help, empowerment, capacity building, skills development or anti-poverty;
  - (ii) the provision of training, support or assistance to community-based projects contemplated in item (i); or
  - (iii) the provision of training, support or assistance to emerging micro enterprises to improve capacity to start and manage businesses, which may include the granting of loans on such conditions as may be prescribed by the Minister by way of regulation;
- (q) The promotion of access to media and a free press.  
[Sub-para. (q) added by s. 124 of Act 45 of 2003.]

## 2 Health care

- (a) The provision of health care services to poor and needy persons.
- (b) The care or counseling of terminally ill persons or persons with a severe physical or mental disability, and the counseling of their families in this regard.
- (c) The prevention of HIV infection, the provision of preventative and education programmes relating to HIV/AIDS.
- (d) The care, counseling or treatment of persons afflicted with HIV/AIDS, including the care or counseling of their families and dependants in this regard.
- (e) The provision of blood transfusion, organ donor or similar services.
- (f) The provision of primary health care education, sex education or family planning.

## 3 Land and housing

- (a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income falls within the housing subsidy eligibility requirements of the National Housing Code published pursuant to section 4 of the Housing Act, 1997 (Act 107 of 1997).  
[Sub-para. (a) substituted by s. 125 (1) (a) of Act 45 of 2003.]
- (b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph (a).
- (c) The provision of residential care for retired persons, where-
  - (i) more than 90 per cent of the persons to whom the residential care is provided are over the age of 60 and nursing services are provided by the organisation carrying on such activity; and
  - (ii) residential care for retired persons who are poor and needy is actively provided by that organisation without full recovery of cost.
 [Sub-para. (c) substituted by s. 125 (1) (b) of Act 45 of 2003.]
- (d) Building and equipping of-
  - (i) clinics or crèches; or
  - (ii) community centres, sport facilities or other facilities of a similar nature, for the benefit of the poor and needy.
 [Sub-para. (d) substituted by s. 125 (1) (c) of Act 45 of 2003.]
- (e) The promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes.
- (f) Granting of loans for purposes of subparagraph (a) or (b) subject to such conditions as may be prescribed by the Minister by way of regulation.

- (g) The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or occupiers, to use or occupy land or housing.

#### **4 Education and development**

- (a) The provision of education by a 'school' as defined in the South African Schools Act, 1996, (Act 84 of 1996).
- (b) The provision of 'higher education' by a 'higher education institution' as defined in terms of the Higher Education Act, 1997, (Act 101 of 1997).
- (c) 'Adult basic education and training', as defined in the Adult Basic Education and Training Act, 2000, (Act 52 of 2000), including literacy and numeracy education.
- (d) 'Further education and training' provided by a 'public further education and training institution' as defined in the Further Education and Training Act 1998, (Act 98 of 1998).
- (e) Training for unemployed persons with the purpose of enabling them to obtain employment.
- (f) The training or education of persons with a severe physical or mental disability.
- (g) The provision of bridging courses to enable educationally disadvantaged persons to enter a higher education institution as envisaged in subparagraph (b).
- (h) The provision of educare or early childhood development services for pre-school children.
- (i) Training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government.
- (j) The provision of school buildings or equipment for public schools and educational institutions engaged in public benefit activities contemplated in subparagraphs (a) to (h).
- (k) Career guidance and counseling services provided to persons for purposes of attending any school or higher education institution as envisaged in subparagraphs (a) and (b).
- (l) The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10 (1) (cA) (i), carrying on activities envisaged in subparagraphs (a) to (g).
- (m) Programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole school development, safety and security at schools, pre-schools or educational institutions as envisaged in subparagraphs (a) to (h).
- (n) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.
- (o) The provision of scholarships, bursaries and awards for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.

#### **5 Religion, belief or philosophy**

- (a) The promotion or practice of religion which encompasses acts of worship, witness, teaching and community service based on a belief in a deity.
- (b) The promotion and/or practice of a belief.
- (c) The promotion of, or engaging in, philosophical activities.

#### **6 Cultural**

- (a) The advancement, promotion or preservation of the arts, culture or customs.
- (b) The promotion, establishment, protection, preservation or maintenance of areas, collections or buildings of historical or cultural interest, national monuments, national heritage sites, museums, including art galleries, archives and libraries.
- (c) The provision of youth leadership or development programmes.

#### **7 Conservation, environment and animal welfare**

- (a) Engaging in the conservation, rehabilitation or protection of the natural environment, including flora, fauna or the biosphere.
- (b) The care of animals, including the rehabilitation, or prevention of the ill-treatment of animals.
- (c) The promotion of, and education and training programmes relating to, environmental awareness, greening, clean-up or sustainable development projects.
- (d) The establishment and management of a transfrontier area, involving two or more countries, which-
  - (i) is or will fall under a unified or coordinated system of management without compromising national sovereignty; and

- (ii) has been established with the explicit purpose of supporting the conservation of biological diversity, job creation, free movement of animals and tourists across the international boundaries within the peace park, and the building of peace and understanding between the nations concerned.

## **8 Research and consumer rights**

- (a) Research including agricultural, economic, educational, industrial, medical, political, social, scientific and technological research.
- (b) The protection and promotion of consumer rights and the improvement of control and quality with regard to products or services.

## **9 Sport**

The administration, development, co-ordination or promotion of sport or recreation in which the participants take part on a non-professional basis as a pastime.

## **10 Providing of funds, assets or other resources**

The provision of-

- (a) funds, assets, services or other resources by way of donation;
- (b) assets or other resources by way of sale for a consideration not exceeding the direct cost to the organisation providing the assets or resources;
- (c) funds by way of loan at no charge; or
- (d) assets by way of lease for an annual consideration not exceeding the direct cost to the organisation providing the asset divided by the total useful life of the asset,

to any-

- (i) any public benefit organisation which has been approved in terms of section 30;
- (ii) any institution, board or body contemplated in section 10(1)(cA)(i), which conducts one or more public benefit activities in this part (other than this paragraph);
- (iii) any association of persons carrying on one or more public benefit activity contemplated in this part (other than this paragraph), in the Republic; or
- (iv) any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10 (1) (a) or (b).

## **11 General**

- (a) The provision of support services to, or promotion of the common interests of public benefit organisations contemplated in section 30 or institutions, boards or bodies contemplated in section 10 (1) (cA) (i), which conduct one or more public benefit activities contemplated in this part.
- (b) The bid to host or hosting of any international event approved by the Minister for purposes of this paragraph, having regard to-
  - (i) the foreign participation in that event; and
  - (ii) the economic impact that event may have on the country as a whole.

[Sub-para. (b) amended by s. 126 of Act 45 of 2003.]

### **Part II**

## **1 Welfare and humanitarian**

- (a) The care or counseling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.
- (b) The care or counseling of poor and needy persons where more than 90 per cent of those persons to whom the care or counseling are provided are over the age of 60.
- (c) The care or counseling of, or the provision of education programmes relating to, physically or mentally abused and traumatised persons.  
[Sub-para. (c) added by s. 127 of Act 45 of 2003.]
- (d) The provision of disaster relief.  
[Sub-para. (d) added by s. 127 of Act 45 of 2003.]
- (e) The rescue or care of persons in distress.  
[Sub-para. (e) added by s. 127 of Act 45 of 2003.]
- (f) The provision of poverty relief.  
[Sub-para. (f) added by s. 127 of Act 45 of 2003.]
- (g) Rehabilitative care or counseling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.  
[Sub-para. (g) added by s. 127 of Act 45 of 2003.]

- (h) The rehabilitation, care or counseling of persons addicted to a dependence-forming substance or the provision of preventative and education programmes regarding addiction to dependence-forming substances.  
[Sub-para. (h) added by s. 127 of Act 45 of 2003.]
- (i) Conflict resolution, the promotion of reconciliation, mutual respect and tolerance between the various peoples of South Africa.  
[Sub-para. (i) added by s. 127 of Act 45 of 2003.]
- (j) The promotion or advocacy of human rights and democracy.  
[Sub-para. (j) added by s. 127 of Act 45 of 2003.]
- (k) The protection of the safety of the general public.  
[Sub-para. (k) added by s. 127 of Act 45 of 2003.]
- (l) The promotion or protection of family stability.  
[Sub-para. (l) added by s. 127 of Act 45 of 2003.]
- (m) The provision of legal services for poor and needy persons.  
[Sub-para. (m) added by s. 127 of Act 45 of 2003.]
- (n) The provision of facilities for the protection and care of children under school-going age of poor and needy parents.  
[Sub-para. (n) added by s. 127 of Act 45 of 2003.]
- (o) The promotion or protection of the rights and interests of, and the care of, asylum seekers and refugees.  
[Sub-para. (o) added by s. 127 of Act 45 of 2003.]
- (p) Community development for poor and needy persons and anti-poverty initiatives, including-
  - (i) the promotion of community-based projects relating to self-help, empowerment, capacity building, skills development or anti-poverty;
  - (ii) the provision of training, support or assistance to community-based projects contemplated in item (i); or
  - (iii) the provision of training, support or assistance to emerging micro enterprises to improve capacity to start and manage businesses, which may include the granting of loans on such conditions as may be prescribed by the Minister by way of regulation.  
[Sub-para. (p) added by s. 127 of Act 45 of 2003.]
- (q) The promotion of access to media and a free press.  
[Sub-para. (q) added by s. 127 of Act 45 of 2003.]

## 2 Health Care

- (a) The provision of health care services to poor and needy persons.
- (b) The care or counseling of terminally ill persons or persons with a severe physical or mental disability, and the counseling of their families in this regard.
- (c) The prevention of HIV infection, the provision of preventative and education programmes relating to HIV/AIDS.
- (d) The care, counseling or treatment of persons afflicted with HIV/AIDS, including the care or counseling of their families and dependants in this regard.
- (e) The provision of blood transfusion, organ donor or similar services.  
[Sub-para. (e) added by s. 128 of Act 45 of 2003.]
- (f) The provision of primary health care education, sex education or family planning.  
[Sub-para. (f) added by s. 128 of Act 45 of 2003.]

## 3 Education and development

- (a) The provision of education by a 'school' as defined in the South African Schools Act, 1996, (Act 84 of 1996).
- (b) The provision of 'higher education' by a 'higher education institution' as defined in terms of the Higher Education Act, 1997, (Act 101 of 1997).
- (c) 'Adult basic education and training', as defined in the Adult Basic Education and Training Act, 2000 (Act 52 of 2000), including literacy and numeracy education.
- (d) 'Further education and training' provided by a 'public further education and training institution' as defined in the Further Education and Training Act 1998, (Act 98 of 1998).
- (e) Training for unemployed persons with the purpose of enabling them to obtain



- employment.
- (f) The training or education of persons with a severe physical or mental disability.
  - (g) The provision of bridging courses to enable educationally disadvantaged persons to enter a higher education institution as envisaged in subparagraph (b).
  - (h) The provision of educare or early childhood development services for pre-school children.
  - (i) The provision of school buildings or equipment for public schools and educational institutions engaged in public benefit activities contemplated in subparagraphs (a) to (h).
  - (j) Programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole school development, safety and security at schools, pre-schools or educational institutions as envisaged in subparagraphs (a) to (h).
  - (k) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.
  - (l) Training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government.  
[Sub-para. (l) added by s. 129 of Act 45 of 2003.]
  - (m) Career guidance and counseling services provided to persons for purposes of attending any school or higher education institution as envisaged in subparagraphs (a) and (b).  
[Sub-para. (m) added by s. 129 of Act 45 of 2003.]
  - (n) The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10 (1) (cA) (i), carrying on activities envisaged in subparagraphs (a) to (g).  
[Sub-para. (n) added by s. 129 of Act 45 of 2003.]
  - (o) The provision of scholarships, bursaries and awards for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.  
[Sub-para. (o) added by s. 129 of Act 45 of 2003.]

#### **4 Conservation, environment and animal welfare**

The establishment and management of a transfrontier area, involving two or more countries, which-

- (a) is or will fall under a unified or coordinated system of management without compromising national sovereignty; and
- (b) has been established with the explicit purpose of supporting the conservation of biological diversity, job creation, free movement of animals and tourists across the international boundaries within the peace park, and the building of peace and understanding between the nations concerned.

#### **5 Land and Housing**

- (a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income falls within the housing subsidy eligibility requirements of the National Housing Code published pursuant to section 4 of the Housing Act, 1997 (Act 107 of 1997).
- (b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph (a).
- (c) Building and equipping of clinics or crèches for the benefit of the poor and needy.
- (d) The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or occupiers, to use or occupy land or housing.
- (e) The promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes.

[Para. 5 added by s. 130 of Act 45 of 2003.]

#### **PENDLEX: Income Tax Act 58 of 1962 after amendment by the Income Tax Act 101 of 1990 Section 10 (1) - further proviso to para. (h)**

Provided further that in the case of any such person not ordinarily resident nor carrying on business in a neighbouring country or any such company which is not incorporated, registered, managed or controlled in a neighbouring country, the exemption under this paragraph shall not apply unless such stock or securities were directly or indirectly paid for in the currency of any country other than the Republic or a neighbouring country;

**PENDLEX: Income Tax Act 58 of 1962 after amendment by the Revenue Laws Amendment Act 32 of 2004**

**Section 10 (1) (d) (iii)**

mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industries (or an association of such chambers) or local publicity association approved by the Commissioner subject to such conditions as the Minister may prescribe by regulation; or

**Section 35A - Withholding of amounts from payments to non-resident sellers of immovable property**

(1) Any person (hereinafter referred to as 'the purchaser') who must pay any amount to any other person who is not a resident (hereinafter referred to as 'the seller'), or to any other person for or on behalf of that seller, in respect of the disposal by that seller of any immovable property in the Republic must, subject to subsection (2), withhold from the amount which that person must so pay, an amount equal to-

- (a) 5 per cent of the amount so payable, in the case where the seller is a natural person;
- (b) 7,5 per cent of the amount so payable, in the case where the seller is a company; and
- (c) 10 per cent of the amount so payable, in the case where the seller is a trust.

(2) The seller may apply to the Commissioner, in the form and at the place as the Commissioner may determine, for a directive that no amount or a reduced amount be withheld by the purchaser in terms of subsection (1) solely having regard to-

- (a) any security furnished for the payment of any tax due on the disposal of the immovable property by the seller;
- (b) the extent of the assets of the seller in the Republic;
- (c) whether that seller is subject to tax in respect of the disposal of the immovable property; and
- (d) whether the actual liability of that seller for tax in respect of the disposal of the immovable property is less than the amount contemplated in subsection (1).

(3) The amount withheld from any payment to the seller in terms of subsection (1) is an advance in respect of that seller's liability for normal tax for the year of assessment during which that property is disposed of by that seller.

(4) The amount withheld by a purchaser in terms of subsection (1), must be paid to the Commissioner-

- (a) where that purchaser is a resident, within 14 days after the date on which that amount was so withheld; or
- (b) where that purchaser is not a resident, within 28 days after the date on which that amount was so withheld.

(5) If amount has been withheld in terms of subsection (1) from any amount payable in a foreign currency, that amount so withheld must be translated to the currency of the Republic at the spot rate on the date that the amount is paid to the Commissioner.

(6) The purchaser must, together with the payment contemplated in subsection (4), submit to the Commissioner a declaration in the form and containing the information as the Commissioner may prescribe.

(7) If a purchaser knows or should reasonably have known that the seller is not a resident and fails to withhold any amount as required by subsection (1), that purchaser-

- (a) is personally liable for the payment of the amount which he or she failed to withhold; and
- (b) must pay that amount to the Commissioner not later than the date on which payment should have been made if the amount had in fact been withheld.

(8) Subsection (7) does not apply if an estate agent or conveyancer assists in the disposal of the immovable property and that estate agent or conveyancer fails to notify the purchaser as contemplated in subsection (11).

(9) If a purchaser fails to pay any amount contemplated in subsection (1) to the Commissioner within the period allowed for payment in terms of subsection (4), that purchaser-

- (a) is liable for interest at the prescribed rate on any amount outstanding calculated from the day following the last date for payment to the date that the amount is received by the Commissioner; and
- (b) must pay a penalty equal to ten per cent of that amount, in addition to any other penalty or charge for which he or she may be liable under this Act.

(10) The Commissioner may having regard to the circumstances of the case remit the whole or any

part of the penalty imposed under subsection (9) (b).

(11) Any estate agent and any conveyancer who is entitled to any remuneration or other payment in respect of services rendered in connection with the disposal of the immovable property by the seller or the registration of transfer, as the case may be, must before any payment is made to the seller each notify the purchaser in writing of the fact that the seller is not a resident and that the provisions of this section may apply.

(12) If an estate agent or conveyancer knows or should reasonably have known that the seller is not a resident and fails to comply with subsection (11), that failing estate agent or conveyancer is jointly and severally liable for the payment of the amount which the purchaser is required to withhold and pay to the Commissioner in terms of this section, but limited to the amount of remuneration or other payment in respect of the services rendered in connection with the disposal of the immovable property by the seller or the registration of transfer, as the case may be.

(13) The purchaser, estate agent or conveyancer, as the case may be, may recover any amount paid in terms of subsection (7) or (12) from the seller.

(14) This section does not apply -

- (a) if the amounts payable by the purchaser to the seller and to any other person for or on behalf of the seller, in respect of the acquisition by that purchaser of the immovable property, in aggregate do not exceed R2 million; or
- (b) in respect of any deposit paid by a purchaser for purposes of securing the disposal of the immovable property by the seller to that purchaser, until the agreement for that disposal has been entered into, in which case any amount which would have been required to be withheld from the amount of that deposit, must be withheld from the first following payments made by that purchaser in respect of that disposal.

(15) For purposes of this section-

'conveyancer' means a 'conveyancer' as defined in section 102 of the Deeds Registries Act, 1937 (Act 47 of 1937);

'estate agent' means an 'estate agent' as defined in section 1 of the Estate Agency Affairs Act, 1976 (Act 112 of 1976);

'foreign currency' means any currency other than the currency of the Republic;

'immovable property' means immovable property contemplated in paragraph 2 (1) (b) (i) and (2) of the Eighth Schedule.

**PENDLEX: Income Tax Act 58 of 1962 after amendment by the Second Revenue Laws Amendment Act 34 of 2004**

### **Chapter III, Part IA - Advance tax rulings**

#### **76B Definitions**

For purposes of this Part, unless the context otherwise indicates -

'advance tax ruling' means a written statement issued by the Commissioner regarding the interpretation or application of the Act and is limited to a binding general ruling under section 76P, a binding private ruling under section 76Q, or a binding class ruling under section 76R;

'applicant' means a person who applies for a binding private ruling under section 76Q or a binding class ruling under section 76R;

'application' means an application for a binding private ruling under section 76Q or a binding class ruling under section 76R;

'binding class ruling' means an advance tax ruling regarding the application or interpretation of the Act to a specific class of persons in respect of a proposed transaction that is issued in accordance with the requirements of section 76R in response to an application by an applicant;

'binding general ruling' means an advance tax ruling, issued in accordance with the requirements of section 76P, regarding-

- (a) the interpretation of the Act; or
- (b) the application or interpretation of the Act in respect of a particular set of facts and circumstances or transaction;

'binding private ruling' means an advance tax ruling regarding the application or interpretation of the Act in respect of a proposed transaction that is issued in accordance with the requirements of section 76Q in response to an application by an applicant;

'class member' means a member of the class to which a binding class ruling applies, such as a shareholder in a company or an employee participant in a share investment scheme;

'entity' means a person, other than a natural person, which may apply for a binding class ruling on behalf of its shareholders or members in respect of a proposed transaction to which it is a party and includes a company, close corporation or trade association: Provided that an entity does not include a professional firm acting or purporting to act on behalf of a client;

'nonbinding private opinion' means a written statement issued by the Commissioner in response to an inquiry by a person in order to provide the person with informal guidance in respect of the tax treatment of a particular set of facts and circumstances or transaction, but which does not have any binding effect within the meaning of section 76H;

'transaction' means any transaction, deal, business, arrangement, operation or scheme (collectively, 'transaction') and includes a series of transactions.

#### **76C Purpose**

The purpose of the advance tax ruling system is to promote clarity, consistency, and certainty regarding the interpretation and application of the Act.

#### **76D Scope**

The Commissioner may make an advance tax ruling on any provision of this Act.

#### **76E Form and content of applications**

(1) Subject to the minimum requirements set forth in subsection (2) of this section, an application must be made in such manner and in such form as the Commissioner may prescribe.

(2) An application must state the following minimum information-

- (a) the applicant's name, applicable identification or tax registration number, postal address and telephone number;
- (b) the name, postal address and telephone number of the applicant's representative, if any;
- (c) a complete description of the proposed transaction in respect of which the ruling is sought;
- (d) a complete description of the impact the proposed transaction may have upon the tax liability of the applicant or, where relevant, any connected person in relation to the applicant, including any and all relevant information regarding the financial or tax implications of the proposed transaction;
- (e) a complete description of any transactions entered into by the applicant prior to submitting the application or that may be undertaken after the completion of the proposed transaction which may have a bearing on the tax consequences of the proposed transaction or may be considered to be part of a series of transactions involving the proposed transaction;
- (f) the proposed ruling being sought;
- (g) the relevant statutory provisions or issues;
- (h) the reasons why the applicant believes that the proposed ruling should be granted;
- (i) a statement of the applicant's interpretation of the relevant statutory provisions or issues, as well as an analysis of any relevant authorities either considered by the applicant or of which the applicant is aware, whether those authorities support or are contrary to the proposed ruling being sought;
- (j) a statement, to the best of the applicant's knowledge, that the same or substantially similar issue upon which the ruling is sought is not the subject of an audit, examination, investigation, ruling application, objection and appeal, or other proceeding currently before the Commissioner or the courts involving the applicant or a connected person in relation to the applicant;
- (k) a draft version of the binding private ruling or binding class ruling to be issued;
- (l) a description of the information that the applicant believes should be deleted from the final ruling before publication in order to protect the applicant's confidentiality; and
- (m) the applicant's consent to the publication of the ruling by the Commissioner in accordance with section 76O.

(3) In addition to the minimum information required by subsection (2) of this section, an application for a binding class ruling must also state the following minimum information-

- (a) a description of the class members; and
- (b) the impact the proposed transaction may have upon the liability of the class members or, where relevant, any connected person in relation to the applicant or to any class member.

(4) The Commissioner may request additional information from an applicant at any time.

(5) An application must be accompanied by the application fee prescribed by the Commissioner pursuant to section 76F (1).

#### **76F Fees**

(1) In order to defray the cost of the advance tax ruling system, the Commissioner must prescribe fees for the issuance of binding private rulings and binding class rulings, including-

- (a) an application fee; and
- (b) a cost recovery fee.

(2) Following the acceptance of an application, the Commissioner must, if requested, provide the applicant with an estimate of the cost recovery fee anticipated in connection with that application and must notify the applicant if it subsequently appears that this estimate may be exceeded.

(3) The fees imposed by this section constitute fees imposed by SARS within the meaning of section 5 (1) (h) the South African Revenue Services Act, 1997, and constitute funds of SARS within the meaning of section 24 of that Act.

#### **76G Exclusions, refusals and rejections**

(1) Notwithstanding any provision to the contrary in this Act, the Commissioner may not accept an application for an advance tax ruling in any of the following circumstances -

- (a) the application requests or requires the rendering of an opinion, conclusion or determination regarding or in respect of any of the following:
  - (i) the market value of an asset;
  - (ii) the application or interpretation of the laws of a foreign country;
  - (iii) the pricing of goods or services supplied by or rendered to a connected person in relation to the applicant (or to a class member in the case of an application for a binding class ruling);
  - (iv) the constitutionality of any tax law; or
  - (v) a proposed transaction that is hypothetical or not seriously contemplated;
- (b) the application relates to the duty of an employer to determine whether a person is an independent contractor, labour broker, personal service company or personal service trust;
- (c) the application is submitted for academic purposes; or
- (d) the application presents, contains, or raises-
  - (i) a frivolous or vexatious issue;
  - (ii) alternative courses of action by the applicant (or requests or requires the rendering of an opinion, conclusion or determination regarding such alternative courses of action); or
  - (iii) an issue that is the same as or substantially similar to an issue that is-
    - (aa) currently before the Commissioner in connection with an audit, examination, investigation or other proceeding involving the applicant or any connected person in relation to the applicant (or, in the case of a binding class ruling, in relation to the applicant or any class member);
    - (bb) the subject of draft legislation; or
    - (cc) pending before the courts.

(2) In addition to the exclusions and refusals set forth in subsections (1) of this section, the Commissioner may reject any application regarding or in respect of any of the following-

- (a) the application or interpretation of any general or specific anti-avoidance provision, including but not limited to section 103 of this Act, as well as the application or interpretation of any anti-avoidance doctrine, principle or mechanism;
- (b) an issue-
  - (i) that is of an inherently or distinctly factual nature;
  - (ii) in respect of which material facts cannot be established at the time of the application;
  - (iii) the resolution of which would depend upon assumptions to be made regarding a future event or other matters which cannot be reasonably determined at the time of the application;
  - (iv) which would be more appropriately dealt with by the competent authorities of the parties to an agreement for the avoidance of double taxation;
  - (v) which is the same as or substantially similar to an issue upon which the applicant

- (vi) has already received a ruling; in which the tax treatment of the applicant is dependent upon the tax treatment of another party to the proposed transaction and that other party has not applied for a ruling; or
- (vii) in respect of a transaction that is part of another transaction which has a bearing on that issue and the details of that other transaction have not been disclosed; or
- (c) a matter the resolution of which would be unduly time-consuming or resource intensive.

(3) In addition to the exclusions and refusals set forth in subsections (1) and (2) of this section, the Commissioner may publish lists of issues in respect of which applications will not be accepted.

(4) If the Commissioner requests additional information in respect of or in connection with an application and the applicant fails or refuses to provide that information, the Commissioner may reject that application without any refund or rebate of any applicable fees imposed under section 76F.

#### **76H Binding effect**

(1) Except to the extent otherwise provided in sections 76K, 76L and 76M, if an advance tax ruling applies to a person in accordance with section 76J, then the Commissioner must interpret or apply the Act to that person in accordance with that advance tax ruling (referred to as 'binding effect' for purposes of this Part).

(2) An advance tax ruling does not have any binding effect upon the Commissioner unless that advance tax ruling applies to that person in accordance with section 76J.

(3) A binding general ruling may be cited by the Commissioner or any person in any proceeding before the Commissioner or the courts.

(4) A binding private ruling may not be cited in any proceeding before the Commissioner or the courts other than a proceeding involving the applicant for that ruling.

(5) A binding class ruling may not be cited in any proceeding before the Commissioner or the courts by any person other than a proceeding involving the applicant for that ruling or an affected class member identified in the ruling.

(6) A publication or other written statement issued by the Commissioner does not have any binding effect unless it is a binding general ruling under section 76P, a binding private ruling under section 76Q, or a binding class ruling under section 76R.

#### **76I Nonbinding private opinions and other written statements**

(1) The Commissioner may issue a nonbinding private opinion to a person regarding the tax treatment of a particular set of facts and circumstances or a particular transaction.

(2) A nonbinding private opinion does not have any binding effect upon the Commissioner.

(3) A nonbinding private opinion may not be cited in any proceeding before the Commissioner or the courts other than a proceeding involving the person to whom the nonbinding private opinion was issued.

(4) With respect to any written statement issued by the Commissioner prior to the effective date of this Part, the Commissioner may prescribe, in writing, the extent to which, if any, such statement has binding effect.

(5) Except to the extent the Commissioner prescribes otherwise in accordance with subsection (4) of this section, any written statement issued by the Commissioner prior to the effective date of this Part is to be treated as and have the effect of a nonbinding private opinion.

#### **76J Applicability of advance tax rulings**

(1) For purposes of section 76H, an advance tax ruling applies to a person only if all of the following conditions have been satisfied-

- (a) the provision or provisions of the Act at issue are the subject of the advance tax ruling;
- (b) the set of facts and circumstances or the transaction presented by the person are the same as the particular set of facts and circumstances or the particular transaction specified in the advance tax ruling;
- (c) the person's set of facts and circumstances or transaction fall entirely within the effective period for the effective period of the advance tax ruling; and
- (d) any assumptions made or conditions imposed by the Commissioner in connection with the validity of the advance tax ruling have been satisfied or carried out.

(2) In addition to the requirements set forth in subsection (1) of this section-

- (a) in the case of a binding private ruling, the ruling applies to a person only if that person is the applicant identified in the ruling; and

- (b) in the case of a binding class ruling, the ruling applies to a person only if that person is either the applicant identified in the ruling or a class member identified in the ruling.

**76K Rulings rendered void due to fraud, misrepresentation, etc**

(1) Notwithstanding any provision to the contrary in this Act, a binding private ruling or binding class ruling is rendered void *ab initio* under any of the following circumstances -

- (a) the facts stated in the application regarding the proposed transaction are materially different from the transaction actually carried out;
- (b) there is fraud, misrepresentation or nondisclosure of a material fact; or
- (c) any condition or assumption stipulated by the Commissioner is not satisfied or carried out.

(2) For purposes of this section, a fact is considered material if it would have resulted in a different ruling had the Commissioner been aware of it when the original ruling was made.

**76L Impact of subsequent changes in tax law**

(1) Notwithstanding any provision to the contrary contained in this Act, an advance tax ruling ceases to be effective upon the occurrence of any of the following circumstances -

- (a) if the provision of the Act that was the subject of the advance tax ruling is repealed or amended, the advance tax ruling will cease to be effective from the date that such repeal or amendment is effective;
- (b) if a court overturns or modifies an interpretation of the Act on which the advance tax ruling is based, the advance tax ruling will cease to be effective from the date of judgment unless-
  - (i) the decision is under appeal;
  - (ii) the decision is fact-specific and the general interpretation upon which the advance tax ruling was based was unaffected; or
  - (iii) the reference to the interpretation upon which the advance tax ruling was based was *obiter dicta*.

(2) An advance tax ruling ceases to be effective immediately upon the occurrence of the circumstances described in subsection (1) of this section, whether or not the Commissioner publishes a notice of withdrawal or modification.

**76M Withdrawal or modification**

(1) The Commissioner may withdraw or modify an advance tax ruling at any time, subject to the requirements of this section.

(2) Notice of the withdrawal or modification of an advance tax ruling must be published in such manner and media as the Commissioner may deem appropriate.

(3) The notice of withdrawal or modification may be made in such manner and in such form as the Commissioner may prescribe: Provided that such notice must include the following information-

- (a) the title or number of the advance tax ruling being withdrawn or modified;
- (b) if a modification, a summary of the changes made; and
- (c) the effective date of the withdrawal or modification.

(4) If the advance tax ruling is either a binding private ruling or a binding class ruling, the Commissioner must first provide the applicant with notice of the proposed withdrawal or modification and a reasonable opportunity to state any proposition of law or fact relevant to the decision to withdraw or modify the ruling.

**76N Retrospective Effect**

(1) The Commissioner may withdraw or modify an advance tax ruling with retrospective effect, subject to the requirements of this section.

(2) The effective date for the withdrawal or modification of a binding general ruling issued in error may not be earlier than the date of publication of the notice of that withdrawal or modification.

(3) The Commissioner may withdraw or modify a binding private ruling or a binding class ruling retrospectively if that ruling was made in error and any of the following circumstances apply -

- (a) the applicant has not yet commenced the proposed transaction;
- (b) there is any person other than the applicant (or class member, in the case of a binding class ruling) who will suffer significant tax disadvantage if the ruling is not withdrawn or modified and the applicant will suffer comparatively less if the ruling is withdrawn or modified; or
- (c) the effect of the ruling will materially erode the South African tax base and it is in the

public interest to withdraw or modify the ruling retrospectively.

(4) A binding general ruling which is interpretative and is limited to providing details, supplementary information, examples, illustrations or elaborations of existing tax law, policy, or practice, applies from the effective date of the provision which is the subject of that ruling unless otherwise stated in that general binding ruling.

#### **76O Publication and protection of confidentiality**

(1) A person applying for an advance tax ruling must consent to the publication of the advance tax ruling in accordance with this section.

(2) Binding private rulings and binding class rulings must be published by the Commissioner for general information in such form as does not reveal the identity of the applicants or class members.

(3) Information that may reveal the identity of an applicant or class member includes the following-

- (a) the name, address, and other identifying details of the applicant, as well as any person identified or referred to in the ruling;
- (b) in the case of a binding class ruling, the name, address, and other identifying details of the applicant for the ruling, as well as of any member of the class to which the ruling applies; and
- (c) any information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(4) Pursuant to section 76Q (7) or section 76R (7), the Commissioner must consider, prior to publication, any comments and proposed edits and deletions submitted by an applicant: Provided that the Commissioner's determination regarding the contents of the published ruling is final.

(5) The application or interpretation of the Act to a transaction does not constitute and may not be treated as information that may reveal the identity of an applicant or class member or constitute an unwarranted invasion of personal privacy within the meaning of subsection (3) of this section.

(6) An applicant for a binding class ruling may consent in writing to the inclusion of information identifying it or the proposed transaction in order to facilitate communication with the class members.

(7) The Commissioner must treat the publication of the withdrawal or modification of a binding private ruling or a binding class in the same manner and subject to the same requirements as the publication of the original ruling.

#### **76P Binding General Rulings**

(1) The Commissioner may, at any time, make binding general rulings.

(2) A binding general ruling may be effective for either-

- (a) a particular year of assessment or other definite period; or
- (b) an indefinite period.

(3) A binding general ruling must state-

- (a) that it is a binding general ruling made under this section;
- (b) the provisions of the Act which are the subject of the binding general ruling; and
- (c) either-

- (i) the year of assessment or other definite period for which it applies; or
- (ii) in the case of a binding general ruling for an indefinite period, that it is for an indefinite period and the date or year of assessment from or beginning with which it applies.

(4) Subject to the minimum requirements set forth in subsection (3) of this section, binding general rulings may be issued in such form and in such manner as the Commissioner may prescribe, including but not limited to interpretation notes and practice notes.

(5) A publication or other written statement does not constitute and may not be considered or treated as a binding general ruling unless it contains the information prescribed by subsection (3) of this section.

#### **76Q Binding Private Rulings**

(1) The Commissioner may issue binding private rulings regarding the application or interpretation of a provision or provisions of the Act to a proposed transaction upon application by a person in accordance with the requirements of section 76E.

(2) The Commissioner may make a binding private ruling subject to such conditions and assumptions as may be prescribed in the ruling.

(3) The Commissioner must provide an applicant with a reasonable opportunity to consult if,



based upon the application and any additional information received, it appears that the content of the binding private ruling to be made would differ materially from the proposed ruling sought by the applicant.

(4) The Commissioner must issue the final binding private ruling to the applicant at the address shown in the application unless the applicant provides other instructions, in writing, before the ruling is issued.

(5) A binding private ruling may be issued in such manner and in such form as the Commissioner may prescribe: Provided that it must state the following-

- (a) a statement identifying it as a binding private ruling made under this section;
- (b) the name, tax number, and postal address of the applicant;
- (c) the relevant statutory provisions or issues;
- (d) a description of the proposed transaction;
- (e) the specific ruling made;
- (f) any assumptions made or conditions imposed by the Commissioner in connection with the validity of the ruling; and
- (g) the period for which the ruling is valid.

(6) Subject to the requirements of section 76O, binding private rulings must be published in such manner and in such form as the Commissioner may prescribe.

(7) Prior to final publication, the Commissioner must provide the applicant with a draft copy of the edited ruling for review and comment.

#### **76R Binding Class Rulings**

(1) The Commissioner may issue binding class rulings regarding the application or interpretation of a provisions or provisions of the Act to a proposed transaction upon application by a person in accordance with the requirements of section 76E.

(2) The Commissioner may make a binding class ruling subject to such conditions and assumptions as may be prescribed in the ruling.

(3) The Commissioner must provide an applicant with a reasonable opportunity to consult if, based upon the application and any additional information received, it appears that the content of the binding class ruling to be made would differ materially from the proposed ruling sought by the applicant.

(4) The Commissioner must issue the final binding class ruling to the applicant at the address shown in the application unless the applicant provides other instructions, in writing, before the ruling is issued.

(5) A binding class ruling may be issued in such manner and in such form as the Commissioner may prescribe: Provided that it must state the following-

- (a) a statement identifying it as a binding class ruling made under this section;
- (b) the name, tax number, and postal address of the applicant;
- (c) a list or a description of the affected class members;
- (d) the relevant statutory provisions or issues;
- (e) a description of the proposed transaction;
- (f) the specific ruling made;
- (g) any assumptions made or conditions imposed by the Commissioner in connection with the validity of the ruling; and
- (h) the period for which the ruling is valid.

(6) Subject to the requirements of section 76O, binding class rulings must be published in such manner and in such form as the Commissioner may prescribe.

(7) Prior to final publication, the Commissioner must provide the applicant with a draft copy of the edited ruling for review and comment.

(8) It is the sole and exclusive responsibility of the applicant to communicate with the affected class members regarding the application for the binding class ruling, the issuance, withdrawal or modification of such ruling, or any other information or matters pertaining to such ruling.

#### **76S Procedures and Guidelines**

The Commissioner may issue procedures and guidelines, in the form of binding general rulings, for implementation and operation of the advance tax ruling system established by this Part.

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<sup>1</sup>The following amounts will be deemed to have been actually expended by a recipient to

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whom an allowance or advance has been granted or paid-

(a) where the accommodation to which that allowance or advance relates is in the Republic and that allowance or advance is paid or granted to defray-

(i) incidental costs only, an amount equal to R60 per day; or

(ii) the cost of meals and incidental costs, an amount equal to R196 per day; or

(b) where the accommodation to which that allowance or advance relates is outside the Republic and that allowance or advance is paid or granted to defray the cost of meals and incidental costs, an amount equal to U\$190 per day. (GN 111 in *GG* 27235 of 11 February 2005)

<sup>2</sup>Rate fixed by Government Notice 170 in *Government Gazette* 27332 of 25 February 2005

<sup>3</sup>Rate fixed by Government Notice 170 in *Government Gazette* 27332 of 25 February 2005

<sup>4</sup>Interest rate fixed at 8,5 % with effect from 1 September 2004 (GN 1024 in *GG* 26742 of 1 September 2004).