

- (c) the potential effect such project may have on the South African tax base;
- (d) other assistance granted by the State or organ of State in respect of such project; and
- (e) such other criteria which the Minister may prescribe by notice in the *Gazette*. 5

(8B) The Minister may withdraw any exemption granted in terms of subsection (8A), where he is satisfied that any condition imposed in terms of that subsection has not been complied with.

[(9) The discretion exercised by the Commissioner in terms of this section shall be subject to objection and appeal. 10

(10) The amount of any foreign dividend to be included in the gross income of any resident in terms of subsection (3), shall be converted to the currency of the Republic at the ruling exchange rate applicable on the date on which such dividend accrued to such resident.]” 15

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any year of assessment ending on or after that date.

Amendment of section 9F of Act 58 of 1962, as inserted by section 12 of Act 59 of 2000 and amended by section 24 of Act 60 of 2001

16. (1) Section 9F of the Income Tax Act, 1962, is hereby amended— 20

- (a) by the deletion of subsection (1); and
- (b) by the substitution for subsection (2) of the following subsection:

“(2) The amount of any income which shall be exempt from tax in terms of the provisions of section 10(1)(kA), shall be so much of any amount received [by] or accrued during the relevant year of assessment by or to any company which is a resident from a source outside the Republic, which is not deemed to be from a source in the Republic, which has been or will be subject to tax in any designated country at [a] a qualifying statutory rate [of at least 27 per cent (after taking into account the application of the relevant agreement for the avoidance of double taxation, if any, without any right of recovery by any person (other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment): Provided that where such designated country imposes tax on a company at a progressive scale of statutory rates, the statutory rate shall for the purposes of this subsection be deemed to be the highest rate on such scale] as defined in section 9E.”; 25 30 35

- (c) by the deletion of subsection (3).

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any year of assessment ending on or after that date. 40

Amendment of section 9G of Act 58 of 1962, as inserted by section 25 of Act 60 of 2001

17. (1) Section 9G of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection: 45

“(2) Notwithstanding the provisions of section 25D, 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 determined by translating the amount received or accrued in any [foreign] currency other than currency of the Republic in respect of that disposal into the currency of the Republic at the [ruling] average exchange rate [on the date of that disposal] for the year of assessment during which that foreign equity instrument is disposed of. 50

(3) Any—

- (a) expenditure incurred by a person in any [foreign] currency other than currency of the Republic in respect of any foreign equity instrument which is allowable as a deduction in terms of the provisions of this Act; or 55
- (b) amount in any [foreign] currency other than currency of the Republic which is taken into account in the determination of the taxable income of any person in respect of any foreign equity instrument,

shall, for purposes of determining the taxable income of that person 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 [ruling] average exchange rate **[on the later of the date of incurral of that expenditure or 1 October 2001]** for the year of assessment during which that expenditure was actually incurred by that person.”

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of the disposal of any foreign equity instrument during any year of assessment commencing on or after that date.

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, section 9 of Act 19 of 2001, section 26 of Act 60 of 2001 and section 13 of Act 30 of 2002

18. (1) Section 10 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) for subparagraph (iii) of paragraph (hA) of the following subparagraph:

“(iii) for the purposes of this paragraph, so much of any dividend as has been distributed by any [unit] portfolio of any collective investment scheme constituting a company in terms of paragraph (e)(i) of the definition of ‘company’ in section 1 out of interest derived by such [unit] portfolio which is exempt from tax in the hands of such [unit] portfolio under the provisions of paragraph (iA), shall be deemed to be interest;”;

- (b) by the substitution in subsection (1) for paragraph (iA) of the following paragraph:

“(iA) in the case of any [unit] 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 [unit] 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 [registered as] holders of [units] participatory interest in such [unit] portfolio **[on a date falling on or after the first day of April, 1971];**”;

- (c) by the substitution in subsection (1) for items (aa) and (bb) of the proviso to subparagraph (i) of paragraph (k) of the following items:

“(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 [fixed property] company the shares of which are ‘property shares’ as defined in [section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981)] section 47 of the Collective Investment Schemes Control Act, 2002, on shares included in a [unit] portfolio comprised in any [unit trust] collective investment scheme in property [shares authorized under the said Act] 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
- (bb) to so much of any dividend as has been distributed by any [unit] 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 [unit] portfolio which is exempt from tax in the hands of such [unit] portfolio under the provision of paragraph (iA); and
- (B) out of amounts received by or accrued to such [unit] portfolio by way of dividends referred to in section 11(s); or”;
- (d) by the deletion in subsection (1) of subparagraph (iA) of paragraph (k);
- (e) by the substitution in subsection (1) for the words in paragraph (o) preceding subparagraph (i) of the following words:
- “any remuneration as defined in paragraph 1 of the Fourth Schedule [derived by any person]—”;
- (f) by the substitution in subsection (1) for the words in subparagraph (i) of paragraph (o) preceding item (aa) of the following words:
- “(i) derived by any person as an officer or crew member of a ship engaged—”;
- (g) by the substitution in subsection (1) for the words in subparagraph (ii) of paragraph (o) preceding the proviso and the proviso of the following words and proviso:
- “(ii) received by or accrued to any person during any year of assessment in respect of services rendered outside the Republic by [such] that person for or on behalf of any employer, if [such] 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 [a] that year of assessment; and
- (bb) for a continuous period exceeding 60 full days during [such] that period of 12 months,
- and [such] those services were rendered during [such] 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 defined in the Immigration Act, 2002 (Act No. 13 of 2002), shall be deemed to be outside the Republic; and
- (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);”;
- (h) by the deletion of subparagraph (xv) of paragraph (t) of subsection (1);
- (i) by the substitution in subsection (1) for the words preceding the proviso to paragraph (zA) of the following words:
- “(zA) any amount by way of rebate or other assistance received by or accrued to or in favour of any [exporter (as defined in section 11bis(1))] 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:”;
- (j) by the deletion in subsection (1) of paragraph (zF).
- (2) (a) Subsection (1)(a), (b) and (c) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.
- (b) Subsection(1)(d) shall come into operation on the date of promulgation of this Act and shall apply in respect of any dividend received or accrued on or after that date.
- (c) Subsection (1)(e), (f) and (g) shall come into operation on the date of promulgation of this Act and shall apply in respect of any year of assessment ending on or after that date.

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section 13 of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993, section 5 of Act 140 of 1993, section 10 of Act 21 of 1994, section 12 of Act 21 of 1995, section 9 of Act 36 of 1996, section 12 of Act 28 of 1997, section 30 of Act 30 of 1998, section 20 of Act 53 of 1999, section 22 of Act 30 of 2000, section 15 of Act 59 of 2000, section 10 of Act 19 of 2001, section 27 of Act 60 of 2001 and section 14 of Act 30 of 2002

19. (1) Section 11 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for paragraph (s) of the following paragraph:

“(s) in the case of a **[fixed property]** company the shares of which are ‘property shares’ as defined in section [1] 47 of the **[Unit Trusts Control Act, 1981 (Act No. 54 of 1981)]** 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 **[unit]** portfolio comprised in any **[unit trust]** collective investment scheme in property **[shares authorized under the said Act]** 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;”

(b) by the substitution for subparagraph (B) of paragraph (ee) of the proviso to paragraph (w) of the following subparagraph:

“(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 **[but including any amount referred to in paragraph (iv) or (vii) of that definition]**) derived by such employee or director from the taxpayer during the said year of assessment;”

(2) Subsection (1)(a) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

Repeal of section 11bis of Act 58 of 1962

20. Section 11bis of the Income Tax Act, 1962, is hereby repealed.

Amendment of section 12E of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 17 of Act 30 of 2002

21. Section 12E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for subparagraph (ii) of paragraph (a) of the following subparagraph:

“(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 a company **[listed on a stock exchange as defined in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)]** contemplated in paragraph (a) of the definition of ‘listed company’), or any **[unit]** portfolio in a collective investment scheme contemplated in paragraph (e) of the definition of ‘company’ **[in section 1]**;”

Amendment of section 12G of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 29 of Act 60 of 2001

22. (1) Section 12G of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) for the words in paragraph (a) of the definition of “industrial asset” preceding subparagraph (i) of the following words: 5

“any plant or machinery acquired, [or] contracted for or brought into the Republic by a company after the date of approval in terms of subsection (5), which—”;
 - (b) by the substitution in subsection (1) for subparagraph (ii) of paragraph (a) of the definition of “industrial asset” of the following subparagraph: 10

“(ii) will be brought into use for the first time by that company within [three] four years from the date of approval in terms of subsection (5);”;
 - (c) by the substitution in subsection (1) for subparagraph (ii) of paragraph (b) of the definition of “industrial asset” of the following subparagraph: 15

“(ii) will be brought into use by that company within [three] four years from the date of approval in terms of subsection (5);”;
 - (d) by the substitution in subsection (1) for paragraph (a) of the definition of “industrial project” of the following paragraph: 20

“(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 25
 - (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);”.
 - (e) by the substitution in subsection (2) for the word “and” at the end of paragraph (a) of the word “or”; 30
 - (f) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) the cost of all industrial assets to be acquired by the company, which will be brought into use for that industrial project within [three] four years after the date of approval in terms of subsection (5), will exceed R50 million;”; 35
 - (g) by the substitution in subsection (16) for paragraph (a) of the following paragraph:

“(a) may, after taking into account the recommendations of the adjudication committee, extend the [three] 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;”; 40
- (2) Subsection (1) shall be deemed to have come into operation on 27 July 2001. 45

Amendment of section 20 of Act 58 of 1962, as amended by section 13 of Act 90 of 1964, section 18 of Act 88 of 1965, section 13 of Act 76 of 1968, section 18 of Act 89 of 1969, section 15 of Act 65 of 1973, section 8 of Act 101 of 1978, section 18 of Act 94 of 1983, section 19 of Act 191 of 1990, section 16 of Act 113 of 1993, section 17 of Act 21 of 1995, section 15 of Act 28 of 1997, section 20 of Act 30 of 2000 and section 27 of Act 59 of 2000 50

23. Section 20 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(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 [or, if the context so requires, means an assessed loss as determined under the provisions of section 30].”.

Amendment of section 22 of Act 58 of 1962, as amended by section 8 of Act 6 of 1963, section 14 of Act 90 of 1964, section 21 of Act 89 of 1969, section 23 of Act 85 of 1974, section 20 of Act 69 of 1975, section 15 of Act 103 of 1976, section 20 of Act 94 of 1983, section 19 of Act 121 of 1984, section 14 of Act 65 of 1986, section 5 of Act 108 of 1986, section 21 of Act 101 of 1990 section 22 of Act 129 of 1991, section 17 of Act 113 of 1993, section 1 of Act 168 of 1993, section 19 of Act 21 of 1995, section 12 of Act 36 of 1996, section 25 of Act 53 of 1999, section 27 of Act 30 of 2000 and section 12 of Act 5 of 2001

24. (1) Section 22 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subsection (6) of the following subsection: 10

“(6) Any reference in this section to the beginning or end of a year of assessment includes—

[(i)] (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; 15

[(ii) **where a return is accepted under the proviso to subsection (13) of section sixty-six to a date other than the thirtieth day of June, a reference to the beginning or end, as the case may be, of the period covered by the return;**]

[(iii)] (b) where accounts are accepted under [subsection (13)ter of the said section] 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.”; 20

(b) by the deletion in subsection (8) for the word “or” at the end of paragraph (b) to the proviso; 25

(c) by the addition in subsection (8) of the word “or” at the end of paragraph (c) of the proviso;

(d) by the addition to the proviso to subsection (8) of the following paragraph:

“(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.” 30

(2) (a) Subsection (1)(a) shall come into operation on the date of promulgation of this Act. 35

(b) Subsection (1)(b), (c) and (d) shall be deemed to have come into operation on 12 December 2001.

Amendment of section 24F of Act 58 of 1962, as inserted by section 17 of Act 85 of 1987 and amended by section 19 of Act 90 of 1988, section 24 of Act 101 of 1990, section 26 of Act 129 of 1991 and section 30 of Act 59 of 2000 40

25. Section 24F of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion in subsection (1) after the definition of “completion date” of the following definition:

“‘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;” 45

(b) by the insertion in subsection (1) after the definition of “exported” of the following definition:

“‘export country’ means any country other than the Republic or a neighbouring country;” 50

(c) by the insertion in subsection (1) after the definition of “production cost” of the following definition:

“ ‘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 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; 5
 - (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; 10
 - (c) in providing without charge samples or technical information in respect of that film to prospective customers in any export country; 15
 - (d) in bringing prospective customers from any export country to the Republic; 20
 - (e) in connection with the preparation or submission of tenders or quotations in respect of that film to be exported to any export country; 25
 - (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; 30
 - (g) by way of certification fees charged by the South African Certification Authority in respect of that film which has been exported; 35
 - (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; 40
 - (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 labeling or packaging of that film differ materially from, or are additional to, the requirements of the South African market; and 45
 - (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;” 50
- (d) by the substitution for the words preceding paragraph (a) of subsection (7) of the following subsection: 55
- “(7) The amount of any print cost or any marketing expenditure [contemplated in section 11*bis*] which may be allowed under the provisions of section 11 shall not in the aggregate exceed the total of—”;
- (e) by the substitution for subsection (8) of the following subsection: 60
- “(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 [(as contemplated in section 11*bis*)] 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.”; 65
- and
- (f) by the deletion of subsections (9), (10) and (11).

Amendment of section 24H of Act 58 of 1962, as inserted by section 21 of Act 90 of 1988

26. Section 24H of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“(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 **[other than section 11bis]** 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—”.

Amendment of section 24I of Act 58 of 1962, as inserted by section 21 of Act 113 of 1993 and amended by section 11 of Act 140 of 1993, section 18 of Act 21 of 1994, section 13 of Act 36 of 1996, section 18 of Act 28 of 1997, section 35 of Act 30 of 1998, section 26 of Act 53 of 1999, section 31 of Act 59 of 2000 and section 36 of Act 60 of 2001

27. (1) Section 24I of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the definition of “foreign currency” of the following definition:

“ ‘foreign currency’ in relation to any exchange item of a person, means any currency which is not local currency **[in relation to—**

(a) **a any permanent establishment of a person, any currency which is not legal tender in the country in which that permanent establishment is situated;**

(b) **any resident in respect of any exchange item which is not attributable to a permanent establishment outside the Republic, any currency which is not legal tender in the Republic;**

(c) **any company or trust which is not a resident in respect of any exchange item which is not attributable to a permanent establishment of that company or trust, any currency which is not legal tender in the country in which that company is incorporated or trust is formed;]**”;

(b) by the substitution in subsection (1) for the definition of “local currency” of the following definition:

“ ‘local currency’ means in relation to—

(a) **any exchange item which is attributable to any permanent establishment of a person outside the Republic, [any] the currency [which is legal tender in the country in which that permanent establishment is situated] used by that permanent establishment for purposes of financial reporting; or**

(b) **any resident in respect of an exchange item which is not attributable to a permanent establishment outside the Republic, any currency which is legal tender in the Republic;**

(c) **any [company or trust which] person that is not a resident in respect of any exchange item which is [not] attributable to a permanent establishment in the Republic, any currency which is legal tender in the [country in which that company is incorporated or trust is formed] Republic;”;**

(c) by the deletion in subsection (1) of the word “or” at the end of paragraph (b) of the definition of “realised” and the addition of the word “or” at the end of paragraph (c) of that definition;

(d) by the addition in subsection (1) to the definition of “realised” of the following paragraph:

“(d) **an amount which constitutes a unit of currency, when that amount is disposed of;”;**

(e) by the substitution in subsection (1) for item (bb) of subparagraph (ii) of paragraph (c) of the definition of “ruling exchange rate” of the following item:

“(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**

- [(4)(a)] (3)(b) by the foreign currency amount, as specified in such affected contract;”;
- (f) by the insertion in subsection (1) before the proviso to the definition of “ruling exchange rate” of the following paragraph:
- “(d) an amount which constitutes a unit of currency, on— 5
- (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;”;
- (g) by the deletion in subsection (1) of the word “and” at the end of paragraph (e) of the definition of “transaction date” and by the addition of the word “and” 10 at the end of paragraph (f) of that definition;
- (h) by the addition in subsection (1) to the definition of “transaction date” of the following paragraph:
- “(g) an amount which constitutes a unit of currency, the date on which that amount was acquired;”; 15
- (i) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
- “The provisions of this [subsection] section shall apply in respect of any—”;
- (j) by the deletion in subsection (2) of the word “and” at the end of paragraph (b); 20
- (k) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
- “(c) natural person who holds any amount contemplated in paragraph (a) or (b) of the definition of ‘exchange item’ [for purposes of trade] as trading stock; and”; 25
- (l) by the addition to subsection (2) of the following paragraph:
- “(d) natural person or trust in respect of any amount contemplated in paragraph (c) or (d) of the definition of ‘exchange item.’;”
- (m) by the deletion of subsection (4);
- (n) by the substitution for subsections (10), (11) and (12) of the following 30 subsections:
- “(10) No [deduction shall be allowed] amount shall be included in or deducted from the income of—
- (a) any [person] resident in terms of this section in respect of any exchange difference [arising from a transaction entered into by such person with any] determined on the translation of an exchange item to which that resident and any company are parties, where that company is a controlled foreign [entity] company in relation either to [that person or any connected person in relation to that controlled foreign entity, to the extent that the income attributable to that transaction is not included in the net income of that controlled foreign entity for purposes of section 9D] 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 35
- (b) any controlled foreign company contemplated in paragraph (a): 45
- 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. 50
- (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— 55
- (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; 60
- (ii) any asset the currency of expenditure of which is denominated in the local currency of that person; or

- (iii) [to] in respect of which the provisions of section 9G or paragraph [43(1) or (2)] 43(4) of the Eighth Schedule applies; and
- (b) any forward exchange contract or foreign currency option contract entered into to hedge such loan, advance or debt. 5
- (12) Where a person holds any **[amount contemplated in paragraph (a), (b), (c) or (d) of the definition of 'exchange item' otherwise than as trading stock]** exchange item and the provisions of this section at any time during a year of assessment—
- (a) become applicable to that person, that **[amount]** exchange item shall be deemed to **[be an exchange item which has]** have been acquired at that time for the purposes of this section; or 10
- (b) cease to apply to that person, that **[amount]** exchange item shall be deemed to **[be an exchange item which has]** have been realised at that time for the purposes of this section.”. 15
- (2) Subsection (1) shall—
- (a) in so far as it deletes subsection (4) and amends subsection (10) of section 24I of the Income Tax Act, 1962, be deemed to have come into operation on 1 October 2001; and
- (b) in so far as it amends the rest of section 24I the date of promulgation of this Act and shall apply in respect of years of assessment commencing on or after that date. 20

Substitution of section 25D of Act 58 of 1962, as inserted by section 33 of Act 59 of 2000 and substituted by section 37 of Act 60 of 2001

28. (1) Section 25D of the Income Tax Act, 1962, is hereby substituted as follows: 25

“Determination of taxable income in foreign currency

25D. The amount of any taxable income derived by **[any resident from a source outside the Republic (other than by way of any foreign dividend as contemplated in section 9E), shall]** a person during any year of assessment from amounts received by or accrued to, or expenditure incurred by, that person which are denominated in any currency other than currency of the Republic, shall be determined— 30

- (a) in that currency; or
- [(a)](b)** where **[such]** that income is attributable to a permanent establishment of that [resident] person outside the Republic, be determined in the [relevant] currency [of the country in which that permanent establishment is situated, if the financial records of that permanent establishment are kept in that currency, and the amount of the taxable income so determined shall be converted on the last day of the relevant year of assessment to the currency of the Republic and the ruling exchange rate at that date, or any other exchange rate or rates as the Commissioner may approve taking into account the ruling exchange rates during such year of assessment, shall be applied to determine the value of the amount of the taxable income so derived] used by that permanent establishment for purposes of financial reporting, 35 40 45

and the amount so determined shall be translated to the currency of the Republic by applying the average exchange rate for that year of assessment]; or 50

- (b) in any other case, be determined in the currency of the Republic].”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any year of assessment commencing on or after that date.

Amendment of section 27 of Act 58 of 1962, as amended by section 17 of Act 113 of 1977, section 11 of Act 101 of 1978, section 19 of Act 104 of 1980, section 21 of Act 96 of 1981, section 15 of Act 96 of 1985, section 18 of Act 85 of 1987, section 22 of Act 90 of 1988, section 28 of Act 129 of 1991, section 23 of Act 141 of 1992, section 23 of Act 113 of 1993, section 15 of Act 36 of 1996 and section 34 of Act 59 of 2000 5

29. Section 27 of the Income Tax Act, 1962, is hereby amended by the substitution for the proviso in paragraph (a) of subsection (2) of the following proviso:

“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 section 11bis] 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;” 10 15

Amendment of section 29A of Act 58 of 1962, as inserted by section 30 of Act 53 of 1999 and amended by section 36 of Act 59 of 2000, section 15 of Act 5 of 2001, section 15 of Act 19 of 2001 and section 39 of Act 60 of 2001

30. Section 29A of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (11) of paragraph (b). 20

Amendment of section 30 of Act 58 of 1962, as inserted by section 35 of Act 30 of 2000 and amended by section 16 of Act 19 of 2001 and section 22 of Act 30 of 2002

31. (1) Section 30 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (f) of paragraph (3) of the following subparagraph: 25

“(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 [(b)]10(iii) of [the definition of “public benefit activity”] 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”; 30

(b) by the deletion of subsection (11).

(2) Subsection (1)(a) shall be deemed to have come into operation on 5 August 2002.

Amendment of section 35 of Act 58 of 1962, as amended by section 20 of Act 90 of 1962, section 20 of Act 65 of 1973, section 27 of Act 85 of 1974, section 24 of Act 94 of 1983, section 21 of Act 21 of 1994 and section 39 of Act 59 of 2000 35

32. (1) Section 35 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(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—” 40

(b) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) The general provisions contained in Parts I to VI of Chapter III of this Act shall *mutatis mutandis* apply in respect of payments made to the Commissioner in terms of paragraph (a).” 45

(2) Subsection (1)(a) shall come into operation on the date of promulgation of this Act and shall apply in respect of any amount received or accrued on or after that date.

Amendment of section 38 of Act 58 of 1962, as amended by section 21 of Act 90 of 1962, section 16 of Act 90 of 1964, section 28 of Act 89 of 1969, section 31 of Act 85 of 1974, section 27 of Act 94 of 1983, section 24 of Act 121 of 1984, section 32 of Act 53 of 1999, section 36 of Act 30 of 2000 and section 43 of Act 60 of 2001

33. Section 38 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph (i) of the following paragraph: 5

“(i) any [unit] portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of ‘company’ in section one.”.

Substitution for Part III of Chapter 2 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 10

34. (1) The following Part is hereby substituted for Part III of Chapter II of the Income Tax Act, 1962:

“PART III

Special rules relating to company formations, share-for-share transactions, amalgamation transactions, intra-group transactions, unbundling transactions and liquidation distributions. 15

General

41. (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— 20

‘allowance asset’ means a capital asset qualifying for a deduction or allowance under the provisions of the Act;

‘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; 25

‘capital asset’ means an asset as defined in paragraph 1 of the Eighth Schedule, which does not constitute trading stock; 30

‘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; 35

‘domestic financial instrument holding company’ means any company which is a resident, where more than 50 per cent of the market value or actual cost of all the assets of that company together with the assets of all controlled group companies in relation to that company consists of financial instruments, other than— 40

(a) a 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 where the amount of that debt is or was included in the income of that company (or of any controlled group company in relation to that company) and that debt is an integral part of a business conducted by that company as a going concern; or 45

(b) a financial instrument of any company regulated in terms of—

(i) the Banks Act, 1990 (Act No. 94 of 1990); 50

(ii) the Financial Markets Control Act, 1989 (Act No. 55 of 1989);

(iii) the Long Term Insurance Act, 1998 (Act No. 52 of 1998);

(iv) the Short Term Insurance Act, 1998 (Act No. 53 of 1998);

(v) the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or 55

(vi) the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or its successor the Collective Investment Schemes Control Act, 2002:

Provided that in determining the 50 per cent ratio, the following will 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 if both the debtor and creditor companies are members within the same group of companies;

'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 a foreign financial holding company as defined in section 9D;

'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 or income 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

'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 section 103.

(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 No. 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 No. 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 the Commissioner 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 5
 - (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— 10
 - (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 15
 - (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; 20
 - (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 25
 - (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. 30
- (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. 35
- (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. 40

Company Formations

- 42. (1)** For the purposes of this section 'company formation transaction' means any transaction— 45
- (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 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), 50
 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; 55
 - (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 60
 - (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 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, which amount must, where those equity shares are acquired as—
 - (aa) 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
 - (bb) 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
- (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).
- (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) Subject to subsection (8), where—
 - (a) a person disposes of an asset to a company in terms of a company formation transaction; and
 - (b) that person in exchange for that asset, becomes entitled to any consideration in addition to any equity shares issued by the company to that person,
 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; or
 - (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 total amount 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.
 - (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 which were not disposed of immediately before 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 equity shares not disposed of immediately after that person ceased to hold a qualifying interest at a cost equal to the amount contemplated in paragraph (a):

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 as the result of the death of that person.

(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 5
 - (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), 10
 - 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), 15 20
- that person must, notwithstanding the fact that that person may be liable as surety for the payment of the debt referred to in subparagraphs (a) or (b), treat the face value of that debt as a capital distribution of cash in respect of that equity share, for the purposes of paragraph 76 of the Eighth Schedule, or as income to be included in that person's income when that person disposes of that equity share. 25
- (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 as defined in paragraph 1 of the Eighth Schedule, unless— 30
- (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 35
 - (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 40
 - (c) that financial instrument is being transferred to any company regulated in terms of—
 - (i) the Banks Act, 1990 (Act No. 94 of 1990);
 - (ii) the Financial Markets Control Act, 1989 (Act No. 55 of 1989);
 - (iii) the Long Term Insurance Act, 1998 (Act No. 52 of 1998); 45
 - (iv) the Short Term Insurance Act, 1998 (Act No. 53 of 1998);
 - (v) the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or
 - (vi) the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or its successor the Collective Investment Schemes Control Act, 2002. 50
- (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. 55

Share-for-share transactions

43. (1) For the purposes of this section, a 'share-for-share transaction' means any transaction—

- (a) in terms of which any person (other than a trust which is not a special trust) disposes of an equity share, the market value of which exceeds— 60

- (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
 - (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.
- (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.
- (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 total amount 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.

(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 target shares acquired in terms of that share-for-share transaction which were not disposed of immediately before 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
- (b) immediately reacquired all the target shares not disposed of immediately after that person ceased to hold such an interest at a cost equal to the amount contemplated in paragraph (a):

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 as the result of the death of that person.

(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 shares in that target company), that acquiring company must for purposes of section 22 or the Eighth Schedule be deemed to have—

- (a) disposed of all the equity shares in the target company acquired in terms of that share-for-share transaction which were not disposed of immediately before that acquiring company 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
- (b) immediately reacquired all the equity shares not disposed of immediately after that acquiring company ceased to hold such an interest at a cost equal to the amount contemplated in paragraph (a):

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.

(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 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 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 any 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 as defined in section 9D.

(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.

Amalgamation transactions

44. (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 to another company (hereinafter referred to as the 'resultant company') which is a resident, by means of an amalgamation, conversion or merger; and
- (b) as a result of which that amalgamated company's existence will be terminated;

'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 incurral by that amalgamated company of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and 5
 - (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— 10
 - (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 incurral 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). 15 20
- (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— 25
 - (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 30
 - (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 35
 - (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— 40 45
 - (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— 50
 - (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. 55
- (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 an equity share or shares in that resultant company. 60

(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 close 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; and
 - (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, 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).

(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 total amount 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.

(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—
- (i) not to be a dividend which accrued to that company for the purposes of section 64B(3); and
 - (ii) to be profits which are not of a capital nature for the purposes of section 64B(5)(c);
- (10) The amount of any other consideration to which a person becomes entitled as contemplated in subsection (7)(b) must for purposes of section 64B be deemed to be a dividend declared and distributed out of profits of that amalgamated company.
- (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 which were not disposed of immediately before 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
 - (b) immediately reacquired all the equity shares not disposed of immediately after that person ceased to hold such an interest at a cost equal to the amount contemplated in paragraph (a);
- Provided that the provisions of this subsection do not apply where that person ceases to hold an 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, or an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or as the result of the death of that person.
- (12) The provisions of subsections (2) and (3) do not apply 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 amalgamated company in respect of goods sold or services rendered by that amalgamated company in the course of carrying on any business where the amount of that debt is or was included in the income of that amalgamated company and that debt is transferred as an integral part of a going concern;
 - (ii) that financial instrument constitutes an equity share in or a debt owed by a controlled group company in relation to that amalgamated 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; or
 - (iii) the total market value, immediately prior to that disposal, of all financial instruments so disposed of (other than financial instruments contemplated in paragraph (i) or (ii)), 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
 - (iv) that financial instrument is being transferred to any resultant company regulated in terms of—
 - (aa) the Banks Act, 1990 (Act No. 94 of 1990);
 - (bb) the Financial Markets Control Act, 1989 (Act No. 55 of 1989);
 - (cc) the Long Term Insurance Act, 1998 (Act No. 52 of 1998);
 - (dd) the Short Term Insurance Act, 1998 (Act No. 53 of 1998);

(ee) the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or

(ff) the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or its successor the Collective Investment Schemes Control Act, 2002; or

(b) all the receipts and accruals of the resultant company are exempt from tax in terms of section 10(1)(cA), (cH), (cM), (cN), (d), (t) and (tA).

(13) The provisions of subsections (2) and (3) do not apply where the amalgamated company 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: Provided that any tax which becomes payable as a result of the application of this subsection shall be recoverable from the resultant company.

Intra-group transactions

45. (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 on the date of that transaction;

(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) Where an asset is disposed of by a transferor company to a transferee company in terms of an intra-group transaction and the transferor company and the transferee company at any time before the disposal by the transferee company of that asset, cease to form part of any group of companies in relation to each other, that transferee company must be deemed to have disposed of that asset for an amount equal to the market value of that asset on the date on which the disposal in terms of that intra-group transaction was effected and as having immediately reacquired that asset for a cost equal to that market value: Provided that where the transferor company or transferee company is liquidated or deregistered as contemplated in section 47, the holding company and the liquidating company, as contemplated in that section, must be deemed to be one and the same company for purposes of this subsection.

(5) Where a transferee company disposes of an asset 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 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 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.
- (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)), 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
- (iii) that financial instrument is being transferred to any transferee company regulated in terms of—
- (aa) the Banks Act, 1990 (Act No. 94 of 1990);
- (bb) the Financial Markets Control Act, 1989 (Act No. 55 of 1989);
- (cc) the Long Term Insurance Act, 1998 (Act No. 52 of 1998);
- (dd) the Short Term Insurance Act, 1998 (Act No. 53 of 1998);
- (ee) the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or
- (ff) the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or its successor the Collective Investment Schemes Control Act, 2002; or
- (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; or
- (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).

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Unbundling transactions

46. (1) For purposes of this section, 'unbundling transaction' means any transaction in terms of which equity shares of a company which is a resident (hereinafter referred to as the 'unbundled company')—

- (a) are disposed of by a company (hereinafter referred to as the 'unbundling company') which, if listed, is a resident; 10
- (b) to the extent those shares (hereinafter referred to as 'distributable shares') so disposed of were acquired by that unbundling company—
- (i) at least 18 months immediately prior to that disposal, and for purposes of this subsection, that unbundling company must be deemed to have acquired— 15
- (aa) any shares acquired in terms of a substitution, as contemplated in paragraph 78(2) of the Eighth Schedule, at the same time as the previously held shares exchanged therefor;
- (bb) any shares previously held by one or more other companies which all formed part of the same group of companies as that unbundling company during that 18 month period at the same time as those shares were acquired by any of those companies; 20
- (cc) any shares acquired in terms of any transaction contemplated in this Part or any transaction that would have constituted a transaction contemplated— 25
- (i) in section 42, 45 or 47 had an election been made for the provisions of that section to apply; or
- (ii) in section 42, 43 or 44 had the market value of the asset transferred in exchange for those shares exceeded the base cost or the amount taken into account in respect of that asset as contemplated in section 42(1)(a), 43(1)(a) or 44(6); or 30
- (ii) in exchange for an issue of equity shares by that unbundling company; and 35
- (c) at least 18 months immediately prior to that disposal all the distributable shares—
- (i) where that unbundled company is a listed company, constitute— 40
- (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 45
- (ii) where that unbundled company is an unlisted company, constitute more than 50 per cent of the equity shares of that unbundled company; and
- all the equity shares contemplated in subparagraph (a) are disposed of— 50
- (i) where that unbundling company is a listed company, to the shareholders of that unbundling company as long as the shares of the unbundled company are listed within 12 months after that disposal; or
- (ii) 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, 55
- in accordance with the effective interest of those shareholders or that shareholder, as the case may be, in the shares of that unbundling company.
- (2) Where an unbundling company disposes of any distributable shares to a shareholder in terms of an unbundling transaction that unbundling company must be deemed to have disposed of those shares for proceeds equal to— 60