

- (a) in the case of shares held as capital assets, the base cost of those shares on the date of that disposal; or
- (b) in the case of shares held as trading stock, the amount taken into account in respect of those shares in terms of section 11(a) or 22(1) or (2). 5
- (3) Where a shareholder acquires distributable shares in terms of an unbundling transaction—
- (a) that shareholder must be deemed to have acquired the equity shares held in the unbundling company (hereinafter referred to as the 'previously held shares') and those distributable shares at a cost equal to— 10
- (i) where the previously held shares were held by that shareholder as trading stock, the amount taken into account by that person in respect of the previously held shares as contemplated in section 11(a) or 22(1) or (2); or 15
- (ii) where the previously held shares were held by that shareholder as capital assets, the expenditure in respect of those shares allowable in terms of paragraph 20 of the Eighth Schedule, or the amount of the market value of those shares determined by that shareholder as contemplated in paragraph 29(4) of the Eighth Schedule; and 20
- (b) that shareholder must determine the portion of the cost contemplated in paragraph (a) that must be attributed to those distributable shares, by determining an amount which bears to that cost the same ratio that the market value of those distributable shares, as at the close of the day after the date of that disposal, bears to the sum of the market values, as at the close of that day, of the previously held shares and of those distributable shares, which amount must, where the shareholder held the previously held shares as— 25
- (i) capital assets and acquired those distributable shares as capital assets, be treated as an expenditure actually incurred and paid by that shareholder in respect of those distributable shares for the purposes of paragraph 20 of the Eighth Schedule; or 30
- (ii) trading stock and acquired those distributable shares as trading stock, be treated as the amount to be taken into account by that shareholder in respect of those distributable shares for the purposes of section 11(a) or 22(1) or (2); and 35
- (c) that shareholder must determine the portion of the cost contemplated in paragraph (a) that must be attributed, after that unbundling transaction, to the previously held shares, by reducing that cost by the amount determined in terms of paragraph (b); 40
- (d) that shareholder's previously held shares and those distributable shares must be deemed to be the same shares in respect of the date of acquisition of those shares and the date of incurral of any expenditure in respect of those shares. 45
- (4) Where distributable shares are disposed of by an unbundling company to a shareholder in terms of an unbundling transaction and that shareholder held the previously held shares in that unbundling company as a result of the exercise, by that shareholder, of a right contemplated in section 8A, a portion of any gain made by that shareholder in the exercise of that right to acquire those previously held shares must be included in the income of that shareholder— 50
- (a) in the year of assessment during which that shareholder becomes entitled to dispose of those distributable shares, which portion shall be an amount which bears to such gain the same ratio as that contemplated in paragraph (3)(b); and 55
- (b) in the year of assessment during which that person becomes entitled to dispose of the previously held shares, which portion shall be calculated by reducing such gain by the amount which has been determined or is to be determined in terms of paragraph (a). 60
- (5) Where distributable shares are disposed of by an unbundling company to a shareholder in terms of an unbundling transaction—

- (a) the disposal by that unbundling company of the distributable shares must be deemed not to be a dividend with respect to that unbundling company for the purposes of section 64B(3); and
- (b) any distributable 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).
- (6) Any distributable shares disposed of by an unbundling company in terms of an unbundling transaction, must be deemed to have been disposed of first from the share premium account of that unbundling company.
- (7) The provisions of this section do not apply—
  - (a) where the unbundled company is a domestic financial instrument holding company immediately prior to that disposal; or
  - (b) in respect of any disposal of distributable shares in terms of an unbundling transaction to a shareholder who is not a resident, where that shareholder acquires more than five per cent of those distributable shares.

#### Transactions relating to liquidation, winding-up and deregistration 20

- 47. (1)** For the purposes of this section 'liquidation distribution' means any transaction—
- (a) in terms of which any company (hereinafter referred to as the 'liquidating company') disposes of all its assets in anticipation of or in the course of the liquidation, winding up or deregistration of that company to another company (hereinafter referred to as the 'holding company') which is a resident and which holds, on the date of that disposal, at least 75 per cent of the equity shares of that liquidating company; and
  - (b) in respect of which that liquidating company and that holding company have jointly elected that this section applies in respect of all the assets so disposed of by that liquidating company to that holding company.
- (2) Where a liquidating company disposes of—
- (a) a capital asset in terms of a liquidation distribution to its holding company which acquires it as a capital asset—
    - (i) that liquidating company must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of the disposal thereof; and
    - (ii) that liquidating company and that holding company must, for purposes of determining any capital gain or capital loss in respect of a disposal of that asset by that holding company, be deemed to be one and the same person with respect to—
      - (aa) the date of acquisition of that asset by that liquidating company and the amount and date of incurral by that liquidating company of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and
      - (bb) any valuation of that asset effected by that liquidating company as contemplated in paragraph 29(4) of the Eighth Schedule; or
  - (b) an asset held by it as trading stock in terms of a liquidation distribution to its holding company which acquires it as trading stock—
    - (i) that liquidating company must be deemed to have disposed of that asset for an amount equal to the amount taken into account by that liquidating company in respect of that asset in terms of section 11(a) or 22(1) or (2), and
    - (ii) that liquidating company and that holding company must, for purposes of determining any taxable income derived by that holding company from a trade carried on by it, be deemed to be one and the same person with respect to the date of acquisition of that asset by that liquidating company and the amount and date of

incurred by that liquidating company of any cost or expenditure incurred in respect of that asset as contemplated in section 11(a) or 22(1) or (2).

(3) Where a liquidating company disposes of—

- (a) an asset that constitutes an allowance asset in that liquidating company's hands to its holding company in terms of a liquidation distribution and that holding company acquires that asset as an allowance asset—
    - (i) no allowance allowed to that liquidating company in respect of that asset must be recovered or recouped by that liquidating company or included in that liquidating company's income for the year of that transfer; and
    - (ii) that liquidating company and that holding company must be deemed to be one and the same person for purposes of determining the amount of any allowance—
      - (aa) to which that holding company may be entitled in respect of that asset; or
      - (bb) that is to be recovered or recouped by or included in the income of that holding company in respect of that asset; or
  - (b) a contract to its holding company as part of a disposal of a business as a going concern in terms of a liquidation distribution and that contract imposes an obligation on that liquidating company in respect of which an allowance in terms of section 24C was allowable to that liquidating company for the year preceding that in which that contract is transferred or would have been allowable to that liquidating company for the year of that transfer had that contract not been so transferred—
    - (i) no allowance allowed to that liquidating company in respect of that obligation must be included in that liquidating company's income for the year of that transfer; and
    - (ii) that liquidating company and that holding company must be deemed to be one and the same person for purposes of determining the amount of any allowance—
      - (aa) to which that holding company may be entitled in respect of that obligation; or
      - (bb) that is to be included in the income of that holding company in respect of that obligation.
- (4) Where the holding company acquires any asset from the liquidating company in terms of a liquidation distribution and that holding company disposes of that asset within a period of 18 months after so acquiring that asset and—
- (a) that asset constitutes a capital asset in the hands of that holding company—
    - (i) so much of any capital gain determined in respect of the disposal of that asset as does not exceed the amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date, may not be taken into account in determining any net capital gain or assessed capital loss of that holding company but is subject to paragraph 10 of the Eighth Schedule for 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 holding company; or
    - (ii) so much of any capital loss determined in respect of the disposal of that asset as does not exceed the amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date must be disregarded in determining the aggregate capital gain or aggregate capital loss of that holding company for purposes of the Eighth Schedule: Provided that the amount of any capital loss so disregarded may be deducted from the amount of any capital gain determined in respect of the disposal during that year or any subsequent year of assessment of

- any other asset acquired by that holding company from the liquidating company in terms of that liquidation distribution; or
- (b) that asset constitutes—
- (i) trading stock in the hands of that holding company, so much of the amount received or accrued in respect of the disposal of that trading stock as does not exceed the market value of that trading stock as at the beginning of that period of 18 months and so much of the amount taken into account in respect of that trading stock in terms of section 11(a) or 22(1) or (2) as is equal to the amount so taken into account in terms of subsection (2)(b); or
  - (ii) an allowance asset in the hands of that holding company, so much of any allowance in respect of that asset that is recovered or recouped by or included in the income of that holding company as a result of that disposal as does not exceed the amount that would have been recovered had that asset been disposed of at the beginning of that period of 18 months for an amount equal to the market value of that asset as at that date,
- must be deemed to be attributable to a separate trade carried on by that holding company, the taxable income or assessed loss from which trade may not be set off against or added to any assessed loss or balance of assessed loss of that holding company.
- (5) Where a holding company disposes of any equity share in a liquidating company as a result of the liquidation of that liquidating company, that holding company must be treated to have disposed of that share for an amount equal to—
- (a) in the case of that 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).
- (6) The provisions of this section do not apply where—
- (a) all the receipts and accruals of the holding company are exempt from tax in terms of section 10(1)(cA), (cH), (cM), (cN), (d), (t) and (tA);
  - (b) the liquidating company constitutes a domestic financial instrument holding company or foreign financial instrument holding company immediately prior to that disposal;
  - (c) the liquidating company has not, within a period of six months after the date of the liquidation distribution, taken such steps contemplated in section 41(4) to liquidate, wind up or deregister that company: Provided that any tax which becomes payable as a result of the application of this paragraph shall be recoverable from the holding company.”.

(2) Subsection (1) shall come into operation on 6 November 2002 and shall apply in respect of any disposal on or after that date.

**Amendment of section 56 of Act 58 of 1962, as amended by section 18 of Act 90 of 1964, section 25 of Act 55 of 1966, section 33 of Act 89 of 1969, section 38 of Act 85 of 1974, section 21 of Act 113 of 1977, section 13 of Act 101 of 1978, section 23 of Act 96 of 1981, section 31 of Act 94 of 1983, section 4 of Act 30 of 1984, section 28 of Act 121 of 1984, section 18 of Act 96 of 1985, section 21 of Act 85 of 1987, section 26 of Act 90 of 1988, section 28 of Act 141 of 1992, section 32 of Act 113 of 1993, section 18 of Act 36 of 1996, section 39 of Act 30 of 1998, section 38 of Act 30 of 2000, section 41 of Act 59 of 2000, section 45 of Act 60 of 2001 and section 24 of Act 30 of 2002**

35. Section 56 of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (q); and
- (b) by the addition to subsection (1) of the following paragraph:
 

“(r) to the extent that the disposal is deemed to be a dividend in terms of section 64C.”

Amendment of section 64B of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995, section 21 of Act 36 of 1996, section 13 of Act 46 of 1996, section 25 of Act 28 of 1997, section 35 of Act 53 of 1999, section 39 of Act 30 of 2000, section 42 of Act 59 of 2000, section 18 of Act 5 of 2001, section 48 of Act 60 of 2001 and section 25 of Act 30 of 2002 5

36. (1) Section 64B of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subsection (1) of the definitions of “affected company”, “holding company” and “intermediate company”;
- (b) by the substitution in subsection (1) for the definition of “intermediate company” of the following definition: 10

“‘intermediate company’ means any company at least 75 percent of whose equity share capital is held by—

- (a) the first-mentioned company in the definition of [‘**holding company**’] [‘**controlling group company**’]; or 15
- (b) (i) one or more companies which are intermediate companies in terms of paragraph (a); or
- (ii) a [‘holding company’] controlling group company and one or more companies referred to in subparagraph (i);”;
- (c) by the substitution in subsection (5) for paragraph (c) of the following 20 paragraph:

“(c) so much of any dividend distributed in the course or in anticipation of the liquidation or winding up or deregistration of a company, as is shown by the company to be a—

- (i) distribution of profits derived during any year of assessment 25 which ended not later than 31 March 1993, (other than any such profits derived by way of the revaluation of trading stock held by such company); or

- (ii) distribution of profits of a capital nature (other than capital profits attributable to the disposal of any asset on or after 1 October 2001 which capital profits must, in the case of an asset acquired before that date, be limited to the amount of profit determined as if that asset had been acquired on 1 October 2001 for a cost equal to the market value of that asset on that date as contemplated in paragraph 29 of the Eighth Schedule): 30

Provided that where such dividend is distributed in anticipation of the liquidation or winding-up or deregistration of a company and such company—

- (i) has not within six months taken such steps as [may be 40 **prescribed by the Minister by regulation in the Gazette**] contemplated in section 41(4) to liquidate, wind up or deregister that company [**within such period specified by the Minister in those regulations**]; or
- (ii) has at any stage withdrawn any step taken to liquidate, wind up 45 or deregister that company, as contemplated in paragraph (i), or does anything to invalidate any such step so taken, with the result that the company is or will not be liquidated, wound up or deregistered,

the provisions of this paragraph and of subsection (3)(b) shall be 50 deemed not to have applied to such dividend and any secondary tax on companies which becomes payable as a result thereof shall be recoverable from the shareholders to whom such dividend was distributed in the same proportion as such dividend was so distributed.”; 55

- (d) by the substitution in subsection (5) for paragraph (d) of the following paragraph:

“(d) so much of any dividend declared by a [unit] portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of “company” in section 1 as represents a distribution [of 60 **interest or**] of dividends referred to in section 11(s) received by or accrued to such [unit] portfolio;”;

- (e) by the substitution in subsection (5) for paragraph (f) of the following paragraph:

“(f) any dividend declared by a company to a shareholder (as defined in Part III) of that company if—

- (i) that shareholder is a company forming part of the same group of companies as the company declaring the dividend; 5
- (ii) to the extent the dividend is derived out of profits earned by the company declaring the dividend during any period when that company formed part of the same group of companies as the shareholder to whom the dividend was declared; 10
- (iii) that shareholder is a resident;
- (iv) at least 90 per cent of that shareholders’ profits (excluding profits derived by way of dividends) were derived from a source within the Republic during the three years of assessment immediately preceding the date of declaration; and 15
- (v) the company declaring the dividend elects the exemption under this paragraph to apply by submitting this election—
  - (aa) no later than the last day on which the secondary tax on companies would otherwise be due but for this paragraph (or no later than any other subsequent date prescribed by the Commissioner), and 20
  - (bb) in such form as the Commissioner may prescribe;”;

- (f) by the substitution in subsection (10) for paragraph (a) of the following paragraph:

“(a) in the case of a company [which is listed on a recognized stock exchange] contemplated in paragraph (a) or (b) of the definition of ‘listed company’ or a subsidiary (as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973)), of any such company, it had not prior to that date paid the dividend to the shareholders concerned or publicly announced the declaration thereof; or”.

(2) (a) Subsection (1)(a), (b) and (e) shall come into operation on the date of promulgation of this Act.

(b) Subsection (1)(c) shall come into operation on 1 January 2003 and shall apply in respect of any dividend declared on or after that date.

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

**Amendment of section 64C of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 13 of Act 140 of 1993, section 25 of Act 21 of 1994, section 30 of Act 21 of 1995, section 22 of Act 36 of 1996, section 40 of Act 30 of 1998, section 36 of Act 53 of 1999, section 40 of Act 30 of 2000 and section 43 of Act 59 of 2000**

37. (1) Section 64C of the Income Tax Act, 1962, is hereby amended—

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

“‘share incentive scheme’ means a scheme in terms of which not more than 20 per cent of the equity share capital of a company is—

- (a) held by the directors and full-time employees of—
  - (i) such company; or
  - (ii) an associated institution, as defined in paragraph 1 of the Seventh Schedule, in relation to such company, in terms of a share incentive scheme carried on for their own benefit; 50
- (b) held by a trustee for the benefit of such directors and employees under a scheme referred to in section 38(2)(b) of the Companies Act, 1973 (Act 61 of 1973); or 55
- (c) collectively held by such directors and full-time employees, and such a trustee.”;

- (b) by the substitution for subsection (2) of the following subsection:

“(2) For the purposes of section 64B any amount which is in terms of subsection (3) deemed to have been distributed by a company [to a recipient, ] shall, subject to the provisions of subsection (4), be deemed

- to be a dividend declared by such company out of that company's profits (determined in respect of the most recent year of assessment and which are available for distribution) to a shareholder, where that shareholder—  
 (a) receives a deemed distribution as contemplated in subsection (3); or  
 (b) is a connected person in relation to any person who receives a deemed distribution as contemplated in subsection (3),  
 notwithstanding the fact that such amount may have been so distributed by way of a loan or credit to the recipient or that the recipient may in consequence of such distribution have assumed any other form of obligation to make a future payment to the company.”;
- (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:  
 “(3) For the purposes of subsection (2) an amount shall be deemed to have been distributed by a company [to a recipient] if—”;
- (d) by the substitution in subsection (4) of paragraph (h) of the following paragraph:  
 “(h) to a loan made by any company to any other company within the same group of companies if that loan is utilised by that other company in the Republic.”
- (2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any amount distributed on or after that date.

**Amendment of section 66 of Act 58 of 1962, as amended by section 10 of Act 6 of 1963, section 19 of Act 90 of 1964, section 27 of Act 88 of 1971, section 22 of Act 91 of 1982, section 19 of Act 65 of 1986, section 23 of Act 85 of 1987, section 37 of Act 101 of 1990, section 26 of Act 21 of 1994, section 41 of Act 30 of 2000, section 19 of Act 5 of 2001, section 17 of Act 19 of 2001 and section 26 of Act 30 of 2002**

38. (1) Section 66 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:  
 “(a) The Commissioner shall annually give public notice that all persons who are personally or in a representative capacity liable to taxation under the provisions of this Act [and] or are required to furnish returns for the assessment of tax, shall within sixty days after the date of such notice, or within such further time as the Commissioner may for good cause allow, furnish returns for the purposes of assessments in respect of the years of assessment specified in such notice.”;
- (b) by the substitution in subsection (1) for subparagraph (vi) of paragraph (b) of the following subparagraph:  
 “(vi) any resident who holds any funds in foreign currency as defined in section 78(3) or owns any assets outside the Republic, or to whom any income or gain from any funds in foreign currency or assets outside the Republic would be attributable during the relevant year of assessment in terms of section 7 or Part X of the Eighth Schedule.”;
- (c) by the substitution for subsection (13) of the following subsection:  
 “(13) The return of income to be made by any person [in respect of the year of assessment ended the thirtieth day of June, 1962, or by any person (other than a company)] in respect of any year of assessment [referred to in subparagraph (i) of paragraph (b) of subsection (1) of section five] shall be a full and true return—  
 (a) in the case of a person (other than a company), for the whole period of twelve months ending upon the last day of the year of assessment under charge; or  
 (b) in the case of a company, for the whole period of the relevant financial year of that company comprising the year of assessment: [Provided that where it is established to the satisfaction of the Commissioner that the income of a person cannot be conveniently returned for that period, the Commissioner may accept returns made up to a date agreed to by him which returns shall be deemed for all purposes of this Act to be returns for the periods covered by the years of assessment under charge, and

the taxpayer shall not without the consent of the Commissioner be entitled to make a return in respect of any subsequent year of assessment to a date other than the date so agreed to].”;

(d) by the deletion of subsections (13)*bis*, (13)*ter*, (13)*quat* and (13)*quin*;

(e) by the insertion after subsection (13) of the following subsections:

“(13A) Where—

(a) it is established to the satisfaction of the Commissioner that the whole or any portion of the income of any person to whom the provisions of subsection (13)(a) apply cannot be conveniently returned for any year of assessment, the Commissioner may, subject to such conditions as he or she may impose, accept accounts in respect of the whole or a portion of the taxpayer’s income drawn to a date agreed to by the Commissioner, whether for a longer or shorter period than the year of assessment under charge, and the income disclosed in any such accounts must be deemed to be income of that person in respect of that year under charge;

(b) any such accounts are drawn to a date later than the last day of the year of assessment, no further regard shall be had to the income disclosed by those accounts for purposes of any subsequent year of assessment;

(c) any such accounts are drawn to a date falling within the year of assessment and the person concerned dies or his or her estate is sequestrated during the interim period between that date and the last day of the year of assessment, any income received by or accrued to that person during that interim period must be deemed to be part of that person’s income for the year of assessment.

(13B) For the purposes of subsections (13), (13A) and (14), the word ‘income’ must be construed as including any aggregate capital gain or aggregate capital loss.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 July 2002 and shall apply in respect of years of assessment commencing on or after that date.

#### **Amendment of section 69 of Act 58 of 1962, as amended by section 41 of Act 30 of 1998**

39. Section 69 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) In addition to the returns specified in subsection (1), every person[, whether a taxpayer or not,] shall, if required by the Commissioner—”.

#### **Substitution of section 70A of Act 58 of 1962, as inserted by section 21 of Act 5 of 2001 and substituted by section 49 of Act 60 of 2001**

40. (1) The following section is hereby substituted for section 70A of the Income Tax Act, 1962:

#### **“Return of information by [Unit] Portfolio of Collective Investment Scheme**

70A. Any [unit] portfolio of a collective investment scheme contemplated in paragraph (e)(i) of the definition of ‘company’ in section 1, and any [unit] portfolio comprised in any [unit trust] collective investment scheme in property [shares authorised under the Unit Trust Control Act, 1981 (Act 54 of 1981) contemplated in Part V of the Collective Investment Schemes Control Act, 2002, managed or carried on by a company registered under section 42 of that Act for the purposes of Part V of that Act, shall furnish to the Commissioner an annual return in such form and within such time and containing such information as the Commissioner may prescribe.”.

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



# Substitution of section 71 of Act 58 of 1962

41. The following section is hereby substituted for section 71 of the Income Tax Act, 1962:

## “Return of payments in respect of bearer warrants

71. Every bank carrying on business in the Republic or company dealing in or negotiating bearer warrants shall keep a record in such form, including any electronic form, as the Commissioner may prescribe of all payments in respect of interest or dividends made to any person by means of bearer warrants, and shall in such manner and form and at such times as may be prescribed or as the Commissioner may require, furnish particulars of such payments.”

## Amendment of section 72A of Act 58 of 1962, as inserted by section 46 of Act 59 of 2000

42. (1) Section 72A of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the heading of the following heading:  
“Return as to participation right in controlled foreign [entity] company”;
- (b) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs:  
“(a) directly or indirectly holds not less than 10 per cent of the participation [or voting] rights [or control] in any controlled foreign [entity as contemplated in section 9D] company; and  
(b) together with any connected person in relation to such resident, in aggregate holds more than 50 per cent of the total participation [or voting] rights [or control] in such controlled foreign [entity] company.”;
- (c) by the substitution in subsection (1) for the words following paragraph (b) but preceding the proviso of the following words:  
“shall submit to the Commissioner a return containing the information contemplated in subsection (2) relating to such controlled foreign [entity] company, in such form and within such time as may be prescribed by the Commissioner.”;
- (d) by the substitution in subsection (2) for paragraphs (a), (b), (c) and (d) of the following paragraphs:  
“(a) the name, address and country of residence of such controlled foreign [entity] company;  
(b) a description of the various classes of participation rights in such controlled foreign [entity] company;  
(c) the percentage and class of participation [or voting] rights held by such resident whether directly, indirectly or together with connected persons;  
(d) the percentage and class of participation rights held by any other resident (who is a connected person in relation to such resident) who directly or indirectly holds not less than 10 per cent of the participation [or voting rights] in such controlled foreign [entity] company.”;
- (e) by the substitution in subsection (2) for the words in paragraph (e) preceding subparagraph (i) of the following words:  
“a description of the receipts and accruals of such controlled foreign [entity] company which are—”;
- (f) by the substitution in subsection (2) for paragraph (f) of the following paragraph:  
“(f) a description of any amount of tax proved to be payable by such controlled foreign [entity] company to the government of any other country in respect of any income contemplated in paragraph (e)(i), including particulars relating to the country in which such tax was payable and the underlying profits to which such foreign tax relates.”;

- (g) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) have available for submission to the Commissioner when so requested, an income statement and balance sheet of such controlled foreign **[entity] company** prepared in accordance with the laws of the country of which such controlled foreign **[entity] company** is a resident, or internationally accepted accounting practice.”.

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

**Amendment of section 73A of Act 58 of 1962, as inserted by section 22 of Act 5 of 2001**

43. Section 73A of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) A person **[whose gross income consists of amounts other than those derived solely by way of salary, wages or similar compensation for personal service shall]** who is required to render a return or who is not so required but has rendered a return must retain all records relevant to that return for a period of **[four]** five years from the date upon which the return relevant to the last entry in those records was received by the Commissioner.”; and

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

“(3) The records contemplated in subsection (1) must be retained in such form, including any electronic form, as may be prescribed by the Commissioner.”.

**Amendment of section 73B of Act 58 of 1962, as inserted by section 22 of Act 5 of 2001**

44. Section 73B of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) A person **[shall]** must retain all records required to determine the taxable capital gain or assessed capital loss of that person for a period of **[four]** five years from the date on which the return for that year of assessment was received by the Commissioner.”; and

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

“(4) The records contemplated in subsections (1) and (2) must be retained in such form, including any electronic form, as may be prescribed by the Commissioner.”.

**Amendment of section 75 of Act 58 of 1962, as amended by section 40 of Act 101 of 1990, section 34 of Act 129 of 1991, section 30 of Act 141 of 1992, section 35 of Act 113 of 1993, section 27 of Act 21 of 1994, section 15 of Act 46 of 1996, section 39 of Act 53 of 1999, section 44 of Act 30 of 2000, section 23 of Act 5 of 2001, section 18 of Act 19 of 2001 and section 52 of Act 60 of 2001**

45. Section 75 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words following paragraph (j) of the following words:

“shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[12]** 24 months.”.

**Amendment of section 77 of Act 58 of 1962, as amended by section 25 of Act 69 of 1975, section 41 of Act 101 of 1990, section 35 of Act 129 of 1991 and section 31 of Act 21 of 1995**

46. (1) Section 77 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (2) for the expression “Controller and Auditor-General” of the expression “Auditor-General”; and

- (b) by the substitution for subsection (5) of the following subsection:

“(5) The Commissioner shall, in the notice of assessment, give notice to the taxpayer that any objection to the assessment made must be sent to

him or her within [30 days after the date of the assessment] the period contemplated in section 81.”

(2) Subsection (1)(b) shall come into operation on the date that section 53(1) of the Second Revenue Laws amendment Act, 2001 (Act No. 60 of 2001), comes into operation.

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**Amendment of section 78 of Act 58 of 1962, as amended by section 25 of Act 5 of 2001 and section 27 of Act 30 of 2002**

47. (1) Section 78 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subsection (1B) of the following subsection:

“(1B) The Commissioner shall estimate an amount of taxable income derived from any funds or assets contemplated in subsection (1A), which estimated amount shall be calculated by applying a percentage, determined at the rate contemplated in paragraph (a) of the definition of ‘official rate of interest’ contemplated in paragraph 1 of the Seventh Schedule during the year of assessment to the estimated amount of those funds or value of those assets or such higher amount as may be estimated in terms of subsection (1).”; and

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

“(b) taken into account by the Commissioner during any succeeding year of assessment in estimating the amount of any funds in foreign currency or value of any assets owned by that resident outside the Republic, as contemplated in subsection (1A).”; and

(c) by the addition of the following subsection:

“(3) For the purposes of this section, ‘foreign currency’ means currency other than the currency of the Republic.”

(2) Subsection (1) shall come into operation on 1 January 2003.

**Insertion of section 79B of Act 58 of 1962**

48. (1) The following section is hereby inserted after section 79A of the Income Tax Act, 1962:

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**“Withdrawal of assessments**

**79B.** The Commissioner may, notwithstanding the fact that no objection has been lodged or appeal has been noted in terms of Part III of Chapter III, withdraw an assessment, which—

(a) was issued to the incorrect taxpayer; or

(b) was issued in respect of the incorrect year of assessment.

(2) Any assessment withdrawn by the Commissioner in terms of this section shall for all purposes of this Act be deemed not to have been issued.”

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

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**Amendment of section 89quat of Act 58 of 1962, as inserted by section 34 of Act 121 of 1984, substituted by section 22 of Act 65 of 1986 and amended by section 18 of Act 70 of 1989, section 42 of Act 113 of 1993, section 15 of Act 140 of 1993, section 33 of Act 21 of 1995, section 24 of Act 36 of 1996, section 50 of Act 59 of 2000 and section 29 of Act 5 of 2001**

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49. Section 89quat of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b) of the definition of “effective date” of the following paragraphs:

“(a) where the provisional taxpayer is a company which has a year of assessment which ends on the last day of February or is a person (other than a company) who has not been granted permission by the Commissioner under the provisions of section [66(13)ter] 66(13A) to render accounts for a period ending on a date other than the last day of February, the date falling [7] seven months after the last day of such year; or

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- (b) in any other case, the date falling [6] six months after the last day of such year as applicable for the purposes of the provisions of paragraph 21 [22] or 23 of the Fourth Schedule;”.

**Amendment of section 101 of Act 58 of 1962, as amended by section 29 of Act 90 of 1962, section 22 of Act 52 of 1970, section 39 of Act 94 of 1983, section 40 of Act 129 of 1991, section 27 of Act 36 of 1996 and section 49 of Act 30 of 2000** 5

50. (1) Section 101 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) Every company carrying on business or having an office in the Republic and every [unit] portfolio of a collective investment scheme constituting a company in terms of paragraph (e)(i) of the definition of ‘company’ in section one, shall at all times be represented by an individual residing therein.”; 10

- (b) by the substitution in subsection (2) for the second proviso of the following proviso: 15

“Provided further that in the case of any [unit] portfolio referred to in subsection (1) the public officer of the relevant [management company] manager registered in terms of section 42 of the Collective Investment Schemes Control Act, 2002, shall be the public officer except in the event of the winding-up of the [management company] portfolio, in which event the manager, trustee or custodian appointed by the Registrar as defined in section 1 of that Act or any competent division of the court, to wind-up the portfolio [under the relevant unit trust scheme] shall be the public officer.”; 20

- (c) by the substitution in subsection (5) for the first proviso of the following proviso: 25

“Provided that in the case of any [unit] portfolio referred to in subsection (1) the place at which any such notice or other document may be served or delivered or to which any such notice or document may be sent shall be the place appointed by the relevant [management company] manager in regard to any notice or other document affecting itself, or, in the event of the manager, trustee or custodian under the relevant [unit trust] collective investment scheme becoming the public officer, the place within the Republic appointed by the manager, trustee or custodian and approved by the Commissioner.”. 30 35

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

**Amendment of section 104 of Act 58 of 1962, as amended by section 50 of Act 30 of 2000**

51. Section 104 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words following paragraph (d) of the following words: 40

“shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding [two] five years.”.

**Substitution of section 105 of Act 58 of 1962**

52. The following section is hereby substituted for section 105 of the Income Tax Act, 1962: 45

**“Jurisdiction of courts**

105. Any person charged with an offence under this Act may[, notwithstanding anything to the contrary contained in any law,] be tried in respect of that offence by any court having jurisdiction within any area in which he resides or carries on business, in addition to any jurisdiction conferred upon any court by any law.”. 50

**Amendment of section 106 of Act 58 of 1962, as substituted by section 29 of Act 69 of 1975, amended by section 26 of Act 103 of 1976 and section 51 of Act 30 of 2000**

53. (1) Section 106 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for subparagraph (ii) of paragraph (d) of the following subparagraph:

“(ii) if left with some adult person apparently residing at or occupying or employed at the place appointed by the company under subsection (5) of section 101 or, in the case of any [unit] portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of ‘company’ in section 1, the public officer of which is the manager, trustee or custodian referred to in the said subsection (5), by such manager, trustee or custodian, or where no such place has been appointed by the company, [or] manager, trustee or custodian, as the case may be, if left with some adult person apparently residing at or occupying or employed at the last known office or place of business of the company, [or] manager, trustee or custodian, as the case may be, in the Republic; or”.

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

**Amendment of section 107 of Act 58 of 1962, as amended by section 26 of Act 65 of 1973, section 46 of Act 97 of 1986, section 29 of Act 21 of 1994, section 37 of Act 28 of 1997, section 46 of Act 30 of 1998, section 34 of Act 5 of 2001 and section 62 of Act 60 of 2001**

54. Section 107 of the Income Tax Act, 1962, is hereby amended by the deletion of paragraph (f) of subsection (1).

**Amendment of paragraph 5 of First Schedule to Act 58 of 1962, as substituted by section 18 of Act 72 of 1963 and amended by section 23 of Act 52 of 1970, section 30 of Act 88 of 1971, section 28 of Act 103 of 1976, section 23 of Act 104 of 1980, section 26 of Act 96 of 1981, section 31 of Act 36 of 1996 and section 36 of Act 5 of 2001**

55. Paragraph 5 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) The value to be placed upon livestock for the purposes of this Schedule shall, subject to the provisions of paragraph 4(1) [and subparagraph (2) of this paragraph] as respects livestock held and not disposed of at the end of the year of assessment, be the standard value applicable to the livestock.”.

**Amendment of paragraph 11B of Fourth Schedule to Act 58 of 1962, as inserted by section 41 of Act 90 of 1988 and amended by section 22 of Act 70 of 1989, section 47 of Act 101 of 1990, section 46 of Act 129 of 1991, section 34 of Act 141 of 1992, section 3 of Act 168 of 1993, section 40 of Act 21 of 1995, section 35 of Act 36 of 1996, section 48 of Act 28 of 1997, section 53 of Act 30 of 1998, section 56 of Act 59 of 2000 and section 33 of Act 30 of 2002**

56. (1) Paragraph 11B of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in the definition of “net remuneration” in subparagraph (1) for item (h) of the following item:

“(h) the amount of any allowance or advance contemplated in paragraph [(bA) or] (c) of the definition of ‘remuneration’ in paragraph (1);”.

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

**Amendment of paragraph 14 of the Fourth Schedule to Act 58 of 1962, as amended by section 40 of Act 88 of 1971 and section 50 of Act 101 of 1990**

57. Paragraph 14 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph:

“(4) The records contemplated in subparagraph (1) must be maintained in such form, including any electronic form, as may be prescribed by the Commissioner.”.

**Amendment of paragraph 18 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 28 of Act 90 of 1964, section 42 of Act 88 of 1971, section 49 of Act 85 of 1974, section 19 of Act 104 of 1979, section 26 of Act 65 of 1986, section 9 of Act 108 of 1986, section 23 of Act 70 of 1989, section 50 of Act 113 of 1993, section 37 of Act 36 of 1996, section 24 of Act 19 of 2001 and section 34 of Act 30 of 2002**

**58.** Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraphs (2), (3), (4) and (5). 10

**Amendment of paragraph 21 of the Fourth Schedule to Act 58 of 1962, as substituted by section 30 of Act 88 of 1965 and amended by section 46 of Act 88 of 1971**

**59.** Paragraph 21 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended— 15

(a) by the substitution for the heading of the following heading:

**“Payment of provisional tax by provisional taxpayers (other than companies) [whose income is not normally derived wholly or mainly from farming, fishing or diamond digging]”;**

(b) by the substitution for subparagraph (2) of the following subparagraph: 20

**“(2) If the Commissioner has in terms of [subsection (13)ter of section sixty-six] section 66(13A) of this Act agreed to accept accounts from any provisional taxpayer in respect of any year of assessment drawn to a date falling after the end of such year, the period referred to in item (a) of subparagraph (1) shall, notwithstanding the provisions of that subparagraph, be reckoned from such date as the Commissioner upon application of the taxpayer and having regard to the circumstances of the case may approve, and in such case the last day of such year of assessment shall for the purposes of item (b) of that subparagraph be deemed to be the day preceding the first anniversary of the said date.”;** 25  
and

(c) by the deletion of subparagraph (3). 30

**Repeal of paragraph 22 of the Fourth Schedule to Act 58 of 1962**

**60.** (1) Paragraph 22 of the Fourth Schedule to the Income Tax Act, 1962, is hereby repealed. 35

(2) Subsection (1) shall be deemed to have come into operation on 1 July 2002 in respect of years of assessment commencing on or after that date.

**Amendment of paragraph 26 of the Fourth Schedule to Act 58 of 1962, as amended by section 48 of Act 129 of 1991**

**61.** Paragraph 26 of the Fourth Schedule to the Income Tax Act, 1962, is hereby deleted. 40

**Amendment of paragraph 1 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 26 of Act 96 of 1985, Government Notice No. R.2706 of 29 November 1985, section 33 of Act 65 of 1986, Government Notice No. R.2683 of 19 December 1986, section 28 of Act 85 of 1987, Government Notice No. R.714 of 14 April 1989, section 24 of Act 70 of 1989, Government Notice No. R.763 of 29 March 1990, section 55 of Act 101 of 1990, section 35 of Act 141 of 1992, section 52 of Act 113 of 1993, section 30 of Act 21 of 1994, section 40 of Act 36 of 1996, section 54 of Act 30 of 2000 and section 59 of Act 59 of 2000** 45  
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**62.** Paragraph 1 of the Seventh Schedule is hereby amended—

(a) by the substitution for paragraph (b) of the definition of “official rate of interest” of the following paragraph:

- “(b) in the case of a loan which is denominated in **[a foreign]** any other currency, a market related rate of interest;”;
- (b) by the addition in the definition of “taxable benefit” of the following paragraph:

“(d) any benefit or privilege received by or accrued to a person 5  
contemplated in section 9(1)(e) stationed outside the Republic  
which is attributable to that person’s services rendered outside the  
Republic.”.

**Amendment of paragraph 1 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 65 of Act 60 of 2001** 10

63. (1) Paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion of the definition of “active business asset”;
- (b) by the deletion of the definition of “financial instrument”;
- (c) by the deletion of the definition of “foreign currency”; 15
- (d) by the insertion after the definition of “ruling price” of the following definition:

“‘special trust’ means a trust contemplated in paragraph (a) of the definition of ‘special trust’ in section 1;”.

(2) (a) Subsection (1)(a) shall be deemed to have come into operation on 1 October 2001. 20

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

(c) Subsection (1)(c) shall come into operation on the date of promulgation of this Act and shall apply in respect of years of assessment commencing on or after that date. 25

(d) Subsection (1)(d) shall be deemed to have come into operation from the commencement of years of assessment ending on or after 1 January 2003.

**Amendment of paragraph 2 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 25 of Act 19 of 2001 and section 66 of Act 60 of 2001** 30

64. Paragraph 2 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item (b) of subparagraph (1) of the following item:

“(b) the following assets **[situated in the Republic]** of a person who is not a resident, namely—

- (i) immovable property situated in the Republic held by that person or any interest or right of whatever nature of that person to or in immovable property situated in the Republic; or 35
- (ii) any asset **[of a]** which is attributable to a permanent establishment of that person in the Republic [through which a trade is carried on in the Republic during the relevant year of assessment].” 40

**Amendment of paragraph 4 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 68 of Act 60 of 2001**

65. Paragraph 4 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (a) of the following subparagraph:

“(a) during that year, is equal to the amount by which the base cost of that asset 45  
exceeds the proceeds received or accrued in **[consequence]** respect of that disposal; or”.

**Amendment of paragraph 10 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001**

66. Paragraph 10 of the Eighth Schedule to the Income Tax Act, 1962, is hereby 50  
amended by the substitution for subparagraph (a) of the following subparagraph:

“(a) in the case of a natural person or a special trust as defined in section 1 of the Act, 25 per cent;”.

**Amendment of paragraph 11 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 71 of Act 60 of 2001**

67. (1) Paragraph 11 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (2) for item (c) of the following item: 5
    - “(c) by a **[unit]** portfolio of a collective investment scheme in respect of the issue of a **[unit]** participatory interest in that portfolio, or by a **[unit]** portfolio in respect of the granting of an option to acquire a **[unit]** participatory interest in that **[unit]** portfolio;”.
  - (b) by the substitution in subparagraph (2) for item (e) of the following item: 10
    - “(e) by a trustee in respect of the distribution of an asset of the trust to a beneficiary **[who]** to the extent that that beneficiary has a vested right in that asset **[prior to distribution]**;”;
  - (c) by the deletion in subparagraph (2) at the end of item (g) of the word “or”; 15
    - and
  - (d) by the addition in subparagraph (2) to the end of item (h) of the word “or”.
- (2) Subsection (1) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

**Amendment of paragraph 12 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 72 of Act 60 of 2001**

68. (1) Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (5) for the words preceding item (a) of the following words:

- “(5) (a) **[Where]** Subject to paragraph 67, this subparagraph applies where a debt owed by a person to a creditor has been reduced or discharged by that creditor— 25
    - (i) **[without full]** for no consideration **[for that reduction or discharge]; or**
    - (ii) for a consideration which is less than the amount by which the face value of the debt has been so reduced or discharged,
  - [that person will, to the extent that]** but does not apply where the amount of that reduction or discharge **[did not constitute]** constituted a capital gain in terms of paragraph 3(b)(ii) or has **[not]** been taken into account in terms of section 20(1)(a)(ii) or paragraph 20(3). **[be treated as having—]**” 30
    - (b) Where this subparagraph applies the person contemplated in item (a) shall be treated as having— 35
      - [(a)](i)** acquired a claim to so much of that debt that was reduced or discharged for no consideration, or if a consideration was paid, to so much of the reduction or discharge of the debt as exceeds the consideration, which claim shall have a base cost of nil; and
      - [(b)](ii)** disposed of that claim for proceeds equal to that reduction or discharge.”. 40
- (2) Subsection (1) shall—
- (a) to the extent it includes a reference to paragraph 67 and paragraph 20(1)(a)(ii) be deemed to have come into operation on 1 October 2001; and
  - (b) to the extent that it amends the rest of paragraph 12, comes into operation on the date of promulgation. 45

**Amendment of paragraph 13 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001**

69. (1) Paragraph 13 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for the words preceding item (a) of the following words: 50
  - “(1) The time of disposal of an asset **[in consequence of]** by means of—”;
- (b) by the substitution in subparagraph (1) for the words preceding sub-item (i) of item (a) of the following words: 55
  - “(a) a change of ownership **effected or to be effected** from one person to another because of an event, act, forbearance or by the operation of law is, in the case of—”;



- (c) by the substitution in subparagraph (1) for the words preceding sub-item (I) of item (g) of the following words:

“the happening of an event contemplated in—”.

- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

**Amendment of paragraph 14 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001** 5

70. Paragraph 14 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding subparagraph (a) of the following words:

“For the purposes of this Schedule, in the case of spouses married in community of property, where any **[property]** asset is disposed of by one of the spouses and that **[property]** asset—”.

**Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 26 of Act 19 of 2001 and section 75 of Act 60 of 2001** 15

71. (1) Paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for item (f) of the following item:

“(f) if that asset was acquired or disposed of by the exercise on or after valuation date of an option acquired prior to the valuation date, the valuation date value of that option, which value must be treated **[to be]** as expenditure actually incurred in respect of that asset on valuation date for the purposes of this Part;”;

- (b) by the substitution in subparagraph (1) for the words in item (g) preceding subitem (i) of the following words: 25

“(g) the following amounts actually incurred as expenditure directly related to the cost of ownership of that asset, which is used wholly and exclusively for business purposes or which constitutes a share listed on a recognised stock exchange or **[an]** a participatory interest in a **[unit]** portfolio of a collective investment scheme **[(other than a unit portfolio comprised in any unit trust scheme in property shares)]**—”;

- (c) by the substitution in subparagraph (1) for the proviso to item (g) of the following proviso:

“Provided that if that asset constitutes a share listed on a recognised **[stock]** exchange or **[an]** a participatory interest in a **[unit]** portfolio of a collective investment scheme, the expenditure in respect of that asset must for the purposes of this subparagraph be reduced by two-thirds;”;

- (d) by the substitution in subparagraph (1) for sub-items (ii) and (iii) of item (h) of the following sub-items: 40

“(ii) any other asset—

(aa) so much of an amount that has been included in that person’s income in terms of section 8(5), as having been applied towards the reduction of the purchase price of that asset; **[or]** 45

(bb) where an amount has been included in that person’s gross income in terms of paragraph (i) of the definition of ‘gross income’ in section 1, the value placed on the asset under the Seventh Schedule for purposes of determining the amount so included in that person’s gross income; or 50

(cc) where an amount has been included in that person’s gross income in terms of paragraph (h) of the definition of ‘gross income’ in section 1 in respect of that asset, so much of that amount so included as exceeds the amount of any allowance granted to that person in terms of section 11(h); 55

- (iii) **[an interest]** a share in a controlled foreign **[entity as defined in section 9D]** company, an amount equal to the proportional amount of the net income of that **[entity]** company (or any other controlled foreign company in relation to that resident in which that controlled

foreign company directly or indirectly has an interest) which was included in the income of that person in terms of section 9D during any year of assessment (other than such portion of that proportional amount which relates to the amount of any taxable capital gain included in that **[net income]** proportional amount) plus the proportional amount of the net capital gains of that controlled foreign **[entity]** company, less the amount of any foreign dividend distributed by that **[entity]** company to that person during any year of assessment which was exempt from tax in terms of section 9E(7)(e)(i); or”.

(2) (a) Subsection (1)(a) shall be deemed to have come into operation on 1 October 2001.

(b) Subsections (1)(b) and (c) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

(c) Subsection (1)(d) shall in so far as it amends—

(i) paragraph 20(h)(ii), be deemed to have come into operation on 1 October 2001; and

(ii) paragraph 20(h)(iii), come into operation on the date of promulgation and shall apply in respect of years of assessment ending on or after that date.

**Amendment of paragraph 24 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 76 of Act 60 of 2001**

**72.** (1) Paragraph 24 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (1) of the following subparagraph:

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

(b) by the substitution in subparagraph (2) for the words preceding item (a) of the following words:

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

(c) by the substitution for item (b) of subparagraph (2) of the following item:

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

(d) by the substitution for the words preceding item (a) of subparagraph (3) of the following words:

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

(e) by the substitution for item (b) of subparagraph (3) of the following item:

“(b) those proceeds less the expenditure allowable in terms of paragraph 20 incurred on or after that date in respect of that asset.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

**Substitution of paragraph 25 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and substituted by section 77 of Act 60 of 2001**

73. (1) The following paragraph is hereby substituted for paragraph 25 of the Eighth Schedule to the Income Tax Act, 1962:

**"Determination of base cost of pre-valuation date assets**

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25. The base cost of a pre-valuation date asset (other than an identical asset in respect of which paragraph 32(3A) has been applied), is the sum of the valuation date value of that asset, as determined in terms of paragraph 26, 27 or 28 and the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date in respect of that asset."

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(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

**Amendment of paragraph 26 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 78 of Act 60 of 2001**

74. (1) Paragraph 26 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 15

(a) by the substitution for the words preceding item (a) of subparagraph (1) of the following words:

"Where the proceeds from the disposal of a pre-valuation date asset (other than an asset contemplated in paragraph 28 or in respect of which paragraph 32(3A) has been applied) exceed the expenditure allowable in terms of paragraph 20 incurred **[both]** before, on and after the valuation date in respect of that asset, the person who disposed of that asset must, subject to subparagraph (3), adopt any of the following as the valuation date value of that asset—";

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

"(b) 20 per cent of the proceeds from disposal of the asset, after deducting from those proceeds an amount equal to the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date; or";

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(c) by the substitution for item (b) of subparagraph (2) of the following item:

"(b) 20 per cent of the proceeds from disposal of the asset, after deducting from those proceeds an amount equal to the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date."; and

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(d) by the substitution for subparagraph (3) of the following subparagraph:

"(3) Where a person has adopted the market value as the valuation date value of an asset, as contemplated in subparagraph (1)(a), and the proceeds from the disposal of that asset do not exceed that market value, that person must substitute as the valuation date value of that asset, those proceeds less the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date in respect of that asset."

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(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

**Amendment of paragraph 27 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and substituted by section 79 of Act 60 of 2001**

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75. (1) Paragraph 27 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (1) of the following subparagraph:

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

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- (b) by the substitution in subparagraph (3) for sub-item (ii)(bb) of item (a) of the following paragraph:

“(bb) those proceeds less the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date in respect of that asset; or”.

- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

**Amendment of paragraph 29 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 81 of Act 60 of 2001 and section 38 of Act 30 of 2002**

76. (1) Paragraph 29 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subparagraph (4) of the word “or” at the end of item (a);  
(b) by the addition in subparagraph (4) of the word “or” to the end of item (b);  
(c) by the addition to subparagraph (4) of the following item; and

“(c) that person has acquired that asset from that person’s spouse as contemplated in paragraph 67 and the transferor spouse had adopted or determined a market value in terms of this paragraph, and for this purpose the transferee spouse must be treated as having adopted or determined that same market value.”;

- (d) by the substitution in subparagraph (6) for the words following item (b) the following words:

“that person must submit proof of that valuation in a form prescribed by the Commissioner with the return for the year of assessment during which that asset was disposed of.”.

- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

**Amendment of paragraph 30 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 82 of Act 60 of 2001**

77. (1) Paragraph 30 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for the words proceeding the formula of the words:

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

- (b) by the substitution in subparagraph (1) for item (c) of the following item:

“(c) ‘P’ represents the proceeds as determined in terms of paragraph 35, in **[consequence]** respect of the disposal of that asset, or where subparagraph (2) applies, the amount of proceeds attributable to the expenditure in ‘B’ as determined in accordance with subparagraph (2);”;

- (c) by the substitution for subparagraph (2) of the following subparagraph:

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

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

where—

- (a) ‘P’ represents the **[amount to be determined]** proceeds attributable to B;  
(b) ‘[T]R’ represents the total amount of proceeds as determined in terms of paragraph 35 in consequence of the disposal of the pre-valuation date asset;  
(c) ‘A’ represents the amount of expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred on or after valuation date;

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

(d) by the addition of the following subparagraphs:

“(3) Despite the provisions of paragraph 20(3)(a) and 35(3)(a), where in respect of a pre-valuation date asset—

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

that person must determine the time-apportionment base cost of that asset in terms of subparagraph (4).

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

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

and

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

where—

- (a) 'Y' represents the time apportionment base cost of the asset;
- (b) 'P<sub>1</sub>' represents the proceeds attributable to the expenditure in B<sub>1</sub>, disregarding the provisions of paragraph 35(3)(a);
- (c) 'A<sub>1</sub>' represents the amount of expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred on or after valuation date, disregarding the provisions of paragraph 20(3)(a);
- (d) 'B<sub>1</sub>' represents the amount of expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred before valuation date, disregarding the provisions of paragraph 20(3)(a);
- (e) 'B', 'N' and 'T' bear the same meanings ascribed to those symbols in subparagraph (1); and
- (f) 'R<sub>1</sub>' represents the total amount of proceeds as determined in terms of paragraph 35 in respect of the disposal of the pre-valuation date asset, disregarding the provisions of paragraph 35(3)(a);”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

**Amendment of paragraph 31 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 83 of Act 60 of 2001**

78. (1) Paragraph 31 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for item (c) of the following item:

“(c) an asset which is not listed on a recognised exchange which constitutes a right of a [unit] holder of a participatory interest in—

- (i) any company contemplated in paragraph (e)(i) of the definition of “company” in section 1 of the Act, or any [unit] portfolio comprised in any [unit trust] collective investment scheme in property [shares] contemplated in Part V of the Collective Investment Schemes Control Act, 2002, carried on in the Republic, the price at which a [unit] participatory interest can be sold to the management company of the scheme on the date of disposal; or

- (ii) any arrangement or scheme contemplated in paragraph (e)(ii) of the definition of ‘company’, the price at which a [unit] participatory interest can be sold to the management company of the scheme on the date of disposal or where there is not a management company the price which could have been

obtained upon a sale of the asset between a willing buyer and a willing seller dealing at arm's length in an open market;";

- (b) by the substitution in subparagraph (1) for items (d) and (e) of the following items:

"(d) a fiduciary, usufructuary or other similar interest in any **[property]** asset, an amount determined by capitalising at 12 per cent the annual value of the right of enjoyment of the **[property]** asset subject to that fiduciary, usufructuary or other like interest, as determined in terms of subparagraph (2), over the expectation of life of the person to whom that interest was granted, or if that right of enjoyment is to be held for a lesser period than the life of that person, over that lesser period;

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

- (c) by the substitution for subparagraph (2) of the following subparagraph:

"(2) For purposes of subparagraph (1)(d)—

(a) the annual value of the right of enjoyment of any **[property]** asset which is subject to any fiduciary, usufructuary or other like interest, means an amount equal to 12 per cent of the **[fair]** market value of the full ownership of the **[property]** asset: Provided that where the Commissioner is satisfied that the **[property]** asset which is subject to that interest could not reasonably be expected to produce an annual yield equal to 12 per cent on that value of the **[property]** asset, the Commissioner may fix such sum as representing the annual yield as may seem **[to him to be]** reasonable, and the sum so fixed must for the purposes of subparagraph (1)(d) be treated as being the annual value of the right of enjoyment of that **[property]** asset; and

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

- (i) in the case of a natural person, must be determined in accordance with the provisions applicable in determining the expectation of life of a person for estate duty purposes, as contemplated in the regulations issued in terms of section 29 of the Estate Duty Act, 1955, (Act No. 45 of 1955); and
- (ii) in the case of a person other than a natural person, is a period of fifty years."

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

(b) Subsection (1)(b) and (c) shall be deemed to have come into operation on 1 October 2001.

**Amendment of paragraph 32 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 28 of Act 19 of 2001, section 84 of Act 60 of 2001 and section 39 of Act 30 of 2002**

79. (1) Paragraph 32 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for item (a) of subparagraph (3A) of the following item:

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

- (b) by the substitution for item (b) of subparagraph (3A) of the following item:

"(b) constitute participatory interests **[rights of unit holders]**—

- (i) contemplated in paragraph 31(1)(c), where the prices of these **[units, shares or]** participatory interests or shares are regularly published in a national or international newspaper;

- (ii) in any **[unit]** portfolio comprised in any **[unit trust]** collective investment scheme managed or carried on by a **[management]** company registered as a manager under section **[4 or 30 of the**

Unit Trust Control Act, 1981 (Act No. 54 of 1981)] 42 of the Collective Investment Schemes Control Act, 2002, for purposes of Parts IV and V of that Act; or

- (iii) in any arrangement or scheme contemplated in paragraph (e)(ii) of the definition of 'company' in section 1 of the Act, which is approved in terms of section 65 of the Collective Investment Schemes Control Act, 2002, by the Registrar [of Unit Trust Companies in terms of section 37A of the Unit Trust Control Act, 1981 (Act No. 54 of 1981)] defined in section 1 of the latter Act; [or]";

(c) by the addition in subparagraph (3A) of the word "or" to the end of item (c);

(d) by the insertion after item (c) of the following item:

"(d) from the date of acquisition to the date of disposal constituted instruments as defined in section 24J that were listed on a recognised exchange and for which a price was quoted on that exchange,".

(e) by the substitution for the words following item (d) of the following words:

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

(2)(a) Subsection (1)(a), (c), (d) and (e) shall be deemed to have come into operation on 1 October 2001.

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

#### **Amendment of paragraph 33 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001**

80. Paragraph 33 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

#### **"Part-disposals**

33. (1) Subject to subparagraphs (2), [and] (3) and (4), where part of an asset is disposed of, the proportion of the base cost attributable to the part disposed of is an amount which bears to the base cost of the entire asset the same proportion as the market value of the part disposed of bears to the market value of the entire asset immediately prior to that disposal.

(2) Subject to subparagraph (4), where a part of the base cost of an asset can be directly attributed to the part of the asset that is disposed of or retained then the apportionment contemplated in subparagraph (1) does not apply in respect of that part of the base cost.

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

(a) the granting of an option by that person in respect of that asset; and  
(b) the granting, variation or cession of a right of use or occupation of that asset by that person in respect of which no proceeds are received by or accrue to that person.

(4) Where proceeds are received by or accrue to a person in respect of the granting, variation or cession of a right of use or occupation of an asset by that person, the portion of the base cost attributable to the part of the asset in respect of which those proceeds were received or accrued is an amount which bears to the base cost of the entire asset the same proportion as those proceeds bear to the market value of the entire asset immediately prior to that disposal."

#### **Amendment of paragraph 38 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 87 of Act 60 of 2001**

81. (1) Paragraph 38 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the words preceding item (a) of the following words:

“(1) Subject to subparagraph 2 and **[paragraph]** paragraphs 12(5) and 67, where a person disposed of an asset by means of a donation or for a consideration not measurable in money or to a person who is a connected person in relation to that person for a consideration which does not reflect an arm’s length price—”.

**Amendment of paragraph 40 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 89 of Act 60 of 2001** 5

82. Paragraph 40 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subparagraph (1) of the word “or” at the end of item (b);
- (b) by the addition in subparagraph (1) of the word “or” at the end of item (c); and 10
- (c) by the substitution in subparagraph (2) for the words preceding item (a) of the following words:

“(2) Subject to subparagraph 12(5), where an asset is disposed of by a deceased estate to an heir or legatee (other than the surviving spouse of the deceased person as contemplated in paragraph 67(2)(a) or an approved public benefit organisation as contemplated in paragraph 62) or a trustee of a trust—”.

**Amendment of paragraph 41 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001**

83. Paragraph 41 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution of item (a) of subparagraph (1) of the following item: 20

- “(a) the tax determined in terms of this Act, which relates to the taxable capital gain of a deceased person, exceeds 50 per cent of the net value of the estate determined for purposes of the Estate Duty Act, 1955 (Act No. 45 of 1955), before taking into account the amount of that tax so determined; and”.

**Substitution of paragraph 43 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 91 of Act 60 of 2001**

84. (1) Paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

**“Assets disposed of or acquired in foreign currency”** 30

43. (1) Subject to subparagraph (4), where a person during any year of assessment disposes of an asset, **[other than a foreign equity instrument,]** for proceeds denominated in a foreign currency after having incurred expenditure in respect of that asset in the same currency, that person must determine the capital gain or capital loss on the disposal **[by translating both proceeds and the base cost]** in that foreign currency and that capital gain or capital loss must be translated into the local currency **[of the Republic at the ruling exchange rate on the date of disposal]** in accordance with the provisions of section 25D. 35

(2) Despite section 25D, where a person disposes of an asset, (other than **[a foreign equity instrument]** an asset contemplated in subsection (4)), for proceeds denominated in any currency (hereinafter referred to as the ‘currency of disposal’) after having incurred expenditure in respect of that asset in another currency (hereinafter referred to as the ‘currency of expenditure’), that person must **[determine]** for purposes of determining the capital gain or capital loss on the disposal **[by translating both]** of that asset— 40

(a) where the currency of expenditure is denominated in the local currency, translate the proceeds **[and the base cost]** into the local currency **[of expenditure]** at the **[ruling]** average exchange rate **[on the date of disposal]** for that year of assessment during which that asset was disposed of; **[and]** 50

(b) **[determine a capital gain or capital loss in terms of Part XIII as if that person disposed of the currency of expenditure for the**



- currency of disposal]** where the currency of disposal is denominated in the local currency, translate the expenditure which is allowable in terms of paragraph 20, into the local currency at the average exchange rate for the year of assessment during which that expenditure was incurred or treated as being incurred (or if the local currency did not exist at the time of expenditure, the first available exchange rate for that local currency); and 5
- (c) where neither the currency of disposal nor the currency of expenditure constitutes local currency— 10
- (i) translate the amount of the expenditure, which is allowable in terms of paragraph 20, to the currency of disposal at the average exchange rate for the year of assessment during which that expenditure was incurred or treated as being incurred (or if the currency of disposal did not exist at the time of expenditure, the first available exchange rate for that currency of disposal); and 15
- (ii) translate the amount of the capital gain or capital loss determined in foreign currency to the local currency **[of the Republic]** at the average exchange rate for the year of assessment during which the asset was disposed of.
- [(3) For the purposes of this paragraph the term ‘ruling exchange rate’ will have the same meaning as defined in section 24I.]** 20
- (4) Despite section 25D, where a person during any year of assessment disposes of any—
- (a) foreign equity instrument; or
- (b) asset the capital gain or capital loss from the disposal of which is derived or deemed to have been derived from a source in the Republic, as contemplated in section 9(2) (other than an asset contemplated in section 9(2)(b)(i) or an asset contemplated in paragraph (b) of the definition of ‘foreign currency asset’ in paragraph 84), 25
- which was acquired or disposed of in any currency other than currency of the Republic, that person must **[determine]** for purposes of determining the capital gain or capital loss on the disposal **[by translating]** of that asset, translate— 30
- [(a)] (i)** the proceeds into the currency of the Republic at the **[ruling]** average exchange rate **[on the date of disposal]** for that year of assessment; and 35
- [(b) the valuation date value of that foreign equity instrument which is a pre-valuation date asset into the currency of the Republic at the ruling exchange rate on valuation date; and]**
- [(c)] (ii)** the expenditure incurred **[after valuation date]** in respect of that foreign equity instrument into the currency of the Republic at the **[ruling]** average exchange rate **[on the date of incurral of that expenditure]** for the year of assessment during which that expenditure was incurred: 40
- Provided that the provisions of this subparagraph do not apply in respect of any exchange item in respect of which section 24I applies. 45
- (5) Where a person is treated as having derived an amount of proceeds from the disposal of any asset and the base cost of that asset is determined in any foreign currency—
- (a) the amount of those proceeds must be treated as being denominated in the currency of the base cost; and 50
- (b) the base cost of the person acquiring that asset must for purposes of paragraphs 12, 38, 40, 42 and 67 be treated as being denominated in that currency.
- (6) Where a person has adopted the market value as the valuation date value of any asset contemplated in this paragraph, that market value must be determined in the currency of expenditure of that asset and, in the case of an asset— 55
- (a) contemplated in subparagraph (2)(b) and (4), must be translated to the currency of the Republic at the ruling exchange rate on valuation date; or 60
- (b) contemplated in subparagraph (2)(c), must be translated to the currency of disposal at the ruling exchange rate on valuation date.

(7) For the purposes of this paragraph—

‘foreign currency’ means currency other than local currency; and

‘local currency’ means—

- (a) in relation to a permanent establishment of a person, the currency used by that permanent establishment for purposes of financial reporting;
- (b) in any other case, the currency of the Republic.”

(2) Subsection (1) shall come into operation on the date of promulgation and shall apply in respect of the disposal of any asset during any year of assessment which commences on or after that date.

**Amendment of paragraph 51 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 96 of Act 60 of 2001**

85. Paragraph 51 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item (a) of subparagraph (2) of the following item:

- “(a) that natural person acquires that residence from the company or trust on or after the date of promulgation of the Taxation Laws Amendment Act, 2001 (Act No. 5 of 2001), but not later than 30 September 2002;”

**Amendment of paragraph 53 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 97 of Act 60 of 2001**

86. (1) Paragraph 53 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subparagraph (3) of the word “and” at the end of item (f);
- (b) by the substitution of item (g) of subparagraph (3) of the following item:
  - “(g) any contract in terms of which a person, in return for payment of a premium, is entitled to policy benefits upon the happening of a certain event and includes a reinsurance policy in respect of such a contract, but excludes any short-term policy contemplated in the Short-Term Insurance Act, 1998 (Act No. 53 of 1998);”;
- (c) by the addition to subparagraph (3) of the following items:
  - “(h) any short-term policy contemplated in the Short-Term Insurance Act, 1998, to the extent that it relates to any asset which is not a personal-use asset; and
  - (i) a right or interest of whatever nature to or in an asset envisaged in items (a) to (h).”

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

**Amendment of paragraph 55 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 32 of Act 19 of 2001 and section 98 of Act 60 of 2001**

87. Paragraph 55 of the Eighth Schedule to the Income tax Act, 1962, is hereby amended—

- (a) by the substitution for item (b) of subparagraph (1) of the following item:
  - “(b) in respect of any policy, [taken out on the life of an employee or director as contemplated in section 11(w)] where that person is an employee or director whose life was insured in terms of that policy and any premiums paid by that person’s employer were deducted in terms of section 11(w);”;
- (b) by the substitution for item (c) of subparagraph (1) of the following item:
  - “(c) in respect of a policy that was [originally] taken out [on the life of any other] to insure against the death, disability or illness of that person by any other person who was a partner of that person, or held any share or similar interest in a company in which that person held any share or similar interest, for the purpose of enabling that other person to acquire, upon the death of that [other] person, the whole or part of—
  - (i) that [other] person’s interest in the partnership concerned; or

- (ii) that [other] person's share or similar interest in that company and any claim by that [other] person against that company, and no premium on the policy was paid or borne by that [other] person [or any connected person in relation to that other person] while that other person was the beneficial owner of the policy; or". 5

**Amendment of paragraph 56 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and substituted by section 99 of Act 60 of 2001**

88. (1) Paragraph 56 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph: 10
- "(2) Despite paragraph 39, subparagraph (1) does not apply in respect of any capital loss determined in consequence of the disposal by a creditor of a claim [owned] owed by a debtor, to the extent that the amount of that claim so disposed of represents— 15
- (a) a capital gain which is included in the determination of the aggregate capital gain or aggregate capital loss of that debtor by virtue of paragraph 12(5); 15
- (b) an amount which the creditor proves must be or was included in the gross income of any acquirer of that claim; or
- (c) an amount that must be or was included in the gross income or income of the debtor or taken into account in the determination of the balance of assessed loss of the debtor in terms of section 20(1)(a)(ii).". 20
- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

**Amendment of paragraph 57 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001**

89. (1) Paragraph 57 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion before the definition of "small business" in subparagraph (1) 25 of the following definition:
- " 'active business asset' means—
- (a) an asset which constitutes immovable property, to the extent that it is used for business purposes; or
- (b) an asset (other than immovable property) used or held wholly and exclusively 30 for business purposes, but excludes—
- (i) a financial instrument; and
- (ii) an asset held in the course of carrying on a business mainly to derive any income in the form of an annuity, rental income, a foreign exchange gain or 35 royalty or any income of a similar nature;".
- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

**Substitution of paragraph 61 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 102 of Act 60 of 2001**

90. (1) Paragraph 61 of the Eighth Schedule to the Income Tax Act, 1962, is hereby 40 substituted by the following paragraph:

**"Collective Investment Schemes in Securities**

61. A [unit] portfolio in a collective investment scheme contemplated in paragraph (e)(i) of the definition of 'company' in section 1, must disregard any capital gain or capital loss.". 45
- (2) Subsection (1) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

**Substitution of paragraph 63 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001**

91. The following paragraph is hereby substituted for paragraph 63 of the Eighth 50 Schedule to the Income Tax Act, 1962:

**“Exempt persons**

**63.** A person must disregard any capital gain or capital loss in respect of the disposal of an asset where all the receipts and accruals of that person [are] would have been exempt from tax in terms of section 10, if those receipts and accruals had been received by or had accrued to that person.” 5

**Insertion of paragraph 64A of Eighth Schedule to Act 58 of 1962**

**92.** (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 64:

**“Awards in terms of the Restitution of Land Rights Act**

**64A.** A person must disregard any capital gain or capital loss in respect 10  
of the disposal that resulted in that person receiving restitution of a right to  
land, an award or compensation in terms of the Restitution of Land Rights  
Act, 1994 (Act No. 22 of 1994).”

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

**Substitution of section 67A of Eighth Schedule to Act 58 of 1962, as inserted by 15  
section 105 of Act 60 of 2001**

**93.** (1) The following paragraph is hereby substituted for paragraph 67A of the Eighth Schedule to the Income Tax Act, 1962:

**“Capital gains and capital losses in respect of interests in collective 20  
investment schemes in property**

**67A.** (1) A holder of a [unit] participatory interest in a [unit] portfolio 25  
comprised in any [unit trust] collective investment scheme managed or  
carried on by any company registered as a [management company]  
manager under section [30 of the Unit Trusts Control Act, 1981 (Act No.  
54 of 1981)], 42 of the Collective Investment Schemes Control Act, 2002, 25  
for the purposes of Part V of that Act must determine a capital gain or  
capital loss in respect of any participatory interest in that [unit] portfolio  
only upon the disposal of that [unit] interest.

(2) The capital gain or capital loss to be determined in terms of  
subparagraph (1) must be determined with reference to the proceeds from 30  
the disposal of that [unit] participatory interest and its base cost.”

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

**Amendment of paragraph 72 of Eighth Schedule to Act 58 of 1962, as inserted by 35  
section 38 of Act 5 of 2001**

**94.** Paragraph 72 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item (b) of the following item:

“(b) a capital gain attributable to that donation, settlement or other disposition has arisen during a year of assessment and has during that year vested in or is treated as having vested in any person who is not a resident (other than a 40  
controlled foreign [entity, as defined in section 9D] company, in relation to that resident).”

**Amendment of paragraph 74 of Eighth Schedule to Act 58 of 1962, as inserted by  
section 38 of Act 5 of 2001 and amended by section 106 of Act 60 of 2001**

**95.** (1) Paragraph 74 of the Eighth Schedule to the Income Tax Act, 1962, is hereby 45  
amended by the substitution for the definition of “company” of the following definition:

“ ‘company’ means any ‘company’ as defined in section 1, except for any [unit] portfolio in a collective investment scheme contemplated in paragraph (e) of that definition.”

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

**Amendment of paragraph 76 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 107 of Act 60 of 2001**

96. (1) Paragraph 76 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (1) and (2) of the following subparagraphs:

“(1) Subject to subparagraph (2), where a capital distribution of cash or an asset *in specie* is received by or accrues to a shareholder in respect of a share, that shareholder must—

(a) where that capital distribution is received or accrues before valuation date, reduce the expenditure contemplated in paragraph 20 actually incurred before valuation date in respect of that share by the amount of that cash or the market value of that asset *in specie*; and

(b) where that capital distribution is received or accrues on or after valuation date, treat the amount of that cash or the market value of that asset *in specie* as proceeds when that share is disposed of.

(2) Where a shareholder uses the weighted average method in respect of shares that are identical assets as contemplated in paragraph 32(3A)(a) and a capital distribution of cash or an asset *in specie* is received by or accrues to that shareholder in respect of those shares on or after valuation date, the weighted average base cost of those shares must be determined by—

(a) deducting the amount of that cash or the market value of that asset *in specie* from the base cost of those shares held when that capital distribution was received or accrued; and

(b) dividing the result by the number of those shares held when that capital distribution was received or accrued.”

(b) by the substitution for subparagraph (3) of the following subparagraph:

“(3) Any distribution of an asset *in specie* received by or accrued to a shareholder must be treated as having been acquired at [for] an expenditure [incurred at] equal to the market value and on the date contemplated in paragraph 75(2), which expenditure must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).”; and

(c) by the deletion of subparagraph (4).

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

**Amendment of paragraph 78 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001**

97. (1) Paragraph 78 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraphs (1) and (2) of the following subparagraphs:

“(1) Where a company issues capitalisation shares, [such] those capitalisation shares must be treated as having [a base cost] been acquired for expenditure incurred and paid of nil, except to the extent that the issue of those shares constitutes a dividend, in which case they must be treated as having been acquired for expenditure incurred and paid equal to the amount of that dividend.

(2) Subject to paragraphs 11(1)(g), 23 and 35(2), where a company issues shares in substitution of previously held shares in that company by reason of a subdivision, consolidation, or similar arrangement or a conversion contemplated in section 40A or 40B—

(a) the shareholder must disregard any capital gain or capital loss determined in respect of that substitution; and

(b) those newly issued shares must [have] be treated as—

(i) having an aggregate base cost equal to the aggregate base cost of the previously held shares with the aggregate base cost allocated among all

those newly issued shares in proportion to their relative market values;  
and

(ii) having been acquired on the same date as those previously held shares.”

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

**Amendment of paragraph 79 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001** 5

98. Paragraph 79 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the words preceding item (a) of the following words:

“Despite [section] paragraph 76, where a shareholder receives a capital distribution of cash or assets *in specie*, the amount of that capital distribution must be treated as a capital gain for the purposes of determining that shareholder’s aggregate capital gain or aggregate capital loss, where—” 10

**Substitution of paragraph 81 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and substituted by section 109 of Act 60 of 2001** 15

99. The following paragraph is hereby substituted for paragraph 81 of the Eighth Schedule to the Income Tax Act, 1962:

**“Base cost of interest in discretionary trust**

81. Despite paragraph 38(1)(b), a person’s interest in a discretionary trust must be treated as having a base cost of nil.” 20

**Substitution of Part XIII of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 34 of Act 19 of 2001 and sections 110 and 111 of Act 60 of 2001**

100. (1) The following Part is hereby substituted for Part XIII of the Eighth Schedule to the Income Tax Act, 1962: 25

**“PART XIII**

**FOREIGN CURRENCY**

**Definitions**

84. For purposes of this Part, unless the context otherwise indicates—

“foreign currency” means any currency which is not legal tender in the Republic; 30

“foreign currency asset” in relation to a person means any amount in foreign currency—

(a) which constitutes a unit of foreign currency of that person; or

(b) owing to that person in respect of any loan, advance or debt payable to that person; 35

“foreign currency base cost” means the base cost in respect of a foreign currency asset, as determined in accordance with paragraph 91;

“foreign currency liability” means an amount in foreign currency owing by that person in respect of any loan, advance or debt incurred by that person; 40

“foreign currency proceeds” means the proceeds from the disposal of a foreign currency asset, as determined in accordance with paragraph 92;

“personal expenses” of a person means any—

(a) domestic or private expenses incurred outside the Republic in respect of foreign accommodation (excluding the acquisition of any immovable property) or foreign personal-use assets; or 45

(b) traveling or maintenance expenses;

“personal foreign currency asset” means any foreign currency asset of a person which constitutes—