South Africa

Income Tax Act, 1962

Act 58 of 1962

Legislation as at 29 July 2022

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South Africa

Income Tax Act, 1962

Act 58 of 1962

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ACT

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

Preliminary

1. Interpretation

(1) In this Act, unless the context otherwise indicates—

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

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

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

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

"**assessment**" has the meaning assigned under section 1 of the Tax Administration Act, and includes a determination by the Commissioner—

(c) of any loss ranking for set-off;

(d) of any assessed capital loss determined in terms of paragraph 9 of the Eighth Schedule; or

(e) of any amounts to be taken into account in the determination of tax payable on income in future years;

"**average exchange rate**" in relation to a year of assessment means the average determined by using the closing spot rates at the end of daily or monthly intervals during that year of assessment which must be consistently applied within that year of assessment;

"**Banks Act**" means the Banks Act, 1990 (Act No. 94 of 1990);

"**beneficiary**" in relation to a trust means a person who has a vested or contingent interest in all or a portion of the receipts or accruals or the assets of that trust;

"**benefit fund**" means—

(a) any friendly society registered under the Friendly Societies Act, 1956 (Act No. 25 of 1956), or any fund established before 13 June 1986 which is not so registered solely because of the provisions of section 2(2)(a) of that Act; or

(b) any medical scheme registered under the provisions of the Medical Schemes Act;

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

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

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

"**child**", in relation to any person, includes any person adopted by him or her—

(a) under the law of the Republic; or

(b) under the law of any country other than the Republic, provided the adopted person is under such law accorded the status of a legitimate child of the adoptive parent and the adoption was made at a time when the adoptive parent was ordinarily resident in such country;

"**close corporation**" means a close corporation within the meaning of the Close Corporations Act, 1984 (Act No. 69 of 1984);

"**collateral arrangement**" means a collateral arrangement as defined in section 1 of the Securities Transfer Tax Act, 2007 (Act No. 25 of 2007);

"**Collective Investment Schemes Control Act**" means the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

"**Commissioner**" means the Commissioner for the South African Revenue Service appointed in terms of section 6 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), or the Acting Commissioner designated in terms of section 7 of that Act;

"**Companies Act**" means the Companies Act, 2008 (Act No. 71 of 2008);

"**company**" includes—

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

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

(c) any co-operative; or

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

(e) any—

(ii) portfolio comprised in any investment scheme carried on outside the Republic that is comparable to a portfolio of a collective investment scheme in participation bonds or a portfolio of a collective investment scheme in securities in pursuance of any arrangement in terms of which members of the public (as defined in section 1 of the Collective Investment Schemes Control Act) are invited or permitted to contribute to and hold participatory interests in that portfolio through shares, units or any other form of participatory interest; or

(iii) portfolio of a collective investment scheme in property that qualifies as a REIT as defined in the listing requirements of an exchange, as defined in section 1 of the Financial Markets Act and licensed under section 9 of that Act, where those listing requirements have been approved in consultation with the Director-General of the National Treasury and published by the appropriate authority, as contemplated in section 1 of the Financial Markets Act, in terms of section 11 of that Act or by the Financial Sector Conduct Authority; or

[subparagraph (iii) substituted by section 1(1)(a) of Act 23 of 2018; effective date 17 January 2019, and by section 4(1)(a) of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(f) a close corporation,

but does not include a foreign partnership;

"**connected person**" means—

(a) in relation to a natural person—

(i) any relative; and

(ii) any trust (other than a portfolio of a collective investment scheme) of which such natural person or such relative is a beneficiary;

(b) in relation to a trust (other than a portfolio of a collective investment scheme)—

(i) any beneficiary of such trust; and

(ii) any connected person in relation to such beneficiary;

(bA) in relation to a connected person in relation to a trust (other than a portfolio of a collective investment scheme), any other person who is a connected person in relation to such trust;

(c) in relation to a member of any partnership or foreign partnership—

(i) any other member; and

(ii) any connected person in relation to any member of such partnership or foreign partnership;

(d) in relation to a company—

(i) any other company that would be part of the same group of companies as that company if the expression "at least 70 per cent of the equity shares in" in paragraphs (a) and (b) of the definition of "group of companies" in this section were replaced by the expression "more than 50 per cent of the equity shares or voting rights in";

(iv) any person, other than a company as defined in section 1 of the Companies Act that alone or together with any connected person in relation to that person, holds, directly or indirectly, at least 20 per cent of—

(aa) the equity shares in the company; or

(bb) the voting rights in the company;

[words preceding item (aa) substituted by section 4(1)(b) of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(v) any other company if at least 20 per cent of the equity shares or voting rights in the company are held by that other company, and no holder of shares holds the majority voting rights in the company;

(vA) any other company if such other company is managed or controlled by—

(aa) any person who or which is a connected person in relation to such company; or

(bb) any person who or which is a connected person in relation to a person contemplated in item (aa); and

(vi) where such company is a close corporation—

(aa) any member;

(bb) any relative of such member or any trust (other than a portfolio of a collective investment scheme) which is a connected person in relation to such member; and

[item (bb) substituted by section 3(1)(f) of Act 25 of 2015, as retroactively substituted by section 103(1)(a) of Act 23 of 2018; effective date 8 January 2016, date of promulgation of the first Act]

(cc) any other close corporation or company which is a connected person in relation to—

(i) any member contemplated in item (aa); or

(ii) the relative or trust contemplated in item (bb); and

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

Provided that for the purposes of this definition, a company includes a portfolio of a collective investment scheme;

"**contributed tax capital**", in relation to a class of shares in a company, means—

(a) in relation to a class of shares issued by a company, in the case of a foreign company that becomes a resident on or after 1 January 2011, an amount equal to the sum of—

(i) the market value of all the shares in that company of that class immediately before the date on which that company becomes a resident;

(ii) the consideration received by or accrued to that company for the issue of shares of that class on or after the date on which that company becomes a resident; and

(iii) if the shares of that class include or consist of shares that were converted from another class of shares of that company to that class of shares—

(aa) any consideration received by or accrued to that company in respect of that conversion; and

(bb) the amount contemplated in subparagraph (cc) that was determined in respect of shares of the other class of shares that were so converted,

reduced by so much of that amount as—

(aa) the company has transferred on or after the date on which the company becomes a resident for the benefit of any person holding a share in that company of that class in respect of that share;

(bb) has by the date of the transfer been determined by the directors of the company or by some other person or body of persons with comparable authority to be an amount so transferred; and

(cc) in the case of a convertible class of shares some of the shares of which have been converted to another class of shares, so much of the amount contemplated in this paragraph in respect of that convertible class of shares immediately prior to that conversion as bears to that amount the same ratio as the number of shares so converted bears to the total number of that convertible class of shares prior to that conversion; or

(b) in relation to a class of shares issued by a company, in the case of any other company, an amount equal to the sum of—

(i) the stated capital or share capital and share premium of that company immediately before 1 January 2011 in relation to shares in that company of that class issued by that company before that date, less so much of that stated capital or share capital and share premium as would have constituted a dividend, as defined before that date, had that stated capital or share capital and share premium been distributed by that company immediately before that date;

(ii) the consideration received by or accrued to that company for the issue of shares of that class on or after 1 January 2011; and

(iii) if the shares of that class include or consist of shares that were converted from another class of shares of that company to that class of shares—

(aa) any consideration received by or accrued to that company in respect of that conversion; and

(bb) the amount contemplated in subparagraph (cc) that was determined in respect of shares of the other class of shares that were so converted,

reduced by so much of that amount as—

(aa) the company has transferred on or after 1 January 2011 for the benefit of any person holding a share in that company of that class in respect of that share;

(bb) has by the date of the transfer been determined by the directors of the company or by some other person or body of persons with comparable authority to be an amount so transferred; and

(cc) in the case of a convertible class of shares some of the shares of which have been converted to another class of shares, so much of the amount contemplated in this paragraph in respect of that convertible class of shares immediately prior to that

conversion as bears to that amount the same ratio as the number of shares so converted bears to the total number of that convertible class of shares prior to that conversion:

Provided that the amount transferred by a company as contemplated in paragraph (a) or (b) for the benefit of a person holding shares of any class of shares of that company must not exceed an amount that bears to the total of the amount of contributed tax capital attributable to that class of shares immediately before the transfer the same ratio as the number of shares of that class held by that person bears to the total number of shares of that class:

Provided further—

(i) that an amount transferred by a company as contemplated in paragraph (a) or (b) must not comprise a transfer of contributed tax capital unless all holders of shares in that class participate in the transfer in the same manner and are actually allocated an amount of contributed tax capital based on their proportional shareholding within that class of shares; and

(ii) that no regard must be had to paragraph (i) of this further proviso if the amount transferred constitutes an acquisition by the company of its own securities by way of general repurchase of securities, as contemplated in subparagraph (b) of paragraph 5.67(B) of section 5 of the JSE Limited Listings Requirements, where that acquisition complies with any applicable requirements prescribed by paragraphs 5.68 and 5.72 to 5.81 of section 5 of the JSE Limited Listings Requirements or a general repurchase of securities as contemplated in the listings requirements of any other exchange licensed under the Financial Markets Act, which requirements are substantially the same as the requirements prescribed by the JSE Limited Listings 45 Requirements, where that acquisition complies with the applicable requirements of that exchange;

[further proviso to the definition of "contributed tax capital" added by section 4(1)(c) of Act 20 of 2021; effective date 1 January 2023]

"**controlled foreign company**" means a controlled foreign company as defined in section 9D;

[definition of "controlled foreign company" inserted by section 2(1)(b) of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

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

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

"**controlled foreign company**" *[definition of "controlled foreign company" deleted by section 2(1)(a) of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]*

"**co-operative**" means any association of persons registered in terms of section 27 of the Co-operatives Act, 1981 (Act No. 91 of 1981) or section 7 of the Co-operatives Act, 2005 (Act No. 14 of 2005);

"**Copyright Act**" means the Copyright Act, 1978 (Act No. 98 of 1978);

"**date of sequestration**" means—

(a) the date of voluntary surrender of an estate, if accepted by the Court; or

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

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

"**Designs Act**" means the Designs Act, 1993 (Act No. 195 of 1993);

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

"**dividend**" means any amount, other than a dividend consisting of a distribution of an asset *in specie* declared and paid as contemplated in section 31(3), transferred or applied by a company that is a resident for the benefit or on behalf of any person in respect of any share in that company, whether that amount is transferred or applied—

(a) by way of a distribution made by; or

(b) as consideration for the acquisition of any share in,

[words preceding paragraph (a) substituted by section 1(1)(b) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]

that company, but does not include any amount so transferred or applied to the extent that the amount so transferred or applied—

(i) results in a reduction of contributed tax capital of the company;

(ii) constitutes shares in the company;

(iii) constitutes an acquisition by the company of its own securities by way of a general repurchase of securities as contemplated in subparagraph (b) of paragraph 5.67(B) of section 5 of the JSE Limited Listings Requirements, where that acquisition complies with any applicable requirements prescribed by paragraphs 5.68 and 5.72 to 5.81 of section 5 of the JSE Limited Listings Requirements or a general repurchase of securities as contemplated in the listings requirements of any other exchange, licensed under the Financial Markets Act, that are substantially the same as the requirements prescribed by the JSE Limited Listings Requirements, where that acquisition complies with the applicable requirements of that exchange;

[paragraph (iii) substituted by section 2(1)(a) of Act 34 of 2019, effective date 15 January 2020, date of promulgation of that Act]

"**domestic treasury management company**" means a company—

(a) that is incorporated or deemed to be incorporated—

(i) by or under any law in force in the Republic and is not subject to exchange control restrictions by virtue of being registered with the financial surveillance department of the South African Reserve Bank; or

(ii) by or under the law of any country other than the Republic and is not subject to exchange control restrictions by virtue of being registered before 1 January 2019 with the financial surveillance department of the South African Reserve Bank; and

(b) that has its place of effective management in the Republic;

[definition of "domestic treasury management company" substituted by section 2(1)(b) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

"**equity share**" means any share in a company, excluding any share that, neither as respects dividends nor as respects returns of capital, carries any right to participate beyond a specified amount in a distribution;

"**Estate Duty Act**" means the Estate Duty Act, 1955 (Act No. 45 of 1955);

"**executor**" means any person to whom letters of administration have been granted by a Master or an Assistant Master of the High Court appointed under the Administration of Estates Act, 1965 (Act No. 66 of 1965), in respect of the estate of a deceased person under any law relating

to the administration of estates, and includes a person acting or authorized to act under letters of administration granted outside the Republic but signed and sealed by such a Master or Assistant Master for use within the Republic and, in any case where the estate is not required to be administered under the supervision of such a Master or Assistant Master, the person administering the estate;

"**financial instrument**" includes—

(a) a loan, advance, debt, bond, debenture, bill, share, promissory note, banker's acceptance, negotiable certificate of deposit, deposit with a financial institution, a participatory interest in a portfolio of a collective investment scheme, or a similar instrument;

(b) any repurchase or resale agreement, forward purchase arrangement, forward sale arrangement, futures contract, option contract or swap contract;

(c) any other contractual right or obligation the value of which is determined directly or indirectly with reference to—

(i) a debt security or equity;

(ii) any commodity as quoted on an exchange; or

(iii) a rate index or a specified index;

(d) any interest-bearing arrangement;

(e) any financial arrangement based on or determined with reference to the time value of money or cash flow or the exchange or transfer of an asset; and

(f) any crypto asset;

[paragraph (f) added by section 1(1)(c) of Act 23 of 2018; effective date 17 January 2019, and substituted by section 2(1)(c) of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

"**Financial Markets Act**" means the Financial Markets Act, 2012 (Act No. 19 of 2012);

"**Financial Sector Conduct Authority**" means the Financial Sector Conduct Authority as defined in section 1 of the Financial Sector Regulation Act;

[definition of "Financial Sector Conduct Authority" inserted by section 1(1)(d) of Act 23 of 2018; effective date 1 April 2018]

"**Financial Sector Regulation Act**" means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);

[definition of "Financial Sector Regulation Act" inserted by section 1(1)(g) of Act 23 of 2018; effective date 1 April 2018]

"**Financial Services Board**" *[definition of "Financial Services Board" deleted by section 1(1)(e) of Act 23 of 2018; effective date 1 April 2018]*

"**Financial Services Board Act**" *[definition of "Financial Services Board Act" deleted by section 1(1)(e) of Act 23 of 2018; effective date 1 April 2018]*

"**financial year**", in relation to any company, means—

(a) the period, whether of 12 months or not, commencing upon the date of incorporation or creation of such company and ending upon the last day of February immediately succeeding such date or upon such other date as the Commissioner having regard to the circumstances of the case may approve; or

(b) any period subsequent to the period referred to in paragraph (a), whether of 12 months or not, commencing immediately after the last day of the immediately preceding financial year

of such company and ending upon the first anniversary of such last day or upon such other date as the Commissioner having regard to the circumstances of the case may approve;

"**foreign company**" means any company which is not a resident;

"**foreign dividend**" means any amount that is paid or payable by a foreign company in respect of a share in that foreign company where that amount is treated as a dividend or similar payment by that foreign company for the purposes of the laws relating to—

(a) tax on income on companies of the country in which that foreign company has its place of effective management; or

(b) companies of the country in which that foreign company is incorporated, formed or established, where the country in which that foreign company has its effective place of management does not have any applicable laws relating to tax on income,

but does not include any amount so paid or payable that—

(i) constitutes a redemption of a participatory interest in an arrangement or scheme contemplated in paragraph (e)(ii) of the definition of "company"; or

(iii) constitutes a share in that foreign company;

"**foreign investment entity**" means any person other than a natural person—

(a) that is not incorporated, established or formed in the Republic;

(b) the assets of which consist solely of a portfolio of one or more of the following:

(i) amounts in cash or that constitute cash equivalents;

(ii) financial instruments that—

(aa) are issued by a listed company or by the government of the Republic in the national, provincial or local sphere; or

(bb) if not issued by a listed company or by the government of the Republic in the national, provincial or local sphere, are traded by members of the general public and a market for that trade exists;

(iii) financial instruments, the values of which are determined with reference to financial instruments contemplated in subparagraph (ii); or

(iv) rights to receive any asset contemplated in subparagraph (i), (ii) or (iii),

which amounts, financial instruments and rights are held by that person for investment purposes;

(c) where no more than 10 per cent of the shares, units or other form of participatory interest in that person are directly or indirectly held by persons that are residents; and

(d) where that person has no employees and has no directors or trustees that are engaged in the management of that person on a full-time basis;

"**foreign partnership**", in respect of any year of assessment, means any partnership, association, body of persons or entity formed or established under the laws of any country other than the Republic if—

(a) for the purposes of the laws relating to tax on income of the country in which that partnership, association, body of persons or entity is formed or established—

(i) each member of the partnership, association, body of persons or entity is required to take into account the member's interest in any amount received by or accrued to that partnership, association, body of persons or entity when that amount is received by or accrued to the partnership, association, body of persons or entity; and

(ii) the partnership, association, body of persons or entity is not liable for or subject to any tax on income, other than a tax levied by a municipality, local authority or a comparable authority, in that country; or

(b) where the country in which that partnership, association or body of persons is formed or established does not have any applicable laws relating to tax on income—

(i) any amount—

(aa) that is received by or accrued to; or

(bb) of expenditure that is incurred by,

the partnership, association, body of persons or entity is allocated concurrently with the receipt, accrual or incurral to the members of that partnership, association, body of persons or entity in terms of an agreement between those members; and

(ii) no amount distributed to a member of a partnership, association, body of persons or entity may exceed the allocation contemplated in subparagraph (i) after taking into account any prior distributions made by the partnership, association or body of persons;

"**foreign return of capital**" means any amount that is paid or payable by a foreign company in respect of any share in that foreign company where that amount is treated as a distribution or similar payment (other than an amount that constitutes a foreign dividend) by that foreign company for the purposes of the laws relating to—

(a) tax on income on companies of the country in which that foreign company has its place of effective management; or

(b) companies of the country in which that foreign company is incorporated, formed or established, where that country in which that foreign company has its place of effective management does not have any applicable laws relating to tax on income,

but does not include any amount so paid or payable to the extent that the amount so paid or payable—

(i) is deductible by that foreign company in the determination of any tax on income of companies of the country in which that foreign company has its place of effective management; or

(ii) constitutes shares in that foreign company;

"**foreign tax year**", in relation to a foreign company, means any year or period of reporting for foreign income tax purposes by that company or, if that company is not subject to foreign income tax, any annual period of financial reporting by that company;

"**functional currency**", in relation to—

(a) a person, means the currency of the primary economic environment in which the business operations of that person are conducted; and

(b) a permanent establishment of any person, means the currency of the primary economic environment in which the business operations of that permanent establishment are conducted;

"**gross income**", in relation to any year or period of assessment, means—

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

(ii) in the case of any person other than a resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such person from a source within the Republic,

during such year or period of assessment, excluding receipts or accruals of a capital nature, but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described hereunder, namely—

(a) any amount received or accrued by way of annuity, including any amount contemplated in the definition of "living annuity" or the definition of "annuity amount" in section 10A(1), other than an amount contemplated in paragraph (d)(ii);

(b) any amount payable to the taxpayer—

(i) by the spouse or former spouse of that taxpayer, under any judicial order or written agreement of separation or under any order of divorce, by way of alimony or allowance or maintenance of the taxpayer; or

(ii) in terms of any maintenance order for the maintenance of a child as contemplated in section 15(1) of the Maintenance Act, 1998 (Act No. 99 of 1998);

(c) any amount, including any voluntary award, received or accrued in respect of services rendered or to be rendered or any amount (other than an amount referred to in section 8(1), 8B or 8C) received or accrued in respect of any employment or the holding of any office: Provided that—

(i) the provisions of this paragraph shall not apply in respect of any benefit or advantage in respect of which the provisions of paragraph (i) apply;

(ii) any amount received by or accrued to or for the benefit of any person in respect of services rendered or to be rendered by any other person shall for the purposes of this definition be deemed to have been received by or to have accrued to the said other person;

(vii) the provisions of this paragraph shall not apply in respect of any amount received by or accrued to or for the benefit of any person in respect of long service as defined in paragraph 5(4) of the Seventh Schedule, to the extent that the aggregate value of an amount determined under this paragraph together with all amounts determined under paragraphs 5(2)(b), 6(4)(d) and 10(2)(e) of the Seventh Schedule do not exceed R5 000;

[paragraph (vii) added by section 4(1)(d) of Act 20 of 2021; effective date 1 March 2022, applicable in respect of years of assessment commencing on or after that date]

(cA) any amount received by or accrued to any person who—

(ii) is or was a labour broker as defined in the Fourth Schedule (other than a labour broker in respect of which a certificate of exemption has been issued in terms of that Schedule);

(iii) is or was a personal service provider as defined in the Fourth Schedule; or

(iv) was a personal service company or personal service trust as defined in the Fourth Schedule prior to section 66 of the Revenue Laws Amendment Act, 2008, coming into operation,

as consideration for any restraint of trade imposed on such person;

(cB) any amount received by or accrued to any natural person as consideration for any restraint of trade imposed on that person in respect or by virtue of—

(i) employment or the holding of any office; or

(ii) any past or future employment or the holding of an office;

(d) any amount (other than an amount contemplated in paragraph (a)), including any voluntary award, received or accrued—

(i) in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of any office or employment or of any appointment (or right or claim to be appointed) to any office or employment;

(ii) by or to a person, or dependant or nominee of the person, directly or indirectly in respect of proceeds from a policy of insurance where the person is or was an employee or director of the policyholder; or

(iii) by or to a person, or dependant or nominee of the person, in respect of any policy of insurance (other than a risk policy with no cash value or surrender value) that has been ceded to—

(aa) the person;

(bb) a dependant or nominee of the person; or

for the benefit of the person, or dependant or nominee of the person, by—

(A) the employer or former employer of the person; or

(B) the company of which the person is or was a director:

Provided that—

(aa) the provisions of subparagraphs (i) and (ii) shall not apply to any lump sum award from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;

(bb) any such amount which becomes payable in consequence of or following upon the death of any person shall be deemed to be an amount which accrued to such person immediately prior to his or her death;

(cc) for the purposes of subparagraphs (ii) and (iii), any amount received by or accrued to a dependant or nominee of a person shall be deemed to be received by or to accrue to that person;

(e) a retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit other than any amount included under paragraph (eA);

(eA) where, in relation to a member who effectively remains in the employment of the same employer, or the dependants or nominees of a deceased member—

(i) any amount in a fund contemplated in paragraph (a), (b) or (d) of the definition of "pension fund" or paragraph (a), (b) or (c) of the definition of "provident fund", the rules of which provide that on retirement of such member a portion of his benefit has to be taken in the form of an annuity, has been transferred to a fund, the rules of which entitle such member, or the dependants or nominees of a deceased member, to a benefit on retirement in the form of a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments and annuities); or

[subparagraph (i) substituted by section 1(1)(c) of Act 20 of 2022; effective date deemed to have been 1 March 2021, applies in respect of years of assessment commencing on or after that date]

(ii) a fund contemplated in paragraph (a), (b) or (d) of the definition of "pension fund" or paragraph (a), (b) or (c) of the definition of "provident fund", the rules of which provide that on retirement of such member a portion of his benefit has to be taken in the form of an annuity, is wholly or partially converted by way of an amendment to its rules or otherwise, to entitle such member, or the dependants or nominees of a deceased member, to a benefit on retirement in the form of a lump sum exceeding

one-third of the capitalised value of all benefits (including lump sum payments and annuities); or

[subparagraph (ii) substituted by section 1(1)(c) of Act 20 of 2022; effective date deemed to have been 1 March 2021, applies in respect of years of assessment commencing on or after that date]

(iii) any amount in a fund contemplated in paragraph (a), (b) or (d) of the definition of "pension fund" or paragraph (a), (b) or (c) of the definition of "provident fund" has become payable to the member or is being utilised to redeem a debt,

[subparagraph (iii) substituted by section 1(1)(c) of Act 20 of 2022; effective date deemed to have been 1 March 2021, applies in respect of years of assessment commencing on or after that date]

an amount equal to two-thirds—

(aa) of the amount so transferred; or

(bb) in the case of a conversion, of the amount representing the amount converted for the benefit or ultimate benefit of the member or the dependants or nominees of the deceased member, and such amount shall be deemed to have been received by or accrued to or in favour of such member, dependants or nominees, as the case may be: Provided that where a court order granting a decree of divorce in respect of such member has made an order that any part of such amount shall be paid to the former spouse of such member, as provided for in section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979), such part shall for the purposes of this paragraph be deemed to be an amount converted for the benefit or ultimate benefit of such member; or

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

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

(a) that on 12 March 1997 the proportion of the benefit on retirement in such fund that could be taken in the form of a lump sum was greater than one-third, but not greater than one-half, of the total capitalized value of all benefits;

(b) that the rules of such fund are amended so that the maximum proportion of such member's benefit on retirement that can be taken in the form of a lump sum is one-third of the total capitalized value of all benefits; and

(c) such further conditions as the Commissioner may determine from time to time;

(f) any amount received or accrued in commutation of amounts due under any contract of employment or service;

(g) any amount received or accrued from another person, as a premium or consideration in the nature of a premium—

(i) for the use or occupation or the right of use or occupation of land or buildings; or

(ii) for the use or the right of use of plant or machinery; or

(iibis) for the use or the right of use of any motion picture film or any film or video tape or disc for use in connection with television or any sound recording or advertising matter connected with such motion picture film, film or video tape or disc; or

(iii) for the use or right of use of any patent as defined in the Patents Act or any design as defined in the Designs Act or any trade mark as defined in the Trade Marks Act or

any copyright as defined in the Copyright Act or any model, pattern, plan, formula or process or any other property or right of a similar nature;

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

(h) in the case of any person to whom, in terms of any agreement relating to the grant to any other person of the right of use or occupation of land or buildings, or by virtue of the cession of any rights under any such agreement, there has accrued in any such year or period the right to have improvements effected on the land or to the buildings by any other person—

(i) the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements; or

(ii) if no amount is so stipulated, an amount representing the fair and reasonable value of the improvements;

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

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

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

(k) any amount received or accrued by way of a dividend or a foreign dividend;

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

(lA) any amount received by or accrued to a company or association as contemplated in subparagraph (ii) of section 11E;

(lC) any amount received by or accrued to a person by way of a government grant as defined in section 12P;

(m) any amount received or accrued in respect of a policy of insurance of which the taxpayer is the policyholder, where the policy relates to the death, disablement or illness of an employee or director (or former employee or director) of the taxpayer, including by way of any debt: Provided that any amount so received or accrued shall be reduced by the amount of any such debt which is or has been included in the taxpayer's gross income;

[paragraph (m) substituted by section 2(1)(d) of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(mA) any amount in respect of a policy as contemplated in—

(a) section 11(w) if that policy was concluded prior to 1 January 2011; or

(b) section 11(w)(ii) if that policy was concluded on or after 1 January 2011,

that is received by or accrues to a person other than the taxpayer contemplated in paragraph (m) subsequent to a cession of that policy, reduced by an amount not exceeding the amount so received or accrued equal to so much of the premiums paid by any person that ranked for deduction but has been disallowed solely by reason of the fact that the amount exceeded the amount of the deduction allowable in respect of the year of assessment;

(n) any amount which in terms of any other provision of this Act is specifically required to be included in the taxpayer's income and that amount must for the purposes of this paragraph be deemed to have been received by or to have accrued to the taxpayer:

[words and subparagraphs preceding the proviso substituted by section 2(1)(c) of Act 34 of 2019, effective date 15 January 2020, date of promulgation of that Act]

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

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

(a) at least 70 per cent of the equity shares in each controlled group company are directly held by the controlling group company, one or more other controlled group companies or any combination thereof; and

(b) the controlling group company directly holds at least 70 per cent of the equity shares in at least one controlled group company;

"**headquarter company**" in respect of any year of assessment means a company contemplated in section 9I(1) in respect of which an election has been made in terms of that section;

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

"**identical security**" means in respect of a listed security, as defined in the Securities Transfer Tax Act, 2007 (Act No. 25 of 2007), that is the subject of a securities lending arrangement—

(a) a security of the same class in the same company as that security; or

(b) any other security that is substituted for that listed security in terms of an arrangement that is announced and released as a corporate action as contemplated in the JSE Limited Listing Requirements in the SENS (Stock Exchange News Service) as defined in the JSE Limited Listing Requirements;

"**identical share**" means in respect of a share—

(a) a share of the same class in the same company as that share; or

(b) any other share that is substituted for a listed share in terms of an arrangement that is announced and released as a corporate action as contemplated in the JSE Limited Listings Requirements in the SENS (Stock Exchange News Service) as defined in the JSE Limited Listings Requirements or a corporate action as contemplated in the listings requirements of any other exchange, licensed under the Financial Markets Act, that are substantially the

same as the requirements prescribed by the JSE Limited Listings Requirements, where that corporate action complies with the applicable requirements of that exchange;

[paragraph (b) substituted by section 1(1)(f) of Act 23 of 2018; effective date 17 January 2019, and by section 2(1)(d) of Act 34 of 2019, effective date 15 January 2020, date of promulgation of that Act]

"**IFRS**" means the International Financial Reporting Standards issued by the International Accounting Standards Board;

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

"**insolvent estate**" means an insolvent estate as defined in section 2 of the Insolvency Act, 1936 (Act No. 24 of 1936);

"**Insurance Act**" means the Insurance Act, 2017 (Act No. 18 of 2017);

[definition of "Insurance Act" inserted by section 3(1)(i) of Act 25 of 2015 (section 3(1)(i) and (5) of Act 25 of 2015 retroactively deleted by section 103(1)(b) and (c) of Act 23 of 2018), and inserted again by section 1(1)(h) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

"**JSE Limited Listings Requirements**" means the JSE Limited Listings Requirements, 2003, made by the JSE Limited in terms of section 11 of the Financial Markets Act;

"**linked unit**" means a unit comprising a share and a debenture in a company, where that share and that debenture are linked and are traded together as a single unit;

"**liquidation and distribution account**" means the account required to be submitted by an executor to a Master in accordance with section 35 of the Administration of Estates Act, 1965 (Act No. 66 of 1965);

[definition of "liquidation and distribution account" inserted by section 4(1)(e) of Act 20 of 2021; effective date 1 March 2022, applicable in respect of liquidation and distribution accounts finalised on or after that date]

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

(a) an exchange as defined in section 1 of the Financial Markets Act and licensed under section 9 of that Act; or

(b) a stock exchange in a country other than the Republic which has been recognised by the Minister as contemplated in paragraph (c) of the definition of "recognised exchange" in paragraph 1 of the Eighth Schedule;

"**listed share**" means a share that is listed on an exchange as defined in section 1 of the Financial Markets Act and licensed under section 9 of that Act;

"**living annuity**" means a right of a member or former member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, or his or her dependant or nominee, or any subsequent nominee, to an annuity purchased from a person or provided by that fund on or after the retirement date of that member or former member in respect of which—

(a) the value of the annuity is determined solely by reference to the value of assets which are specified in the annuity agreement and are held for purposes of providing the annuity;

(b) the amount of the annuity is determined in accordance with a method or formula prescribed by the Minister by notice in the *Gazette*;

(c) the full remaining value of the assets contemplated in paragraph (a) may be paid as a lump sum when the value of those assets become at any time less than an amount prescribed by the Minister by notice in the *Gazette*;

(d) the amount of the annuity is not guaranteed by that person or fund;

(e) on the death of the member or former member, the value of the assets referred to in paragraph (a) may be paid to a nominee of the member or former member as an annuity or lump sum or as an annuity and a lump sum, or, in the absence of a nominee, to the deceased's estate as a lump sum;

[paragraph (e) amended by section 2(1)(e) of Act 23 of 2020; effective date 1 March 2021]

(eA) in anticipation of the termination of a trust, the value of the assets referred to in paragraph (a) must be paid to the trust as a lump sum pursuant to that termination; and

[paragraph (eA) inserted by section 2(1)(f) of Act 23 of 2020; effective date 1 March 2021]

(f) further requirements regarding the annuity may be prescribed by the Minister by notice in the *Gazette*;

"**Long-term Insurance Act**" means the Long-term Insurance Act, 1998 (Act No. 52 of 1998);

"**low-cost residential unit**" means—

(a) an apartment qualifying as a residential unit in a building located within the Republic, where —

(i) the cost of the apartment does not exceed R350 000; and

(ii) the owner of the apartment does not charge a monthly rental in respect of that apartment that exceeds one per cent of the cost; or

(b) a building qualifying as a residential unit located within the Republic, where—

(i) the cost of the building does not exceed R300 000; and

(ii) the owner of the building does not charge a monthly rental in respect of that building that exceeds one per cent of the cost contemplated in subparagraph (i) plus a proportionate share of the cost of the land and the bulk infrastructure:

Provided that for the purposes of paragraphs (a)(ii) and (b)(ii), the cost is deemed to be increased by 10 per cent in each year succeeding the year in which the apartment or building is first brought into use;

"**lump sum benefit**" means a retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit;

"**Medical Schemes Act**" means the Medical Schemes Act, 1998 (Act No. 131 of 1998);

"**Mineral and Petroleum Resources Development Act**" means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

"**mining for gold**" or "to mine for gold" includes mining for uranium or to mine for uranium;

"**mining operations**" and "mining" include every method or process by which any mineral is won from the soil or from any substance or constituent thereof;

"**Minister**" means the Minister of Finance;

"**municipality**" means a municipality which is within a category listed in section 155(1) of the Constitution of the Republic of South Africa, 1996, and which is an organ of state within the local sphere of government exercising legislative and executive authority within an area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

"**municipal value**" means an amount determined in terms of section 46 of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);

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

"**neighbouring country**" means Botswana, Lesotho, Namibia and Swaziland;

"**normal retirement age**" means—

(a) in the case of a member of a pension fund or provident fund, the date on which the member becomes entitled to retire from employment for reasons other than sickness, accident, injury or incapacity through infirmity of mind or body;

(b) in the case of a member of a retirement annuity fund, a pension preservation fund or a provident preservation fund, the date on which the member attains 55 years of age; or

(c) in the case of a member of any fund contemplated in this definition, the date on which that member becomes permanently incapable of carrying on his or her occupation due to sickness, accident, injury or incapacity through infirmity of mind or body;

"**normal tax**" means income tax referred to in section 5(1);

"**officer**" means, where used in the context of a person who is engaged by the Commissioner in carrying out the provisions of this Act, a SARS official as defined in section 1 of the Tax Administration Act;

"**official rate of interest**" means—

(a) in the case of a debt which is denominated in the currency of the Republic, a rate of interest equal to the South African repurchase rate plus 100 basis points; or

(b) in the case of a debt which is denominated in any other currency, a rate of interest that is the equivalent of the South African repurchase rate applicable in that currency plus 100 basis points:

Provided that where a new repurchase rate or equivalent rate is determined, the new rate of interest applies for the purposes of this definition from the first day of the month following the date on which that new repurchase rate or equivalent rate came into operation;

[definition of "official rate of interest" substituted by section 1(1)(i) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

"**Patents Act**" means the Patents Act, 1978 (Act No. 57 of 1978);

"**pension fund**" means—

(a) (i) any pension or dependants' fund or pension scheme established by law, other than the Government Employees Pension Fund, as contemplated in the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996);

[subparagraph (i) substituted by section 7(1)(o) of Act 17 of 2009; effective date 30 September 2009, and by section 3(1)(k) of Act 25 of 2015, as retroactively substituted by section 74(1)(a) of Act 23 of 2020; effective date, retroactively amended by section 3(1)(b) of Act 2 of 2016, by section 98(1) of Act 17 of 2017, and by section 111(1) of Act 23 of 2018 to 1 March 2021, applicable in respect of years of assessment commencing on or after that date]

(ii) any pension, provident or dependants' fund or pension scheme established for the benefit of the employees of any municipality or of any local authority (as defined in the definition of "local authority" in this section prior to the coming into operation of

section 3(1)(h) of the Revenue Laws Amendment Act, 2006 (Act No. 20 of 2006), that was established prior to the date that section so came into operation); or

[subparagraph (ii) substituted by section 7(1)(o) of Act 17 of 2009; effective date 30 September 2009, and by section 3(1)(l) of Act 25 of 2015 (retroactively deleted by section 74(1)(b) of Act 23 of 2020)]

(iii) any fund contemplated in subparagraph (ii), which includes as members employees of any municipal entity created in accordance with the provisions of the Municipal Systems Act, 2000 (Act No. 32 of 2000), over which one or more municipalities or local authorities (as defined in section 1 prior to the coming into operation of section 3(1)(h) of the Revenue Laws Amendment Act, 2006, and that was established prior to the date that section so came into operation) exercise ownership control as contemplated by that Act, where such fund was established—

(aa) on or before 14 November 2000, and such employees were employees of a local authority (as defined in section 1 prior to the coming into operation of section 3(1)(h) of the Revenue Laws Amendment Act, 2006, and that was established prior to the date that section so came into operation) immediately prior to becoming employees of such municipal entity; or

(bb) after 14 November 2000, and such fund has been approved by the Commissioner subject to such limitations, conditions and requirements as contemplated in paragraph (c);

(b) with effect from a date determined by the Commissioner in relation to any fund hereinafter referred to (not being a date earlier than 4 December 1981), any pension fund established for the benefit of employees of a control board as defined in section 1 of the Marketing of Agricultural Products Act, 1996 (Act No. 47 of 1996), or for the benefit of employees of the Development Bank of Southern Africa, if the rules of such fund are in all material respects identical to those of the Government Employees' Pension Fund; or

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

(i) that the fund is a permanent fund *bona fide* established for the purpose of providing annuities for employees on retirement date or for the dependants or nominees of deceased employees, or mainly for the said purpose and also for the purpose of providing benefits other than annuities for the persons aforesaid or for the purpose of providing any benefit contemplated in paragraph 2C of the Second Schedule or section 15A or 15E of the Pension Funds Act; and

(ii) that the rules of the fund provide—

(aa) that all annual contributions of a recurrent nature to the fund shall be in accordance with specified scales;

(bb) that membership of the fund throughout the period of employment shall be a condition of the employment by the employer of all persons of the class or classes specified therein who enter his employment on or after the date upon which—

(A) the fund comes into operation; or

(B) the employer becomes a participant in that fund;

(cc) that persons who immediately prior to the said date were employed by the employer and who on the said date fall within the said class or classes may, on application made, be permitted to become members of the fund on such conditions as may be specified in the rules;

(dd) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund or a retirement annuity fund;

[subparagraph (dd) substituted by section 1(1)(j) of Act 23 of 2018; effective date 1 March 2018, and by section 1(1)(k) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]

(ee) that a partner of a partnership is regarded as an employee of the partnership; and

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

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

Provided further that a fund contemplated in paragraph (i) of the further proviso to the definition of "pension preservation fund" which is deemed to be approved or which is approved in terms of that definition or which fails to submit its rules as required by that paragraph is deemed with effect from the earlier of the date of the deemed approval or 30 September 2010 to be a fund which is not approved in terms of this definition;

(d) the Government Employees Pension Fund, as contemplated in the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996):

[paragraph (d) added by section 3(1)(o) of Act 25 of 2015; effective date, retroactively amended by section 3(1)(b) of Act 2 of 2016, by section 98(1) of Act 17 of 2017, and by section 111(1) of Act 23 of 2018 to 1 March 2021, applicable in respect of years of assessment commencing on or after that date]

Provided that the Commissioner may approve any fund contemplated in paragraph (c) subject to such limitations or conditions as he may determine, and shall not approve a fund in respect of any year of assessment unless the Commissioner is in respect of that year of assessment satisfied—

(i) that the fund is a permanent fund *bona fide* established for the purpose of providing annuities for employees on retirement date or for the dependants or nominees of deceased employees, or mainly for the said purpose and also for the purpose of providing benefits other than annuities for the persons aforesaid or for the purpose of providing any benefit contemplated in paragraph 2C of the Second Schedule or section 15A or 15E of the Pension Funds Act; and

(ii) that the rules of the fund provide—

(aa) that all annual contributions of a recurrent nature to the fund shall be in accordance with specified scales;

(bb) that membership of the fund throughout the period of employment shall be a condition of the employment by the employer of all persons of the class or classes specified therein who enter employment with that employer on or after the date upon which—

(A) the fund comes into operation; or

(B) the employer becomes a participant in that fund;

(cc) those persons who immediately prior to the said date were employed by the employer and who on the said date fall within the said class or classes may, upon application made, be permitted to become members of that fund on such conditions as may be specified in the rules;

(dd) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund or a retirement annuity fund:

Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account—

(A) in the case of a person who was a member of a provident fund or provident preservation fund and who was 55 years of age or older on 1 March 2021—

(AA) any amount contributed to a provident fund or transferred to a provident preservation fund prior to, on and after 1 March 2021 of which that person was a member on 1 March 2021;

(BB) with the addition of any other amount credited to the member's individual account or minimum individual reserve of the provident fund or provident preservation fund prior to, on and after 1 March 2021; and

(CC) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subparagraph (AA) or amounts credited contemplated in subparagraph (BB); or

[subparagraph (CC) substituted by section 1(1)(c) of Act 17 of 2023; effective date deemed to have been 1 March 2022, applies in respect of years of assessment commencing on or after that date]

(B) in any other case of a person who was a member of a provident fund or provident preservation fund on 1 March 2021—

(AA) any amount contributed to a provident fund or transferred to a provident preservation fund prior to 1 March 2021;

(BB) with the addition of any other amount credited to the member's individual account or minimum individual reserve of the provident fund or provident preservation fund as a result of the value of the member's individual account or minimum individual reserve on 1 March 2021; and

(CC) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subparagraph (AA) or amounts credited contemplated in subparagraph (BB),

[subparagraph (CC) substituted by section 1(1)(d) of Act 17 of 2023; effective date deemed to have been 1 March 2022, applies in respect of years of assessment commencing on or after that date]

reduced proportionally by an amount permitted in terms of the Pension Funds Act to be deducted from the member's individual account or minimum individual reserve of the provident fund or provident preservation fund prior to, on and after 1 March 2021: Provided further that in the case where the remaining balance is utilised to provide

or purchase more than one annuity, the amount utilised to provide or purchase each annuity must exceed R165 000;

[subparagraph (dd) substituted by section 4(1)(f) of Act 20 of 2021; effective date 1 March 2022, applicable in respect of annuities purchased on or after that date]

(ee) that a partner of a partnership is regarded as an employee of the partnership; and

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

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

[proviso added by section 1(1)(a) of Act 2 of 2016, as retroactively substituted by section 97(1)(a) of Act 17 of 2017, by section 110(1)(a) of Act 23 of 2018, and by section 75(1) of Act 23 of 2020; effective date, retroactively amended by section 110(1)(b) of Act 23 of 2018 to 1 March 2021, applicable in respect of years of assessment commencing on or after that date]

"**Pension Funds Act**" means the Pension Funds Act, 1956 (Act No. 24 of 1956);

"**pension preservation fund**" means a pension fund organisation which is registered under the Pension Funds Act and which is approved by the Commissioner in respect of the year of assessment in question: Provided that the Commissioner may approve a fund subject to such limitations and conditions as the Commissioner may determine, and shall not approve a fund in respect of any year of assessment unless the Commissioner is satisfied in respect of that year of assessment that the rules of the fund provide that—

(a) membership of the fund consists of—

(i) former members of a pension fund or provident fund whose membership of that fund has terminated due to—

(aa) resignation, retrenchment or dismissal from employment and who elected to have any lump sum benefit that is payable as a result of the termination transferred to that fund;

(bb) the winding up or partial winding up of that fund, if the member elects or is required in terms of the rules to transfer to this fund; or

(cc) a transfer of business from one employer to another in terms of section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995), and the employment of the employee with the transferor employer is transferred to the transferee employer, if the member elects or is required in terms of the rules to transfer to this fund;

(ii) former members of any other pension preservation fund or a provident preservation fund—

(aa) if that fund was wound up or partially wound up; or

(bb) if the member elected to have any lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule transferred to this pension preservation fund and who made this election while they were members of that other fund;

[words preceding item (a) substituted by section 3(1)(q) of Act 25 of 2015 (retroactively deleted by section 74(1)(c) of Act 23 of 2020)]

(iii) *[subparagraph (iii) substituted by section 1(1)(o) of Act 23 of 2018; effective date 1 March 2019, and deleted by section 2(1)(g) of Act 23 of 2020; effective date 1 March 2021]*

(iv) persons who have elected to transfer to that fund amounts awarded to those persons in terms of any court order contemplated in section 7(8) of the Divorce Act, 1979 (Act

No. 70 of 1979), from any pension fund, pension preservation fund, provident fund or provident preservation fund for the benefit of those persons;

[subparagraph (iv) substituted by section 1(1)(o) of Act 23 of 2018; effective date 1 March 2019]

(v) former members of a pension fund, pension preservation fund, provident fund or provident preservation fund who have elected to have a lump sum benefit contemplated in paragraph 2(1)(c) of the Second Schedule transferred to this pension preservation fund and who made the election while they were members of that other fund; or

[subparagraph (v) added by section 1(1)(l) of Act 23 of 2018; effective date 1 March 2019, and substituted by section 4(1)(g) of Act 20 of 2021; effective date 1 March 2022, applicable in respect of years of assessment commencing on or after that date]

(vi) former members of a pension fund, pension preservation fund, provident fund or provident preservation fund or nominees or dependants of that former member in respect of whom an "unclaimed benefit" as defined in the Pension Funds Act is due or payable by that fund;

[subparagraph (vi) added by section 2(1)(h) of Act 23 of 2020; effective date 1 March 2021]

(b) payments or transfers to the fund in respect of a member are limited to any amount contemplated in paragraph 2(1)(a)(ii), (b) or (c) of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act that is paid or transferred to the fund by—

(i) a pension fund, provident fund, provident preservation fund or any other pension preservation fund of which such member was previously a member; or

(ii) a pension fund, provident fund, pension preservation fund or pension preservation fund of which such member's former spouse is or was previously a member and such payment or transfer was made pursuant to an election by such member in terms of section 37D(4)(b)(ii) of the Pension Funds Act;

[paragraph (b) amended by section 3(1)(r) of Act 25 of 2015 (retroactively deleted by section 74(1)(c) of Act 23 of 2020), and substituted by section 1(1)(m) of Act 23 of 2018; effective date 1 March 2019]

(c) with the exception of amounts transferred to any other pension fund, pension preservation fund or retirement annuity fund, not more than one amount contemplated in paragraph 2(1)(b)(ii) of the Second Schedule is allowed to be paid to the member during the period of membership of the fund or any other pension preservation fund: Provided that—

(i) this paragraph applies separately to each payment or transfer to the fund contemplated in paragraph (b);

(ii) a member shall, prior to his or her retirement date, be entitled to the payment of a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule where a member—

(aa) (A) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control in respect of applications for that recognition received on or before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of currency on or before 28 February 2022; or

(B) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or

[item (aa) substituted by section 2(1)(i) of Act 23 of 2020; effective date 1 March 2021]

(bb) departed from the Republic at the expiry of a visa obtained for the purposes of —

(A) working as contemplated in paragraph (i) of the definition of "visa" in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or

(B) a visit as contemplated in paragraph (b) of the definition of "visa" in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of that Act by the Director-General, as defined in that Act; and

(iii) a member who has transferred a retirement interest in terms of paragraph 2(1)(c) of the Second Schedule to this fund shall not be entitled to payment of a withdrawal benefit as contemplated in paragraph 2(1)(b)(ii) in respect of that transferred amount, except to the extent that it is an amount contemplated in subparagraph (ii); and

[proviso to paragraph (c) substituted by section 1(1)(n) of Act 23 of 2018; effective date 1 March 2019]

(d) a member, other than a member contemplated in paragraph (a)(vi) of this proviso, will become entitled to a benefit on his or her retirement date; and

[paragraph (d) substituted by section 1(1)(g) of Act 17 of 2023; effective date deemed to have been 1 March 2021, applies in respect of years of assessment commencing on or after that date]

(e) not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the member is deceased or where the member elects to transfer the retirement interest to a pension preservation fund, a provident preservation fund or a retirement annuity fund: Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account—

(a) in the case of a person who was a member of a provident fund or provident preservation fund and who was 55 years of age or older on 1 March 2021—

(i) any amount contributed to a provident fund or transferred to a provident preservation fund prior to, on and after 1 March 2021 of which that person was a member on 1 March 2021;

(ii) with the addition of any other amount credited to the member's individual account or minimum individual reserve of the provident fund or provident preservation fund prior to, on and after 1 March 2021; and

(iii) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii); or

(b) in any other case of a person who was a member of a provident fund or a provident preservation fund on 1 March 2021—

(i) any amount contributed to a provident fund or transferred to a provident preservation fund prior to 1 March 2021;

(ii) with the addition of any other amounts credited to the member's individual account or minimum individual reserve of the provident fund or provident preservation fund as a result of the value of the member's individual account or minimum individual reserve on 1 March 2021; and

(iii) any fund return, as defined in the Pension Funds Act, in relation to the contributions or transfers contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii),

reduced proportionally by an amount permitted to be deducted in terms of the Pension Funds Act from the member's individual account or minimum individual reserve of the provident fund or the provident preservation fund prior to, on or after 1 March 2021:

Provided further that in the case where the remaining balance is utilised to provide or purchase more than one annuity, the amount utilised to provide or purchase each annuity must exceed R165 000:

[paragraph (e) substituted by section 3(1)(s) of Act 25 of 2015; effective date 1 March 2016, by section 1(1)(b) of Act 2 of 2016, as retroactively substituted by section 97(1)(a) of Act 17 of 2017, by section 110(1)(a) of Act 23 of 2018, and by section 75(1) of Act 23 of 2020; effective date retroactively amended by section 110(1)(b) of Act 23 of 2018 to 1 March 2021, and by section 4(1)(h) of Act 20 of 2021; effective date 1 March 2022, applicable in respect of years of assessment commencing on or after that date]

Provided further that—

(i) the rules of a pension fund that is doing the business of a preservation fund as prescribed by the Commissioner from time to time must be submitted to the Commissioner for approval in terms of the provisions of this definition before 30 September 2010; and

(ii) the rules of a pension fund contemplated in paragraph (i) that are submitted before 30 September 2010 are deemed to have been approved under this definition with effect from the date that the rules are submitted until the date that the Commissioner notifies the fund of its status under this definition;

"**permanent establishment**" means a permanent establishment as defined from time to time in Article 5 of the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development: Provided that in determining whether a qualifying investor in relation to a partnership, trust or foreign partnership has a permanent establishment in the Republic, any act of that partnership, trust or foreign partnership in respect of any financial instrument must not be ascribed to that qualifying investor;

"**person**" includes—

(a) an insolvent estate;

(b) the estate of a deceased person;

(c) any trust; and

(d) any portfolio of a collective investment scheme,

but does not include a foreign partnership;

"**portfolio of a collective investment scheme**" means any—

(a) portfolio of a collective investment scheme in participation bonds;

(b) portfolio of a collective investment scheme in property;

(c) portfolio of a collective investment scheme in securities; or

(d) portfolio of a declared collective investment scheme;

"**portfolio of a collective investment scheme in participation bonds**" means any portfolio comprised in any collective investment scheme in participation bonds contemplated in Part VI of the Collective Investment Schemes Control Act managed or carried on by any company registered as a manager under and for the purposes of that Part;

"**portfolio of a collective investment scheme in property**" means any portfolio comprised in any collective investment scheme in property contemplated in Part V of the Collective Investment Schemes Control Act managed or carried on by any company registered as a manager under section 51 of that Act for the purposes of that Part;

"**portfolio of a collective investment scheme in securities**" means any portfolio comprised in any collective investment scheme in securities contemplated in Part IV of the Collective Investment Schemes Control Act managed or carried on by any company registered as a manager under section 42 of that Act for the purposes of that Part;

"**portfolio of a declared collective investment scheme**" means any portfolio comprised in any declared collective investment scheme contemplated in Part VII of the Collective Investment Schemes Control Act managed or carried on by any company registered as a manager under section 64 of that Act for the purposes of that Part;

"**portfolio of a hedge fund collective investment scheme**" means any portfolio held by any hedge fund business that qualifies as a declared collective investment scheme in terms of section 63 of the Collective Investment Schemes Control Act;

"**post-1973 gold mine**" means a gold mine—

(a) which, in the opinion of the Director-General: Mineral and Energy Affairs, is an independent workable proposition and in respect of which a mining authorisation for gold mining was issued for the first time after 14 March 1990 in terms of the Minerals Act, 1991 (Act No. 50 of 1991); or

(b) for which a mining permit or mining right for gold mining (other than a mining permit or mining right issued on conversion of an old order mining right as defined in paragraph 1 of Schedule II to the Mineral and Petroleum Resources Development Act) was issued for the first time on or after 1 May 2004 in terms of that Act;

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

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

"**prescribed rate**" means the rate contemplated in section 189(3) of the Tax Administration Act;

"**provident fund**" means—

(a) any provident fund established by law;

(b) any provident fund established for the benefit of the employees of any municipality or of any local authority (as defined in the definition of "local authority" in this section prior to the coming into operation of section 3(1)(h) of the Revenue Laws Amendment Act, 2006 (Act No. 20 of 2006), that was established prior to the date that section so came into operation); or

(c) any fund contemplated in subparagraph (b), which includes as members employees of any municipal entity created in accordance with the provisions of the Municipal Systems Act, 2000 (Act No. 32 of 2000), over which one or more municipalities or local authorities (as defined in section 1 prior to the coming into operation of section 3(1)(h) of the Revenue Laws Amendment Act, 2006, and that was established prior to the date that section so came into operation) exercise ownership control as contemplated by that Act, where such fund was established—

(aa) on or before 14 November 2000, and such employees were employees of a local authority (as defined in section 1 prior to the coming into operation of section 3(1)(h) of the Revenue Laws Amendment Act, 2006, and that was established prior to the date that section so came into operation) immediately prior to becoming employees of such municipal entity; or

(bb) after 14 November 2000, and such fund has been approved by the Commissioner subject to such limitations, conditions and requirements as contemplated in paragraph (c) of the definition of "provident fund"; and

(d) any fund (other than a pension fund, pension preservation fund, provident preservation fund, benefit fund or retirement annuity fund) which is approved by the Commissioner in respect of the year of assessment in question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of the Pension Funds Act:

[words preceding the proviso substituted by section 4(1)(zM) of Act 31 of 2013; effective date 12 December 2013, and by section 3(1)(u) of Act 25 of 2015, as retroactively substituted by section 74(1)(c) of Act 23 of 2020; effective date, retroactively amended by section 3(1)(b) of Act 2 of 2016, by section 98(1) of Act 17 of 2017, and by section 111(1) of Act 23 of 2018 to 1 March 2021, applicable in respect of years of assessment commencing on or after that date]

Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine, and shall not approve a fund in respect of any year of assessment unless he is in respect of that year of assessment satisfied—

(i) that the fund is a permanent fund *bona fide* established solely for the purpose of providing benefits for employees on retirement date or solely for the purpose of providing benefits for the dependants or nominees of deceased employees or deceased former employees or solely for a combination of such purposes or mainly for the said purpose and also for the purpose of providing any benefit contemplated in paragraph 2C of the Second Schedule or section 15A or 15E of the Pension Funds Act; and

[paragraph (i) (previously (a)) substituted by section 1(1)(c) of Act 2 of 2016, as retroactively substituted by section 97(1)(a) of Act 17 of 2017, section 110(1)(a) of Act 23 of 2018, and section 75(1) of Act 23 of 2020; effective date, retroactively amended by section 97(1)(a) of Act 17 of 2017 and by section 110(1)(b) of Act 23 of 2018 to 1 March 2021, applicable in respect of years of assessment commencing on or after that date]

(ii) that the rules of the fund provide—

(aa) that all annual contributions of a recurrent nature to the fund shall be in accordance with specified scales;

(bb) that membership of the fund throughout the period of employment shall be a condition of the employment by the employer of all persons of the class or classes specified therein who enter the employment of the employer on or after the date upon which—

(a) the fund comes into operation; or

(b) the employer becomes a participant in that fund;

(cc) that person who immediately prior to the said date were employed by the employer and who on the said date fall within the said class or classes may, on application made, be permitted to become members of the fund on such conditions as may be specified in the rules;

(dd) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity

fund: Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account—

(a) in the case of a person who is or was a member of a provident fund or provident preservation fund and who is or was 55 years of age or older on 1 March 2021—

(AA) any amount contributed to a provident fund or transferred to provident preservation fund prior to, on and after 1 March 2021 of which that person is or was a member on 1 March 2021;

(BB) with the addition of any other amount credited to the member's individual account or minimum individual reserve of the provident fund or provident preservation fund prior to, on and after 1 March 2021; and

(CC) any fund return, as defined in the Pension Funds Act, in relation to the contributions or transfers contemplated in subparagraph (AA) or amounts credited contemplated in subparagraph (BB); or

[subparagraph (CC) substituted by section 1(1)(h) of Act 17 of 2023; effective date deemed to have been 1 March 2022, applies in respect of years of assessment commencing on or after that date]

(b) in any other case of a person who is or was a member of a provident fund or provident preservation fund on 1 March 2021—

(AA) any amount contributed to a provident fund or transferred to a provident preservation fund prior to 1 March 2021;

(BB) with the addition of any other amounts credited to the member's individual account or minimum individual reserve of the provident fund or provident preservation fund as a result of the value of the member's individual account or minimum individual reserve on 1 March 2021; and

(CC) any fund return, as defined in the Pension Funds Act, in relation to the contributions or transfers contemplated in subparagraph (AA) or amounts credited contemplated in subparagraph (BB),

[subparagraph (CC) substituted by section 1(1)(i) of Act 17 of 2023; effective date deemed to have been 1 March 2022, applies in respect of years of assessment commencing on or after that date]

reduced proportionally by an amount permitted in terms of the Pension Funds Act to be deducted from the member's individual account or minimum individual reserve of the provident fund or provident preservation fund prior to, on and after 1 March 2021: Provided further that in the case where the remaining balance is utilised to provide or purchase more than one annuity, the amount utilised to provide or purchase each annuity must exceed R165 000;

[subparagraph (dd) substituted by section 4(1)(i) of Act 20 of 2021; effective date 1 March 2022, applicable in respect of annuities purchased on or after that date]

(ee) that the employee may elect to transfer the withdrawal interest to a pension fund established by the same employer or a pension fund in which that employer participates;

(ff) that a partner of a partnership is regarded as an employee of the partnership; and

[paragraph (ii) (previously (b)) substituted by section 1(1)(p) of Act 23 of 2018; effective date 1 March 2018, amended by section 1(1)(q) of Act 23 of 2018; effective date 1 March 2019, and substituted by section 1(1)(c) of Act 2 of 2016, as retroactively substituted by section 97(1)(a) of Act 17 of 2017, section 110(1)(a) of Act 23 of 2018, and section 75(1) of Act 23 of 2020; effective date, retroactively amended by section 97(1)(a) of Act 17 of 2017 and by section 110(1)(b) of Act

23 of 2018 to 1 March 2021, applicable in respect of years of assessment commencing on or after that date]

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

[paragraph (iii) (previously (c)) renumbered by section 1(1)(c) of Act 2 of 2016, as retroactively substituted by section 97(1)(a) of Act 17 of 2017, section 110(1)(a) of Act 23 of 2018, and section 75(1) of Act 23 of 2020; effective date, retroactively amended by section 97(1)(a) of Act 17 of 2017 and by section 110(1)(b) of Act 23 of 2018 to 1 March 2021, applicable in respect of years of assessment commencing on or after that date; Note: while paragraph (c) was not mentioned explicitly in the latest substitution, paragraph (iii) was included and had identical wording]

Provided further that a fund contemplated in paragraph (i) of the further proviso to the definition of "provident preservation fund" which is deemed to be approved or which is approved in terms of that definition or which fails to submit its rules as required by that paragraph is deemed with effect from the earlier of the date of the deemed approval or 30 September 2010 to be a fund which is not approved in terms of this definition;

"**provident preservation fund**" means a pension fund organisation which is registered under the Pension Funds Act and which is approved by the Commissioner in respect of the year of assessment in question: Provided that the Commissioner may approve a fund subject to such limitations and conditions as the Commissioner may determine, and shall not approve a fund in respect of any year of assessment unless the Commissioner is satisfied in respect of that year of assessment that the rules of the fund provide that—

(a) membership of the fund consists of—

(i) former members of any other pension fund, pension preservation fund, provident fund or provident preservation fund whose membership of that fund has terminated due to—

(aa) resignation, retrenchment or dismissal from employment and who elected to have any lump sum benefit that is payable as a result of the termination transferred to that fund;

(bb) the winding up or partial winding up of that fund, if the members elected or are required in terms of the rules to transfer to this fund; or

(cc) a transfer of business from one employer to another in terms of section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995), and the employment of the employee with the transferor employer is transferred to the transferee employer, if the members elected or are required in terms of the rules to transfer to this fund;

[words preceding subparagraph (aa) substituted by section 3(1)(w) of Act 25 of 2015; effective date, retroactively amended by section 3(1)(b) of Act 2 of 2016, by section 98(1) of Act 17 of 2017, and by section 111(1) of Act 23 of 2018 to 1 March 2021, applicable in respect of years of assessment commencing on or after that date]

(ii) former members of any other pension fund, pension preservation fund, provident fund or provident preservation fund—

(aa) if that fund was wound up or partially wound up; or

(bb) if the member elected to have any lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule transferred to that fund and who made this election while they were members of that other fund;

[words preceding subparagraph (aa) substituted by section 3(1)(x) of Act 25 of 2015; effective date, retroactively amended by section 3(1)(b) of Act 2 of 2016, by section 98(1)

of Act 17 of 2017, and by section 111(1) of Act 23 of 2018 to 1 March 2021, applicable in respect of years of assessment commencing on or after that date]

(iii) *[subparagraph (iii) deleted by section 2(1)(k) of Act 23 of 2020; effective date 1 March 2021]*

(iv) a person who has elected to transfer an amount awarded to that person in terms of a court order contemplated in section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979), from a pension fund, pension preservation fund, provident fund or provident preservation fund for the benefit of that person;

[subparagraph (iv) substituted by section 2(1)(l) of Act 23 of 2020; effective date 1 March 2021]

(v) former members of a pension fund, pension preservation fund, provident fund or provident preservation fund who have elected to have a lump sum benefit contemplated in paragraph 2(1)(c) of the Second Schedule transferred to this provident preservation fund and who made the election while they were members of that other fund; or

[subparagraph (v) added by section 1(1)(r) of Act 23 of 2018; effective date 1 March 2019, and substituted by section 2(1)(l) of Act 23 of 2020; effective date 1 March 2021, and by section 4(1)(j) of Act 20 of 2021; effective date 1 March 2022, applicable in respect of years of assessment commencing on or after that date]

(vi) former members of a pension fund, pension preservation fund, provident fund or provident preservation fund or nominees or dependants of that former member in respect of whom an "unclaimed benefit" as defined in the Pension Funds Act is due or payable by that fund;

[subparagraph (vi) added by section 2(1)(m) of Act 23 of 2020; effective date 1 March 2021]

(b) payments or transfers to the fund in respect of a member are limited to any amount contemplated in paragraph 2(1)(a)(ii), (b) or (c) of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act that is paid or transferred to the fund by—

(i) a pension fund, pension preservation fund, provident fund or provident preservation fund of which that member was previously a member; or

[subparagraph (i) substituted by section 3(1)(y) of Act 25 of 2015; effective date, retroactively amended by section 3(1)(b) of Act 2 of 2016, by section 98(1) of Act 17 of 2017, and by section 111(1) of Act 23 of 2018 to 1 March 2021, applicable in respect of years of assessment commencing on or after that date]

(ii) a pension fund, pension preservation fund, provident fund or provident preservation fund of which such member's former spouse is or was previously a member and such payment or transfer was made pursuant to an election by such member in terms of section 37D(4)(b)(ii) of the Pension Funds Act;

[subparagraph (ii) substituted by section 2(1)(j) of Act 23 of 2020; effective date 1 March 2021]

[words preceding subparagraph (i) substituted by section 1(1)(s) of Act 23 of 2018; effective date 1 March 2019]

(c) with the exception of amounts transferred to any pension fund, pension preservation fund, other provident fund, provident preservation fund or retirement annuity fund, not more than one amount contemplated in paragraph 2(1)(b)(ii) of the Second Schedule is allowed

to be paid to the member during the period of membership of the fund or any other pension preservation fund: Provided that—

(i) this paragraph applies separately to each payment or transfer to the fund contemplated in paragraph (b);

(ii) a member shall, prior to his or her retirement date, be entitled to the payment of a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule where a member—

(aa) (a) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control in respect of applications for that recognition received on or before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of currency on or before 28 February 2022; or

(b) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or

[item (aa) substituted by section 2(1)(n) of Act 23 of 2020; effective date 1 March 2021]

(bb) departed from the Republic at the expiry of a visa obtained for the purposes of —

(A) working as contemplated in paragraph (i) of the definition of "visa" in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or

(B) a visit as contemplated in paragraph (b) of the definition of "visa" in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of that Act by the Director-General, as defined in that Act; and

(iii) a member who has transferred a retirement interest in terms of paragraph 2(1)(c) of the Second Schedule to this fund shall not be entitled to payment of a withdrawal benefit as contemplated in paragraph 2(1)(b)(ii) in respect of that transferred amount, except to the extent that it is an amount contemplated in subparagraph (ii); and

[proviso to paragraph (c) substituted by section 1(1)(t) of Act 23 of 2018; effective date 1 March 2019]

(d) a member, other than a member contemplated in paragraph (a)(vi) of this proviso, will become entitled to a benefit on his or her retirement date; and

[paragraph (d) substituted by section 1(1)(k) of Act 17 of 2023; effective date deemed to have been 1 March 2021, applies in respect of years of assessment commencing on or after that date]

(e) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living 60 annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the member is deceased or where the member elects to transfer the retirement interest to a pension preservation fund, a provident preservation fund or a retirement annuity fund: Provided that in determining

the value of the retirement interest an amount calculated as follows must not be taken into account:

(a) in the case of a person who is or was a member of a provident fund or provident preservation fund and who is or was 55 years of age or older on 1 March 2021—

(i) any amount contributed to a provident fund or transferred to a provident preservation fund prior to, on and after 1 March 2021 of which that person is or was a member on 1 March 2021;

(ii) with the addition of any other amount credited to the member's individual account or minimum individual reserve of the provident fund or provident preservation fund prior to, on and after 1 March 2021; and

(iii) any fund return, as defined in the Pension Funds Act, in relation to the contributions or transfers contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii);

(b) in any other case of a person who is or was a member of a provident fund or provident preservation fund on 1 March 2021—

(i) any amount contributed to a provident fund or transferred to a provident preservation fund prior to 1 March 2021;

(ii) with the addition of any other amounts credited to the member's individual account or minimum individual reserve of the provident fund or provident preservation fund as a result of the value of the member's individual account or minimum individual reserve on 1 March 2021; and

(iii) any fund return, as defined in the Pension Funds Act, in relation to the contributions or transfers contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii),

reduced proportionally by an amount permitted in terms of the Pension Funds Act to be deducted from the member's individual account or minimum individual reserve of the provident fund or provident preservation fund prior to, on and after 1 March 2021: Provided further that in the case where the remaining balance is utilised to provide or purchase more than one annuity, the amount utilised to provide or purchase each annuity must exceed R165 000;

[further proviso substituted by section 1(1)(l) of Act 17 of 2023; effective date deemed to have been 1 March 2021, applies in respect of years of assessment commencing on or after that date]

[paragraph (e) substituted by section 1(1)(d) of Act 2 of 2016, as amended by section 97(1)(a) of Act 17 of 2017, section 110(1)(a) of Act 23 of 2018, and section 75(1) of Act 23 of 2020; effective date 1 March 2021, and by section 4(1)(k) of Act 20 of 2021; effective date 1 March 2022, applicable in respect of years of assessment commencing on or after that date]

Provided further that—

(i) the rules of a provident fund that is doing the business of a preservation fund as prescribed by the Commissioner from time to time must be submitted to the Commissioner for approval in terms of the provisions of this definition before 30 September 2010; and

(ii) the rules of the provident fund contemplated in paragraph (i) that are submitted before 30 September 2010 are deemed to have been approved under this definition with effect from the date that the rules are submitted until the date that the Commissioner notifies the fund of its status under this definition;

"**Public Finance Management Act**" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"**Public Private Partnership**" means a Public Private Partnership as defined in—

(a) Regulation 16 of the Treasury Regulations issued in terms of section 76 of the Public Finance Management Act; or

(b) the Municipal Public-Private Partnership Regulations made in terms of section 168 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

"**qualifying investor**" means a member of a partnership or foreign partnership or a beneficiary of a trust if the liability of the member or beneficiary to any creditor of the partnership, trust or foreign partnership is limited to the amount that the member or beneficiary has contributed or undertaken to contribute to the partnership, trust or foreign partnership, unless that member or beneficiary—

(a) participates in the effective management of the trade or business of the partnership, trust or foreign partnership;

(b) has the authority to act on behalf of—

(i) the partnership or foreign partnership;

(ii) the members of the partnership or foreign partnership; or

(iii) the trust; or

(c) renders any services to or on behalf of the partnership, trust or foreign partnership;

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

"**REIT**" means a company—

(a) that is a resident; and

(b) the equity shares of which are listed—

(i) on an exchange (as defined in section 1 of the Financial Markets Act and licensed under section 9 of that Act); and

(ii) as shares in a REIT as defined in the listing requirements of that exchange approved in consultation with the Director-General of the National Treasury and published, after approval of those listing requirements by the Director-General of the National Treasury, by the appropriate authority, as contemplated in section 1 of the Financial Markets Act, in terms of section 11 of that Act or by the Financial Sector Conduct Authority;

[paragraph (b) amended by section 1(1)(u) of Act 23 of 2018; effective date 17 January 2019, and by section 2(1)(f) of Act 34 of 2019, effective date 15 January 2020, and substituted by section 2(1)(o) of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

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

[definition of "relative" substituted by section 1(1)(v) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

"**remuneration proxy**", in relation to a year of assessment, means the remuneration, as defined in paragraph 1 of the Fourth Schedule, derived by an employee from an employer during the year of assessment immediately preceding that year of assessment, other than the cash equivalent of the value of a taxable benefit derived from the occupation of residential accommodation as

contemplated in subparagraph (3) of paragraph 9 of the Seventh Schedule in the application of that subparagraph: Provided that—

(a) where during a portion of such preceding year the employee was not in the employment of the employer or of any associated institution in relation to the employer, the remuneration proxy as respects that employee must be deemed to be an amount which bears to the amount of the employee's remuneration for the portion of such preceding year during which the employee was in such employment the same ratio as the period of 365 days bears to the number of days in such last-mentioned portion;

(b) where during the whole of such preceding year, the employee was not in the employment of the employer or of any associated institution in relation to the employer, the remuneration proxy as respects that employee must be deemed to be an amount which bears to the employee's remuneration during the first month during which the employee was in the employment of the employer the same ratio as 365 days bears to the number of days during which the employee was in such employment;

"**representative taxpayer**" means a natural person who resides in the Republic and—

(a) in respect of the income of a company, the public officer thereof, or in the event of such company being placed under business rescue in terms of Chapter 6 of the Companies Act, the business rescue practitioner;

(b) in respect of the income under his or her management, disposition or control, the agent of any person;

(c) in respect of income which is the subject of any trust or in respect of the income of any minor or mentally disordered or defective person or any other person under legal disability, the trustee, guardian, curator or other person entitled to the receipt, management, disposal or control of such income or remitting or paying to or receiving moneys on behalf of such person under disability;

(d) in respect of income paid under the decree or order of any court or judge to any receiver or other person, such receiver or person, whoever may be entitled to the benefit of such income, and whether or not it accrues to any person on a contingency or an uncertain event;

(e) in respect of the income received by or accrued to any deceased person during his lifetime and the income received by or accrued to the estate of any deceased person, the executor or administrator of the estate of such deceased person;

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

Provided that for the purposes of this definition income includes any amount received or accrued or deemed to have been received or accrued in consequence of the disposal of any asset envisaged in the Eighth Schedule;

"**Republic**" means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea which has been or may be designated, under international law and the laws of South Africa, as areas within which South Africa may exercise sovereign rights or jurisdiction with regard to the exploration or exploitation of natural resources;

"**resident**" means any—

(a) natural person who is—

(i) ordinarily resident in the Republic; or

(ii) not at any time during the relevant year of assessment ordinarily resident in the Republic, if that person was physically present in the Republic—

(aa) for a period or periods exceeding 91 days in aggregate during the relevant year of assessment, as well as for a period or periods exceeding 91 days in aggregate during each of the five years of assessment preceding such year of assessment; and

(bb) for a period or periods exceeding 915 days in aggregate during those five preceding years of assessment,

in which case that person will be a resident with effect from the first day of that relevant year of assessment:

Provided that—

(A) a day shall include a part of a day, but shall not include any day that a person is in transit through the Republic between two places outside the Republic and that person does not formally enter the Republic through a "port of entry" as contemplated in section 9(1) of the Immigration Act, 2002 (Act No. 13 of 2002), or at any other place as may be permitted by the Director General of the Department of Home Affairs or the Minister of Home Affairs in terms of that Act; and

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

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

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

Provided that where any person that is a resident ceases to be a resident during a year of assessment, that person must be regarded as not being a resident from the day on which that person ceases to be a resident:

Provided further that in determining whether a person that is a foreign investment entity has its place of effective management in the Republic, no regard must be had to any activity that—

(a) constitutes—

(i) a financial service as defined in section 1 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002); or

(ii) any service that is incidental to a financial service contemplated in subparagraph (i) where the incidental service is in respect of a financial product that is exempted from the provisions of that Act, as contemplated in section 1(2) of that Act; and

(b) is carried on by a financial service provider as defined in section 1 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), in terms of a licence issued to that financial service provider under section 8 of that Act.

"**residential unit**" means a building or self-contained apartment mainly used for residential accommodation, unless the building or apartment is used by a person in carrying on a trade as an hotel keeper;

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

(a) that the fund is a permanent fund *bona fide* established for the sole purpose of providing life annuities for the members of the fund or annuities for the dependants or nominees of deceased members; and

(b) that the rules of the fund provide—

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

(ii) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000 or where the member is deceased: Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account:

(a) in the case of a person who was a member of a provident fund or a provident preservation fund and who was 55 years of age or older on 1 March 2021—

(i) any amount contributed to a provident fund or transferred to a provident preservation fund prior to, on and after 1 March 2021 of which that person was a member on 1 March 2021;

(ii) with the addition of any other amounts credited to the member's individual account or minimum individual reserve of the provident fund or provident preservation fund prior to, on and after 1 March 2021; and

(iii) any fund return, as defined in the Pension Funds Act, in relation to the contributions or transfers contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii);

(b) in any other case of a person who was a member of a provident fund or provident preservation fund on 1 March 2021—

(i) any amount contributed to a provident fund or transferred to a provident preservation fund prior to 1 March 2021;

(ii) with the addition of any other amounts credited to the member's individual account or minimum individual reserve of the provident fund or provident preservation fund as a result of the value of the member's individual account or minimum individual reserve on 1 March 2021; and

(iii) any fund return, as defined in the Pension Funds Act, in relation to the contributions or transfers contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii),

reduced proportionally by an amount permitted to be deducted in terms of the Pension Funds Act from the member's individual account or minimum

individual reserve of the provident fund or provident preservation fund prior to, on and after 1 March 2021:

Provided further that in the case where the remaining balance is utilised to provide or purchase more than one annuity, the amount utilised to provide or purchase each annuity must exceed R165 000;

[words preceding the proviso to subparagraph (ii) substituted by section 4(1)(l) of Act 20 of 2021; effective date 1 March 2022, applicable in respect of annuities purchased on or after that date]

[further proviso to subparagraph (ii) added by section 4(1)(m) of Act 20 of 2021; effective date 1 March 2022, applicable in respect of annuities purchased on or after that date]

[subparagraph (ii) substituted by section 3(1)(zB) of Act 25 of 2015; effective date 1 March 2016, and by section 1(1)(e) of Act 2 of 2016, as retroactively substituted by section 97(1)(a) of Act 17 of 2017, by section 110(1)(a) of Act 23 of 2018, and by section 75(1) of Act 23 of 2020; effective date 1 March 2021, applicable in respect of years of assessment commencing on or after that date]

(v) that no member shall become entitled to the payment of any annuity or lump sum benefit contemplated in paragraph 2(1)(a) of the Second Schedule prior to reaching normal retirement age;

(x) that a member who discontinues his or her contributions prior to his or her retirement date shall be entitled to—

(aa) an annuity or a lump sum benefit contemplated in paragraph 2(1)(a) of the Second Schedule payable on that date;

(bb) be reinstated as a full member under conditions prescribed in the rules of the fund;

(cc) the payment of a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule where that member's interest in the fund is less than an amount determined by the Minister by notice in the *Gazette*; or

(dd) the payment of a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule where that member—

(A) (AA) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control in respect of applications for that recognition received on or before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of currency on or before 28 February 2022; or

(BB) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021;

[subitem (A) substituted by section 2(1)(p) of Act 23 of 2020; effective date 1 March 2021]

(B) departed from the Republic at the expiry of a visa obtained for the purposes of—

(AA) working as contemplated in paragraph (i) of the definition of "visa" in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or

(BB) a visit as contemplated in paragraph (b) of the definition of "visa" in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002),

issued in terms of paragraph (b) of the proviso to section 11 of that Act by the Director-General, as defined in section 1 of that Act;

[words following sub-subitem (BB) deleted by section 2(1)(q) of Act 23 of 2020; effective date 1 March 2021]

(xi) that upon the winding up of the fund a member's withdrawal interest therein must—

(aa) where the member received an annuity from the fund on the date upon which the fund is wound up, be used to purchase an annuity (including a living annuity) from any other fund; or

(bb) in any other case, be paid for the member's benefit into any other retirement annuity fund;

(xii) that save—

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

(bb) for the transfer of any member's total interest in any approved retirement annuity fund into another approved retirement annuity fund;

(cc) for the benefit contemplated in subparagraph (x)(cc);

(dd) as is contemplated in Part V of the Policyholder Protection Rules promulgated in terms of section 62 of the Long-term Insurance Act; or

(ee) for any deduction contemplated in paragraph 2(1)(b) of the Second Schedule,

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

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

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

"**retirement date**" means the date on which—

(a) a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, elects to retire and in terms of the rules of that fund, becomes entitled to an annuity or a lump sum benefit contemplated in paragraph 2(1)(a)(i) of the Second Schedule on or subsequent to attaining normal retirement age; or

[paragraph (a) substituted by section 1(1)(w) of Act 23 of 2018; effective date 1 March 2018, applicable in respect of years of assessment commencing on or after that date]

(b) a nominee or dependant of a deceased member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, in terms of the rules of that fund, becomes entitled to an annuity or a lump sum benefit contemplated in paragraph 2(1)(a)(i) of the Second Schedule on the death of the member;

"**retirement fund lump sum benefit**" means an amount determined in terms of paragraph 2(1)(a) or (c) of the Second Schedule;

"**retirement fund lump sum withdrawal benefit**" means an amount determined in terms of paragraph 2(1)(b) of the Second Schedule;

"**retirement interest**" means a member's share of the value of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as determined in terms of the rules of the fund on the date on which he or she elects to retire or transfer to a pension preservation fund, provident preservation fund or retirement annuity fund;

[definition of "retirement interest" substituted by section 1(1)(x) of Act 23 of 2018; effective date 1 March 2019]

"**return**" means a return as defined in section 1 of the Tax Administration Act;

"**return of capital**" means any amount transferred by a company that is a resident for the benefit or on behalf of any person in respect of any share in that company to the extent that that transfer results in a reduction of contributed tax capital of the company, whether that amount is transferred —

(a) by way of a distribution made by; or

(b) as consideration for the acquisition of any share in,

that company, but does not include any amount so transferred to the extent that the amount so transferred constitutes—

(i) shares in the company; or

(ii) an acquisition by the company of its own securities by way of a general repurchase of securities as contemplated in subparagraph (b) of paragraph 5.67(B) of section 5 of the JSE Limited Listings Requirements, where that acquisition complies with any applicable requirements prescribed by paragraphs 5.68 and 5.72 to 5.81 of section 5 of the JSE Limited Listings Requirements or by way of a general repurchase of securities as contemplated in the listings requirements of any other exchange, licensed under the Financial Markets Act, that are substantially the same as the requirements prescribed by the JSE Limited Listings Requirements, where that acquisition complies with the applicable requirements of that exchange;

[paragraph (ii) substituted by section 2(1)(g) of Act 34 of 2019; effective date 1 March 2019]

"**securities lending arrangement**" means a "lending arrangement" as defined in the Securities Transfer Tax Act, 2007 (Act No. 25 of 2007);

"**severance benefit**" means any amount (other than a lump sum benefit or an amount contemplated in paragraph (d)(ii) or (iii) of the definition of "gross income" received by or accrued to a person by way of a lump sum from or by arrangement with the person's employer or an associated institution in relation to that employer in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of the person's office or employment or of the person's appointment (or right or claim to be appointed) to any office or employment, if—

(a) such person has attained the age of 55 years;

(b) such relinquishment, termination, loss, repudiation, cancellation or variation is due to the person becoming permanently incapable of holding the person's office or employment due to sickness, accident, injury or incapacity through infirmity of mind or body; or

(c) such termination or loss is due to—

(i) the person's employer having ceased to carry on or intending to cease carrying on the trade in respect of which the person was employed or appointed; or

(ii) the person having become redundant in consequence of a general reduction in personnel or a reduction in personnel of a particular class by the person's employer,

unless, where the person's employer is a company, the person at any time held more than five per cent of the issued shares or members' interest in the company:

Provided that any such amount which becomes payable in consequence of or following upon the death of a person must be deemed to be an amount which accrued to such person immediately prior to his or her death;

"**share**" means, in relation to any company, any unit into which the proprietary interest in that company is divided;

"**Share Blocks Control Act**" means the Share Blocks Control Act, 1980 (Act No. 59 of 1980);

"**Short-term Insurance Act**" means the Short-term Insurance Act, 1998 (Act No. 53 of 1998);

"**small business funding entity**" means any entity, approved by the Commissioner in terms of section 30C;

"**small, medium or micro-sized enterprise**" means any—

(a) person that qualifies as a micro business as defined in paragraph 1 of the Sixth Schedule; or

(b) any person that is a small business corporation as defined in section 12E(4);

"**South African Reserve Bank**" means the central bank of the Republic regulated in terms of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989);

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

"**special trust**" means a trust created—

(a) solely for the benefit of one or more persons who is or are persons with a disability as defined in section 6B(1) where such disability incapacitates such person or persons from earning sufficient income for their maintenance, or from managing their own financial affairs: Provided that—

(aa) such trust shall be deemed not to be a special trust in respect of years of assessment ending on or after the date on which all such persons are deceased; and

(bb) where such trust is created for the benefit of more than one person, all persons for whose benefit the trust is created must be relatives in relation to each other; or

(b) by or in terms of the will of a deceased person, solely for the benefit of beneficiaries who are relatives in relation to that deceased person and who are alive on the date of death of that deceased person (including any beneficiary who has been conceived but not yet born on that date), where the youngest of those beneficiaries is on the last day of the year of assessment of that trust under the age of 18 years;

"**specified date**", in relation to any company, means—

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

(b) in respect of any other year of assessment, the last day of such other year of assessment;

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

(a) where such year of assessment is the first financial year of such company, the period commencing on the first day of such year and ending six months after the specified date in respect of such year; and

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

Provided that where by reason of the amalgamation under section 94 of the Co-operative Societies Act, 1939 (Act No. 29 of 1939), of two or more agricultural co-operatives (as defined in section 27(9) of this Act), the assets and liabilities of such co-operatives have vested in a new agricultural co-operative (as so defined), the Commissioner may, having regard to the circumstances of the case, direct that the specified period of each of the co-operatives which have so amalgamated, as applicable in relation to the final year of assessment of the co-operative in question be extended so as to end on such day as the Commissioner may determine;

"**spot rate**" means the appropriate quoted exchange rate at a specific time by any authorised dealer in foreign exchange for the delivery of currency;

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

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

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

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

and "married", "husband" or "wife" shall be construed accordingly: Provided that a marriage or union contemplated in paragraph (b) or (c) shall, in the absence of proof to the contrary, be deemed to be a marriage or union out of community of property;

"**tax**" means tax or a penalty imposed in terms of this Act;

"**Tax Administration Act**" means the Tax Administration Act, 2011 (Act No. 28 of 2011);

"**tax benefit**" includes any avoidance, postponement or reduction of any liability for tax;

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

"**taxable income**" means the aggregate of—

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

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

"**taxpayer**" means any person chargeable with any tax leviable under this Act;

"**this Act**" includes the regulations;

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

"**Trade Marks Act**" means the Trade Marks Act, 1993 (Act No. 194 of 1993);

"**trading stock**"—

(a) includes—

(i) anything produced, manufactured, constructed, assembled, purchased or in any other manner acquired by a taxpayer for the purposes of manufacture, sale or exchange by the taxpayer or on behalf of the taxpayer;

(ii) anything the proceeds from the disposal of which forms or will form part of the taxpayer's gross income, otherwise than—

(aa) in terms of paragraph (j) or (m) of the definition of "gross income";

(bb) in terms of paragraph 14(1) of the First Schedule; or

(cc) as a recovery or recoupment contemplated in section 8(4) which is included in gross income in terms of paragraph (n) of the definition of "gross income"; or

(iii) any consumable stores and spare parts acquired by the taxpayer to be used or consumed in the course of the taxpayer's trade; but

(b) but does not include—

(i) a foreign currency option contract; or

(ii) a forward exchange contract,

as defined in section 24I(1);

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

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

"**Value-Added Tax Act**" means the Value-Added Tax Act, 1991 (Act No. 89 of 1991);

"**water services provider**" means a person who provides water supply services and sanitation services and who is—

(a) a public entity regulated under the Public Finance Management Act;

(b) a wholly owned subsidiary or entity of a public entity contemplated in paragraph (a) if the operations of the subsidiary or entity are ancillary or complementary to the operations of that public entity;

(c) a company as contemplated in paragraph (a) of the definition of "company", which is wholly owned by one or more municipalities; or

(d) a board or institution which has powers similar to a water board established in terms of the Water Services Act, 1997 (Act No. 108 of 1997), and would have fallen within the ambit of the definition of "local authority" prior to the coming into operation of section 3(1)(h) of the Revenue Laws Amendment Act, 2006;

"**withdrawal interest**" means the value of the pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund value, as determined in terms of the rules of the fund on the date on which the member elects to withdraw due to an event other than the member attaining normal retirement age;

[definition of "withdrawal interest" substituted by section 2(1)(h) of Act 34 of 2019; effective date 1 March 2019]

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

(2) Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Tax Administration Act bears that meaning for purposes of this Act.

Chapter I
Administration

2. Administration of Act

(1) The Commissioner is responsible for carrying out the provisions of this Act.

(2) Administrative requirements and procedures for purposes of the performance of any duty, power or obligation or the exercise of any right in terms of this Act are, to the extent not regulated in this Act, regulated by the Tax Administration Act.

3. Exercise of powers and performance of duties

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

(4) Any decision of the Commissioner under the following provisions of this Act is subject to objection and appeal in accordance with Chapter 9 of the Tax Administration Act, namely—

(a) the definitions of "pension fund", "pension preservation fund", "provident fund", "provident preservation fund" and "retirement annuity fund" in section 1;

(b) section 8(5)(b) and (bA), section 10(1)(cA), (e)(i)(cc), (j) and (nB), section 10A(8), section 11(e), (f), (g), (gA), (j) and (l), section 12B(6), section 12C, section 12E, section 12J(6), (6A) and (7), section 13, section 15, section 18A(1)(a)(cc), (b) and (c), section 22(1) and (3), section 23H(2), section 23K, section 24(2), section 24A(6), section 24C, section 24D, section 24I(1) and (7), section 24J(9), section 24P, section 25A, section 27, section 28(9), section 30, section 30A, section 30B, section 30C, section 31, section 37A, section 38(2)(a) and (b) and (4), section 44(13)(a), section 47(6)(c)(i), section 62(1)(c)(iii) and (d) and (2)(a) and (4), section 80B and section 103(2);

[paragraph (b) substituted by section 1 of Act 33 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(c) paragraphs 6, 13, 13A and 20 of the First Schedule;

(d) paragraph 4 of the Second Schedule;

(e) paragraphs 5(2), 14(6), and 24 of the Fourth Schedule;

(f) paragraphs 10(3) and 11(2) of the Sixth Schedule;

(g) paragraphs 3, 7(6), 11 and 12A(3) of the Seventh Schedule;

(h) paragraph (bb)(A) of the proviso to paragraph 12A(6)(e) and paragraphs 29(2A), 29(7), 31(2), 65(1)(d) and 66(1)(e) of the Eighth Schedule.

(5) The Commissioner may, in writing, and on such conditions as may be agreed upon between the Commissioner and the Financial Sector Conduct Authority delegate to the Financial Sector Conduct Authority his or her power—

[words preceding paragraph (a) substituted by section 2(1)(a) of Act 23 of 2018; effective date 1 April 2018]

(a) to approve a fund contemplated in the definition of a "pension fund", "pension preservation fund", "provident fund", "provident preservation fund" or "retirement annuity fund", subject to—

(i) any limitation or condition as may be determined by the Commissioner in terms of those definitions;

(ii) the compliance by any such fund with the requirements under those definitions; and

(b) to withdraw any such approval if any of the limitations, conditions or requirements listed in paragraph (a) are not met; and

(c) to make a disclosure under section 69(8)(b)(i) of the Tax Administration Act.

(6) Any person aggrieved by a decision of the Financial Sector Conduct Authority to approve or to withdraw an approval of a fund in terms of subsection (5) must, notwithstanding section 219 of the Financial Sector Regulation Act, lodge his or her objection with the Commissioner in accordance with the provisions of Chapter 9 of the Tax Administration Act.

[subsection (6) substituted by section 2(1)(b) of Act 23 of 2018; effective date 1 April 2018]

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

[subsection (7) substituted by section 2(1)(c) of Act 23 of 2018; effective date 1 April 2018]

4A. Exercise of powers and performance of duties by Minister

The powers conferred and the duties imposed upon the Minister by or under the provisions of this Act may be exercised or performed by the Minister personally or, except for the power to issue notices or regulations, delegated by the Minister to the Director-General of the National Treasury and the Director-General may in turn delegate the powers and duties so delegated to him or her to any officer or person under his or her control, direction or supervision.

Chapter II
The taxes

Part I – Normal tax

5. Levy of normal tax and rates thereof

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

(c) any person (other than a company) during the year of assessment ending during the period of 12 months ending the last day of February each year; and

(d) any company during every financial year of such company.

(2) (a) The Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, 1999, (Act No. 1 of 1999), that, with effect from a date or dates mentioned in that announcement, the rates of tax chargeable in respect of taxable income will be altered to the extent mentioned in the announcement.

(b) If the Minister makes an announcement of an alteration contemplated in paragraph (a), that alteration comes into effect on the date or dates determined by the Minister in that announcement and continues to apply for a period of 12 months from that date or those dates subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.

[paragraph (b) substituted by section 3(a) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

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

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

(10) Where any taxpayer's income includes any special remuneration, or where the provisions of paragraph 15(3), 17 or 19(1) of the First Schedule are applicable in the case of the taxpayer in respect of any year of assessment, the normal tax (excluding tax on any lump sum benefit or severance benefit) payable by the taxpayer in respect of such year (as determined before the deduction of any rebate) shall be determined in accordance with the formula—

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

in which formula—

(a) "Y" represents the amount of normal tax to be determined;

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

(c) "B" represents the taxpayer's taxable income (excluding any lump sum benefit or severance benefit) for the said year;

[paragraph (c) substituted by section 3(b) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(d) "C" represents an amount equal to the sum of—

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

(ii) where the provisions of paragraph 15(3) of the First Schedule are in the case of the taxpayer applicable in respect of the said year, an amount determined in accordance with those provisions as being the amount, if any, by which the taxable income derived by the taxpayer during the said year from the disposal of plantations and forest produce exceeds the annual average taxable income derived by the taxpayer from that source over the three years of assessment immediately preceding the said year;

(iii) where the provisions of paragraph 17 of the First Schedule are in the case of the taxpayer applicable in respect of the said year, an amount equal to so much of the taxable income of the taxpayer for such year as has been derived from the disposal of sugar cane as a result of fire in the taxpayer's cane fields and but for such fire would not have been derived by the taxpayer in that year; and

(iv) where the provisions of subparagraph (1) of paragraph 19 of the First Schedule are in the case of the taxpayer applicable in respect of the said year, the amount by which the taxpayer's taxable income derived from farming for that year exceeds the taxpayer's average taxable income from farming as determined in relation to that year in accordance with subparagraph (2) of the said paragraph; and

(e) "D" represents an amount equal to so much of any current contribution to a pension fund, provident fund or retirement annuity fund as is allowable as a deduction in terms of section

11F solely by reason of the inclusion in the taxpayer's income of any amount contemplated in paragraph (d)(i), (ii), (iii) or (iv):

Provided that in no case shall the amount of normal tax so payable be less than the amount of normal tax which would be chargeable at the relevant rate fixed in terms of subsection (2) in respect of the first rand of taxable income, and nothing in this section contained shall be construed as relieving any person from liability for taxation under this Act upon any portion of that person's taxable income.

6. Normal tax rebates

(1) In determining the normal tax payable by any natural person, other than normal tax in respect of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit, there must be deducted an amount equal to the sum of the amounts allowed to the natural person by way of rebates under subsection (2).

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

(a) a primary rebate, an amount of R16 425;

[paragraph (a) substituted by section 3(1) of Act 21 of 2018; effective date 1 March 2018, by section 2(1) of Act 32 of 2019; effective date 1 March 2019, by section 3(1) of Act 22 of 2020; effective date 1 March 2020, by section 2(1) of Act 19 of 2021; effective date 1 March 2021, and by section 2(1) of Act 19 of 2022; effective date 1 March 2022, applies in respect of years of assessment commencing on or after that date]

(b) a secondary rebate, if the taxpayer was or, had he or she lived, would have been 65 years of age or older on the last day of the year of assessment, an amount of R9 000; and

[paragraph (b) substituted by section 3(1) of Act 21 of 2018; effective date 1 March 2018, by section 2(1) of Act 32 of 2019; effective date 1 March 2019, by section 3(1) of Act 22 of 2020; effective date 1 March 2020, by section 2(1) of Act 19 of 2021; effective date 1 March 2021, and by section 2(1) of Act 19 of 2022; effective date 1 March 2022, applies in respect of years of assessment commencing on or after that date]

(c) a tertiary rebate if the taxpayer was or, had he or she lived, would have been 75 years of age or older on the last day of the year of assessment, an amount of R2 997.

[paragraph (c) substituted by section 3(1) of Act 21 of 2018; effective date 1 March 2018, by section 2(1) of Act 32 of 2019; effective date 1 March 2019, by section 3(1) of Act 22 of 2020; effective date 1 March 2020, by section 2(1) of Act 19 of 2021; effective date 1 March 2021, and by section 2(1) of Act 19 of 2022; effective date 1 March 2022, applies in respect of years of assessment commencing on or after that date]

(4) Where the period assessed is less than 12 months, the amount to be allowed by way of a rebate under subsection (2) shall be such amount as bears to the full amount of such rebate, the same ratio as the period assessed bears to 12 months.

(6) (a) The Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, that, with effect from a date or dates mentioned in that announcement, the amounts allowed to a natural person by way of rebates under subsection (2) will be altered to the extent mentioned in the announcement.

(b) If the Minister makes an announcement of an alteration contemplated in paragraph (a), that alteration comes into effect on the date or dates determined by the Minister in that announcement and continues to apply for a period of 12 months from that date or those dates, subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.

[subsection (6) added by section 4 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

6A. Medical scheme fees tax credit

(1) In determining the normal tax payable by any natural person there must be deducted an amount, to be known as the medical scheme fees tax credit, equal to the sum of the amounts allowed to that natural person by way of rebates under subsection (2), subject to subsection (3A).

[subsection (1) substituted by section 5(1)(a) of Act 23 of 2018; effective date 1 March 2018, applicable in respect of years of assessment commencing on or after that date]

(2) (a) The medical scheme fees tax credit applies in respect of fees paid by the person to—

(i) a medical scheme registered under the Medical Schemes Act; or

(ii) a fund which is registered under any similar provision contained in the laws of any other country where the medical scheme is registered,

that relate to benefits from that fund in respect of that person or of any person that is a dependant of that person.

[words after subparagraph (ii) added by section 5(1)(b) of Act 23 of 2018; effective date 1 March 2018, applicable in respect of years of assessment commencing on or after that date]

(b) The amount of the medical scheme fees tax credit must be—

(i) (aa) R347, in respect of benefits to the person, or if the person is not a member of a medical scheme or fund in respect of benefits to a dependant who is a member of a medical scheme or fund or a dependant of a member of a medical scheme or fund;

(bb) R694, in respect of benefits to the person, and one dependant; or

(cc) R694, in respect of benefits to two dependants; and

[subparagraph (i) substituted by section 4(1) of Act 21 of 2018 and by section 5(1)(c) of Act 23 of 2018; effective date 1 March 2018, by section 4(1) of Act 22 of 2020; effective date 1 March 2020, by section 3(1) of Act 19 of 2021; effective date 1 March 2021, and by section 3(1) of Act 19 of 2022; effective date 1 March 2022, applies in respect of years of assessment commencing on or after that date]

(ii) R234, in respect of benefits to each additional dependant,

[subparagraph (ii) substituted by section 4(1) of Act 21 of 2018 and by section 5(1)(c) of Act 23 of 2018; effective date 1 March 2018, by section 4(1) of Act 22 of 2020; effective date 1 March 2020, by section 3(1) of Act 19 of 2021; effective date 1 March 2021, and by section 3(1) of Act 19 of 2022; effective date 1 March 2022, applies in respect of years of assessment commencing on or after that date]

for each month in that year of assessment in respect of which those fees are paid.

(3) For the purposes of this section, any amount contemplated in subsection (2) that has been paid by—

(a) the estate of a deceased person is deemed to have been paid by the person on the day before his or her death; or

(b) an employer of the person is, to the extent that the amount has been included in the income of that person as a taxable benefit in terms of the Seventh Schedule, deemed to have been paid by that person.

(3A) Where more than one person pay any fees in respect of benefits to a person or dependant, the amount allowed to be deducted in respect of the medical scheme fees tax credit under subsection (1) must be an amount that bears to the total amount in respect of that person or dependant

contemplated in subsection (2)(b) the same ratio as the amount of the fees paid by that person bears to the total amount of the fees payable.

[subsection (3A) inserted by section 5(1)(d) of Act 23 of 2018; effective date 1 March 2018, applicable in respect of years of assessment commencing on or after that date]

(4) For the purposes of this section a "dependant" in relation to a person means a "dependant" as defined in section 6B(1).

[subsection (4) substituted by section 5(1)(e) of Act 23 of 2018; effective date 1 March 2018, applicable in respect of years of assessment commencing on or after that date]

(5) (a) The Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, that, with effect from a date or dates mentioned in that announcement, the amounts allowed to a natural person by way of rebates under subsection (2) will be altered to the extent mentioned in the announcement.

(b) If the Minister makes an announcement of an alteration contemplated in paragraph (a), that alteration comes into effect on the date or dates determined by the Minister in that announcement and continues to apply for a period of 12 months from that date or those dates subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.

[subsection (5) added by section 5(1)(f) of Act 23 of 2018; effective date 1 March 2018, applicable in respect of years of assessment commencing on or after that date]

6B. Additional medical expenses tax credit

(1) For the purposes of this section—

"child" means a person's child or child of his or her spouse who was alive during any portion of the year of assessment, and who on the last day of the year of assessment—

(a) was unmarried and was not or would not, had he or she lived, have been—

(i) over the age of 18 years;

(ii) over the age of 21 years and was wholly or partially dependent for maintenance upon the person and has not become liable for the payment of normal tax in respect of such year; or

(iii) over the age of 26 years and was wholly or partially dependent for maintenance upon the person and has not become liable for the payment of normal tax in respect of such year and was a full-time student at an educational institution of a public character; or

(b) in the case of any other child, was incapacitated by a disability from maintaining himself or herself and was wholly or partially dependent for maintenance upon the person and has not become liable for the payment of normal tax in respect of that year;

"dependant" means—

(a) a person's spouse;

(b) a person's child and the child of his or her spouse;

(c) any other member of a person's family in respect of whom he or she is liable for family care and support; or

[paragraph (c) amended by section 6(a) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(d) any other person who is recognised as a dependant of that person in terms of the rules of a medical scheme or fund contemplated in section 6A(2)(a)(i) or (ii),

at the time the fees contemplated in section 6A(2)(a) were paid, the amounts contemplated in paragraph (a) and (b) of the definition of "qualifying medical expenses" were paid or the expenditure contemplated in paragraph (c) of that definition was incurred and paid;

"disability" means a moderate to severe limitation of any person's ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment, if the limitation—

(a) has lasted or has a prognosis of lasting more than a year; and

(b) is diagnosed by a duly registered medical practitioner in accordance with criteria prescribed by the Commissioner;

"qualifying medical expenses" means—

(a) any amounts (other than amounts recoverable by a person or his or her spouse) which were paid by the person during the year of assessment to any duly registered—

(i) medical practitioner, dentist, optometrist, homeopath, naturopath, osteopath, herbalist, physiotherapist, chiropractor or orthopedist for professional services rendered or medicines supplied to the person or any dependant of the person;

(ii) nursing home or hospital or any duly registered or enrolled nurse, midwife or nursing assistant (or to any nursing agency in respect of the services of such a nurse, midwife or nursing assistant) in respect of the illness or confinement of the person or any dependant of the person; or

(iii) pharmacist for medicines supplied on the prescription of any person mentioned in subparagraph (i) for the person or any dependant of the person;

(b) any amounts (other than amounts recoverable by a person or his or her spouse) which were paid by the person during the year of assessment in respect of expenditure incurred outside the Republic on services rendered or medicines supplied to the person or any dependant of the person, and which are substantially similar to the services and medicines contemplated in paragraph (a); and

(c) any expenditure that is prescribed by the Commissioner (other than expenditure recoverable by a person or his or her spouse) necessarily incurred and paid by the person during the year of assessment in consequence of any physical impairment or disability suffered by the person or any dependant of the person.

(2) In determining the normal tax payable by any natural person there must be deducted an amount, to be known as the additional medical scheme fees tax credit, equal to the sum of the amounts allowed to that natural person by way of rebates under subsection (3).

(3) The amount of the additional medical expenses tax credit must be—

(a) where the person is entitled to a rebate under section 6(2)(b), the aggregate of—

(i) 33,3 per cent of so much of the amount of the fees paid by the person to a medical scheme or fund contemplated in section 6A(2)(a) as exceeds three times the amount of the medical scheme fees tax credit to which that person is entitled under section 6A(2)(b); and

(ii) 33,3 per cent of the amount of qualifying medical expenses paid by the person;

(b) where the person, his or her spouse or his or her child is a person with a disability, the aggregate of—

(i) 33,3 per cent of so much of the amount of the fees paid by the person to a medical scheme or fund contemplated in section 6A(2)(a) as exceeds three times the amount of the medical scheme fees tax credit to which that person is entitled under section 6A(2)(b); and

(ii) 33,3 per cent of the amount of qualifying medical expenses paid by the person; or

(c) in any other case, if the aggregate of—

(i) the amount of the fees paid by the person to a medical scheme or fund contemplated in section 6A(2)(a) as exceeds four times the amount of the medical scheme fees tax credit to which that person is entitled under section 6A(2)(b); and

(ii) the amount of qualifying medical expenses paid by the person,

exceeds 7,5 per cent of the person's taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit), 25 per cent of the excess.

(4) For the purposes of this section, any amount contemplated in subsection (3) or the definition of "qualifying medical expenses" that has been paid by—

(a) the estate of a deceased person is deemed to have been paid by the person on the day before his or her death; or

(b) an employer of the person is, to the extent that the amount has been included in the income of that person as a taxable benefit in terms of the Seventh Schedule, deemed to have been paid by that person.

(5) (a) The Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, that, with effect from a date or dates mentioned in that announcement, the amounts allowed to a natural person by way of rebates under subsection 25 (3) will be altered to the extent mentioned in the announcement.

(b) If the Minister makes an announcement of an alteration contemplated in paragraph (a), that alteration comes into effect on the date or dates determined by the Minister in that announcement and continues to apply for a period of 12 months from that date or those dates subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.

[subsection (5) added by section 6(b) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

6quat. Rebate or deduction in respect of foreign taxes on income

(1) Subject to subsection (2), where the taxable income of any resident during a year of assessment includes—

(a) any income received by or accrued to such resident from any source outside the Republic; or

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

(e) any taxable capital gain contemplated in section 26A, from a source outside the Republic; or

(f) any amount—

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

(ii) of capital gain of any other person from a source outside the Republic and which is attributed to that resident in terms of paragraph 68, 69, 70, 71, 72 or 80 of the Eighth Schedule; or

(iii) contemplated in paragraphs (a), (b) or (e) which represents capital of a trust, and which is included in the income of that resident in terms of section 25B(2A) or taken

into account in determining the aggregate capital gain or aggregate capital loss of that resident in terms of paragraph 80(3) of the Eighth Schedule,

in determining the normal tax payable in respect of that taxable income there must be deducted a rebate determined in accordance with this section.

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

(a) such resident in respect of—

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

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

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

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

which is so included in that resident's taxable income: Provided that—

(i) where such resident is a member of any partnership or a beneficiary of any trust and such partnership or trust is liable for tax as a separate entity in such other country, a proportional amount of any tax payable by such entity, which is attributable to the interest of such resident in such partnership or trust, shall be deemed to have been payable by such resident; and

(ii) for the purposes of this subsection, the amount so included in such resident's taxable income must be determined without regard to section 10B(3).

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

(a) the rebate or rebates of any tax proved to be payable as contemplated in subsection (1A), shall not in aggregate exceed an amount which bears to the total normal tax payable the same ratio as the total taxable income attributable to the income, proportional amount, taxable capital gain or amount, as the case may be, which is included as contemplated in subsection (1), bears to the total taxable income: Provided that—

(i) in determining the amount of the taxable income that is attributable to that income, proportional amount, taxable capital gain or amount—

(aa) any allowable deductions contemplated in sections 11F and 18A must be deemed to have been incurred proportionately in respect of taxable income derived from sources within and outside the Republic;

(bb) the deduction under section 11F must be allocated in relation to the taxable income from sources within and outside the Republic before taking into account any deduction in terms of that section, subsection (1C) and section 18A; and

(cc) the deduction under section 18A must be allocated in relation to taxable income from sources within and outside the Republic before taking into account any deduction in terms of that section and subsection (1C);

[paragraph (i) substituted by section 7(1)(a) of Act 23 of 2018; effective date 1 March 2018, applicable in respect of years of assessment commencing on or after that date]

(iA) the taxes contemplated in subsection (1A)(b) that are attributable to any proportional amount which—

(bb) relates to any amount contemplated in section 9D(9A)(a) which is not excluded from the application of section 9D(2) in terms of that section or section 9D(9)(b),

shall in aggregate be limited to the amount of the normal tax which is attributable to those proportional amounts;

(iB) the taxes contemplated in subsection (1A)(a)(iii) which are attributable to any taxable capital gain in respect of an asset which is not attributable to a permanent establishment of the resident outside the Republic, must in aggregate be limited to the amount of normal tax which is attributable to that taxable capital gain;

(ii) where the sum of any such taxes proved to be payable (excluding any taxes contemplated in paragraphs (iA) and (iB) of this proviso) exceeds the rebate as so determined (hereinafter referred to as the excess amount), that excess amount may—

(aa) be carried forward to the immediately succeeding year of assessment and shall be deemed to be a tax on income paid to the government of any other country in that year; and

(bb) be set off against the amount of any normal tax payable by that resident during that year of assessment in respect of any amount derived from any other country which is included in the taxable income of that resident during that year, as contemplated in subsection (1), after any tax payable to the government of any other country in respect of any amount so included during such year of assessment which may be deducted in terms of subsections (1) and (1A), has been deducted from the amount of such normal tax payable in respect of such amount so included; and

(iii) the excess amount shall not be allowed to be carried forward for more than seven years reckoned from the year of assessment when such excess amount was for the first time carried forward;

(1C) (a) For the purpose of determining the taxable income derived by any resident from carrying on any trade, there may at the election of the resident be allowed as a deduction from the income of such resident so derived the sum of any taxes on income (other than taxes contemplated in subsection (1A)) paid or proved to be payable by that resident to any sphere of government of any country other than the Republic, without any right of recovery by any person other than in terms of a mutual agreement procedure in terms of an international tax agreement or a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment.

(b) Where, during any year of assessment, any amount was deducted in terms of this subsection from the income of a resident and, in any year of assessment subsequent to that year of assessment, that resident receives any amount by way of refund in respect of the amount so deducted or is discharged from any liability in respect of that amount, so much of the amount so received or so much of the amount of that discharge as does not exceed that amount must be included in the income of that resident in respect of that subsequent year of assessment.

(1D) Notwithstanding subsection (1C), the deduction of any tax paid or proved to be payable as contemplated in that subsection shall not in aggregate exceed the total taxable income (before taking into account any such deduction) attributable to income which is subject to taxes as

contemplated in that subsection: Provided that in determining the amount of the taxable income that is attributable to that income—

(a) any allowable deductions contemplated in sections 11F and 18A must be deemed to have been incurred proportionately in respect of attributable and non-attributable taxable income;

(b) the deduction under section 11F must be allocated in relation to the taxable income from attributable and non-attributable taxable income before taking into account any deduction in terms of that section, subsection (1C) and section 18A; and

(c) the deduction under section 18A must be allocated in relation to attributable and non-attributable taxable income before taking into account any deduction in terms of that section and subsection (1C).

[subsection (1D) substituted by section 7(1)(b) of Act 23 of 2018; effective date 1 March 2018, applicable in respect of years of assessment commencing on or after that date]

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

(3) For the purposes of this section—

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

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

(4A) If the amount translated in accordance with subsection (4) includes a number of cents that is less than one rand, that amount must be rounded off to the nearest rand.

(5) Notwithstanding section 99(1) or 100 of the Tax Administration Act, an additional or reduced assessment in respect of a year of assessment to give effect to subsections (1) and (1A) may be made within a period that does not exceed six years from the date of the original assessment in respect of that year.

6quin. Rebate in respect of foreign taxes on income from source within Republic

(5) Where, during any year of assessment, a rebate was deducted in terms of this section from the normal tax payable by a resident and, in any year of assessment subsequent to that year of assessment, that resident receives any amount by way of refund in respect of the amount so deducted or is discharged from any liability in respect of that amount, so much of the amount so received or so much of the amount of that discharge as does not exceed that rebate must be deemed to be an amount of normal tax payable by that resident in respect of that subsequent year of assessment.

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

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

(2) Any income received by or accrued to any person married in or out of community of property (hereinafter referred to as the recipient) shall be deemed for the purposes of this Act to be income accrued to such person's spouse (hereinafter referred to as the donor) if—

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

(b) income was received by or accrued to the recipient—

(i) from any trade carried on by the recipient in partnership or association with the donor or which is in any way connected with any trade carried on by the donor; or

(ii) from the donor or any partnership of which the donor was at the time of such receipt or accrual a member or any private company of which the donor was at such time the sole or main holder of shares or one of the principal holders of shares,

and such income represents the whole or any portion of the total income so received by or accrued to the recipient which exceeds the amount of income to which the recipient would reasonably be entitled having regard to the nature of the relevant trade, the extent of the recipient's participation therein, the services rendered by the recipient or any other relevant factor; or

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

(a) any income (other than income derived from the letting of fixed property) which has been derived from the carrying on of any trade shall, if such trade is carried on—

(i) by only one of the spouses, be deemed to have accrued to that spouse; or

(ii) jointly by both spouses, be deemed, subject to the provisions of subsection (2)(b), to have accrued to both spouses in the proportions determined by them in terms of the agreement that regulates their joint trade or, if there is no such agreement, in the proportion to which each spouse would reasonably be entitled having regard to the nature of the relevant trade, the extent of each spouse's participation therein, the services rendered by each spouse or any other relevant factor; and

(b) any income derived from the letting of fixed property and any income derived otherwise than from the carrying on of any trade shall be deemed to have accrued in equal shares to both spouses: Provided that any such income which does not fall into the joint estate of the spouses shall be deemed to be income accrued to the spouse who is entitled thereto.

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

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

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

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

(c) where any spouse is the—

(i) registered holder of a patent as defined in the Patents Act or any design as defined in the Designs Act or any trade mark as defined in the Trade Marks Act; or

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

(iii) holder of any other property or right of a similar nature,

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

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

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

(b) it has been accumulated for the benefit of that child.

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

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

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

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

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

(b) the donor's right to receive or have paid to him or for his benefit any income that is or may become due to him by any other person acting in a fiduciary capacity is ceded or otherwise

made over to any other person or to a third party for that other person's benefit in such manner that the donor is or will at a determinable time be entitled to regain the said right,

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

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

(aA) In determining, for purposes of paragraph (a), whether an amount received by or that accrued to a person who is not a resident would have constituted income had that person been a resident, the provisions of section 10B(2)(a) must be disregarded in respect of a receipt or accrual consisting of or derived, directly or indirectly, from a foreign dividend—

(i) paid or payable by a company if—

(aa) more than 50 per cent of the total participation rights, as defined in section 9D(1), or of the voting rights in that company are directly or indirectly held or are exercisable, as the case may be, by that person whether alone or together with any one or more persons that are connected persons in relation to that person; and

(bb) the resident who made the donation, settlement or other disposition or any person that is a connected person in relation to that resident is a connected person in relation to the person who is not a resident; and

(ii) to the extent to which that foreign dividend is not derived from an amount that must be included in the income of or that must be attributed as a capital gain to—

(aa) the resident who made that donation, settlement or other disposition; or

(bb) a resident who is a connected person in relation to the resident referred to in item (aa).

[paragraph (aA) inserted by section 8(1) of Act 23 of 2018; effective date 1 March 2019, applicable in respect of amounts received or accrued on or after that date]

(b) So much of any expenditure, allowance or loss incurred by the person contemplated in paragraph (a) as does not exceed the amount included in the income of the resident in terms of that paragraph and which would be allowable as a deduction under this Act in the determination of the taxable income derived from that amount had that person been a resident, is deemed to be an expenditure, allowance or loss incurred by that resident for purposes of the determination of the taxable income of that resident from that amount.

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

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

(11) Any amount received by or accrued to any person by way of deduction from the minimum individual reserve of any other person in terms of—

(a) section 37D(1)(d)(iA) of the Pension Funds Act; or

(b) section 37D(1)(e) of the Pension Funds Act to the extent that the deduction is a result of a deduction contemplated in paragraph (a),

shall be deemed for the purposes of this Act to be income accrued to that other person on the date of the deduction.

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

(1) For the purposes of this section—

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

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

"salary" means salary, wages or similar remuneration payable by an employer to an employee, but does not include any bonus.

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

(a) if the accrual period commenced not more than two years before the commencement of the said year or period of assessment, to have been received by or to have accrued to the said person in part during each of the years or periods of assessment in which any portion of the accrual period falls (the part of the said amount relating to any such year or period of assessment being determined on the basis of a reasonable apportionment of the whole of the said amount between all the said years or periods of assessment); or

(b) if the accrual period commenced more than two years before the commencement of the first-mentioned year or period of assessment, to have been received by or to have accrued to the said person in three equal annual instalments (the first and second instalments two years and one year respectively before the date on which the said amount accrued to the said person and the third instalment on the said date).

(3) Where any member of the citizen force or of the commandos has bound himself to serve in such force or the commandos for a continuous period of service of at least eighteen months as contemplated in section 22(6A) or 44(5A) of the Defence Act, 1957 (Act No. 44 of 1957), the provisions of subsection (2) shall *mutatis mutandis* apply in respect of any gratuity which has become payable to him by the State upon and by reason of the completion of such period of service, as though such gratuity were antedated salary or pension granted permanently and with retrospective effect, in respect of the said period of service.

7B. Timing of accrual and incurral of variable remuneration

(1) For the purposes of this section—

"employee" means an employee as defined in paragraph 1 of the Fourth Schedule;

"employer" means an employer as defined in paragraph 1 of the Fourth Schedule;

"variable remuneration" means—

(a) overtime pay, bonus or commission contemplated in the definition of "remuneration" in paragraph 1 of the Fourth Schedule;

(b) an allowance or advance paid in respect of transport expenses as contemplated in section 8(1)(b)(ii) or (iii);

[paragraph (b) substituted by section 3(1)(a) of Act 34 of 2019; effective date 1 March 2020, applicable in respect of amounts accrued on or after that date]

(c) any amount which an employer has during any year of assessment become liable to pay to an employee in consequence of the employee having during such year become entitled to any period of leave which had not been taken by the employee during that year;

(d) any night shift allowance;

[paragraph (d) added by section 3(1)(b) of Act 34 of 2019; effective date 1 March 2020, applicable in respect of amounts accrued on or after that date]

(e) any standby allowance; or

[paragraph (e) added by section 3(1)(b) of Act 34 of 2019; effective date 1 March 2020, applicable in respect of amounts accrued on or after that date]

(f) any amount paid or granted in reimbursement of any expenditure as contemplated in section 8(1)(a)(ii).

[paragraph (f) added by section 3(1)(b) of Act 34 of 2019; effective date 1 March 2020, applicable in respect of amounts accrued on or after that date]

(2) In determining the taxable income derived by any person during a year of assessment, any amount to which an employee becomes entitled from an employer in respect of variable remuneration is deemed to—

(a) accrue to the employee; and

(b) constitute expenditure incurred by the employer,

on the date during the year of assessment on which the amount is paid to the employee by the employer.

7C. Loan, advance or credit granted to trust by connected person

[heading substituted by section 4 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(1) This section applies in respect of any loan, advance or credit that—

(a) a natural person; or

(b) at the instance of a natural person, a company in relation to which that person is a connected person in terms of paragraph (d)(iv) of the definition of connected person,

[paragraph (b) substituted by section 5(a) of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

directly or indirectly provides to—

(i) a trust in relation to which—

(aa) that person or company; or

(bb) any person that is a connected person in relation to the person or company referred to in item (aa),

is a connected person; or

(ii) a company if at least 20 per cent of—

(aa) the equity shares in that company are held, directly or indirectly; or

(bb) the voting rights in that company can be exercised,

by a trust referred to in paragraph (i) whether alone or together with any person who is a beneficiary of that trust or the spouse of a beneficiary of that trust or any person related to that beneficiary or that spouse within the second degree of consanguinity.

[words following subparagraph (bb) substituted by section 9(1) of Act 23 of 2018; effective date 19 July 2017, applicable in respect of any amount owed by a trust or a company in respect of a loan, advance or credit provided to that trust or that company before, on or after that date]

(1A) If a person acquires a claim to an amount owing by a trust or a company in respect of a loan, advance or credit referred to in subsection (1), that person must for purposes of this section be treated as having provided a loan, advance or credit to that trust or company—

(a) on the date on which that person acquired that claim; or

(b) if that person was not a connected person on that date in relation to—

(i) that trust; or

(ii) the person who provided that loan, advance or credit to that trust or company,

on the date on which that person became a connected person in relation to that trust or person,

that is equal to the amount of the claim so acquired.

(1B) Where—

(a) a natural person; or

(b) at the instance of a natural person, a company that is a connected person in relation to that natural person in terms of paragraph (d)(iv) of the definition of "connected person",

subscribes for a preference share in a company in which 20 per cent or more of the equity shares are held (whether directly or indirectly) or the voting rights can be exercised by a trust that is a connected person in relation to that natural person or to that company, whether alone or together with any person who is a beneficiary of that trust—

(i) consideration received by or accrued to that company for the issue of that preference share shall be deemed to be a loan for the purposes of subsection (3); and

(ii) any dividend or foreign dividend accrued in respect of that preference share shall be deemed to be interest in respect of the loan contemplated in paragraph (i).

[subsection (1B) inserted by section 3(1)(a) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of any dividend or foreign dividend accruing during any year of assessment commencing on or after that date]

(2) No deduction, loss, allowance or capital loss may be claimed in respect of—

(a) a disposal, including by way of a reduction or waiver; or

(b) the failure, wholly or partly, of a claim for the payment,

of any amount owing in respect of a loan, advance or credit referred to in subsection (1).

(3) If a trust or company incurs—

(a) no interest in respect of a loan, advance or credit referred to in subsection (1), (1A) or (1B); or

[paragraph (a) substituted by section 3(1)(b) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of any dividend or foreign dividend accruing during any year of assessment commencing on or after that date]

(b) interest at a rate lower than the official rate of interest,

an amount equal to the difference between the amount incurred by that trust or company during a year of assessment as interest in respect of that loan, advance or credit and the amount that would have been incurred by that trust or company at the official rate of interest must, for purposes of Part V of Chapter II, be treated as a donation made to that trust by the person referred to in subsection (1)(a), (1A) or (1B) on the last day of that year of assessment of that trust.

[words following paragraph (b) substituted by section 3(1)(c) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of any dividend or foreign dividend accruing during any year of assessment commencing on or after that date]

(4) If a loan, advance or credit was provided by a company to a trust or another company at the instance of more than one person that is a connected person in relation to that company as referred to in paragraph (b) of subsection (1), each of those persons must be treated as having donated, to that trust or company, the part of that amount that bears to that amount the same ratio as the equity shares or voting rights in that company that were held by that person during that year of assessment bears to the equity shares or voting rights in that company held in aggregate by those persons during that year of assessment.

(5) Subsections (2) and (3) do not apply in respect of any amount owing by a trust or company during a year of assessment in respect of a loan, advance or credit referred to in subsection (1) if—

(a) that trust or company is a public benefit organisation approved by the Commissioner in terms of section 30(3) or a small business funding entity approved by the Commissioner in terms of section 30C;

(b) that loan, advance or credit was provided to that trust by a person by reason of or in return for a vested interest held by that person in the receipts and accruals and assets of that trust and—

(i) the beneficiaries of that trust hold, in aggregate, a vested interest in all the receipts and accruals and assets of that trust;

(ii) no beneficiary of that trust can, in terms of the trust deed governing that trust, hold or acquire an interest in that trust other than a vested interest in the receipts and accruals and assets of that trust;

(iii) the vested interest of each beneficiary of that trust is determined solely with reference and in proportion to the assets, services or funding contributed by that beneficiary to that trust; and

(iv) none of the vested interests held by the beneficiaries of that trust is subject to a discretionary power conferred on any person in terms of which that interest can be varied or revoked;

(c) that trust is a special trust as defined in paragraph (a) of the definition of a special trust;

(d) that trust or company used that loan, advance or credit wholly or partly for purposes of funding the acquisition of an asset and—

(i) the natural person referred to in subsection (1)(a) or (b) or the spouse of that person used that asset as a primary residence as contemplated in paragraph (b) of the

definition of "primary residence" in paragraph 44 of the Eighth Schedule throughout the period during that year of assessment during which that trust or company held that asset; and

[subparagraph (i) substituted by section 5(b) of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(ii) the amount owed relates to the part of that loan, advance or credit that funded the acquisition of that asset;

(e) that loan, advance or credit constitutes an affected transaction as defined in section 31(1) that is subject to the provisions of that section;

(f) that loan, advance or credit was provided to that trust or company in terms of an arrangement that would have qualified as a sharia compliant financing arrangement as contemplated in section 24JA, had that trust or company been a bank as defined in that section;

(g) that loan, advance or credit is subject to the provisions of section 64E(4); or

(h) that trust was created solely for purposes of giving effect to an employee share incentive scheme in terms of which—

(i) that loan, advance or credit was provided—

(aa) by a company to that trust; or

(bb) for purposes of funding the acquisition, by that trust, of shares in that company or in any other company forming part of the same group of companies as that company (hereinafter referred to as a "scheme company");

(ii) equity instruments, as defined in section 8C, that relate to or derive their value from shares in a scheme company may be offered by that trust to a person solely by virtue of that person—

(aa) being in employment on a full-time basis with; or

(bb) holding the office of director of,

a scheme company; and

(iii) a person that is a connected person in terms of paragraph (d)(iv) of the definition of connected person in relation to any scheme company is not entitled to participate in that scheme.

(6) For the purposes of this section "preference share" means a preference share as defined in section 8EA(1).

[subsection (6) added by section 3(1)(d) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of any dividend or foreign dividend accruing during any year of assessment commencing on or after that date]

7D. Calculation of amount of interest

Where it must be determined, for the purposes of this Act, what amount would have accrued or been incurred as interest in respect of any loan, debt, advance or amount of credit provided to a person or an amount owed by a person had that interest accrued or been incurred at a specific rate of interest, that amount must be determined—

(a) without regard to any rule of the common law or provision of any Act in terms of which—

(i) the amount of any interest, fee or similar finance charge that accrues or is incurred in respect of a debt may not in aggregate exceed the amount of that debt; or

(ii) no interest may accrue or be incurred in respect of a debt once the amount that has accrued or been incurred as interest is equal to the amount of that debt; and

(b) as simple interest calculated daily.

[section 7D substituted by section 10 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

7E. Time of accrual of interest payable by SARS

In determining the taxable income derived by any person during a year of assessment, any amount of interest to which a person becomes entitled that is payable by SARS in terms of a tax Act is deemed to accrue to that person on the date on which that amount is paid to that person.

7F. Deduction of interest repaid to SARS

In determining the taxable income derived by any person during a year of assessment, any amount of interest paid by SARS to that person under a tax Act and deemed to have accrued to that person in terms of section 7E that has to be repaid by that person to SARS, to the extent that the amount of interest is or was included in the taxable income of that person, must be deducted from that person's income in the year of assessment during which that amount is repaid to SARS.

[section 7F inserted by section 11(1) of Act 23 of 2018; effective date 1 March 2018, applicable to amounts of interest repaid to SARS on or after that date, and substituted by section 5 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

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

(1) (a) (i) There shall be included in the taxable income of any person (hereinafter referred to as the "recipient") for any year of assessment any amount which has been paid or granted during that year by his or her principal as an allowance or advance, excluding any portion of any allowance or advance to the extent that the allowance or advance or a portion of the allowance or advance is exempt from normal tax under section 10(1) or has actually been expended by that recipient—

[words preceding item (aa) substituted by section 6(a) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(aa) on travelling on business, as contemplated in paragraph (b), unless an allowance or advance has been granted by an employer in respect of the use of a motor vehicle as contemplated in paragraph 7 of the Seventh Schedule;

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

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

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

(aa) (A) on the instruction of his or her principal; or

(B) where the recipient is allowed by his or her principal to incur expenditure on meals and other incidental costs while such recipient is by reason of the duties of his or her office or employment obliged

to spend a part of a day away from his or her usual place of work or employment, not exceeding an amount determined by way of notice in the *Gazette*,

in the furtherance of the trade of that principal; and

[item (aa) substituted by section 4(1)(a) of Act 23 of 2020; effective date 1 March 2021, applicable in respect of years of assessment commencing on or after that date]

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

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

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

(iv) The provisions of this paragraph shall not apply in respect of any amount paid or granted as an allowance or advance that is received by or accrued to a person in respect of—

(aa) the holding of a public office by that person as contemplated in section 9(2)(g); or

(bb) services rendered or work or labour performed by that person as contemplated in section 9(2)(h),

if that person is stationed outside the Republic and that amount is attributable to services rendered by that person outside the Republic.

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

(i) any allowance or advance in respect of transport expenses shall, to the extent to which such allowance or advance has been expended by the recipient on private travelling (including travelling between his or her place of residence and his or her place of employment or business or any other travelling done for his or her private or domestic purposes), be deemed not to have been actually expended on travelling on business;

(ii) subject to the provisions of subparagraph (iii), where such allowance or advance has been paid to the recipient in order that it may be utilized for defraying expenditure in respect of any motor vehicle used by the recipient, the portion of the allowance expended by the recipient during the year of assessment for business purposes shall, unless an acceptable calculation based on accurate data is furnished by the recipient, be deemed to be an amount calculated by applying the rate per kilometre determined in the manner prescribed by the Minister of Finance by notice in the *Gazette* for the category of vehicle used, on a distance travelled during the said year for business purposes (other than private travelling as contemplated in subparagraph (i)): Provided that where an allowance or advance is deemed to have accrued under section 7B to the recipient in the year of assessment during which that allowance or advance is paid, the distance travelled for business purposes in respect of which that allowance or advance is received shall be deemed to have been travelled during the year in which that allowance or advance is paid;

[proviso to subparagraph (ii) added by section 6(b) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(iii) where such allowance or advance is based on the actual distance travelled by the recipient in using a motor vehicle on business (excluding the said private travelling), or such actual distance is proved to the satisfaction of the Commissioner to have been travelled by the recipient, the amount expended by the recipient on such business travelling shall, unless the contrary appears, be deemed to be an amount determined on such actual distance at the rate per kilometre fixed by the Minister of Finance by notice in the *Gazette* for the category of vehicle used: Provided that where an allowance or advance is deemed to have accrued under section 7B to the recipient in the year of assessment during which that allowance or advance is paid, the distance travelled for business purposes in respect of which that allowance or advance is received shall be deemed to have been travelled during the year in which that allowance or advance is paid;

[proviso to subparagraph (iii) added by section 6(c) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(iiiA) where the portion of the allowance or advance which is claimed by the recipient to be actually expended is calculated based on accurate data furnished by the recipient in respect of any vehicle—

(aa) in the case of a vehicle that is being leased, the total amount of payments in respect of that lease may not in any year of assessment exceed an amount of the fixed cost determined by the Minister in the notice contemplated in subparagraph (ii), for the category of vehicle used;

(bb) in any other case—

(A) the wear and tear of that vehicle must be determined over a period of seven years from the date of original acquisition by that recipient and the cost of the vehicle must for this purpose be limited to R665 000, or such other amount determined by the Minister by notice in the *Gazette*; and

[subitem (A) substituted by section 5(1) of Act 22 of 2020; effective date 1 March 2020, applicable in respect of years of assessment commencing on or after that date]

(B) the finance charges in respect of any debt incurred in respect of the purchase of that vehicle must be limited to an amount which would have been incurred had the original debt been R665 000, or such other amount determined by the Minister in terms of subitem (A);

[subitem (B) substituted by section 5(1) of Act 22 of 2020; effective date 1 March 2020, applicable in respect of years of assessment commencing on or after that date]

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

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

(i) where that recipient proves to the Commissioner the amount of the expenses incurred by him or her in respect of accommodation, meals or other incidental costs (other than any amount of expenditure borne by the employer otherwise than by way of payment or granting of the allowance), the amount so actually incurred but limited to the amount of the allowance or advance paid or granted to meet those expenses; or

(ii) for each day or part of a day in the period during which that recipient is absent from his or her usual place of residence, such amount in respect of meals and other incidental costs, or incidental costs only, as the Commissioner may determine for a country or region for the relevant year of assessment by way of notice in the *Gazette*, but limited to the amount of the allowance paid or granted to meet those expenses: Provided that this subparagraph does not apply to the extent that—

(aa) the employer has borne the expenses (otherwise than by way of granting the allowance or advance) in respect of which the allowance was paid or granted for that day or part of that day; or

(bb) the recipient has proved to the Commissioner any amount of actual expenditure in respect of meals or incidental costs for that day or part of that day, as contemplated in subparagraph (i).

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

(i) secretarial services, duplicating services, stationery, postage, telephone calls, the hire of office accommodation and the maintenance of such accommodation;

(ii) travelling;

(iii) hospitality extended at any official or civic function which the holder of such office is by reason of the nature of such office normally expected to arrange;

(v) subsistence and incidental costs incurred in the circumstances contemplated in paragraph (c).

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

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

(ii) any member of a municipal council, a traditional leader, a member of a provincial House of Traditional Leaders and a member of the Council of Traditional Leaders; and

(iii) a person occupying the office of president, chairman or chief executive officer of any non-profitmaking organization which is organized on a national or regional basis to represent persons with common interests and the funds of which are derived wholly or mainly from subscriptions of members or donations from the general public.

(f) Where it is expected of any person contemplated in paragraph (e)(i) to defray any expenditure referred to in paragraph (d) out of his salary received as the holder of any public office, an amount equal to a portion (which shall be determined by the National Assembly or the President, as the case may be, as provided for in the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998)) of such salary shall for the purposes of paragraph (d) be deemed to be an allowance granted to such person.

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

(4) (a) There shall be included in the taxpayer's income all amounts allowed to be deducted or set off under the provisions of sections 11 to 20, inclusive, section 24D, section 24F, section 24G, section 24I, section 24J, section 27(2)(b) and section 37B(2) of this Act, except section 11(k), 11(n), 11(p) and (q), section 11F, section 12(2) or section 12(2) as applied by section 12(3), section 12A(3), section 13(5), or section 13(5) as applied by section 13(8), or section 13bis(7), section 15(a) or section 15A, or under the corresponding provisions of any previous Income Tax Act, whether in the current or any previous year of assessment which have been recovered or recouped during the current year of assessment: Provided that the provisions of this paragraph shall not apply in respect of any such amount so recovered or recouped which has been—

(i) included in the gross income of such taxpayer in terms of paragraph (jA) of the definition of "gross income";

(ii) applied to reduce any cost or expenditure incurred by such taxpayer in terms of section 19; or

(iii) previously taken into account as an amount that is deemed to have been recovered or recouped in terms of section 19(4), (5), (6) or (6A).

[paragraph (iii) substituted by section 6 of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(b) For the purposes of paragraph (a), where during any year of assessment any actuarial surplus is paid to a taxpayer pursuant to the provisions of section 15E(1)(f) or (g) of the Pension Funds Act the taxpayer must be deemed to have recovered or recouped an amount equal to the amount of that actuarial surplus less any expenditure incurred by that taxpayer in respect of that actuarial surplus that was not allowed as a deduction during any year of assessment.

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

(eA) Where a person acquires more than one asset (hereinafter referred to as "the replacement asset or assets") contemplated in paragraph (e), that person must, in applying paragraphs (eB), (eC) and (eD), apportion the amount recovered or recouped to each replacement asset in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each replacement asset bear to the total amount of those receipts and accruals expended in acquiring all those replacement assets.

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

(eC) Where a person during any year of assessment disposes of a replacement asset in relation to an asset contemplated in paragraph (e) and any portion of the recovery or recoupment which

is apportioned to that replacement asset has not been included in the income of that person in terms of paragraph (eB) or (eD), that portion must be deemed to be an amount recovered or recouped by that person in respect of that replacement asset in that year of assessment.

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

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

(i) deem the amount contemplated in paragraph (e) to be an amount recovered or recouped for purposes of paragraph (a) on the date on which the relevant period ends;

(ii) determine interest at the prescribed rate on the amount recovered or recouped from the date of the disposal contemplated in paragraph (e) to the date contemplated in subparagraph (i); and

(iii) deem that interest to be an amount recovered or recouped for purposes of paragraph (a) on the date contemplated in subparagraph (i).

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

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

(i) donated any asset;

(ii) in the case of a company, transferred in whatever manner or form any asset to any holder of a share in that company;

(iii) disposed of any asset to a person who is a connected person in relation to that person; or

(iv) commenced to hold any asset as trading stock which was previously not held as trading stock,

[subparagraph (iv) added by section 6(d) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

in respect of which a deduction or an allowance has been granted to such person in terms of any of the provisions referred to in that paragraph, that person shall be deemed to have disposed of that asset for an amount equal to the market value of that asset as at the date of that donation, transfer, disposal or commencement.

[words following subparagraph (iv) substituted by section 4(1)(b) of Act 23 of 2020; effective date 15 January 2020]

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

(i) any person was entitled to a deduction in respect of any interest or related finance charges (including a discount or premium), which was incurred or deemed to have been incurred by such person in relation to any financial arrangement during any

year of assessment and such interest or related finance charges were allowed as a deduction in terms of the provisions of this Act during such year of assessment in the hands of such person;

(ii) such person has transferred such financial arrangement during any year of assessment to any other person; and

(iii) any obligation or part thereof in respect of such interest or related finance charges which such person is legally liable to pay has, as a result of such transfer, been transferred to such other person,

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

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

(4A) The provisions of subsection (4)(a), (e), (f) or (k) shall not apply in respect of any amount which is deemed to have been allowed as a deduction in terms of subparagraph (ix) of the proviso to section 11(e), section 12B(4B), section 12C(4A), section 12D(3A), section 12DA(4), section 12F(3A), section 13(1A), section 13bis(3A), section 13ter(6A), section 13quin(3) or section 37B(4).

(5) (a) Any amount which has been paid, whether in the form of rent or otherwise, by any person for the right of use or occupation of any movable or immovable property and has been allowed as a deduction in the determination of such person's taxable income, and which or the equivalent of which is upon the subsequent acquisition of such property by that or any other person applied in reduction or towards settlement of the purchase price of such property, shall be included in the income of the person by whom the property is acquired as aforesaid for the year of assessment in which such person exercises the option or concludes the agreement, as the case may be, in consequence of which the property is acquired by him: Provided that the provisions of this subsection shall not apply in any case where, in consequence of the acquisition of such property, the person who has acquired the property or any other person has derived a taxable benefit the cash equivalent of which has been included in his gross income in terms of the provisions of paragraph (i) of the definition of "gross income" in section 1.

(b) Where any amount has been paid by any person for the right of use or occupation of any property which is thereafter acquired by that or any other person for a consideration which is less than the fair market value of such property, it shall for the purposes of paragraph (a) be deemed that the said amount, or so much thereof as does not exceed the fair market value of such property less the amount of the consideration, if any, for which it has been acquired as aforesaid, has been applied in reduction or towards settlement of the purchase price of such property.

(bA) If after the termination by the effluxion of time or otherwise of a lease of property consisting of corporeal movable goods or of any machinery or plant in respect of which the lessor under such lease was entitled to any allowance under the provisions of this Act, the person who was the lessee under such lease (hereinafter referred to as the former lessee) is, with the express or implied consent or acquiescence of the person who was the lessor under such lease (hereinafter referred to as the former lessor) or of the owner of the property, allowed to use, enjoy or deal with the property as the former lessee may deem fit—

(i) without the payment of any consideration; or

(ii) in the case of a lease without the payment of any rental or other consideration or subject to the payment of any consideration which is nominal in relation to the fair market value of the property,

the former lessee shall be deemed for the purposes of paragraph (b) to have acquired the property for no consideration and, if the property was owned by the former lessor, the fair market value thereof shall, be deemed for the said purposes to be the cost to the former lessor of the property (or, where the said lease was a financial lease contemplated in paragraph (b) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act, the cash value as defined in that Act of the property, less a depreciation allowance calculated in accordance with paragraph (bB)(i) for the period from the commencement to the termination of the lease.

(bB) For the purposes of paragraph (bA)—

(i) the depreciation allowance shall be calculated as an aggregate of annual allowances for the years in the period for which the depreciation allowance may be made, the allowance for the first year in the said period being calculated at the rate of 20 per cent of the said cost or cash value, as the case may be, of the property in question and the allowance for each succeeding year in that period being calculated at the said rate on the balance of the said cost or cash value, as the case may be, remaining after the deduction therefrom of the allowance or allowances calculated for the year or years preceding such succeeding year;

(ii) the former lessor of the property in question, or the owner thereof, as the case may be, shall, unless and until the contrary is proved, be deemed to have consented to the former lessee using, enjoying or dealing with the property as contemplated in the said paragraph if, at the end of a period of three months reckoned after the date on which the lease in question terminated, the former lessor has not instituted proceedings to compel the former lessee to return the property to the former lessor or to relinquish possession thereof or to dispose thereof in accordance with the terms of the lease;

(iii) where any consideration is payable in respect of the property in question for the period after the termination of the lease in question, such consideration shall be deemed to be nominal in relation to the fair market value of the property if that consideration, in relation to the period for which it is payable, amounts to less than 10 per cent per annum of the said fair market value;

(iv) if after the termination of a lease referred to in the said paragraph (bA) the former lessee is required to pay a consideration in respect of his right to use, enjoy or deal with the property in question but ceases to pay such consideration or, in the case of a lease referred to in subparagraph (ii) of the said paragraph (bA), pays a consideration in respect of such right which is nominal in relation to the fair market value of the property, the said lease shall be deemed to have been terminated on the date from which the former lessee is no longer required to pay such consideration or in the case of a lease referred to in the said subparagraph (ii), whereafter the consideration payable by him becomes nominal as aforesaid.

(bC) Any person who, as a former lessor of property referred to in paragraph (bA) or as the owner thereof, has after the termination of the lease of such property consented to the former lessee thereof using, enjoying or dealing with such property as contemplated in the said paragraph, or is deemed to have so consented under the provisions of paragraph (bB)(ii), shall not later than 14 days after the end of three months after the termination of the relevant lease advise the former lessee of the fair market value of such property as determined in accordance with paragraph (bA).

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

(1) (a) There shall be included in the taxpayer's income for the year of assessment the amount of any gain made by the taxpayer after the first day of June, 1969, by the exercise, cession or release during such year of any right to acquire any marketable security (whether such right be exercised, ceded or released in whole or part), if such right was obtained by the taxpayer before 26 October 2004 as a director or former director of any company or in respect of services rendered or to be rendered by him as an employee to an employer.

(b) Where the taxpayer has exercised such right but, by reason of a condition imposed by the said company or employer or the grantor of the right, the taxpayer is not entitled to dispose of the marketable security until after the end of the said year of assessment, the gain made by the exercise of the right shall, if the taxpayer makes an election as provided in paragraph (c), not be included in his income for such year of assessment but shall be included in his income for the year of assessment during which he becomes entitled to dispose of the marketable security: Provided that in the event of the taxpayer's death or insolvency before he becomes entitled to dispose of the marketable security the said gain shall be deemed to have been made by him on the day before the date of his death or insolvency, as the case may be, and shall be assessed accordingly.

(c) The taxpayer may, in the circumstances contemplated in paragraph (b), elect that the provisions of that paragraph shall apply in respect of the gain referred to in that paragraph, and such election shall be in writing and shall be furnished to the Commissioner not later than the date on which the taxpayer's return of income is furnished for the year of assessment referred to in paragraph (a), or within such further time as the Commissioner may allow.

(2) For the purposes of this section—

(a) a gain shall be deemed to have been made by the taxpayer by the exercise of a right to acquire any marketable security if the amount by which the market value of such marketable security at the time such right was exercised exceeds the consideration given by the taxpayer for such marketable security and any consideration given by him for such right or the grant of such right: Provided that such market value shall for the purpose of this paragraph be deemed to be the sum which a person having the right freely to dispose of such marketable security might reasonably expect to obtain from a sale of such marketable security in the open market;

(b) where the taxpayer for a consideration accepts a restriction upon his right to acquire any marketable security such right shall be deemed to be released in part;

(c) where any gain is made by the exercise, cession or release of a right to acquire any marketable security, such gain shall be deemed to be made at the time when such right is exercised, ceded or released, as the case may be.

(3) The amount to be included in the taxpayer's income in respect of any gain referred to in subsection (1) shall be—

(a) where such gain is made by the exercise of a right to obtain any marketable security, the amount referred to in subsection (2)(a); or

(b) where such gain is made by the cession or release of a right to obtain any marketable security, the amount by which the amount or value of the consideration received by or accrued to the taxpayer for the cession or release, exceeds the amount or value of any consideration given by the taxpayer for such right or the grant of such right.

(4) In determining under subsections (2)(a) and (3) whether any gain has been made by the exercise, cession or release of a right to obtain any marketable security, and in determining the amount of such gain—

(a) where any consideration was given by the taxpayer for such right or the grant of such right and the right is exercised, ceded or released in part only or the consideration was given for something in addition to the right, only the portion of such consideration which relates to so much of the right as is exercised, ceded or released, as the case may be, shall be deductible and for that purpose a fair apportionment of such consideration shall be made; and

(b) no deduction shall be made in respect of any consideration in the form of services rendered or to be rendered or anything done or to be done or not to be done.

(5) Where any right (hereinafter referred to as the first right) to acquire any marketable security is ceded or released by the taxpayer in whole or in part for a consideration which consists of or includes another right (hereinafter referred to as the second right) to acquire such marketable security or any other marketable security—

(a) the second right shall for the purposes of this section not be deemed to be consideration for the cession or release of the first right; and

(b) any gain made by the taxpayer (other than a gain in respect of which section 8C applies or will apply) by the exercise, cession or release of the second right, shall be determined and included in the taxpayer's income as though such gain had been made by the exercise, cession or release of the first right, and for the purpose of determining such gain, the amount to be deducted under subsection (2)(a) or (3) in respect of the amount or value of the consideration given by the taxpayer for the second right shall be deemed to be the consideration given by the taxpayer for the first right or the grant of such right, less so much of the amount or value of that consideration as has been offset by any consideration other than the consideration consisting of the second right.

(6) For the purposes of this section, a gain made by any person other than the taxpayer by the exercise, cession or release of a right to acquire any marketable security shall be deemed to be made by the taxpayer and shall be included in the taxpayer's income as though it were a gain referred to in subsection (1)—

(a) if that right was originally obtained by any person other than the taxpayer by reason of the taxpayer's office or former office as a director of any company or any services rendered or to be rendered by the taxpayer as an employee of any employer; or

(b) if that right was originally obtained by the taxpayer as a director or former director of any company or in respect of services rendered or to be rendered by him as an employee to an employer, and—

(i) the right was ceded by the taxpayer to any person otherwise than by or under a cession made by way of a bargain at arm's length; or

(ii) the gain was made by a relative of the taxpayer.

(7) The provisions of subsections (2), (3), (4) and (5) shall *mutatis mutandis* apply in relation to the determination of any gain referred to in subsection (6).

(8) Where any gain is made after the first day of June, 1969, by the exercise, cession or release of a right to acquire any marketable security granted to any person on or before that date, the amount required to be included in income under this section in respect of such gain shall be reduced by an amount which bears to the amount of the gain, as determined under the preceding provisions of this section, the same ratio as the exemption period, as determined under subsection (9) in relation to the said gain, bears to the accrual period, as so determined.

(9) For the purposes of determining any reduction to be made under subsection (8) in respect of any gain made by the exercise, cession or release or any right to acquire any marketable security—

(a) the exemption period shall be deemed to be the period commencing on the date on which the person referred to in subsection (8) was granted such right and ending on the first day of June, 1969; and

(b) the accrual period shall be deemed to be the period commencing on the first day of the exemption period and ending on the date on which such right is exercised, ceded or released, as the case may be.

(10) For the purposes of this section "marketable security" means any security, debenture, share, option or other interest capable of being sold in a share-market or exchange or otherwise.

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

(1) Notwithstanding section 9C, there must be included in the income of a person for a year of assessment any gain made by that person during that year from the disposal of any qualifying equity share or any right or interest in a qualifying equity share, which is disposed of by that person within five years from the date of grant of that qualifying equity share, otherwise than—

(a) in exchange for another qualifying equity share as contemplated in subsection (2);

(b) on the death of that person; or

(c) on the insolvency of that person.

(2) If a person disposes of a qualifying equity share in exchange solely for any other equity share in that employer or any company that is an associated institution as defined in the Seventh Schedule in relation to that employer, that other equity share acquired in exchange is deemed to be—

(a) a qualifying equity share which was acquired by that person on the date of grant of the qualifying equity share disposed of in exchange; and

(b) acquired for a consideration equal to any consideration given for the qualifying equity share disposed of in exchange.

(2A) If a person acquires any equity share by virtue of any qualifying equity share held by that person, that other equity share so acquired is deemed to be a qualifying equity share which was acquired by that person on the date of grant of the qualifying equity share so held by that person.

(2B) If a person disposes of any right or interest in a qualifying equity share, the amount of consideration incurred in respect of the acquisition of that qualifying equity share that is attributable to that right or interest must be determined in accordance with the ratio that the amount received for the disposal of that right or interest bears to the market value of that qualifying equity share immediately before that disposal.

(3) For the purposes of this section—

"broad-based employee share plan" of an employer means a plan in terms of which—

(a) equity shares in that employer, or in a company that is an associated institution as defined in the Seventh Schedule in relation to the employer are acquired by employees of that employer;

[paragraph (a) substituted by section 7 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(b) employees who participate in any other equity scheme of that employer or of a company that is an associated institution as defined in the Seventh Schedule in relation to that employer are not entitled to participate and where at least 80 per cent of all other employees who are employed by that employer on a permanent basis on the date of grant (and who have

continuously been so employed on a full-time basis for at least one year) are entitled to participate;

(c) the employees who acquire the equity shares as contemplated in paragraph (a) are entitled to all dividends and foreign dividends and full voting rights in relation to those equity shares; and

(d) no restrictions have been imposed in respect of the disposal of those equity shares, other than—

(i) a restriction imposed by legislation;

(ii) a right of any person to acquire those equity shares from the employee or former employee who acquired the equity shares as contemplated in paragraph (a)—

(aa) in the case where the employee or former employee is or was guilty of misconduct or poor performance, at the lower of market value on the date of grant or the market value on the date of acquisition by that employer; or

(bb) in any other case, at market value on the date of acquisition by that person; or

(iii) a restriction in terms of which the employee or former employee who acquired the equity shares as contemplated in paragraph (a) may not dispose of those equity shares for a period, which may not extend beyond five years from the date of grant;

"date of grant" in relation to an equity share means the date on which the granting of that equity share is approved by the directors of the employer company or some other person or body of persons with comparable authority;

"gain" in relation to the disposal by a person of a qualifying equity share or a right or interest in a qualifying equity share, means the amount by which any amount received by or accrued to that person from that disposal exceeds the consideration given by him or her for that qualifying equity share, right or interest (otherwise than in the form of services rendered or to be rendered or anything done or to be done or not to be done);

"market value" in relation to an equity share means the price which could be obtained upon the sale of that equity share between a willing buyer and a willing seller dealing freely at arm's length in an open market and without having regard to any restrictions imposed in respect of that equity share;

"qualifying equity share", in relation to a person, means an equity share acquired in a year of assessment in terms of a broad-based employee share plan, where the market value of all equity shares (as determined on the relevant date of grant of each equity share and excluding the market value of any qualifying equity share acquired in the circumstances contemplated in subsection (2A)), which were acquired by that person in terms of that plan in that year and the four immediately preceding years of assessment, does not in aggregate exceed R50 000.

(4) The provisions of section 25 do not apply in respect of any amount received or accrued from the disposal of any qualifying equity share after the date of death of the person contemplated in subsection (1).

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

(1) (a) Notwithstanding sections 9C and 23(m), a taxpayer must include in or deduct from his or her income for a year of assessment any gain or loss determined in terms of subsection (2) in respect of the vesting during that year of any equity instrument, if that equity instrument was acquired by that taxpayer—

(i) by virtue of his or her employment or office of director of any company or from any person by arrangement with the taxpayer's employer;

(ii) by virtue of any restricted equity instrument held by that taxpayer in respect of which this section will apply upon vesting thereof; or

(iii) as a restricted equity instrument during the period of his or her employment by or office of director of any company from—

(aa) that company or any associated institution in relation to that company; or

(bb) any person employed by or that is a director of—

(A) that company; or

(B) any associated institution in relation to that company.

(b) This section does not apply in respect of any equity instrument which—

(i) was acquired by the exercise or conversion of, or in exchange for the disposal of, any other equity instrument where this section applied in respect of the vesting of that other equity instrument before that exercise, conversion or exchange; or

(ii) constitutes a qualifying equity share contemplated in section 8B.

(1A) A taxpayer must include any amount received by or accrued to him or her during a year of assessment in respect of a restricted equity instrument in his or her income for that year of assessment if that amount does not constitute—

(a) a return of capital or foreign return of capital by way of a distribution of a restricted equity instrument;

(b) a dividend or foreign dividend in respect of that restricted equity instrument; or

(c) an amount that must be taken into account in determining the gain or loss, in terms of this section, in respect of that restricted equity instrument.

(2) (a) The gain to be included in the income of a taxpayer—

(i) in the case of—

(aa) a disposal contemplated in subsection (5)(c); or

(bb) a disposal by way of release, abandonment or lapse of an option or financial instrument contemplated in paragraph (a) or (b) of the definition of "equity instrument",

is the amount received or accrued in respect of that disposal which exceeds the sum of any consideration in respect of that equity instrument; or

(ii) in any other case, is the amount by which the market value of the equity instrument determined at the time that it vests in that taxpayer exceeds the sum of any consideration in respect of that equity instrument.

(b) The loss to be deducted from the income of a taxpayer—

(i) in the case of—

(aa) a disposal contemplated in subsection (5)(c); or

(bb) a disposal by way of release, abandonment or lapse of an option or financial instrument contemplated in paragraph (a) or (b) of the definition of "equity instrument",

is the amount by which the sum of any consideration in respect of that equity instrument exceeds the amount received or accrued in respect of that disposal; or

(ii) in any other case, is the amount by which the consideration in respect of the equity instrument exceeds the market value of that equity instrument determined at the time that it vests in that taxpayer.

(3) An equity instrument acquired by a taxpayer is deemed for the purposes of this section to vest in that taxpayer—

(a) in the case of the acquisition of an unrestricted equity instrument, at the time of that acquisition; or

(b) in the case of the acquisition of a restricted equity instrument, at the earliest of—

(i) when all the restrictions, which result in that equity instrument being a restricted equity instrument, cease to have effect;

(ii) immediately before that taxpayer disposes of that restricted equity instrument, other than a disposal contemplated in subsection (4) or (5)(a), (b) or (c);

(iii) immediately after that equity instrument, which is an option contemplated in paragraph (a) of the definition of "equity instrument" or a financial instrument contemplated in paragraph (b) of that definition, terminates (otherwise than by the exercise or conversion of that equity instrument);

(iv) immediately before that taxpayer dies, if all the restrictions relating to that equity instrument are or may be lifted on or after death; and

(v) the time a disposal contemplated in subsection (2)(a)(i) or (b)(i) occurs.

(4) (a) If a taxpayer disposes of a restricted equity instrument which was acquired in the manner contemplated in subsection (1) for an amount which consists of or includes any other restricted equity instrument in the employer of the taxpayer or an associated institution in relation to the employer, that other restricted equity instrument acquired in exchange is deemed to be acquired by that taxpayer by virtue of his or her employment or office of director of any company.

(b) If the amount received or accrued in respect of the restricted equity instrument which is disposed of as contemplated in paragraph (a) includes any payment in a form other than restricted equity instruments, that payment less any consideration attributable to that payment must be deemed to be a gain or loss which must be included in or deducted from the income of the taxpayer in the year of assessment during which that restricted equity instrument is so disposed of.

(5) (a) If a restricted equity instrument which was acquired by a taxpayer in the manner contemplated in subsection (1) is disposed of by that taxpayer to any person—

(i) otherwise than by or under a disposal made in terms of a transaction at arm's length; or

(ii) who is a connected person in relation to that taxpayer,

the provisions of subsections (2), (3) and (4) apply *mutatis mutandis* in the determination of any gain or loss made by that person as if that person had been the taxpayer, and that gain or loss is for purposes of subsection (1) deemed to be made by that taxpayer in respect of the vesting of that equity instrument.

(b) If an equity instrument was acquired by any person other than the taxpayer by virtue of the taxpayer's employment or office of director, that equity instrument must, for purposes of this section, be deemed to have been so acquired by that taxpayer and disposed of to that person in the manner contemplated in paragraph (a).

(c) Paragraph (a) does not apply where a taxpayer disposes of any restricted equity instrument (including by way of forfeiture, lapse or cancellation) to his or her employer, an associated institution or other person by arrangement with the employer in terms of a restriction imposed in relation to that equity instrument for an amount which is less than the market value of that restricted equity instrument.

(6) If a person who acquires a restricted equity instrument from the taxpayer as contemplated in subsection (5), disposes of that restricted equity instrument to any other person in the manner contemplated in subsection (5)(a)(i) or to a connected person in relation to the taxpayer, subsection (5) applies in respect of that other person as if he or she had acquired that restricted equity instrument directly from that taxpayer.

(7) For purposes of this section, unless the context otherwise indicates—

"associated institution" means an associated institution as contemplated in paragraph 1 of the Seventh Schedule;

"consideration" in respect of an equity instrument means any amount given or to be given (otherwise than in the form of services rendered or to be rendered or anything done, to be done or not to be done)—

(a) by the taxpayer in respect of that equity instrument;

(b) by the taxpayer in respect of any other restricted equity instrument which had been disposed of by that taxpayer in exchange for that equity instrument, reduced by any amount attributable to the gain or loss determined in terms of subsection (4)(b); or

(c) by any person contemplated in subsection (5)(a) or (b) in respect of that restricted equity instrument to the extent that the amount does not exceed the amount the taxpayer would have had to give to acquire that equity instrument had it not been disposed of or deemed to have been disposed of by him or her, but does not include any amount given or to be given by that person to the taxpayer to acquire that restricted equity instrument:

Provided that where a taxpayer acquires—

(a) an equity instrument in exchange for any other equity instrument, as contemplated in subsection (4)(a), the market value of the equity instrument given in exchange must not be taken into account in determining the consideration in respect of the equity instrument so acquired; or

(b) a right to acquire any marketable security in exchange for any other such right, as contemplated in section 8A(5), and the right so acquired constitutes an equity instrument acquired in the manner contemplated in subsection (1), the consideration for that equity instrument must be determined as if it was acquired in the manner contemplated in subsection (4)(a);

"employer" means an employer as contemplated in paragraph 1 of the Seventh Schedule;

"equity instrument" means a share or a member's interest in a company, and includes—

(a) an option to acquire such a share, part of a share or member's interest;

(b) any financial instrument that is convertible to a share or member's interest; and

(c) any contractual right or obligation the value of which is determined directly or indirectly with reference to a share or member's interest;

"market value", in relation to an equity instrument—

(a) of a private company as defined in the Companies Act or a company that would be regarded as a private company if it were incorporated under that Act, means an amount determined as its value in terms of a method of valuation—

(i) prescribed in the rules relating to the acquisition and disposal of that equity instrument;

(ii) which is regarded as a proxy for the market value of that equity instrument for the purposes of those rules; and

(iii) used consistently to determine both the consideration for the acquisition of that equity instrument and the price of the equity instrument repurchased from the taxpayer after it has vested in that taxpayer; or

(b) of any other company, means the price which could be obtained upon the sale of that equity instrument between a willing buyer and a willing seller dealing freely at arm's length in an open market and, in the case of a restricted equity instrument, had the restriction to which that equity instrument is subject not existed;

"restricted equity instrument" in relation to a taxpayer means an equity instrument—

(a) which is subject to any restriction (other than a restriction imposed by legislation) that prevents the taxpayer from freely disposing of that equity instrument at market value;

(b) which is subject to any restriction that could result in the taxpayer—

(i) forfeiting ownership or the right to acquire ownership of that equity instrument otherwise than at market value; or

(ii) being penalised financially in any other manner for not complying with the terms of the agreement for the acquisition of that equity instrument;

(c) if any person has retained the right to impose a restriction contemplated in paragraph (a) or (b) on the disposal of that equity instrument;

(d) which is an option contemplated in paragraph (a) of the definition of "equity instrument" and where the equity instrument which can be acquired in terms of that option will be a restricted equity instrument;

(e) which is a financial instrument contemplated in paragraph (b) of the definition of "equity instrument" and where the equity instrument to which that financial instrument can be converted will be a restricted equity instrument;

(f) if the employer, associated institution in relation to the employer or other person by arrangement with the employer has at the time of acquisition by the taxpayer of the equity instrument undertaken to—

(i) cancel the transaction under which that taxpayer acquired the equity instrument; or

(ii) repurchase that equity instrument from that taxpayer at a price exceeding its market value on the date of repurchase,

if there is a decline in the value of the equity instrument after that acquisition; or

(g) which is not deliverable to the taxpayer until the happening of an event, whether fixed or contingent; and

"unrestricted equity instrument" means an equity instrument which is not a restricted equity instrument.

8E. Dividends derived from certain shares and equity instruments deemed to be income in relation to recipients thereof

(1) For the purposes of this section—

"date of issue", in relation to a share in a company, means the date on which—

(a) the share is issued by the company;

(b) the company at any time after the share has been issued undertakes the obligation to redeem that share in whole or in part; or

(c) the holder of the share at any time after the share has been issued obtains the right to require that share to be redeemed in whole or in part, otherwise than as a result of the acquisition of that share by that holder;

"equity instrument" means any right or interest the value of which is determined directly or indirectly with reference to—

(a) a share; or

(b) an amount derived from a share;

"financial instrument" means any—

(a) interest-bearing arrangement; or

(b) financial arrangement based on or determined with reference to a specified rate of interest or the time value of money;

"hybrid equity instrument" means—

(a) any share, other than an equity share, if—

(i) the issuer of that share is obliged to redeem that share or to distribute an amount constituting a return of the issue price of that share (in whole or in part); or

[subparagraph (i) substituted by section 8(1)(a) of Act 34 of 2019; effective date 21 July 2019, applicable in respect of years of assessment ending on or after that date]

(ii) the holder of that share may exercise an option in terms of which the issuer must redeem that share or distribute an amount constituting a return of the issue price of that share (in whole or in part),

[subparagraph (ii) substituted by section 8(1)(a) of Act 34 of 2019; effective date 21 July 2019, applicable in respect of years of assessment ending on or after that date]

within a period of three years from the date of issue of that share;

(b) any share, other than a share contemplated in paragraph (a), if—

(i) (aa) the issuer of that share is obliged to redeem that share or to distribute an amount constituting a return of the issue price of that share (in whole or in part) within a period of three years from the date of issue of that share;

[item (aa) substituted by section 8(1)(b) of Act 34 of 2019; effective date 21 July 2019, applicable in respect of years of assessment ending on or after that date]

(bb) the holder of that share may exercise an option in terms of which the issuer must redeem that share or distribute an amount constituting a return of the issue price of that share (in whole or in part) within a period of three years from the date of issue of that share; or

[item (bb) substituted by section 8(1)(b) of Act 34 of 2019; effective date 21 July 2019, applicable in respect of years of assessment ending on or after that date]

(cc) at any time on the date of issue of that share, the existence of the company issuing that share—

(A) is to be terminated within a period of three years; or

(B) is likely to be terminated within a period of three years upon a reasonable consideration of all the facts at that time; and

(ii) (aa) that share does not rank *pari passu* as regards its participation in dividends or foreign dividends with all other equity shares in the capital of the relevant

company or, where the equity shares in such company are divided into two or more classes, with the shares of at least one of such classes; or

[item (aa) substituted by section 12 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(bb) any dividend or foreign dividend payable on such share is to be calculated directly or indirectly with reference to any specified rate of interest or the time value of money;

(c) any preference share if that share is—

(i) secured by a financial instrument; or

(ii) subject to an arrangement in terms of which a financial instrument may not be disposed of,

unless that share was issued for a qualifying purpose;

(d) any equity instrument the value of which is determined directly or indirectly with reference to—

(i) a share contemplated in paragraph (a) or (b) or a preference share contemplated in paragraph (c); or

(ii) an amount derived from a share or preference share contemplated in subparagraph (i); or

(e) any equity instrument, other than an equity instrument contemplated in paragraph (d), if that equity instrument is subject to a right or arrangement that would have constituted a right or arrangement contemplated in paragraph (a), (b) or (c) had that right or arrangement applied in respect of the share with reference to which the value of that equity instrument is directly or indirectly determined;

[paragraph (e) substituted by section 8(1)(c) of Act 34 of 2019; effective date 21 July 2019, and by section 7 of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

"issue price", in relation to a share in a company, means the amount that was received by or that accrued to that company in respect of the issue of that share;

[definition of "issue price" inserted by section 8(1)(d) of Act 34 of 2019; effective date 21 July 2019, applicable in respect of years of assessment ending on or after that date]

"preference share" means a preference share as defined in section 8EA(1);

"qualifying purpose" means a qualifying purpose as defined in section 8EA(1).

(2) Any dividend or foreign dividend received by or accrued to a person during any year of assessment in respect of a share or equity instrument must be deemed in relation to that person to be an amount of income accrued to that person if that share or equity instrument constitutes a hybrid equity instrument at any time during that year of assessment.

(2A) Where any share or preference share that was issued in terms of an agreement, all the terms of which were finally agreed to before 1 April 2012 by all the parties to that agreement, constitutes a hybrid equity instrument solely by reason of a right of redemption or a security arrangement acquired in accordance with the terms of that agreement and that right or arrangement is cancelled on or after 26 October 2016 and on or before 31 December 2017—

(a) the provisions of subsection (2) will not apply in respect of any dividend or foreign dividend that accrues in respect of that share after the date of cancellation of that right or arrangement; and

(b) the cancellation of that right or arrangement must not be treated as a disposal of that share if no consideration is payable in respect of that cancellation.

8EA. Dividends on third-party backed shares deemed to be income in relation to recipients thereof

(1) For the purposes of this section—

"**enforcement obligation**" *[definition of "enforcement obligation" deleted by section 9(a) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]*

"**enforcement right**" in relation to a share or equity instrument means any right, whether fixed or contingent, of the holder of that share or equity instrument or of any person that is a connected person in relation to that holder to require any person other than the issuer of that share or equity instrument to—

(a) acquire that share or equity instrument from the holder;

(b) make any payment in respect of that share or equity instrument in terms of a guarantee, indemnity or similar arrangement; or

(c) procure, facilitate or assist with any acquisition contemplated in paragraph (a) or the making of any payment contemplated in paragraph (b);

"**equity instrument**" means a right or interest the value of which is determined directly or indirectly with reference to—

(a) a preference share; or

(b) an amount derived from a preference share;

"**operating company**" means—

(a) any company that carries on business continuously, and in the course or furtherance of that business—

(i) provides goods or services for consideration; or

(ii) carries on exploration for natural resources;

(b) any company that is a controlling group company in relation to a company contemplated in paragraph (a); or

(c) any company that is a listed company;

"**preference share**" means any share—

(a) other than an equity share; or

(b) that is an equity share, if an amount of any dividend or foreign dividend in respect of that share is based on or determined with reference to a specified rate of interest or the time value of money;

"**qualifying purpose**", in relation to the application of the funds derived from the issue of a preference share, means one or more of the following purposes:

(a) The direct or indirect acquisition of an equity share by any person in a company that is an operating company at the time of the receipt or accrual of any dividend or foreign dividend in respect of that preference share, other than a direct or indirect acquisition of an equity share from a company that, immediately before that acquisition, formed part of the same group of companies as the person acquiring that equity share;

(b) the partial or full settlement by any person of any—

(i) debt incurred for one or more of the following purposes:

(aa) The direct or indirect acquisition of an equity share by any person in a company that is an operating company at the time of the receipt or accrual of any dividend or foreign dividend in respect of that preference share, other than a direct or indirect acquisition of an equity share from a company that, immediately before that acquisition, formed part of the same group of companies as the person acquiring that equity share;

(bb) a direct or indirect acquisition or a redemption contemplated in paragraph (c);

(cc) the payment of any dividend or foreign dividend as contemplated in paragraph (d); or

(dd) the partial or full settlement, directly or indirectly, of any debt incurred as contemplated in item (aa), (bb) or (cc); or

(ii) interest accrued on any debt contemplated in subparagraph (i);

(c) the direct or indirect acquisition by any person or a redemption by any person of any other preference share if—

(i) that other preference share was issued for any purpose contemplated in this definition; and

(ii) the amount received by or accrued to the issuer of that preference share as consideration for the issue of that preference share does not exceed the amount outstanding in respect of that other preference share being acquired or redeemed, being the sum of—

(aa) that amount; and

(bb) any amount of dividends, foreign dividends or interest accrued in respect of that other preference share; or

(d) the payment by any person of any dividend or foreign dividend in respect of the other preference share contemplated in paragraph (c);

"**third-party backed share**" means any preference share or equity instrument in respect of which an enforcement right is exercisable by the holder of that preference share or equity instrument as a result of any amount of any specified dividend, foreign dividend, return of capital or foreign return of capital attributable to that share or equity instrument not being received by or accruing to any person entitled thereto.

[definition of "third-party backed share" substituted by section 9(b) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(2) Any dividend or foreign dividend received by or accrued to a person during any year of assessment in respect of a share or equity instrument must be deemed in relation to that person to be an amount of income received by or accrued to that person if that share or equity instrument constitutes a third-party backed share at any time during that year of assessment.

(2A) Where a preference share that was issued in terms of an agreement, all the terms of which were finally agreed to before 1 April 2012 by all the parties to that agreement, constitutes a third-party backed share solely by reason of an enforcement right acquired in accordance with the terms of that agreement and that enforcement right is cancelled on or after 26 October 2016 and on or before 31 December 2017, the provisions of subsection (2) will not apply in respect of any dividend or foreign

dividend that accrues in respect of that share after the date of cancellation of that enforcement right.

[subsection (2A) substituted by section 13 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(3) (a) Where the funds derived from the issue of a preference share were applied for a qualifying purpose, in determining whether an enforcement right is exercisable in respect of that share, no regard must be had to any arrangement in terms of which the holder of that share has an enforcement right in respect of that share and that right is exercisable, against the persons contemplated in paragraph (b).

[paragraph (a) substituted by section 9(c) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(b) For the purposes of the determination contemplated in paragraph (a) no regard must be had to the following persons:

(i) The operating company to which that qualifying purpose relates;

(ii) any issuer of a preference share if that preference share was issued for a qualifying purpose;

(iii) any other person that directly or indirectly holds at least 20 per cent of the equity shares in—

(aa) the operating company contemplated in subparagraph (i); or

(bb) the issuer contemplated in subparagraph (ii);

(iv) any company that forms part of the same group of companies as—

(aa) the operating company contemplated in subparagraph (i);

(bb) the issuer contemplated in subparagraph (ii); or

(cc) the other person that directly or indirectly holds at least 20 per cent of the equity shares in the operating company contemplated in subparagraph (i) or the issuer contemplated in subparagraph (ii);

(v) any natural person;

(vi) any organisation—

(aa) which is—

(A) a non-profit company as defined in section 1 of the Companies Act; or

(B) a trust or association of persons; and

(bb) if—

(A) all the activities of that organisation are carried on in a non-profit manner; and

(B) none of the activities of that organisation are intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of that organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee; or

(vii) any person that holds equity shares in an issuer contemplated in subparagraph (ii) if the enforcement right exercisable against that person is limited to any rights in and claims against that issuer that are held by that person.

[subparagraph (vii) substituted by section 9(d) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

8F. Interest on hybrid debt instruments deemed to be dividends *in specie*

(1) For the purposes of this section—

"enforcement right" in relation to an instrument means any right, whether fixed or contingent, to require any person other than the issuer of that instrument to—

(a) acquire that instrument from the holder thereof;

(b) make any payment in respect of that instrument in terms of a guarantee, indemnity or similar arrangement; or

(c) procure, facilitate or assist with any acquisition contemplated in paragraph (a) or the making of any payment contemplated in paragraph (b);

"hybrid debt instrument" means any instrument in respect of which a company owes an amount during a year of assessment if in terms of any arrangement as defined in section 80L—

(a) that company is in that year of assessment entitled or obliged to—

(i) convert that instrument (or any part thereof) in any year of assessment to; or

(ii) exchange that instrument (or any part thereof) in any year of assessment for,

shares unless the market value of those shares is equal to the amount owed in terms of the instrument at the time of conversion or exchange;

(b) the obligation to pay an amount so owed on a date or dates falling within that year of assessment has been deferred by reason of that obligation being conditional upon the market value of the assets of that company not being less than the amount of the liabilities of that company; or

(c) that company owes the amount to a connected person in relation to that company and is not obliged to redeem the instrument, excluding any instrument payable on demand, within 30 years from the date of issue of that instrument:

Provided that, for the purposes of this paragraph, where the company has the right to—

(aa) convert that instrument to; or

(bb) exchange that instrument for,

a financial instrument other than a share—

(A) that conversion or exchange must be deemed to be an arrangement in respect of that instrument; and

(B) that instrument and that financial instrument must be deemed to be one and the same instrument for the purposes of determining the period within which the company is obliged to redeem that instrument;

"instrument" means any form of interest-bearing arrangement or debt that is issued by—

(a) a company that is a resident;

(b) a company that is not a resident if the interest in respect of that instrument is attributable to a permanent establishment of that company in the Republic; or

(c) a company that is a controlled foreign company as contemplated in section 9D if the interest incurred in respect of that instrument must be taken into account in determining the net income of that controlled foreign company as contemplated in that section;

"issue", in relation to an instrument, means the creation of a liability to pay an amount in terms of that instrument;

"interest" means interest as defined in section 24J(1);

"redeem", in relation to an instrument, means the discharge of all liability to pay all amounts in terms of that instrument;

"third-party backed instrument" means any instrument in respect of which an enforcement right is exercisable as a result of any amount relating to that instrument not being received by or accruing to any person entitled thereto.

(2) Any amount that is incurred by a company or accrues to a person in respect of interest on or after the date that an instrument becomes a hybrid debt instrument is—

(a) deemed to be a dividend *in specie* in respect of a share that is declared and paid by that company to the person to whom that amount accrued on the last day of the year of assessment of that company during which it was incurred;

(b) not deductible; and

(c) deemed to be a dividend *in specie* in respect of a share that accrues to that person on the date contemplated in paragraph (a).

[subsection (2) amended by section 14(1) of Act 23 of 2018; effective date 18 December 2017, and substituted by section 8(1) of Act 20 of 2021; effective date 19 January 2022, date of promulgation of the Taxation Laws Amendment Act, 2021, applicable in respect of amounts incurred or accrued on or after that date]

(3) This section does not apply to any instrument—

(a) in respect of which all amounts are owed by a small business corporation as defined in section 12E(4);

(b) that constitutes a tier 1 or tier 2 capital instrument referred to in the regulations issued in terms of section 90 of the Banks Act (contained in Government Notice No. R.1029 published in *Government Gazette* No. 35950 of 12 December 2012) issued—

(i) by a bank as defined in section 1 of that Act; or

(ii) by a controlling company in relation to that bank;

(c) of any class that is subject to approval as contemplated in the—

(i) Short-term Insurance Act in accordance with the conditions determined in terms of section 23(a)(i) of that Act by the Registrar defined in that Act, where an amount is owed in respect of that instrument by a short-term insurer as defined in that Act; or

(ii) Long-term Insurance Act in accordance with the conditions determined in terms of section 24(a)(i) of that Act by the Registrar defined in that Act, where an amount is owed in respect of that instrument by a long-term insurer as defined in that Act;

(d) that constitutes a linked unit in a company where the linked unit is held by a long-term insurer as defined in the Long-term Insurance Act, a pension fund, a provident fund, a REIT or a short-term insurer as defined in the Short-term Insurance Act, if—

(i) the long-term insurer, pension fund, provident fund, REIT or short-term insurer holds at least 20 per cent of the linked units in that company;

(ii) the long-term insurer, pension fund, provident fund, REIT or short-term insurer acquired those linked units before 1 January 2013; and

(iii) at the end of the previous year of assessment 80 per cent or more of the value of the assets of that company, reflected in the annual financial statements prepared in accordance with the Companies Act for the previous year of assessment, is directly or indirectly attributable to immovable property;

(e) that constitutes a third-party backed instrument; or

(f) that constitutes a hybrid debt instrument solely in terms of paragraph (b) of the definition of hybrid debt instrument if a registered auditor, as contemplated in the Auditing Profession Act, 2005 (Act No. 26 of 2005), has certified that the payment, by a company, of an amount owed in respect of that instrument has been or is to be deferred by reason of the market value of the assets of that company being less than the amount of the liabilities of that company.

8FA. Hybrid interest deemed to be dividends *in specie*

(1) For the purposes of this section—

"hybrid interest", in relation to any debt owed by a company in terms of an instrument, means—

(a) any interest where the amount of that interest is—

(i) not determined with reference to a specified rate of interest; or

(ii) not determined with reference to the time value of money; or

(b) if the rate of interest has in terms of that instrument been raised by reason of an increase in the profits of the company, so much of the amount of interest as has been determined with reference to the raised rate of interest as exceeds the amount of interest that would have been determined with reference to the lowest rate of interest in terms of that instrument during the current year of assessment and the previous five years of assessment;

"instrument" means an instrument as defined in section 8F(1);

"issue", in relation to an instrument, means the creation of a liability to pay or a right to receive an amount in terms of that instrument.

"interest" means interest as defined in section 24J(1);

(2) Any amount that is incurred by a company or accrues to a person in respect of interest on or after the date that the interest becomes hybrid interest is—

(a) deemed to be a dividend *in specie* in respect of a share that is declared and paid by that company to the person to whom that amount accrued on the last day of the year of assessment of that company during which it was incurred;

(b) not deductible; and

(c) deemed to be a dividend *in specie* in respect of a share that accrues to that person on the date contemplated in paragraph (a).

[subsection (2) amended by section 15(1) of Act 23 of 2018; effective date 18 December 2017, and substituted by section 9(1) of Act 20 of 2021; effective date 19 January 2022, date of promulgation of the Taxation Laws Amendment Act, 2021, applicable in respect of amounts incurred or accrued on or after that date]

(3) This section does not apply to any interest owed in respect of—

(a) a debt owed by a small business corporation as defined in section 12E(4);

(b) an instrument that constitutes a tier 1 or tier 2 capital instrument referred to in the regulations issued in terms of section 90 of the Banks Act (contained in Government Notice No. R.1029 published in *Government Gazette* No. 35950 of 12 December 2012) issued—

(i) by a bank as defined in section 1 of that Act; or

(ii) by a controlling company in relation to that bank; or

(c) an instrument of any class that is subject to approval as contemplated—

(i) in the Short-term Insurance Act in accordance with the conditions determined in terms of section 23(1)(a) of that Act by the Registrar defined in that Act, where an amount is owed in respect of that instrument by a short-term insurer as defined in that Act; or

(ii) in the Long-term Insurance Act in accordance with the conditions determined in terms of section 24(1)(a) of that Act by the Registrar defined in that Act, where an amount is owed in respect of that instrument by a long-term insurer as defined in that Act; or

(d) an instrument that constitutes a linked unit in a company where the linked unit is held by a long-term insurer as defined in the Long-term Insurance Act, a pension fund, a provident fund, a REIT or a short-term insurer as defined in the Short-term Insurance Act, if—

(i) the long-term insurer, pension fund, provident fund, REIT or short-term insurer holds at least 20 per cent of the linked units in that company;

(ii) the long-term insurer, pension fund, provident fund, REIT or short-term insurer acquired those linked units before 1 January 2013; and

(iii) at the end of the previous year of assessment 80 per cent or more of the value of the assets of that company, reflected in the annual financial statements prepared in accordance with the Companies Act for the previous year of assessment, is directly or indirectly attributable to immovable property;

(e) an instrument that constitutes a third-party backed instrument as defined in section 8F(1).

8G. Determination of contributed tax capital in respect of shares issued to a group company

(1) For the purposes of this section "group of companies" means two or more companies in which one company (hereinafter referred to as the "controlling group company") directly or indirectly holds shares or voting rights in at least one other company (hereinafter referred to as the "controlled group company"), to the extent that—

(a) at least 50 per cent of the equity shares or voting rights in each controlled group company are directly held by the controlling group company, one or more other controlled group companies or any combination thereof; and

(b) the controlling group company directly holds at least 50 per cent of the equity shares or voting rights in at least one controlled group company.

(2) Where a company issues shares (hereinafter referred to as the "issuing company") to any company that is not a resident (hereinafter referred to as the "subscribing company") that forms, after that transaction, part of the same group of companies as the issuing company, the amount of the contributed tax capital in relation to those shares will, to the extent that the consideration for those shares—

(a) consists of; or

(b) is used, directly or indirectly to acquire,

any shares in another company that is a resident (hereinafter referred to as the "target company") and that forms part of a group of companies in relation to the subscribing company, be equal to so much of the total contributed tax capital attributable to shares of that class in that target company so acquired, determined in terms of subsection (3), as bears the same ratio that the number of shares so acquired bears to the total number of shares of that class.

(3) The contributed tax capital in relation to the shares in that target company must be determined—

(a) in terms of paragraph (b) of the definition of "contributed tax capital" in section 1; and

(b) with reference to the date from which that target company formed part of a group of companies in relation to the subscribing company.

(4) Paragraph (a) of the definition of "contributed tax capital" in section 1 does not apply in respect of any shares of a class that were issued, as contemplated in subsection (2), by an issuing company before that issuing company became a resident.

9. Source of income

(1) For the purposes of this section, "royalty" means any amount that is received or accrues in respect of the use, right of use or permission to use any intellectual property as defined in section 23I.

(2) An amount is received by or accrues to a person from a source within the Republic if that amount—

(a) constitutes a dividend received by or accrued to that person;

(b) constitutes interest as defined in section 24J where that interest—

(i) is attributable to an amount incurred by a person that is a resident, unless the interest is attributable to a permanent establishment which is situated outside the Republic; or

(ii) is received or accrues in respect of the utilisation or application in the Republic by any person of any funds or credit obtained in terms of any form of interest-bearing arrangement;

(c) constitutes a royalty that is attributable to an amount incurred by a person that is a resident, unless that royalty is attributable to a permanent establishment which is situated outside the Republic;

(d) constitutes a royalty that is received or accrues in respect of the use or right of use of or permission to use in the Republic any intellectual property as defined in section 23I;

(e) is attributable to an amount incurred by a person that is a resident and is received or accrues in respect of the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information, or the rendering of or the undertaking to render, any assistance or service in connection with the application or utilisation of such knowledge or information, unless the amount so received or accrued is attributable to a permanent establishment which is situated outside the Republic;

(f) is received or accrues in respect of the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information for use in the Republic, or the rendering of or the undertaking to render, any assistance or service in connection with the application or utilisation of such knowledge or information;

(g) is received or accrues in respect of the holding of a public office to which that person has been appointed or is deemed to have been appointed in terms of an Act of Parliament;

(h) is received or accrues in respect of services rendered to or work or labour performed for or on behalf of any employer—

(i) in the national, provincial or local sphere of government of the Republic;

(ii) that is a constitutional institution listed in Schedule 1 to the Public Finance Management Act;

(iii) that is a public entity listed in Schedule 2 or 3 to that Act; or

(iv) that is a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

(i) constitutes a lump sum, a pension or an annuity payable by a pension fund, pension preservation fund, provident fund or provident preservation fund and the services in respect of which that amount is so received or accrues were rendered within the Republic: Provided that if the amount is received or accrues in respect of services which were rendered partly within and partly outside the Republic, only so much of that amount as bears to the total of that amount the same ratio as the period during which the services were rendered in the Republic bears to the total period during which the services were rendered must be regarded as having been received by or accrued to the person from a source within the Republic;

(j) constitutes an amount received or accrued in respect of the disposal of an asset that constitutes immovable property held by that person or any interest or right of whatever nature of that person to or in immovable property contemplated in paragraph 2 of the Eighth Schedule and that property is situated in the Republic;

(k) constitutes an amount received or accrued in respect of the disposal of an asset other than an asset contemplated in paragraph (j) if—

(i) that person is a resident and—

(aa) that asset is not effectively connected with a permanent establishment of that person which is situated outside the Republic; and

[item (aa) substituted by section 16 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(bb) the proceeds from the disposal of that asset are not subject to any taxes on income payable to any sphere of government of any country other than the Republic; or

(ii) that person is not a resident and that asset is effectively connected with a permanent establishment of that person which is situated in the Republic; or

[subparagraph (ii) substituted by section 5 of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(l) is attributable to any exchange difference determined in terms of section 24I in respect of any exchange item as defined in that section to which that person is a party if—

(i) that person is a resident and—

(aa) that exchange item is not attributable to a permanent establishment of that person which is situated outside the Republic; and

(bb) that amount is not subject to any taxes on income payable to any sphere of government of any country other than the Republic; or

(ii) that person is not a resident and that exchange item is attributable to a permanent establishment of that person which is situated in the Republic.

(4) An amount is received by or accrues to a person from a source outside the Republic if that amount—

(a) constitutes a foreign dividend received by or accrued to that person;

(b) constitutes interest as defined in section 24J(1) received by or accrued to that person that is not from a source within the Republic in terms of subsection (2)(b);

(c) constitutes a royalty received by or accrued to that person that is not from a source within the Republic in terms of subsection (2)(c) or (d);

(d) constitutes an amount received or accrued to that person in respect of the disposal of an asset that is not from a source within the Republic in terms of subsection (2)(j) or (k); or

(e) is attributable to any exchange difference determined in terms of section 24I in respect of any exchange item as defined in that section to which that person is a party and is not from a source within the Republic in terms of subsection (2)(l).

9A. Blocked foreign funds

(1) Where any amount, or any portion of any amount, received by or accrued to any person which is required to be included in the income of that person during any year of assessment may not be remitted to the Republic during that year as a result of currency or other restrictions or limitations imposed in terms of the laws of the country where the amount arose, that person shall be allowed to deduct from his or her income for that year an amount equal to so much of the amount or portion which may not be remitted as is required to be included in the income of that person for that year.

(2) The amount or portion which may not be remitted during the year of assessment contemplated in subsection (1) shall be deemed to be an amount received by or accrued to the person contemplated in that subsection in the following year of assessment.

(3) Where any amount, or any portion of any amount, of the net income of a controlled foreign company in respect of a foreign tax year of the controlled foreign company may not be remitted to the Republic for the reasons contemplated in subsection (1), there shall be allowed to be deducted from the net income of the controlled foreign company for that foreign tax year an amount equal to so much of the amount or portion which may not be remitted.

(4) The amount or portion which may not be remitted as contemplated in subsection (3) shall be deemed to be an amount received by or accrued to the controlled foreign company contemplated in that subsection in the following foreign tax year of the controlled foreign company.

9C. Circumstances in which certain amounts received or accrued from disposal of shares are deemed to be of a capital nature

(1) For the purposes of this section—

"connected person" means a connected person as defined in section 1, provided that the expression "and no holder of shares holds the majority voting rights in the company" in paragraph (d)(v) of that definition shall be disregarded;

"disposal" means a disposal as defined in paragraph 1 of the Eighth Schedule;

[definition of "disposal" substituted by section 17(a) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

"equity share", includes a participatory interest in a portfolio of a collective investment scheme in securities and a portfolio of a hedge fund collective investment scheme excluding a share which at any time prior to the disposal of that share was—

[words preceding paragraph (a) substituted by section 17(b) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(a) a share in a share block company as defined in section 1 of the Share Blocks Control Act;

(b) a share in a company which was not a resident, other than a company contemplated in paragraph (a) of the definition of "listed company"; or

(c) a hybrid equity instrument as defined in section 8E;

(2) Any amount received or accrued (other than a dividend or foreign dividend) or any expenditure incurred in respect of an equity share must be deemed to be of a capital nature if that equity share had, at the time of the receipt or accrual of that amount or incurral of that expenditure, been held for a period of at least three years.

(2A) Subsection (2) does not apply in respect of so much of the amount received or accrued in respect of the disposal of an equity share contemplated in that subsection, other than an equity share held for longer than five years, as does not exceed the expenditure allowed in respect of that share in terms of section 12J(2).

[subsection (2A) substituted by section 17(c) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(3) The provisions of this section shall not apply to any equity share if at the time of the receipt or accrual of any amount (other than an amount constituting a dividend or foreign dividend) in respect of that share the taxpayer was a connected person in relation to the company that issued that share and—

(a) more than 50 per cent of the market value of the equity shares of that company was attributable directly or indirectly to immovable property other than—

(i) immovable property held directly or indirectly by a person that is not a connected person in relation to the taxpayer; or

(ii) immovable property held directly or indirectly for a period of at least three years immediately prior to that receipt or accrual; or

(b) that company acquired any asset during the period of three years immediately prior to that receipt or accrual and amounts were paid or payable by any person to any person other than that company for the use of that asset while that asset was held by that company during that period.

[subsection (3) substituted by section 17(d) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(4) For purposes of this section, where any share has been transferred by a lender to a borrower in terms of a securities lending arrangement, and an identical share has been returned by the borrower to the lender, in terms of that securities lending arrangement, that share and that other share shall be deemed to be one and the same share in the hands of the lender.

(4A) For purposes of this section, where any share has been transferred by a transferor to a transferee in terms of a collateral arrangement and an identical share has in turn been transferred by the transferee to the transferor in terms of that collateral arrangement, that share and that other share shall be deemed to be one and the same share in the hands of the transferor.

(5) There shall in the year of assessment in which any equity share held for a period of at least three years is disposed of by the taxpayer be included in the taxpayer's income any expenditure or losses incurred in respect of such equity share and allowed as a deduction from the income of the taxpayer during that or any previous year of assessment in terms of section 11: Provided that this subsection must not apply—

(a) in respect of any expenditure or loss to the extent that the amount of that expenditure or loss is taken into account in terms of section 8(4)(a) or section 19; or

(b) to expenditure in respect of equity shares in a REIT or a controlled company, as defined in section 25BB(1), that is a resident except to the extent that such amount was taken into

account in determining the cost price or value of trading stock under section 11(a), 22(1) or (2).

(6) Where the taxpayer holds shares of the same class in the same company which were acquired by the taxpayer on different dates and the taxpayer has disposed of any of those shares, the taxpayer shall for the purposes of this section be deemed to have disposed of the shares held by the taxpayer for the longest period of time.

(7) The provisions of section 22(8) shall not apply on or after the date that an equity share has been held for a period exceeding three years.

(8) For the purposes of this section, where a company issues shares to a person 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, such share and such previously held shares shall be deemed to be one and the same share if—

(i) the participation rights and interests of that person in that company remain unaltered; and

(ii) no consideration whatsoever passes directly or indirectly from that person to that company in relation to the issued shares.

9D. Net income of controlled foreign companies

(1) For the purposes of this section—

"controlled foreign company" means—

(a) any foreign company where more than 50 per cent of the total participation rights in that foreign company are directly or indirectly held, or more than 50 per cent of the voting rights in that foreign company are directly or indirectly exercisable, by one or more persons that are residents other than persons that are headquarter companies: Provided that—

(i) no regard must be had to any voting rights in any foreign company—

(aa) which is a listed company; or

(bb) if the voting rights in that foreign company are exercisable indirectly through a listed company;

(ii) any voting rights in a foreign company which can be exercised directly by any other controlled foreign company in which that resident (together with any connected person in relation to that resident) can directly or indirectly exercise more than 50 per cent of the voting rights are deemed for purposes of this definition to be exercisable directly by that resident; and

(iii) a person is deemed not to be a resident for purposes of determining whether residents directly or indirectly hold more than 50 per cent of the participation rights or voting rights in a foreign company, if—

(aa) in the case of a listed company or a foreign company the participation rights of which are held by that person indirectly through a listed company, that person holds less than five per cent of the participation rights of that listed company; or

(bb) in the case of a scheme or arrangement contemplated in paragraph (e)(ii) of the definition of "company" in section 1 or a foreign company the participation rights of which are held and the voting rights of which may be exercised by that person indirectly through such a scheme or arrangement, that person—

(A) holds less than five per cent of the participation rights of that scheme or arrangement; and

(B) may not exercise at least five per cent of the voting rights in that scheme or arrangement,

unless more than 50 per cent of the participation rights or voting rights of that foreign company or other foreign company are held by persons who are connected persons in relation to each other; or

[paragraph (a) amended by section 10(1)(a) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(b) any foreign company where the financial results of that foreign company are reflected in the consolidated financial statements, as contemplated in IFRS 10, of any company that is a resident, other than a headquarter company;

[paragraph (b) substituted by section 18(a) of Act 23 of 2018; effective date 17 January 2019, and by section 10(1)(b) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

"country of residence", in relation to a foreign company, means the country where that company has its place of effective management;

"foreign business establishment", in relation to a controlled foreign company, means—

(a) a fixed place of business located in a country other than the Republic that is used or will continue to be used for the carrying on of the business of that controlled foreign company for a period of not less than one year, where—

(i) that business is conducted through one or more offices, shops, factories, warehouses or other structures;

(ii) that fixed place of business is suitably staffed with on-site managerial and operational employees of that controlled foreign company who conduct the primary operations of that business;

(iii) that fixed place of business is suitably equipped for conducting the primary operations of that business;

(iv) that fixed place of business has suitable facilities for conducting the primary operations of that business; and

(v) that fixed place of business is located outside the Republic solely or mainly for a purpose other than the postponement or reduction of any tax imposed by any sphere of government in the Republic:

Provided that for the purposes of determining whether there is a fixed place of business as contemplated in this definition, a controlled foreign company may take into account the utilisation of structures as contemplated in subparagraph (i), employees as contemplated in subparagraph (ii), equipment as contemplated in subparagraph (iii), and facilities as contemplated in subparagraph (iv) of any other company—

(aa) if that other company is subject to tax in the country in which the fixed place of business of the controlled foreign company is located by virtue of residence, place of effective management or other criteria of a similar nature;

(bb) if that other company forms part of the same group of companies as the controlled foreign company; and

(cc) to the extent that the structures, employees, equipment and facilities are located in the same country as the fixed place of business of the controlled foreign company;

(b) any place outside the Republic where prospecting or exploration operations for natural resources are carried on, or any place outside the Republic where mining or production

operations of natural resources are carried on, where that controlled foreign company carries on those prospecting, exploration, mining or production operations;

(c) a site outside the Republic for the construction or installation of buildings, bridges, roads, pipelines, heavy machinery or other projects of a comparable magnitude which lasts for a period of not less than six months, where that controlled foreign company carries on those construction or installation activities;

(d) agricultural land in any country other than the Republic used for *bona fide* farming activities directly carried on by that controlled foreign company;

(e) a vessel, vehicle, rolling stock or aircraft used for purposes of transportation or fishing, or prospecting or exploration for natural resources, or mining or production of natural resources, where that vessel, vehicle, rolling stock or aircraft is used solely outside the Republic for such purposes and is operated directly by that controlled foreign company or by any other company that has the same country of residence as that controlled foreign company and that forms part of the same group of companies as that controlled foreign company;

(f) a South African ship as defined in section 12Q engaged in international shipping as defined in that section; or

(g) a ship engaged in international traffic used mainly outside the Republic;

"foreign company" means any—

(a) cell or segregated account contemplated in the definition of "protected cell company";

(b) protected cell company to the extent that—

(i) specified assets of that company are not segregated into structurally independent cells or segregated accounts as contemplated in paragraph (a) of the definition of "protected cell company"; or

(ii) specified assets and liabilities of that company are not linked or attributed to cells or segregated accounts as contemplated in paragraph (b) of the definition of "protected cell company"; or

(c) foreign company, as defined in section 1, other than a protected cell company;

"participation rights", in relation to a company, means—

(a) the right to participate in all or part of the benefits of the rights (other than voting rights) attaching to a share, or any interest of a similar nature, in that company; or

(b) in the case where no person has any right in that company as contemplated in paragraph (a) or no such rights can be determined for any person, the right to exercise any voting rights in that company; and

"protected cell company" means any entity incorporated, established or formed, whether by way of conversion or otherwise, in terms of any law of any country other than the Republic—

(a) if the principal trading activities of that entity constitute the business of an insurer; and

(b) where that law makes provision for—

(i) the segregation of specified assets of that entity into structurally independent cells or segregated accounts;

(ii) the linking or attribution of specified assets and liabilities to those cells or segregated accounts; or

(iii) separate participation rights in respect of each such cell or segregated account,

irrespective of whether or not that law provides that the establishment or formation of a cell or segregated account creates a legal person distinct from that entity.

(2) There shall be included in the income for the year of assessment of any resident (other than a resident that is a headquarter company) who directly or indirectly holds any participation rights in a controlled foreign company—

(a) on the last day of the foreign tax year of that controlled foreign company which ends during that year of assessment, an amount equal to—

(i) where that foreign company was a controlled foreign company for the entire foreign tax year, the proportional amount of the net income of that controlled foreign company determined for that foreign tax year, which bears to the total net income of that company during that foreign tax year, the same ratio as the percentage of the participation rights of that resident in relation to that company bears to the total participation rights in relation to that company on that last day; or

(ii) where that foreign company became a controlled foreign company at any stage during that foreign tax year, at the option of the resident, either—

(aa) an amount which bears to the proportional amount determined in accordance with subparagraph (i), the same ratio as the number of days during that foreign tax year that the foreign company was a controlled foreign company bears to the total number of days in that foreign tax year; or

(bb) the proportional amount determined in the manner contemplated in subparagraph (i) (as if the day that foreign company commenced to be a controlled foreign company was the first day of its foreign tax year), of the net income of that company for the period commencing on the day that the foreign company commenced to be a controlled foreign company and ending on the last day of that foreign tax year; or

(b) immediately before that foreign company ceased to be a controlled foreign company at any stage during that year of assessment before the last day of the foreign tax year of that controlled foreign company, an amount which shall be equal to, at the option of the resident, either—

(i) an amount determined in accordance with paragraph (a)(ii)(aa); or

(ii) the proportional amount determined in the manner contemplated in paragraph (a)(i) of the net income of that company determined for the period commencing on the first day of that foreign tax year and ending on the day before the company so ceased to be a controlled foreign company:

[subparagraph (ii) substituted by section 10(1)(c) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

Provided that this subsection shall not apply—

(A) where that resident (together with any connected person in relation to that resident)—

(i) at the end of the last day of the foreign tax year of the controlled foreign company; or

(ii) in the case where that foreign company ceased to be a controlled foreign company during the relevant foreign tax year, immediately before that foreign company so ceased to be a controlled foreign company,

in aggregate holds less than 10 per cent of the participation rights and may not exercise at least 10 per cent of the voting rights in that controlled foreign company; or

(B) to the extent that the participation rights are held by that resident indirectly through any company (other than a resident that is a headquarter company) which is a resident; or

(C) to the extent that—

(i) the participation rights are held by an insurer as defined in section 29A in any policyholder fund as defined in terms of that section, and are directly attributable to—

(aa) a linked policy as defined in section 1 of the Long-term Insurance Act; or

(bb) a policy as defined in section 29A, other than a policy contemplated in item (aa), of which the amount of the policy benefits as defined in the Long-term Insurance Act is not guaranteed by the insurer and is to be determined wholly by reference to the value of particular assets or categories of assets; and

(ii) the holding of the participation rights by the insurer does not form part of any transaction, operation or scheme entered into or effected solely or mainly for purposes of utilising the provisions of this paragraph in order to avoid the inclusion of an amount in the income of a resident as contemplated in this subsection

(D) to the extent that the participation rights are held by a portfolio of a collective investment scheme in securities or a portfolio of a collective investment scheme in participation bonds that is a resident directly or indirectly in a scheme or arrangement contemplated in paragraph (e)(ii) of the definition of "company" in section 1; and

: Provided further that for purposes of applying this subsection to a foreign company that is a controlled foreign company only in terms of paragraph (b) of the definition of "controlled foreign company", the percentage of the participation rights of a resident in relation to that controlled foreign company is equal to the net percentage of the financial results of that foreign company that are included in the consolidated financial statements, as contemplated in IFRS 10, for the year of assessment of the resident, that is a holding company, as defined in the Companies Act;

(2A) For the purposes of this section the "net income" of a controlled foreign company in respect of a foreign tax year is an amount equal to the taxable income of that company determined in accordance with the provisions of this Act as if that controlled foreign company had been a taxpayer, and as if that company had been a resident for purposes of the definition of "gross income", sections 7(8), 10(1)(h), 25B, 28 and paragraphs 2(1)(a), 24, 70, 71, 72 and 80 of the Eighth Schedule: Provided that—

[words preceding the proviso substituted by section 13(1)(a) of Act 25 of 2015; effective date retroactively amended by section 104(1) of Act 23 of 2018 to 1 July 2018]

(a) any deductions or allowances which may be allowed, or any amounts which may be set off against, the income of that foreign company in terms of this Act shall be limited to the amount of that income;

(b) any amount whereby such deductions or allowances or amounts exceed the amount of such income, shall be carried forward to the immediately succeeding foreign tax year and be deemed to be a balance of assessed loss which may be set off against the income of such company in such succeeding year for the purposes of section 20;

(c) no deduction shall be allowed in respect of any—

(i) interest, royalties, rental, insurance premium or income of a similar nature which is paid or payable or deemed to be paid or payable by that company to any other controlled foreign company (including any similar amount adjusted in terms of section 31);

(ii) exchange difference determined in terms of section 24I in respect of any exchange item to which that company and any other controlled foreign company are parties;

(iii) exchange difference in respect of any forward exchange contract or foreign currency option contract entered into to hedge the exchange item referred to in subparagraph (ii); or

(iv) reduction or discharge by that company of a debt owed to that company by any other controlled foreign company for no consideration or for consideration less than the amount by which the face value of the debt has been so reduced or discharged,

where that controlled foreign company and that other controlled foreign company form part of the same group of companies, unless that interest, rental, royalty, insurance premium, other income, adjusted amount, exchange difference, reduction or discharge is taken into account to determine the net income of that other controlled foreign company;

(d) any exemption from normal tax in respect of dividends received or accrued as contemplated in section 10(1)(k) must not apply in respect of the portion of an amount of the aggregate amount of dividends received by or accrued to a controlled foreign company during any foreign tax year, determined in accordance with the formula:

A = B × (C-D)

in which formula—

(i) "A" represents the amount to be determined;

(ii) "B" represents the ratio of the number 20 to the number 28;

(iii) "C" represents the aggregate of dividends received by or accrued to the controlled foreign company during the foreign tax year of that controlled foreign company; and

(iv) "D" represents, in respect of dividends contemplated in symbol 'C', an amount equal to the aggregate of—

(aa) 100 per cent of the amount of any dividend in respect of which dividends tax was paid at a rate of 20 per cent;

(bb) 75 per cent of the amount of any dividend in respect of which dividends tax was paid at a rate of 15 per cent;

(cc) 50 per cent of the amount of any dividend in respect of which dividends tax was paid at a rate of 10 per cent;

(dd) 40 per cent of the amount of any dividend in respect of which dividends tax was paid at a rate of 8 per cent;

(ee) 37.5 per cent of the amount of any dividend in respect of which dividends tax was paid at a rate of 7.5 per cent; and

(ff) 25 per cent of the amount of any dividend in respect of which dividends tax was paid at a rate of 5 per cent;

[subparagraph (iv) substituted by section 10(1)(a) of Act 20 of 2021; effective date 1 January 2021, applicable in respect of dividends received by or accrued to any controlled foreign company on or after that date]

[paragraph (d) inserted by section 6(1)(a) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of dividends received by or accrued to any controlled foreign company on or after that date]

(e) where a foreign company becomes a controlled foreign company after 1 October 2001, the valuation date for purposes of the determination of any taxable capital gain or assessed capital loss in terms of the Eighth Schedule, shall be the day before such company becomes a controlled foreign company;

(f) where the resident contemplated in subsection (2) is an insurer in respect of its individual policyholder fund, the taxable capital gain of the controlled foreign company shall, for the purposes of paragraph 10 of the Eighth Schedule, be 40 per cent of that company's net capital gain for the relevant foreign tax year;

[paragraph (f) substituted by section 6(1)(b) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of any net capital gain of any controlled foreign company during any foreign tax year commencing on or after that date]

(k) for the purposes of section 24I and paragraph 43 of the Eighth Schedule, "local currency" of a controlled foreign company otherwise than in relation to a permanent establishment of that controlled foreign company, means the functional currency of that company; and

[paragraph (k) substituted by section 18(b) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(l) where the functional currency of a controlled foreign company—

(i) was the currency of a country which—

(aa) abandoned its currency; and

(bb) had an official rate of inflation of 100 per cent or more for the foreign tax year preceding the abandonment of the currency; and

(ii) the controlled foreign company adopted a new functional currency as a consequence of the abandonment contemplated in subparagraph (i)(aa),

the controlled foreign company must, for the purposes of determining the cost of an asset of the controlled foreign company, be deemed to have acquired the asset in the new currency contemplated in subparagraph (ii)—

(A) on the first day of the foreign tax year of the controlled foreign company in which; and

(B) for an amount equal to the market value of the asset on the date on which,

the new currency was adopted by the controlled foreign company:

Provided further that—

(i) the net income of a controlled foreign company in respect of a foreign tax year shall be deemed to be nil where—

(aa) the aggregate amount of taxes on income payable to all spheres of government of any country other than the Republic by the controlled foreign company in respect of the foreign tax year of that controlled foreign company is at least 67,5 per cent of the amount of normal tax that would have been payable in respect of any taxable income of the controlled foreign company had the controlled foreign company been a resident for that foreign tax year; or

[subparagraph (aa) substituted by section 10(1)(d) of Act 34 of 2019; effective date 1 January 2020, applicable in respect of years of assessment ending on or after that date]

(bb) all the receipts and accruals of that controlled foreign company are—

(i) attributable to any foreign business establishment of that controlled foreign company as contemplated in subsection (9)(b); and

(ii) not required to be taken into account in terms of subsection (9A); and

(ii) the aggregate amount of tax payable by a controlled foreign company in respect of a foreign tax year of that controlled foreign company as contemplated in subparagraph (i) must be determined—

(aa) after taking into account any applicable agreement for the prevention of double taxation and any credit, rebate or other right of recovery of tax from any sphere of government of any country other than the Republic;

(bb) after disregarding any loss arising during foreign tax years ending after the date that foreign company became a controlled foreign company; and

(cc) *[subparagraph (cc) deleted by section 18(c) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]*

(iii) the normal tax that would have been payable as contemplated in paragraph (i) must be determined before taking into account any amount which would, had that controlled foreign company been a resident for that foreign tax year, have been included in the income of that controlled foreign company in terms of subsection (2) for that foreign tax year.

[paragraph (iii) added by section 18(d) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(6) The net income of a controlled foreign company in respect of a foreign tax year shall be determined in the functional currency of that controlled foreign company and shall, for purposes of determining the amount to be included in the income of any resident during any year of assessment under the provisions of this section, be translated to the currency of the Republic by applying the average exchange rate for that foreign tax year: Provided that any exchange item denominated in any currency other than the functional currency of that controlled foreign company shall be deemed not to be attributable to any permanent establishment of the controlled foreign company if the functional currency is the currency of a country which has an official rate of inflation of 100 per cent or more for that foreign tax year.

(9) Subject to subsection (9A), in determining the net income of a controlled foreign company in terms of subsection (2A), there must not be taken into account any amount which—

(b) is attributable to any foreign business establishment of that controlled foreign company (whether or not as a result of the disposal or deemed disposal of any assets forming part of that foreign business establishment) and, in determining that amount and whether that amount is attributable to a foreign business establishment—

(i) that foreign business establishment must be treated as if that foreign business establishment were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the controlled foreign company of which the foreign business establishment is a foreign business establishment; and

(ii) that determination must be made as if the amount arose in the context of a transaction, operation, scheme, agreement or understanding that was entered into on the terms and conditions that would have existed had the parties to that transaction, operation, scheme, agreement or understanding been independent persons dealing at arm's length;

(c) is attributable to any policyholder that is not a resident or a controlled foreign company in relation to a resident in respect of any policy issued by a company licensed to issue any long-term policy as defined in the Long-term Insurance Act in its country of residence;

(d) is subject to—

(i) the withholding tax on interest in terms of Part IVB;

(ii) the withholding tax on royalties in terms of Part IVA,

after taking into account any applicable agreement for the prevention of double taxation;

(e) is included in the taxable income of the company;

(f) is attributable to any foreign dividend declared to that controlled foreign company, by any other controlled foreign company in relation to the resident, to the extent that the foreign dividend does not exceed the aggregate of all amounts which have been or will be included in the income of the resident in terms of this section in any year of assessment, which relate to the net income of—

(i) the company declaring the dividend; or

(ii) any other company which has been included in the income of that resident by virtue of that resident's participation rights in that other company held indirectly through the company declaring the dividend,

reduced by—

(aa) the amount of any foreign tax payable, in respect of the amounts so included in that resident's income; and

(bb) so much of all foreign dividends received by or accrued to that controlled foreign company as was—

(A) excluded from the application of this section in terms of this paragraph or section 10B(2)(a), (b), (c) or (d);

[item (A) substituted by section 10(1)(b) of Act 20 of 2021; effective date 19 January 2022, date of promulgation of the Taxation Laws Amendment Act, 2021, applicable in respect of amounts incurred or accrued on or after that date]

(B) previously not included in the income of that resident by virtue of any prior inclusion in terms of section 9D;

(fA) is attributable to—

(i) any interest, royalties, rental, insurance premium or income of a similar nature which is paid or payable or deemed to be paid or payable to that company by any other controlled foreign company (including any similar amount adjusted in terms of section 31);

(ii) any exchange difference determined in terms of section 24I in respect of any exchange item to which that company and any other controlled foreign company are parties;

(iii) any exchange difference in respect of any forward exchange contract or foreign currency option contract entered into to hedge the exchange item referred to in subparagraph (ii); or

(iv) the reduction or discharge by any other controlled foreign company of a debt owed by that company to that other controlled foreign company for no consideration or for consideration less than the amount by which the face value of the debt has been so reduced or discharged,

where that controlled foreign company and that other controlled foreign company form part of the same group of companies; or

(fB) is attributable to the disposal of any asset, as defined in the Eighth Schedule, (other than any financial instrument or intangible asset as defined in paragraph 16 of the Eighth Schedule), where that asset was attributable to any foreign business establishment of any other controlled foreign company, where that company and that other controlled foreign company form part of the same group of companies;

(9A) (a) Any amount which is attributable to a foreign business establishment of a controlled foreign company as contemplated in subsection (9)(b) must, notwithstanding that subsection, be taken into account in determining the net income of that controlled foreign company if that amount—

(i) is derived from the sale of goods by that controlled foreign company directly or indirectly to any connected person (in relation to that controlled foreign company) who is a resident, unless—

[words preceding item (aa) substituted by section 10(1)(e) of Act 34 of 2019; effective date 15 January 2019, date of promulgation of that Act]

(aa) that controlled foreign company purchased those goods for delivery in the country of residence of that controlled foreign company from any person who is not a connected person in relation to that controlled foreign company;

[item (aa) substituted by section 10(1)(c) of Act 20 of 2021; effective date 1 January 2022, applicable in respect of years of assessment commencing on or after that date]

(bb) the creation, extraction, production, assembly, repair or improvement of goods undertaken by that controlled foreign company amount to more than minor assembly or adjustment, packaging, repackaging and labelling;

(cc) that controlled foreign company sells a significant quantity of goods of the same or a similar nature to persons who are not connected persons in relation to that controlled foreign company, at comparable prices (after accounting for the level of the market, volume discounts and costs of delivery); or

(dd) that controlled foreign company purchases the same or similar goods mainly for delivery in the country of residence of that controlled foreign company from persons who are not connected persons in relation to that controlled foreign company;

[item (dd) substituted by section 10(1)(d) of Act 20 of 2021; effective date 1 January 2022, applicable in respect of years of assessment commencing on or after that date]

(iA) is derived from the sale of goods by that controlled foreign company directly or indirectly to a person, other than a connected person (in relation to that controlled foreign company) who is a resident, where that controlled foreign company initially purchased those goods or any tangible intermediary inputs thereof directly or indirectly from one or more connected persons (in relation to that controlled foreign company) who are residents, unless—

[words preceding item (aa) substituted by section 10(1)(f) of Act 34 of 2019; effective date 15 January 2019, date of promulgation of that Act]

(aa) those goods or tangible intermediary inputs thereof purchased from connected persons (in relation to such controlled foreign company) who are residents amount to an insignificant portion of the total goods or tangible intermediary inputs of those goods;

(bb) the creation, extraction, production, assembly, repair or improvement of goods undertaken by that controlled foreign company amount to more than minor assembly or adjustment, packaging, repackaging and labelling;

(cc) the products are sold by that controlled foreign company to a person who is not a connected person in relation to that controlled foreign company, for physical delivery to a customer's premises situated within the country of residence of that controlled foreign company; or

(dd) products of the same or similar nature are sold by that controlled foreign company mainly to persons who are not connected persons in relation to that controlled foreign company for physical delivery to customers' premises situated within the country of residence of that controlled foreign company;

(ii) is derived from any service performed by that controlled foreign company directly or indirectly for the benefit of a connected person (in relation to that controlled foreign company) who is a resident, unless that service is performed outside the Republic and —

[words preceding item (aa) substituted by section 10(1)(g) of Act 34 of 2019; effective date 15 January 2019, date of promulgation of that Act]

(aa) the service relates directly to the creation, extraction, production, assembly, repair or improvement of goods utilised within one or more countries other than the Republic;

(bb) the service relates directly to the sale or marketing of goods of a connected person (in relation to that controlled foreign company) who is a resident and those goods are sold to persons who are not connected persons in relation to that controlled foreign company for physical delivery to customers' premises situated within the country of residence of that controlled foreign company;

(cc) the service is rendered mainly in the country of residence of that controlled foreign company for the benefit of customers that have premises situated in that country; or

(dd) to the extent that no deduction is allowed of any amount paid by that connected person to that controlled foreign company in respect of the service;

(iii) arises in respect of a financial instrument—

(aa) unless that financial instrument is attributable to the principal trading activities of the foreign business establishment and those principal trading activities—

(A) constitute the activities of a bank, financial service provider or insurer; and

(B) do not constitute the activities of a treasury operation or captive insurer;

(bb) unless—

(A) that amount is attributable to any exchange difference determined in terms of section 24I in respect of that financial instrument;

(B) the exchange difference contemplated in subitem (A) arises in the ordinary course of business of the principal trading activities of that foreign business establishment; and

(C) the principal trading activities contemplated in subitem (B) do not constitute the activities of a treasury operation or captive insurer; or

(cc) to the extent that the total of—

(A) those amounts arising in respect of financial instruments attributable to activities of that foreign business establishment; and

(B) amounts arising from exchange gains determined in terms of section 24I attributable to activities of that foreign business establishment,

other than amounts in respect of which paragraphs (c) to (fB) of subsection (9) apply or amounts derived from the activities of a treasury operation or a

captive insurer, exceeds five per cent of the total of all amounts received by or accrued to the controlled foreign company that are attributable to that foreign business establishment, other than amounts in respect of which paragraphs (c) to (fB) of subsection (9) apply or amounts derived from the activities of a treasury operation or a captive insurer;

(iv) arises by way of rental in respect of any movable property, unless that movable property is leased by the controlled foreign company in terms of—

(aa) an operating lease; or

(bb) a lease that constitutes a financial instrument;

(v) arises in respect of the use or right of use of or permission to use any intellectual property as defined in section 23I, unless—

(aa) that controlled foreign company directly and regularly creates, develops or substantially upgrades any intellectual property as defined in section 23I which gives rise to that amount; and

(bb) that intellectual property does not constitute property which constitutes tainted intellectual property as defined in section 23I;

(vi) is a capital gain determined in respect of the disposal or deemed disposal of any intellectual property as defined in section 23I, unless that controlled foreign company directly and regularly creates, develops or substantially upgrades any intellectual property as defined in section 23I which gives rise to that amount; or

(vii) is in the form of an insurance premium, unless that amount is attributable to the principal trading activities of the foreign business establishment and those principal trading activities—

(aa) constitute the activities of an insurer; and

(bb) do not consititute the activities of a captive insurer:

Provided that if any amount which is attributable to a foreign business establishment of a controlled foreign company as contemplated in subsection (9)(b) is, solely as a result of the application of subparagraph (iii) of this paragraph, not taken into account in determining the net income of that controlled foreign company, that amount must be so taken into account—

(A) to the extent that a deduction is allowed in respect of any other amount incurred by a connected person (in relation to that controlled foreign company) who is a resident; and

(B) where that amount is attributable to that other amount.

(b) For the purposes of—

(iii) items (aa) and (bb) of paragraph (a)(iii), where the principal trading activities of a foreign business establishment do not constitute the activities of a treasury operation, the principal trading activities of that foreign business establishment must be deemed to constitute the activities of a treasury operation where—

(aa) less of those principal trading activities are conducted in the country in which the foreign business establishment is located than in any other single country;

(bb) those principal trading activities do not involve the regular and continuous acceptance of deposits from or the provision of credit to clients who are not connected persons in relation to that controlled foreign company; or

(cc) less than 50 per cent of the amounts attributable to the activities of the foreign business establishment are derived from those principal trading activities with

respect to clients who are not connected persons in relation to that controlled foreign company;

(iv) items (aa) and (bb) of paragraph (a)(iii) and paragraph (a)(vii), where the principal trading activities of a foreign business establishment do not constitute the activities of a captive insurer, the principal trading activities of that foreign business establishment must be deemed to constitute the activities of a captive insurer where—

(aa) less of those principal trading activities are conducted in the country in which that foreign business establishment is located than in any other single country;

(bb) those principal trading activities do not involve the regular transaction of business as an insurer with clients who are not connected persons in relation to that controlled foreign company; or

(cc) less than 50 per cent of the amounts attributable to activities of that foreign business establishment are derived from those principal trading activities with respect to clients who are not connected persons in relation to that controlled foreign company; and

(v) paragraph (a)(iv), "operating lease" means a lease of movable property concluded by a lessor in the ordinary course of business of letting such property if—

(aa) such property may be hired by members of the general public directly from that lessor in terms of such a lease, for a period of no more than five years;

(bb) either—

(A) the cost of maintaining such property and of carrying out repairs thereto required in consequence of normal wear and tear is ultimately borne by the lessor; or

(B) the activities of maintaining and repairing such property that are required in consequence of normal wear and tear are performed by the lessor; and

(cc) subject to any claim that the lessor may have against the lessee by reason of the lessee's failure to take proper care of the property, the risk of destruction or loss of or other disadvantage to such property is not assumed by the lessee.

9H. Change of residence, ceasing to be controlled foreign company or becoming headquarter company

(1) For the purposes of this section—

"asset" means an asset as defined in paragraph 1 of the Eighth Schedule; and

"market value", in relation to an asset, means the price which could be obtained upon a sale of that asset between a willing buyer and a willing seller dealing at arm's length in an open market.

(2) Subject to subsection (4), where a person (other than a company) that is a resident ceases during any year of assessment of that person to be a resident—

(a) that person must be treated as having—

(i) disposed of each of that person's assets to a person that is a resident on the date immediately before the day on which that person so ceases to be a resident for an amount received or accrued equal to the market value of the asset on that date; and

(ii) reacquired each of those assets on the day on which that person so ceases to be a resident at an expenditure equal to the market value contemplated in subparagraph (i);

(b) that year of assessment must be deemed to have ended on the date immediately before the day on which that person so ceases to be a resident; and

(c) the next succeeding year of assessment of that person must be deemed to have commenced on the day on which that person so ceases to be a resident.

(3) (a) Where a company that is a resident ceases during any year of assessment of that company to be a resident or where a company that is a resident becomes a headquarter company in respect of a year of assessment, that company must be treated as having—

(i) disposed of each of that company's assets to a person that is a resident on the date immediately before the day on which that company so ceased to be a resident or became a headquarter company; and

(ii) reacquired each of those assets on the day on which that company so ceased to be a resident or became a headquarter company,

for an amount equal to the market value of each of those assets.

(b) Where a controlled foreign company ceases, otherwise than by way of becoming a resident, to be a controlled foreign company during any foreign tax year of that controlled foreign company, that controlled foreign company must be treated as having—

(i) disposed of each of the assets of that controlled foreign company, to a person that is a resident, on the date immediately before the day on which that controlled foreign company so ceased to be a controlled foreign company; and

(ii) reacquired each of the assets disposed of as contemplated in subparagraph (i) on the day on which that controlled foreign company so ceased to be a controlled foreign company, for an amount equal to the market value of each of those assets.

(c) Where a company that is a resident ceases to be a resident or becomes a headquarter company during any year of assessment of that company as contemplated in paragraph (a)—

(i) that year of assessment must be deemed to have ended on the date immediately before the day on which that company so ceased to be a resident or became a headquarter company;

(ii) the next succeeding year of assessment of that company must be deemed to have commenced on the day on which that company so ceased to be a resident or became a headquarter company; and

(iii) that company must, on the date immediately before the day on which the company so ceased to be a resident or became a headquarter company and for the purposes of section 64EA(b), be deemed to have declared and paid a dividend that consists solely of a distribution of an asset *in specie*—

(aa) the amount of which must be deemed to be equal to the sum of the market values of all the shares in that company on that date less the sum of the contributed tax capital of all the classes of shares in the company as at that date; and

(bb) to the person or persons holding shares in that company in accordance with the effective interest of that person or those persons in the shares in the company as at that date.

(d) Where a controlled foreign company ceases to be a controlled foreign company during any foreign tax year of that controlled foreign company as contemplated in paragraph (b)—

(i) that foreign tax year must be deemed to have ended on the date immediately before the day on which that controlled foreign company so ceased to be a controlled foreign company; and

(ii) the next succeeding foreign tax year of that controlled foreign company must be deemed to have commenced on the day on which that controlled foreign company so ceased to be a controlled foreign company.

(e) Where a company ceases to be a resident as contemplated in paragraph (a), the amount of any capital gain disregarded in terms of paragraph 64B of the Eighth Schedule that was determined in respect of a disposal of an equity share by that company within three years immediately preceding the date on which that company ceases to be a resident, must be deemed, in respect of the year of assessment of that company ending as contemplated in paragraph (c), to be an amount of net capital gain derived by that company from that capital gain.

(f) Where a company ceases to be a resident as contemplated in paragraph (a), the amount of any foreign dividend that was exempt from normal tax only in terms of section 10B(2)(a) within the three years immediately preceding the date on which that company ceases to be a resident, must be deemed to be a foreign dividend received by or accrued to that company in respect of the year of assessment of that company ending as contemplated in paragraph (c) that is not exempt in terms of section 10B(2).

(3A) Any person that is a holder of at least 10 per cent of the equity shares and voting rights in shares in a company must, where that company is a resident that ceases to be a resident and where section 64FA applies to the dividend *in specie* as referred to in subsection (3)(c)(iii) in respect of that company, be treated as having—

(i) disposed of each of those shares to a person that is a resident on the date immediately before the day on which that company so ceased to be a resident; and

(ii) reacquired each of those shares on the day on which that company so ceased to be a resident,

for an amount equal to the market value of each of those shares.

[subsection (3A) inserted by section 7(1) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of a holder of shares in a company that ceases to be a resident on or after that date]

(4) Subsections (2) and (3) do not apply in respect of an asset of a person where that asset constitutes—

(a) immovable property situated in the Republic that is held by that person;

(c) any asset which is, after the person ceases to be a resident or a controlled foreign company as contemplated in subsection (2) or (3), attributable to a permanent establishment of that person in the Republic;

(d) any qualifying equity share contemplated in section 8B that was granted to that person less than five years before the date on which that person ceases to be a resident as contemplated in subsection (2) or (3);

(e) any equity instrument contemplated in section 8C that had not yet vested as contemplated in that section at the time that the person ceases to be a resident as contemplated in subsection (2) or (3); or

(f) any right of that person to acquire any marketable security contemplated in section 8A.

(5) If—

(a) a person disposes of an equity share in a foreign company that is a controlled foreign company;

(b) the capital gain or capital loss determined in respect of a disposal contemplated in paragraph (a) is wholly or partly disregarded in terms of paragraph 64B of the Eighth Schedule; and

[paragraph (b) substituted by section 11(1) of Act 20 of 2021; effective date 1 January 2021, applicable in respect of disposals on or after that date]

(c) as a direct or indirect result of a disposal contemplated in paragraph (a), a foreign company ceases to be a controlled foreign company,

subsection (3) must not apply to any foreign company contemplated in paragraph (c).

(6) This section must not apply in respect of any company that ceases to be a controlled foreign company as a result of—

(a) an amalgamation transaction as defined in section 44(1) to which section 44 applies; or

(b) a liquidation distribution as defined in section 47(1) to which section 47 applies.

(7) For the purposes of subsections (2) and (3), the market value of any asset must be determined in the currency of expenditure incurred to acquire that asset.

9HA. Disposal by deceased person

(1) A deceased person must be treated as having disposed of his or her assets, other than—

(a) assets disposed of for the benefit of his or her surviving spouse as contemplated in subsection (2);

[paragraph (a) substituted by section 19(a) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(b) a long-term insurance policy of the deceased, if any capital gain or capital loss that would have been determined in respect of a disposal that resulted in proceeds of that policy being received by or accruing to the deceased would have been disregarded in terms of paragraph 55 of the Eighth Schedule; or

(c) an interest of the deceased in—

(i) a pension, pension preservation, provident, provident preservation or retirement annuity fund in the Republic; or

(ii) a fund, arrangement or instrument situated outside the Republic which provides benefits similar to a pension, pension preservation, provident, provident preservation or retirement annuity fund,

if any capital gain or capital loss that would have been determined in respect of a disposal of that interest that resulted in a lump sum benefit being received by or accruing to the deceased would have been disregarded in terms of paragraph 54 of the Eighth Schedule,

at the date of that person's death for an amount received or accrued equal to the market value, as defined in paragraph 1 of the Eighth Schedule, of those assets as at that date.

[words following paragraph (c) substituted by section 19(b) of Act 23 of 2018; effective date 17 January 2019, and by section 11 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(2) A deceased person must, if his or her surviving spouse is a resident, be treated—

(a) as having disposed of an asset for the benefit of that surviving spouse if that asset is acquired by that surviving spouse—

(i) by *ab intestato* or testamentary succession;

(ii) as a result of a redistribution agreement between the heirs and legatees of that person in the course of liquidation or distribution of the deceased estate of that person; or

(iii) in settlement of a claim arising under section 3 of the Matrimonial Property Act, 1984 (Act No. 88 of 1984); and

(b) as having disposed of that asset for an amount received or accrued that is equal to, in the case of—

(i) trading stock, or livestock or produce contemplated in the First Schedule, the amount that was allowed as a deduction in respect of that asset for purposes of determining that person's taxable income, before the inclusion of any taxable capital gain, for the year of assessment ending on the date of that person's death; or

(ii) any other asset, the base cost of that asset, as contemplated in the Eighth Schedule, as at the date of that person's death.

(3) If any asset that is treated as having been disposed of by a deceased person as contemplated in subsection (1) is transferred directly to an heir or legatee of that person, that heir or legatee must be treated as having acquired that asset for an amount of expenditure incurred equal to the market value, as contemplated in paragraph 1 of the Eighth Schedule, of that asset as at the date of that deceased person's death.

[subsection (3) substituted by section 19(c) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

9HB. Transfer of asset between spouses

(1) (a) A person (hereinafter referred to as "the transferor") must disregard any capital gain or capital loss determined in respect of the disposal of an asset to his or her spouse (hereinafter referred to as "the transferee").

(b) The transferee must be treated as having—

(i) acquired the asset on the same date that such asset was acquired by the transferor;

[subparagraph (i) substituted by section 12 of Act 34 of 2019; effective date 17 January 2019]

(ii) incurred an amount of expenditure equal to the expenditure contemplated in paragraph 20 of the Eighth Schedule that was incurred by that transferor in respect of that asset;

(iii) incurred that expenditure on the same date and in the same currency that it was incurred by the transferor;

(iv) used that asset in the same manner that it was used by the transferor; and

(v) received an amount equal to any amount received by or accrued to that transferor in respect of that asset that would have constituted proceeds on disposal of that asset had that transferor disposed of it to a person other than the transferee.

(2) For the purposes of subsection (1)—

(a) a person whose spouse dies must be treated as having disposed of an asset to that spouse immediately before the date of death of that spouse, if ownership of that asset is acquired by the deceased estate of that spouse in settlement of a claim arising under section 3 of the Matrimonial Property Act, 1984 (Act No. 88 of 1984); or

(b) a person must be treated as having disposed of an asset to his or her spouse, if that asset is transferred to that spouse in consequence of a divorce order or, in the case of a union contemplated in paragraph (b) or (c) of the definition of "spouse" in section 1, an agreement of division of assets which has been made an order of court.

(3) A person who disposes of an asset consisting of trading stock, livestock or produce contemplated in the First Schedule to his or her spouse, must be treated as having disposed of that asset for an amount received or accrued that is equal to the amount that was allowed as a deduction in respect

of that asset for purposes of determining that person's taxable income, before the inclusion of any taxable capital gain.

(4) Where a person acquires an asset consisting of trading stock, livestock or produce contemplated in the First Schedule from his or her spouse, that person and his or her spouse must, for purposes of determining any taxable income derived by that person, be deemed to be one and the same person with respect to the date of acquisition of that asset by that person and the amount and date of incurral by that spouse of any cost or expenditure incurred in respect of that asset as contemplated in section 11(a) or 22(1) or (2).

(5) This section must not apply in respect of the disposal of an asset by a person to his or her spouse who is not a resident, unless the asset disposed of is an asset contemplated in section 9J or in paragraph 2(1)(b) of the Eighth Schedule.

[section 9HB inserted by section 20 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

9I. Headquarter companies

(1) Any company that—

(a) is a resident; and

(b) complies with the requirements prescribed by subsection (2),

may elect in the form and manner determined by the Commissioner to be a headquarter company for a year of assessment of that company.

(2) A company complies with the requirements contemplated in subsection (1)(b) for a year of assessment of that company if—

(a) for the duration of that year of assessment, each holder of shares in the company (whether alone or together with any other company forming part of the same group of companies as that holder) held 10 per cent or more of the equity shares and voting rights in that company: Provided that in determining whether a company complies with the requirements prescribed by this paragraph in relation to any year of assessment of that company during which the company commenced the carrying on of trade, no regard must be had to any period during that year before which the company so commenced the carrying on of trade;

(b) at the end of that year of assessment and of all previous years of assessment of that company, 80 per cent or more of the cost of the total assets of the company was attributable to one or more of the following:

(i) any interest in equity shares in;

(ii) any debt owed by; or

(iii) any intellectual property as defined in section 23I(1) that is licensed by that company to,

any foreign company in which that company (whether alone or together with any other company forming part of the same group of companies as that company) held at least 10 per cent of the equity shares and voting rights:

Provided that in determining—

(aa) the total assets of the company, there must not be taken into account any amount in cash or in the form of a bank deposit payable on demand; and

(bb) whether a company complies with the requirements prescribed by this paragraph in relation to any year of assessment of that company, no regard must be had to any such year of assessment if the company did not at any time during such year of assessment own assets with a total market value exceeding R50 000; and

(c) where the gross income of that company for that year of assessment exceeds R5 million, 50 per cent or more of that gross income consisted of amounts in the form of one or both of the following:

(i) any rental, dividend, interest, royalty or service fee paid or payable by any foreign company contemplated in paragraph (b); or

(ii) any proceeds from the disposal of any interest contemplated in paragraph (b)(i) or of any intellectual property contemplated in paragraph (b)(iii):

Provided that in determining the gross income of the company, there must not be taken into account any exchange difference determined in terms of section 24I in respect of any exchange item as defined in that section to which that company is a party.

(3) An election made by a company in terms of subsection (1) is effective from the commencement of the year of assessment in respect of which that election is made.

(4) A headquarter company must submit to the Minister an annual report providing the Minister with the information that the Minister may prescribe within such time and containing such information as the Minister may prescribe.

9J. Interest of non-resident persons in immovable property

(1) Any amount received or accrued in respect of the disposal by a person of trading stock consisting of —

(a) immovable property situated in the Republic held by that person; or

(b) any interest or right of whatever nature of that person to or in immovable property situated in the Republic,

shall be an amount received or accrued from a source within the Republic.

(2) For purposes of subsection (1), any interest or right in immovable property situated in the Republic includes—

(a) rights to variable or fixed payments as consideration for the working of, or the right to work mineral deposits, sources and other natural resources; or

(b) any equity shares held by a person in a company or ownership or the right to ownership of a person in any other entity or a vested interest of a person in any assets of any trust, if—

(i) 80 per cent or more of the market value of those equity shares, ownership or right to ownership or vested interest, as the case may be, at the time of disposal thereof is attributable directly or indirectly to immovable property situated in the Republic or any interest or right of whatever nature in or to immovable property situated in the Republic including rights to variable or fixed payments as consideration for the working of, or the right to work mineral deposits, sources and other natural resources in the Republic; and

[subparagraph (i) substituted by section 8 of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(ii) in the case of a company or other entity, that person (whether alone or together with any connected person in relation to that person), directly or indirectly, holds at least 20 per cent of the equity shares in that company or ownership or right to ownership of that other entity.

[section 9J inserted by section 21 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

9K. Listing of security on exchange outside Republic

(1) Where a natural person or a trust that is a resident holds a security in a company and that security is delisted on an exchange as defined in section 1 of the Financial Markets Act and licenced under section 9 of that Act, and subsequent to that delisting that security is listed on an exchange outside the Republic, that person must be treated as having—

(a) disposed of that security for an amount received or accrued equal to the market value of that security as contemplated in the definition of "market value" in section 9H(1) on the day that the security is listed on the exchange outside the Republic; and

(b) reacquired that security on the same day on which that security is treated as having been disposed of under paragraph (a) for expenditure in an amount equal to that market value.

(2) For the purposes of section 9C(2), a security that is listed on an exchange outside the Republic as contemplated in subsection (1) must be treated to be one and the same security that is delisted.

[section 9K inserted by section 9(1) of Act 23 of 2020; effective date 1 March 2021, applicable in respect of any security listed on an exchange outside the Republic on or after that date]

10. Exemptions

(1) There shall be exempt from normal tax—

(a) the receipts and accruals of the government of the Republic in the national, provincial or local sphere;

(bA) the receipts and accruals of—

(i) any sphere of government of any country other than the Republic;

(ii) any institution or body established by a foreign government to the extent that—

(aa) the institution or body has been appointed by that government to perform its functions in terms of an official development assistance agreement that is binding in terms of section 231(3) of the Constitution of the Republic of South Africa, 1996; and

(bb) the agreement provides that the receipts and accruals of that institution or body must be exempt; and

(iii) any multinational organisation providing foreign donor funding in terms of an official development assistance agreement that is binding in terms of section 231(3) of the Constitution of the Republic of South Africa Act, 1996, to the extent—

(aa) the receipts and accruals are derived pursuant to the organisation supplying goods or rendering services in relation to projects that are approved by the Minister after consultation with the Minister of Foreign Affairs;

(bb) that agreement provides that those receipts and accruals of that organisation must be exempt; and

(cc) the Minister announces that those receipts and accruals are exempt by notice in the *Gazette*;

(bB) the receipts and accruals of the—

(i) African Development Bank established on 10 September 1964;

(ii) World Bank established on 27 December 1945 including the International Bank for Reconstruction and Development and International Development Association;

(iii) International Monetary Fund established on 27 December 1945;

(iv) African Import and Export Bank established on 8 May 1993;

(v) European Investment Bank established on 1 January 1958 under the Treaty of Rome;

(vi) New Development Bank established on 15 July 2014;

(c) (ii) any pension payable to any person or his surviving spouse by reason of such person having occupied the office of State President or Vice State President: Provided that the provisions of this subparagraph shall not apply to any amount payable to any person or his surviving spouse by reason of such person having occupied the office of President as elected in terms of section 77 of the Constitution;

(iii) the salary and emoluments payable to any person who holds office in the Republic as an official of any government, other than the Government of the Republic, provided such person is stationed in the Republic for that purpose and is not ordinarily resident in the Republic;

(iv) any salary and emoluments payable to any domestic or private servant of any person referred to in subparagraph (iii) in respect of domestic or private services rendered or to be rendered by such servant to such person if such servant is not a South African citizen and is not ordinarily resident in the Republic;

(v) any salary and emoluments payable to any subject of a foreign state who is temporarily employed in the Republic, provided the exemption of such salary and emoluments is authorized by an agreement entered into by the governments of such foreign state and the Republic;

(vi) any salary and emoluments payable to any person that is a subject of a foreign state and who is not a resident to the extent that that salary or those emoluments are paid by—

(aa) an institution or body contemplated in subsection (1)(bA)(ii) in respect of any agreement contemplated therein; or

(bb) an organisation contemplated in subsection (1)(bA)(iii) in respect of services rendered in relation to a project contemplated therein;

(cA) the receipts and accruals of—

(i) any institution, board or body (other than a company as defined in the Companies Act, any co-operative, close corporation, trust or water services provider) established by or under any law and which, in the furtherance of its sole or principal object—

(aa) conducts scientific, technical or industrial research;

(bb) provides necessary or useful commodities, amenities or services to the State (including any provincial administration) or members of the general public; or

(cc) carries on activities (including the rendering of financial assistance by way of loans or otherwise) designed to promote commerce, industry or agriculture or any branch thereof;

(ii) any association, corporation or company contemplated in paragraph (a) of the definition of "company" in section 1, all the shares of which are held by any such institution, board or body, if the operations of such association, corporation or company are ancillary or complementary to the object of such institution, board or body:

Provided that such institution, board, body or company—

(a) has been approved by the Commissioner subject to such conditions as he may deem necessary to ensure that the activities of such institution, board, body or company are wholly or mainly directed to the furtherance of its sole or principal object;

(b) is by law or under its constitution—

(i) not permitted to distribute any amount to any person, other than, in the case of such company, to the holders of shares in that company;

[subparagraph (i) substituted by section 10(a) of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(ii) required to utilize its funds solely for investment or the object for which it has been established; and

(iii) required on dissolution—

(aa) where the institution, board, body or company is established under any law, to transfer its assets to some other institution, board or body which has been granted exemption from tax in terms of this paragraph and which has objects similar to those of such institution, board, body or company; or

(bb) where the institution, board or body is established by law, to transfer its assets to—

(A) some other institution, board or body which has been granted exemption from tax in terms of this paragraph and which has objects similar to those of such institution, board, body or company; or

(B) to the State:

Provided further that—

(a) where the Commissioner is satisfied that any such institution, board, body or company has during any year of assessment failed to comply with the provisions of this paragraph, he may withdraw his approval of the institution, board, body or company with effect from the commencement of that year of assessment;

(b) where the institution, board, body or company fails to transfer, or take reasonable steps to transfer, its assets as contemplated in paragraph (b)(iii) of the first proviso, the accumulated net revenue which has not been distributed shall be deemed for the purposes of this Act to be an amount of taxable income which accrued to such institution, board, body or company during the year of assessment contemplated in paragraph (a); and

(cE) the receipts and accruals of any political party registered in terms of section 15 of the Electoral Commission Act, 1996 (Act No. 51 of 1996);

(cG) the receipts and accruals of any person who is not a resident, which are derived by such person from carrying on business as the owner or charterer of any ship or aircraft, if a similar exemption or equivalent relief is granted by the country of which such person is a resident, to any resident in respect of any tax imposed in that country on income which may be derived by such person from carrying on in such country any business as owner or charterer of any ship or aircraft;

(cN) the receipts and accruals of any public benefit organisation approved by the Commissioner in terms of section 30(3), to the extent that the receipts and accruals are derived—

(i) otherwise than from any business undertaking or trading activity; or

(ii) from any business undertaking or trading activity—

(aa) if the undertaking or activity—

(A) is integral and directly related to the sole or principal object of that public benefit organisation as contemplated in paragraph (b) of the definition of "public benefit organisation" in section 30;

(B) is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost; and

(C) does not result in unfair competition in relation to taxable entities;

(bb) if the undertaking or activity is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation;

(cc) if the undertaking or activity is approved by the Minister by notice in the *Gazette*, having regard to—

(A) the scope and benevolent nature of the undertaking or activity;

(B) the direct connection and interrelationship of the undertaking or activity with the sole or principal object of the public benefit organisation;

(C) the profitability of the undertaking or activity; and

(D) the level of economic distortion that may be caused by the tax exempt status of the public benefit organisation carrying out the undertaking or activity; or

(dd) other than an undertaking or activity in respect of which item (aa), (bb) or (cc) applies and do not exceed the greater of—

(i) 5 per cent of the total receipts and accruals of that public benefit organisation during the relevant year of assessment; or

(ii) R200 000;

(cO) the receipts and accruals of any recreational club approved by the Commissioner in terms of section 30A, to the extent that the receipts and accruals are derived—

(i) in the form of membership fees or subscriptions paid by its members;

(ii) from any business undertaking or trading activity that—

(aa) is integral and directly related to the provision of social and recreational amenities or facilities for the members of that club;

(bb) is carried out on a basis substantially the whole of which is directed towards the recovery of cost; and

(cc) does not result in unfair competition in relation to taxable entities;

(iii) from any fundraising activities of that club, which are of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation; and

(iv) from any other source and do not in total exceed the greater of—

(aa) five per cent of the total membership fees and subscriptions due and payable by its members during the relevant year of assessment; or

(bb) R120 000;

(cP) the receipts and accruals of a company or trust contemplated in section 37A: Provided that this paragraph does not apply where—

(a) the constitution of a company or the instrument establishing a trust does not comply with section 37A(5)(a); and

(b) the person contemplated in section 37A(5)(b) does not furnish the Commissioner with a written undertaking as contemplated in that section;

(cQ) the receipts and accruals of any small business funding entity approved by the Commissioner in terms of section 30C, to the extent that the receipts and accruals are derived—

(i) otherwise than from any business undertaking or trading activity; or

(ii) from any business undertaking or trading activity—

(aa) if the undertaking or activity—

(A) is integral and directly related to the sole or principal object of that small business funding entity;

(B) is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost; and

(C) does not result in unfair competition in relation to taxable entities;

(bb) if the undertaking or activity is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation;

(cc) if the undertaking or activity is approved by the Minister by notice in the *Gazette*, having regard to—

(A) the scope and benevolent nature of the undertaking or activity;

(B) the direct connection and interrelationship of the undertaking or activity with the sole or principal object of the small business funding entity;

(C) the profitability of the undertaking or activity; and

(D) the level of economic distortion that may be caused by the tax exempt status of the small business funding entity carrying out the undertaking or activity; or

(dd) other than an undertaking or activity in respect of which item (aa), (bb) or (cc) applies and do not exceed the greater of—

(A) 5 per cent of the total receipts and accruals of that small business funding entity during the relevant year of assessment; or

(B) R200 000;

(d) the receipts and accruals of any—

(i) pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, or a beneficiary fund defined in section 1 of the Pension Funds Act;

(ii) benefit fund; or

(iii) mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industries (or an association of such chambers) or local publicity association approved by the Commissioner in terms of section 30B; or

(iv) company, society or other association of persons established to—

(bb) promote the common interests of persons (being members of such company, society or association of persons) carrying on any particular kind of business, profession or occupation,

approved by the Commissioner in terms of section 30B;

(e) (i) any levy received by or accrued to—

(aa) any body corporate established in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986), from its members;

(bb) a share block company as defined in the Share Blocks Control Act from the holders of shares in that share block company; or

(cc) any other association of persons (other than a company as defined in the Companies Act, any co-operative, close corporation and trust, but including a non-profit company as defined in that Act) from its members, where the Commissioner is satisfied that, subject to such conditions as he or she may deem necessary, such association of persons—

(A) has been formed solely for purposes of managing the collective interests common to all its members, which includes expenditure applicable to the common immovable property of such members and the collection of levies for which such members are liable; and

(B) is not permitted to distribute any of its funds to any person other than a similar association of persons:

Provided that such body, company or association is or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would become payable by any person under this Act or any other law administered by the Commissioner; and

(ii) any receipts and accruals other than levies derived by a body corporate, share block company or association contemplated in subparagraph (i), to the extent that the aggregate of those receipts and accruals does not exceed R50 000;

(g) any amount received as a war pension, or as an award or a benefit under any law relating to the payment of compensation in respect of diseases contracted by persons employed in mining operations;

(gA) any disability pension paid under section 2 of the Social Assistance Act, 1992 (Act No. 59 of 1992);

(gB) any—

(i) compensation paid in terms of the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), or the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);

(ii) pension paid in respect of the death or disablement caused by any occupational injury or disease sustained or contracted by an employee before 1 March 1994 in the course of employment, where that employee would have qualified for compensation under the Compensation for Occupational Injuries and Diseases Act, 1993, had that injury or disease been sustained or contracted on or after 1 March 1994; or

(iii) compensation paid in respect of the death of any person where that death arises out of and in the course of the employment of that person, to the extent that that compensation—

(A) was paid in addition to any compensation contemplated in subparagraph (i) paid in that respect;

(B) does not exceed an amount of R300 000; and

(C) was paid by the employer of that person; and

(iv) compensation paid in terms of section 17 of the Road Accident Fund Act, 1996 (Act No. 56 of 1996);

(gC) any—

(i) amount received by or accrued to any resident under the social security system of any other country; or

(ii) lump sum, pension or annuity received by or accrued to any resident from a source outside the Republic as consideration for past employment outside the Republic other than from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as defined in section 1(1) or a company that is a resident and that is registered in terms of the Long-term Insurance Act as a person carrying on long-term insurance business excluding any amount transferred to that fund or that insurer from a source outside the Republic in respect of that member;

[subparagraph (ii) substituted by section 16(1)(b) of Act 34 of 2017; effective date 18 December 2017, date of promulgation of that Act]

(gD) any funeral benefit payable in terms of section 6F of the Special Pensions Act, 1996 (Act No. 69 of 1996);

(gE) any amount awarded to a person by a beneficiary fund as defined in the Pension Funds Act;

(gF) any value required to be taken into account in determining the gross income of any person in respect of the cession by another person of a policy contemplated in section 11(w) ceded to or in favour of that person—

(i) where that person is—

(aa) an employee or director of that other person or a connected person in relation to the employee or director;

(bb) the estate of the employee or director; or

(cc) any person who is or was wholly or partly dependent for his or her maintenance upon the employee or director; and

(ii) where that policy was concluded before 1 January 2011;

(gG) any amount received by or accrued to a person as contemplated in subparagraph (ii) or (iii) of paragraph (d) of the definition of "gross income"—

(i) in the case of a policy that is a risk policy with no cash value or surrender value, if the amount of premiums paid in respect of that policy by the employer of the person has been deemed to be a taxable benefit of the person in terms of the Seventh Schedule since the later of—

(aa) the date on which the employer or company contemplated in those subparagraphs became the policyholder of that policy; or

(bb) 1 March 2012;

(ii) in the case of any other policy, if an amount equal to the aggregate of the amount of any premiums has been included in the income of the person as a taxable benefit in terms of the Seventh Schedule since the date on which the policy was entered into;

(gH) any amount received or accrued in respect of a policy of insurance where—

(i) the policy relates to death, disablement or illness of an employee or director, or former employee or director, of the person that is the policyholder; and

(ii) no amount of premiums payable in respect of that policy on or after 1 March 2012 is deductible from the income of that person for the purposes of determining the taxable income derived by the person from carrying on any trade;

(gI) any amount received or accrued in respect of a policy of insurance relating to the death, disablement, illness or unemployment of any person who is insured in terms of that policy of insurance, including the policyholder or an employee of the policyholder in respect of that policy of insurance to the extent to which the benefits in terms of that policy are paid as a result of death, disablement, illness or unemployment other than any policy of which the benefits are paid or payable by a retirement fund;

(gJ) any amount received by or accrued to a person who is a member of a bargaining council that is established in terms of section 27 of the Labour Relations Act, 1995 (Act No. 66 of 1995), from a scheme or fund as contemplated in section 28(1)(g) of that Act, other than an amount from a pension fund or a provident fund;

[paragraph (gJ) inserted by section 22(1)(a) of Act 23 of 2018; effective date 1 March 2019]

(h) any amount of the interest which is received by or accrues to any person that is not a resident, unless—

(i) that person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the interest is received by or accrues to that person; or

[subparagraph (i) substituted by section 22(1)(b) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(ii) the debt from which the interest arises is effectively connected to a permanent establishment of that person in the Republic;

(hA) any amount received by or accrued to the holder of a debt—

(i) if the holder of that debt is a company that forms part of the same group of companies, as defined in section 41, as the issuer of that debt; and

(ii) to the extent that the amount is attributable to any amount of interest as defined in section 23K(1) that is not deductible as a result of the application of section 23K;

(i) in the case of any taxpayer who is a natural person, so much of the aggregate of any interest received by or accrued to him or her, other than interest in respect of a tax free investment as defined in section 12T(1), from a source in the Republic as does not during the year of assessment exceed—

(i) in the case of any person who was or, had he or she lived, would have been at least 65 years of age on the last day of the year of assessment, the amount of R34 500; or

(ii) in any other case, the amount of R23 800;

(iB) any amount received by or accrued to a holder of a participatory interest in a portfolio of a collective investment scheme in securities by way of a distribution from that portfolio if that amount is deemed to have accrued to that portfolio in terms of section 25BA(1)(b) and that amount was subject to normal tax in the hands of that portfolio;

(j) the receipts and accruals of any bank, if such bank is not resident in the Republic and is entrusted by the Government of a territory outside the Republic with the custody of the principal foreign exchange reserves of that territory;

[paragraph (j) substituted by section 13 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(k) (i) dividends (other than dividends paid or declared by a headquarter company) received by or accrued to any person: Provided that this exemption shall not apply—

(aa) to dividends (other than those received by or accrued to or in favour of a person that is not a resident or a dividend contemplated in paragraph (b) of the definition of "dividend") distributed by a company that is a REIT, or a controlled company as defined in section 25BB;

(dd) to any dividend in respect of a restricted equity instrument as defined in section 8C to the extent that the restricted equity instrument was acquired in the circumstances contemplated in section 8C, unless—

(A) the restricted equity instrument constitutes an equity share, other than an equity share that would have constituted a hybrid equity instrument as defined in section 8E(1) but for the three-year period requirement contemplated in that definition;

(B) the dividend constitutes an equity instrument as defined in that section; or

(C) the restricted equity instrument constitutes an interest in a trust and, where that trust holds shares, all of those shares constitute equity shares, other than equity shares that would have constituted hybrid equity instruments as defined in section 8E(1) but for the three-year period requirement contemplated in that definition;

(ee) to any dividend received by or accrued to a company in consequence of—

(A) any cession of the right to that dividend; or

(B) the exercise of a discretionary power by any trustee of a trust,

unless that cession or exercise results in the holding by that company of all of the rights attaching to a share;

(ff) to any dividends received by or accrued to a company in respect of a share borrowed by that company; or

(gg) to any dividends received by or accrued to a company in respect of a share held by that company to the extent that the aggregate of those dividends does not exceed an amount equal to the aggregate of any amounts incurred by that company as compensation for any distributions in respect of any other share borrowed by the company, other than a share in respect of which any dividends were received by or accrued to that company as contemplated in paragraph (ff), where the share so borrowed and the share so held are identical shares: Provided that where the company borrowing the share has lent out any other share that is an identical share to the share so borrowed, the aggregate amount so incurred must be reduced by the amount accrued to that company as compensation for any distribution in respect of the share so lent;

(hh) to any dividends received by or accrued to a company in respect of a share to the extent that—

(A) the aggregate of those dividends does not exceed an amount equal to the aggregate of any deductible expenditure incurred by that company or

any amount taken into account that has the effect of reducing income in the application of section 24JB(2); and

(B) the amount of that expenditure or reduction is determined directly or indirectly with reference to the dividend in respect of an identical share to that share:

Provided that the deductible expenditure so incurred or the amount of the reduction must be reduced by any amount of income accrued to the company in respect of any distribution in respect of any other share that is an identical share in relation to that share;

(ii) to any dividend received by or accrued to a person in respect of services rendered or to be rendered or in respect of or by virtue of employment or the holding of any office, other than a dividend received or accrued in respect of a restricted equity instrument as defined in section 8C held by that person or in respect of a share held by that person;

(jj) notwithstanding the provisions of paragraphs (dd) and (ii), to any dividend in respect of a restricted equity instrument as defined in section 8C that was acquired in the circumstances contemplated in section 8C(1) if that dividend constitutes—

(A) an amount transferred or applied by a company as consideration for the acquisition or redemption of any share in that company;

(B) an amount received or accrued in anticipation or in the course of the winding up, liquidation, deregistration or final termination of a company; or

(C) an equity instrument that does not qualify, at the time of the receipt or accrual of that dividend, as a restricted equity instrument as defined in section 8C; or

(kk) notwithstanding the provisions of paragraphs (dd) and (ii), to any dividend in respect of a restricted equity instrument as defined in section 8C that was acquired in the circumstances contemplated in section 8C(1) if that dividend is derived directly or indirectly from—

(A) an amount transferred or applied by a company as consideration for the acquisition or redemption of any share in that company; or

(B) an amount received or accrued in anticipation or in the course of the winding up, liquidation, deregistration or final termination of a company;

(l) the amount of any royalty as defined in section 49A which is received by or accrues to any person that is not a resident, unless—

(i) that person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the amount is received by or accrues to that person; or

(ii) the intellectual property or the knowledge or information in respect of which that royalty is paid is effectively connected with a permanent establishment of that person in the Republic;

(lA) any amount received by or accrued to any person who is not a resident if that amount is subject to tax on foreign entertainers and sportspersons in terms of Part IIIA of this Chapter;

(mB) any benefit or allowance payable in terms of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001);

(nA) where an employee is as a condition of his employment required while on duty to wear a special uniform which is clearly distinguishable from ordinary clothing, the value of any such uniform given to the employee by his employer, or so much of any allowance made by the employer to the employee in lieu of any such uniform as is reasonable;

(nB) any benefit or advantage accruing to any employee (as defined in paragraph 1 of the Seventh Schedule) by reason of the fact that his employer (as defined in the said paragraph), has, in consequence of the transfer of the employee from one place of employment to another place of employment or the appointment of the employee as an employee of the employer or the termination of the employee's employment, borne the expense—

(i) of transporting such employee, members of his household and the personal goods and possessions of himself and the members of his household from his previous place of residence to his new place of residence; or

(ii) of the costs which have been incurred by the employee in respect of the sale of his or her previous residence and in settling in permanent residential accommodation at his or her new place of residence; or

(iii) of hiring residential accommodation in an hotel or elsewhere for the employee or members of his household during the period ending 183 days after his transfer took effect or after he took up his appointment, as the case may be, if such residential accommodation was occupied temporarily pending the obtaining of permanent residential accommodation;

(nC) any amount received by or accrued to that person in the form of a qualifying equity share contemplated in section 8B;

(nD) any amount received by or accrued to that person which constitutes—

(i) an equity instrument contemplated in section 8C acquired by that person and in respect of which that section applies; or

(ii) consideration for the disposal of an equity instrument contemplated in subparagraph (i),

which had not yet vested as contemplated in that section at the time of that acquisition or disposal;

(nE) any amount (including any taxable benefit determined under the provisions of the Seventh Schedule, but excluding any gain or loss as a result of any transaction in respect of which section 8C applies or the cancellation of any such transaction) received by or accrued to an employee, as so defined, under a share incentive scheme operated for the benefit of employees of the taxpayer's employer, as so defined, which was derived—

(i) upon the cancellation of a transaction under which the taxpayer purchased shares under that scheme; or

(ii) upon the repurchase from the taxpayer, at a price not exceeding the selling price to him or her, of shares purchased by him or her under that scheme,

if in consequence of such cancellation or repurchase the taxpayer has not received or become entitled to receive any compensation or consideration other than the repayment of any portion of the purchase price actually paid by him;

(o) any form of remuneration—

(i) as defined in paragraph 1 of the Fourth Schedule, derived by any person as an officer or crew member of a ship engaged—

(aa) in the international transportation for reward of passengers or goods; or

(bb) in the prospecting, exploration or mining (including surveys and other work of a similar nature) for, or production of, any minerals (including natural oils) from the seabed outside the Republic, where such officer or crew member is employed on board such ship solely for purposes of the "passage" of such ship, as defined in the Marine Traffic Act, 1981 (Act No. 2 of 1981),

if such person was outside the Republic for a period or periods exceeding 183 full days in aggregate during the year of assessment;

(iA) as defined in paragraph 1 of the Fourth Schedule, derived by any person as an officer or crew member of a South African ship as defined in section 12Q(1) mainly engaged—

(aa) in international shipping as defined in section 12Q(1); or

(bb) in fishing outside the Republic; or

(ii) to the extent to which that remuneration does not exceed R1,25 million in respect of a year of assessment and is received by or accrues to any employee during any year of assessment by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument or allowance, including any amount referred to in paragraph (i) of the definition of gross income in section 1 or an amount referred to in section 8, 8B or 8C, in respect of services rendered outside the Republic by that employee for or on behalf of any employer, if that employee was outside the Republic —

[words preceding item (aa) substituted by section 6(1) of Act 22 of 2020; effective date 1 March 2020, applicable in respect of years of assessment commencing on or after that date]

(aa) (a) for a period or periods exceeding 183 full days in aggregate during any period of 12 months; or

(b) for a period or periods exceeding 117 full days in aggregate during any period of 12 months in respect of any year of assessment ending on or after 29 February 2020 but on or before 28 February 2021; and

[item (aa) substituted by section 10(c) of Act 23 of 2020; effective date 29 February 2020]

(bb) for a continuous period exceeding 60 full days during that period of 12 months,

and those services were rendered during that period or periods: Provided that—

(A) for purposes of this subparagraph, a person who is in transit through the Republic between two places outside the Republic and who does not formally enter the Republic through a port of entry as contemplated in section 9(1) of the Immigration Act, 2002 (Act No. 13 of 2002), or at any other place as may be permitted by the Director General of the Department of Home Affairs or the Minister of Home Affairs in terms of that Act, shall be deemed to be outside the Republic;

(B) the provisions of this subparagraph shall not apply in respect of any remuneration—

(AA) derived in respect of the holding of a public office contemplated in section 9(2)(g); or

(BB) received by or accrued to any person in respect of services rendered or work or labour performed as contemplated in section 9(2)(h); and

(C) for the purposes of this subparagraph, where remuneration is received by or accrues to any employee during any year of assessment in respect of

services rendered by that employee in more than one year of assessment, the remuneration is deemed to have accrued evenly over the period that those services were rendered;

(p) any amount received by or accrued to any person who is not a resident, for services rendered or work or labour done by him outside the Republic for or on behalf of any employer in the national or provincial sphere of Government or any municipality in the Republic or any national or provincial public entity if not less than 80 per cent of the expenditure of such entity is defrayed directly or indirectly from funds voted by Parliament, if such amount is chargeable with income tax in the country in which he is ordinarily resident and the income tax so chargeable is borne by himself and is not paid on his behalf by the Government, the municipality concerned or such public entity;

(q) any *bona fide* scholarship or bursary, other than any scholarship or bursary contemplated in paragraph (qA), granted to enable or assist any person to study at a recognized educational or research institution: Provided that if any such scholarship or bursary has been so granted by an employer or an associated institution (as respectively defined in paragraph 1 of the Seventh Schedule) to an employee (as defined in the said paragraph) or to a relative of such employee, the exemption under this paragraph shall not apply—

(i) in the case of a scholarship or bursary granted to so enable or assist any such employee, unless the employee agrees to reimburse the employer for any scholarship or bursary granted to that employee if that employee fails to complete his or her studies for reasons other than death, ill-health or injury;

(ii) in the case of a scholarship or bursary granted to enable or assist any such relative of an employee so to study—

(aa) if the remuneration proxy derived by the employee in relation to a year of assessment exceeded R600 000;

(bb) to so much of any scholarship or bursary contemplated in this subparagraph as in the case of any such relative, during the year of assessment, exceeds—

(A) R20 000 in respect of—

(AA) grade R to grade twelve as contemplated in the definition of "school" in section 1 of the South African Schools Act, 1996 (Act No. 84 of 1996); or

(BB) a qualification to which an NQF level from 1 up to and including 4 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008); and

(B) R60 000 in respect of a qualification to which an NQF level from 5 up to and including 10 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008); and

(cc) if any remuneration to which the employee was entitled or might in the future have become entitled was in any manner whatsoever reduced or forfeited as a result of the grant of such scholarship or bursary;

[subparagraph (cc) added by section 10(b) of Act 23 of 2020; effective date 1 March 2021, applicable in respect of years of assessment commencing on or after that date]

(qA) any *bona fide* scholarship or bursary granted to enable or assist any person who is a person with a disability as defined in section 6B(1) to study at a recognised educational or research institution:

Provided that if any such scholarship or bursary has been so granted by an employer or an associated institution (as respectively defined in paragraph 1 of the Seventh Schedule) to an

employee (as defined in the said paragraph) who is a person with a disability as defined in section 6B(1) or to any person with a disability as defined in section 6B(1) who is a member of the family of an employee (as defined in paragraph 1 of the Seventh Schedule) in respect of whom that employee is liable for family care and support, the exemption under this paragraph shall not apply—

(i) in the case of a scholarship or bursary granted to so enable or assist an employee, who is a person with a disability as defined in section 6B(1), unless that employee agrees to reimburse the employer for any scholarship or bursary granted to that employee if that employee fails to complete his or her studies for reasons other than death, ill-health or injury;

(ii) in the case of a scholarship or bursary granted to enable or assist a person with a disability as defined in section 6B(1) who is a member of the family of an employee, as defined in paragraph 1 of the Seventh Schedule, in respect of whom that employee is liable for family care and support, to study—

[words preceding subparagraph (aa) substituted by section 22(1)(c) of Act 23 of 2018; effective date 1 March 2018, applicable in respect of years of assessment commencing on or after that date]

(aa) if the remuneration proxy derived by the employee in relation to a year of assessment exceeded R600 000;

(bb) to so much of any scholarship or bursary contemplated in this subparagraph as in the case of any such member of the family of that employee, during the year of assessment, exceeds—

(A) R30 000 in respect of—

(AA) grade R to grade twelve as contemplated in the definition of "school" in section 1 of the South African Schools Act, 1996 (Act No. 84 of 1996); or

(BB) a qualification to which an NQF level from 1 up to and including 4 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008); and

(B) R90 000 in respect of a qualification to which an NQF level from 5 up to and including 10 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008); and

(cc) if any remuneration to which the employee was entitled or might in the future have become entitled was in any manner whatsoever reduced or forfeited as a result of the grant of such scholarship or bursary;

[subparagraph (cc) added by section 10(d) of Act 23 of 2020; effective date 1 March 2021, applicable in respect of years of assessment commencing on or after that date]

(r) any gratuity (other than a leave gratuity) received by or accrued to any person from public funds upon his retirement from any office or employment under the Government, including the Railway Administration and any provincial administration, or from the funds of the Land and Agricultural Bank of South Africa upon his retirement as a member of the board of the said Bank, which the Treasury declares to be free of tax;

(s) any amount by which the employees' tax as defined in section 1 of the Employment Tax Incentive Act, 2013, payable by an employer as contemplated in section 3 of that Act is reduced in terms of section 2(2) of that Act or paid in terms of section 10 of that Act;

(t) the receipts and accruals—

(i) of the Council for Scientific and Industrial Research;

(ii) of the South African Inventions Development Corporation;

(iii) of the South African National Roads Agency Limited incorporated in terms of section 3 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998);

(v) of the Armaments Corporation of South Africa Limited, contemplated in section 2(1) of the Armaments Corporation of South Africa, Limited Act, 2003 (Act No. 51 of 2003);

(vi) of any company during any period during which all the issued shares of such company are held by the Corporation referred to in subparagraph (v), if the operations of such company are conducted in pursuance of, or are ancillary or complementary to, the objects of the said Corporation;

(vii) of any traditional council or traditional community established or recognised or deemed to have been established or recognised in terms of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), or any tribe as defined in section 1 of that Act;

(ix) of any water services provider;

(x) of the Development Bank of Southern Africa established on 23 June 1983;

(xvi) of—

(aa) the compensation fund established by section 15 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);

(bb) the reserve fund established by section 19 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993); and

(cc) a mutual association licensed in terms of section 30 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), to carry on the business of insurance of employers against their liabilities to employees, if the compensation paid by the mutual association is identical to compensation that would have been payable in similar circumstances in terms of that Act;

(xvii) of the National Housing Finance Corporation established in 1996 by the National Department of Human Settlements:

Provided that any entity contemplated in this paragraph must comply with such reporting requirements as the Commissioner may determine;

(u) any amount received by or accrued to any person—

(i) from or on behalf of such person's spouse or former spouse by way of alimony or allowance or maintenance of such person under an order of judicial separation or divorce granted in consequence of proceedings instituted after the twenty-first day of March, 1962, or under any agreement of separation entered into after that date; or

(y) any government grant or government scrapping payment received or accrued in terms of any programme or scheme which has been approved in terms of the national annual budget process and has been identified by the Minister by notice in the *Gazette* with effect from a date specified by the Minister in that notice (including any date that precedes the date of such notice) for purposes of this paragraph, having regard to—

(i) whether the programme or scheme meets government policy priorities and objectives with respect to—

(aa) the encouragement of economic growth and investment;

(bb) the promotion of employment creation;

(cc) the development of public infrastructure and transport;

(dd) the promotion of public health;

(ee) the development of innovation and technology;

(ff) the provision of housing and basic services; or

(gg) the provision of relief in the case of natural disasters;

(ii) the extent to which the programme or scheme will support the policy priorities and objectives contemplated in subparagraph (i);

(iii) the financial implications for government should government grants or government scrapping payments in terms of that programme or scheme be exempt from tax; and

(iv) whether the tax implications were taken into account in determining the appropriation or payment in respect of that programme or scheme;

(yA) any amount received by or accrued to any person in respect of goods or services provided to beneficiaries in terms of an official development assistance agreement that is binding in terms of section 231(3) of the Constitution of the Republic of South Africa, 1996, to the extent—

(aa) that amount is received or accrued in relation to projects that are approved by the Minister; and

[subparagraph (aa) substituted by section 22(1)(d) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(bb) where that agreement was concluded on or after 1 January 2007, that that agreement provides that those receipts and accruals of that person must be exempt;

[subparagraph (bb) substituted by section 22(1)(d) of Act 23 of 2018; effective date 17 January 2019, and by section 10(e) of Act 23 of 2020; effective date 1 January 2007, applicable in respect of years of assessment commencing on or after that date]

(zE) any amount received by or accrued to the Small Business Development Corporation Limited, by way of any subsidy or assistance payable by the State;

(zJ) any amount received by or accrued to or in favour of a registered micro business as defined in the Sixth Schedule, from the carrying on of a business in the Republic, other than an amount received by or accrued to a natural person registered as a micro business that constitutes—

(i) investment income as defined in paragraph 1 of the Sixth Schedule; or

(ii) remuneration as defined in the Fourth Schedule;

(zK) any amount received by or accrued to or in favour of a small, medium or micro-sized enterprise from a small business funding entity.

(zL) any amount received or accrued previously prohibited as a deduction during any year of assessment under section 23(o)(iii) that is recovered in any subsequent year of assessment.

[paragraph (zL) inserted by section 22(1)(e) of Act 23 of 2018; effective date 1 April 2019, applicable in respect of years of assessment commencing on or after that date]

(2) Notwithstanding the exemptions provided for in paragraphs (h) and (k) of subsection (1)—

(b) the said exemptions shall not apply in respect of any portion of an annuity.

(3) The exemptions from tax provided by any paragraph of subsection (1) shall not extend to—

(a) any payments out of the receipts, accruals, amounts or profits mentioned in such paragraph; or

(b) any tax leviable under this Act in respect of any taxable capital gain determined in accordance with the Eighth Schedule.

10A. Exemption of capital element of purchased annuities

(1) For the purposes of this section—

"annuity amount" means an amount payable by way of annuity under an annuity contract and any amount payable in consequence of the commutation or termination of any such annuity contract;

"annuity contract" means an agreement concluded between an insurer in the course of his insurance business and a purchaser, in terms of which—

(a) the insurer agrees to pay to the purchaser or the purchaser's spouse or surviving spouse an annuity or annuities (whether to one such person or to each of them) until the death of the annuitant or the expiry of a specified term;

(b) the purchaser agrees to pay to the insurer a lump sum cash consideration for such annuity or annuities; and

(c) no amounts are or will be payable by the insurer to the purchaser or any other person other than amounts payable by way of such annuity or annuities or, where an annuity is payable for a minimum term and such annuity is in the event of the death of the annuitant before the end of such term to continue to be payable to some third person for the balance of that term, amounts which may be so payable to such third person by way of such annuity,

but does not include any agreement for the payment by any insurer of any annuity which is under the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund payable to a member of such fund or to any other person;

"commencement", in relation to an annuity contract, means the date on which the annuity contract is concluded;

"expected return", in relation to an annuity under an annuity contract, means an amount determined in a manner contemplated in this section as representing the sum of all the annuity amounts which may, as at the commencement of the annuity contract, be expected to become payable by way of the annuity from the said commencement;

"purchaser", in relation to an annuity contract means—

(a) any natural person and includes such person's deceased or insolvent estate; or

(b) a *curator bonis* of, or a trust created solely for the benefit of, any natural person where the High Court has declared such person to be of unsound mind and incapable of managing his own affairs and such Court has ordered the appointment of such curator or creation of such trust, as the case may be;

"statutory actuary" means an actuary appointed in accordance with section 20(1) or 21(1)(b) of the Long-term Insurance Act;

(2) There shall be exempt from normal tax so much of any annuity amount payable to a purchaser or his spouse or surviving spouse (as contemplated in paragraph (a) of the definition of "annuity contract" in subsection (1)), or to the deceased or insolvent estate of such spouse or surviving spouse as is determined in accordance with subsection (3) to represent the capital element of such amount.

(3) The capital element of an annuity amount shall be—

(a) a sum determined in accordance with the formula

$$Y = \frac{A \times C}{B}$$

in which formula—

(i) "Y" represents the sum to be determined;

(ii) "A" represents the amount of the total cash consideration given by the purchaser under the annuity contract in question as contemplated in paragraph (b) of the definition of "annuity contract" in subsection (1);

(iii) "B" represents the total expected returns of all the annuities provided for in the annuity contract in question; and

(iv) "C" represents the aforesaid annuity amount; or

(b) where, by reason of any unpredictable contingency (other than the death or survival of any person), any amount payable by way of any annuity under the annuity contract in question is uncertain at the date on which the first payment by way of an annuity becomes due under that contract, such sum as may on the basis of a fair and reasonable calculation be taken to be the capital element of the aforesaid annuity amount: Provided that the said sum shall be determined in such manner that the capital element of all the annuity amounts becoming due during any year of assessment in respect of all the annuities under the said contract does not in total exceed an amount determined in accordance with the formula

$$Z = \frac{1}{N} \times A,$$

in which formula—

(i) "Z" represents the amount to be determined;

(ii) "N" represents the probable number of years during which annuity amounts will be payable under the said annuity contract from the date on which the first of such amounts becomes due, due regard being had to the manner in which and the frequency with which such amounts are payable; and

(iii) "A" represents the amount of the total cash consideration given by the purchaser under the said annuity contract as contemplated in paragraph (b) of the definition of "annuity contract" in subsection (1); or

(c) where such annuity amount is payable in consequence of the commutation or termination of the annuity contract concerned, an amount determined in accordance with the formula

$X = A - D$

in which formula—

(i) "X" represents the amount to be determined;

(ii) "A" represents the amount of the total cash consideration given by the purchaser under the annuity contract concerned as contemplated in paragraph (b) of the definition of "annuity contract" in subsection (1); and

(iii) "D" represents the sum of the amounts determined in accordance with paragraphs (a) and (b) as representing the capital element of all annuity amounts payable under the annuity contract prior to the commutation or termination thereof.

(4) The statutory actuary of an insurer who is a party to an annuity contract shall, before payment of the first annuity amount is made under such contract, or within such period as the Commissioner may allow, make a calculation (with due regard to the provisions of subsection (5)) in the manner prescribed in paragraph (a) of subsection (3) or, if the provisions of paragraph (b) of that subsection are applicable, in accordance with that paragraph, of the capital element of all the annuity amounts to be paid under the said contract: Provided that—

(i) where the capital element is calculated under the said paragraph (a), it shall be sufficient if the capital element is calculated as a percentage to be applied to each of the said annuity amounts; or

(ii) where the capital element is calculated under the said paragraph (b), it shall be sufficient if a calculation is made of the amount to be determined in accordance with the formula in the proviso to that paragraph.

(5) A statutory actuary who makes any calculation as provided in subsection (4) or any recalculation as provided in subsection (6)(b), shall do so in accordance with generally accepted actuarial principles or practice, and where a determination has to be made of the life expectancy of any person for the purpose of a calculation of the expected return of any annuity or the probable number of years during which annuity amounts will be paid under any annuity contract, the mortality tables to be used for such determination shall be the select tables in the volume of tables published in 1953 at the University Press, Cambridge, for the Institute of Actuaries and the Faculty of Actuaries, entitled "The a (55) Tables for Annuitants", and the age of the person concerned shall for the purposes of such determination be taken to be his age on his birthday immediately preceding the commencement of the annuity contract in question.

(6) (a) Where any annuity contract is varied so that it no longer conforms with the requirements prescribed in the definition of "annuity contract" in subsection (1), the exemption conferred by subsection (2) in respect of the capital element of annuity amounts under that contract shall not apply in respect of such amounts under that contract which become due on or after the date of such variation.

(b) Subject to the provisions of paragraph (a), where any annuity contract is varied as to the payment of any annuity or consideration payable thereunder, the capital element of annuity amounts becoming due thereunder after such variation is effected shall, with due regard to the provisions of subsection (5), be re-calculated by the statutory actuary of the insurer concerned.

(7) (a) Where the capital element of annuity amounts has been calculated as provided in subsection (4) or has been re-calculated as provided in subsection (6)(b), the insurer concerned shall furnish each annuitant under the annuity contract in question, within one month after the date on which the calculation or re-calculation is made, as the case may be, or within such further period as the Commissioner may allow, with two copies of such calculation or re-calculation, as the case may be.

(b) An annuitant who has received the two copies referred to in paragraph (a) shall submit one of them to the Commissioner as and when required by the Commissioner.

(c) Where the capital element of annuity amounts has been calculated as provided in subsection (4) or has been re-calculated as provided in subsection (6)(b), the calculation or re-calculation shall apply in respect of all annuity amounts which become due to any person under the annuity contract in question and shall also apply to any year of assessment subsequent to the year of assessment in which the calculation or re-calculation took place.

(11) Where the cash consideration given by the purchaser and the annuity amount receivable under an annuity contract is denominated in any currency other than the currency of the Republic, the capital element of that annuity amount must be calculated in terms of subsection (3) in that other currency and must be translated to the currency of the Republic by applying the exchange rate applied in terms of section 25D in respect of the annuity amount payable during the relevant year of assessment.

10B. Exemption of foreign dividends and dividends paid or declared by headquarter companies

(1) For the purposes of this section, "foreign dividend" means any—

(a) foreign dividend as defined in section 1; or

(b) dividend paid or declared by a headquarter company.

(2) Subject to subsection (4), there must be exempt from normal tax any foreign dividend received by or accrued to a person—

(a) if that person (whether alone or together with any other company forming part of the same group of companies as that person) holds at least 10 per cent of the total equity shares and voting rights in the company declaring the foreign dividend;

(b) if that person is a foreign company and the foreign dividend is paid or declared by another foreign company that is resident in the same country as that person;

(c) who is a resident to the extent that the foreign dividend does not exceed the aggregate of all amounts which are included in the income of that resident in terms of section 9D in any year of assessment, which relate to the net income of—

(i) the company declaring the foreign dividend; or

(ii) any other company which has been included in the income of that resident in terms of section 9D by virtue of that resident's participation rights in that other company held indirectly through the company declaring the foreign dividend,

reduced by—

(aa) the amount of any foreign tax payable in respect of the amounts so included in that resident's income; and

(bb) so much of all foreign dividends received by or accrued to that resident at any time from any company contemplated in subparagraph (i) or (ii), as was—

(A) exempt from tax in terms of paragraph (a), (d) or (e); or

[item (A) substituted by section 23(a) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(B) previously not included in the income of that resident by virtue of any prior inclusion in terms of section 9D:

Provided that for the purposes of this paragraph, the net income of any company contemplated in subparagraphs (i) and (ii) must be determined without regard to subsection (3);

(d) to the extent that the foreign dividend is received by or accrues to that person in respect of a listed share and does not consist of a distribution of an asset *in specie*; or

(e) to the extent that the foreign dividend is received by or accrues to a company that is a resident in respect of a listed share and consists of the distribution of an asset *in specie*:

Provided that paragraphs (a) and (b) must not apply to any foreign dividend to the extent that the foreign dividend is deductible by the foreign company declaring or paying that foreign dividend in the determination of any tax on income on companies of the country in which that foreign company has its place of effective management:

Provided further that paragraph (a) must not apply to any foreign dividend received by or accrued to that person in respect of a share other than an equity share.

(3) In addition to the exemption provided for in subsection (2), there must be exempt from normal tax so much of the amount of the aggregate of any foreign dividends received by or accrued to a person during a year of assessment as—

(a) is not exempt from normal tax in terms of subsection (2) for that year of assessment; and

(b) does not during the year of assessment exceed an amount determined in accordance with the following formula:

A = B × C

in which formula:

(i) "A" represents the amount to be exempted for a year of assessment in terms of this paragraph;

(ii) "B" represents—

(aa) where the person is a natural person, deceased estate, insolvent estate or trust, the ratio of the number 25 to the number 45;

(bb) where the person is—

(A) a person other than a natural person, deceased estate, insolvent estate or trust; or

(B) an insurer in respect of its company policyholder fund, corporate fund and risk policy fund,

the ratio of the number 8 to the number 28; or

(cc) where the person is an insurer in respect of its individual policyholder fund, the ratio of the number 10 to the number 30; and

(iii) "C" represents the aggregate of any foreign dividends received by or accrued to the person during a year of assessment that is not exempt from normal tax in terms of subsection (2).

(4) Subsections (2)(a) and (2)(b) do not apply in respect of any foreign dividend received by or accrued to any person—

(a) if—

(i) (aa) any amount of that foreign dividend is determined directly or indirectly with reference to; or

(bb) that foreign dividend arises directly or indirectly from,

any amount paid or payable by any person to any other person; and

(ii) the amount so paid or payable is deductible from the income of the person by whom it is paid or payable and—

(aa) is not subject to normal tax in the hands of the other person contemplated in subparagraph (i); and

(bb) where that other person contemplated in subparagraph (i) is a controlled foreign company, is not taken into account in determining the net income, contemplated in section 9D(2A), of that controlled foreign company,

unless the amount so paid or payable is paid or payable as consideration for the purchase of trading stock by the person by whom the amount is paid or payable; or

(b) from any portfolio contemplated in paragraph (e)(ii) of the definition of "company" in section 1.

(5) The exemptions from tax provided by subsections (2) and (3) do not apply in respect of any portion of an annuity or extend to any payments out of any foreign dividend received by or accrued to any person.

(6) Subsections (2) and (3) do not apply to any foreign dividend received by or accrued to a person in respect of—

(a) services rendered or to be rendered or in respect of or by virtue of employment or the holding of any office, other than a foreign dividend in respect of a share held by that person; or

(b) a restricted equity instrument as defined in section 8C that was acquired in the circumstances contemplated in that section if that foreign dividend is derived directly or indirectly from, or constitutes—

(i) an amount—

(aa) transferred or applied by a company as consideration for the acquisition or redemption of any share in that company; or

(bb) received or accrued in anticipation or in the course of the winding up, liquidation, deregistration or final termination of a company; or

(ii) an equity instrument that does not qualify, at the time of the receipt or accrual of that foreign dividend, as a restricted equity instrument as defined in section 8C.

(6A) Subsections (2) and (3) do not apply to any foreign dividend received by or accrued to any company in respect of a share to the extent that the aggregate of those foreign dividends does not exceed an amount equal to the aggregate of any deductible expenditure incurred by that company or any amount taken into account that has the effect of reducing income in the application of section 24JB(2), and the amount of that expenditure or reduction is determined directly or indirectly with reference to the foreign dividend in respect of a share that is an identical share to that share: Provided that the deductible expenditure so incurred or the amount of the reduction must be reduced by any amount of income accrued to the company in respect of any distribution in respect of any other share that is an identical share in relation to that share.

[subsection (6A) added by section 11(1) of Act 23 of 2020; effective date 1 January 2021, applicable to foreign dividends received or accrued on or after that date]

(7) (a) The Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, that, with effect from a date or dates mentioned in that announcement, the numbers contemplated in subsection (3)(b)(ii) will be altered to the extent mentioned in the announcement.

[paragraph (a) substituted by section 6(1) of Act 20 of 2022; effective date deemed to have been 17 January 2019]

(b) If the Minister makes an announcement of an alteration contemplated in paragraph (a), that alteration comes into effect on the date or dates determined by the Minister in that announcement and continues to apply for a period of 12 months from that date subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.

[subsection (7) added by section 23(b) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

10C. Exemption of non-deductible element of qualifying annuities

[heading substituted by section 14(1)(a) of Act 34 of 2019; effective date 1 March 2020, applicable in respect of any contributions made to a provident or provident preservation fund in determining the taxable annuity

received during any year of assessment from such fund in relation to annuities received on or after 1 March 2020]

(1) For the purposes of this section—

"qualifying annuity" means the amount of the retirement interest of a person payable in the form of an annuity (including a living annuity)—

(a) as contemplated in paragraph (ii)(dd) of the proviso to paragraph (c) of the definition of "pension fund";

(b) as contemplated in paragraph (e) of the proviso to the definition of "pension preservation fund";

(c) as contemplated in paragraph (b)(ii) of the proviso to the definition of "retirement annuity fund";

(d) as contemplated in paragraph (ii)(dd) of the proviso to the definition of "provident fund" in section 1(1); or

[paragraph (d) substituted by section 12(1)(b) of Act 23 of 2020; effective date 1 March 2021, and by section 7(1) of Act 20 of 2022; effective date deemed to have been 1 March 2021]

(e) as contemplated in paragraph (e) of the definition of "provident preservation fund" in section 1(1).

[paragraph (e) added by section 12(1)(c) of Act 23 of 2020; effective date 1 March 2021]

[definition of "qualifying annuity", previously "compulsory annuity", substituted by section 14(1)(b) of Act 34 of 2019; effective date 1 March 2020, applicable in respect of any contributions made to a provident or provident preservation fund in determining the taxable annuity received during any year of assessment from such fund in relation to annuities received on or after 1 March 2020]

(2) There shall be exempt from normal tax in respect of the aggregate of qualifying annuities payable to a person an amount equal to so much of any contributions to any pension fund, provident fund and retirement annuity fund that did not rank for a deduction against the person's income in terms of section 11F as has not previously been—

[words preceding paragraph (a) substituted by section 14(1)(c) of Act 34 of 2019; effective date 1 March 2020, applicable in respect of any contributions made to a provident or provident preservation fund in determining the taxable annuity received during any year of assessment from such fund in relation to annuities received on or after 1 March 2020, and by section 12(1)(d) of Act 23 of 2020; effective date 1 March 2021]

(a) allowed to the person as a deduction in terms of the Second Schedule; or

(b) exempted from normal tax in terms of this section,

in respect of any prior year of assessment.

[words following paragraph (b) substituted by section 24(1) of Act 23 of 2018; effective date 1 March 2016]

11. General deductions allowed in determination of taxable income

For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall be allowed as deductions from the income of such person so derived—

(a) expenditure and losses actually incurred in the production of the income, provided such expenditure and losses are not of a capital nature;

(c) any legal expenses (being fees for the services of legal practitioners, expenses incurred in procuring evidence or expert advice, court fees, witness fees and expenses, taxing fees, the fees and expenses of sheriffs or messengers of court and other expenses of litigation which are of an essentially

similar nature to any of the said fees or expenses) actually incurred by the taxpayer during the year of assessment in respect of any claim, dispute or action at law arising in the course of or by reason of the ordinary operations undertaken by him in the carrying on of his trade: Provided that the amount to be allowed under this paragraph in respect of any such expenses shall be limited to so much thereof as—

(i) is not of a capital nature; and

(ii) is not incurred in respect of any claim made against the taxpayer for the payment of damages or compensation if by reason of the nature of the claim or the circumstances any payment which is or might be made in satisfaction or settlement of the claim does not or would not rank for deduction from his income under paragraph (a); and

(iii) is not incurred in respect of any claim made by the taxpayer for the payment to him of any amount which does not or would not constitute income of the taxpayer; and

(iv) is not incurred in respect of any dispute or action at law relating to any such claim as is referred to in paragraph (ii) or (iii) of this proviso;

(cA) an allowance in respect of any amount actually incurred by such person in the course of the carrying on of his trade, as compensation in respect of any restraint of trade imposed on any other person who—

(i) is a natural person;

(ii) is or was a labour broker as defined in the Fourth Schedule (other than a labour broker in respect of which a certificate of exemption has been issued in terms of such Schedule);

(iii) was a personal service company or personal service trust as defined in the Fourth Schedule prior to section 66 of the Revenue Laws Amendment Act, 2008, coming into operation; or

(iv) is a personal service provider as defined in the Fourth Schedule,

to the extent that such amount constitutes or will constitute income of the person to whom it is paid: Provided that the amount allowed to be deducted under this paragraph shall not exceed for any one year the lesser of—

(aa) so much of such amount so incurred as is equal to such amount divided by the number of years, or part thereof, during which the restraint of trade shall apply; or

(bb) one-third of such amount so incurred;

(d) expenditure actually incurred during the year of assessment on repairs of property occupied for the purpose of trade or in respect of which income is receivable, including any expenditure so incurred on the treatment against attack by beetles of any timber forming part of such property and sums expended for the repair of machinery, implements, utensils and other articles employed by the taxpayer for the purposes of his trade;

(e) save as provided in paragraph 12 (2) of the First Schedule, such sum as the Commissioner may think just and reasonable as representing the amount by which the value of any machinery, plant, implements, utensils and articles (other than machinery, plant, implements, utensils and articles in respect of which a deduction may be granted under section 12B, 12C, 12DA, 12E(1), 12U or 37B) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of "installment credit agreement" in section 1 of the Value-Added Tax Act and used by the taxpayer for the purpose of his or her trade has been diminished by reason of wear and tear or depreciation during the year of assessment:

Provided that—

(iA) no allowance may be made in respect of any machinery, plant, implement, utensil or article the ownership of which is retained by the taxpayer as a seller in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act;

(ii) in no case shall any allowance be made for the depreciation of buildings or other structures or works of a permanent nature;

(iiA) where any machinery, implement, utensil or article qualifying for an allowance under this paragraph is mounted on or affixed to any concrete or other foundation or supporting structure and—

(aa) the foundation or supporting structure is designed for such machinery, implement, utensil or article and constructed in such manner that it is or should be regarded as being integrated with the machinery, implement, utensil or article; and

(bb) the useful life of the foundation or supporting structure is or will be limited to the useful life of the machinery, implement, utensil or article mounted thereon or affixed thereto,

the said foundation or supporting structure shall for the purposes of this paragraph not be deemed to be a structure or work of a permanent nature but shall for the purposes of this Act be deemed to be a part of the machinery, implement, utensil or article mounted thereon or affixed thereto;

(iiiA) no allowance shall be made under this paragraph in respect of any machinery, implement, utensil or article of which the cost has been allowed as a deduction from the taxpayer's income under the provisions of section 24D;

(v) the value of any machinery, implements, utensils or articles used by the taxpayer for the purposes of his trade shall be increased by the amount of any expenditure (other than expenditure referred to in paragraph (a)) which is incurred by the taxpayer in moving such machinery, implements, utensils or articles from one location to another;

(vii) where the value of any such machinery, implements, utensils or articles acquired by the taxpayer on or after 15 March 1984 is for the purposes of this paragraph to be determined having regard to the cost of such machinery, implements, utensils or articles, such cost shall be deemed to be the cost which the taxpayer would, if such taxpayer had acquired such machinery, implements, utensils or articles under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of such machinery, implements, utensils or articles was in fact concluded, have incurred in respect of the direct cost of the acquisition of such machinery, implements, utensils or articles, including the direct cost of the installation or erection thereof;

[paragraph (vii) substituted by section 8(1)(a) of Act 20 of 2022; effective date deemed to have been 29 July 2022, applies in respect of years of assessment ending on or after that date]

(ix) where any such machinery, plant, implement, utensil or article was used by the taxpayer during any previous year of assessment or years of assessment for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year or years the period of use of such asset during such previous year or years shall be taken into account in determining the amount by which the value of such machinery, plant, implement, utensil or article has been diminished; and

[paragraph (ix) amended by section 8(1)(b) of Act 20 of 2022; effective date deemed to have been 29 July 2022, applies in respect of years of assessment ending on or after that date]

(x) no allowance may be made in respect of any machinery, plant, implement, utensil or article acquired by the taxpayer as or with a "government grant" as defined in section 12P(1);

[paragraph (x) added by section 8(1)(b) of Act 20 of 2022; effective date deemed to have been 29 July 2022, applies in respect of years of assessment ending on or after that date]

(f) an allowance in respect of any premium or consideration in the nature of a premium paid by a taxpayer for—

(i) the right of use or occupation of land or buildings used or occupied for the production of income or from which income is derived; or

(ii) the right of use of any plant or machinery used for the production of income or from which income is derived; or

(iibis) the right of use of any motion picture film or any sound recording or advertising matter connected with such film, if such film, sound recording or advertising matter is used for the production of income or income is derived therefrom; or

(iii) the right of use of any patent as defined in the Patents Act or any design as defined in the Designs Act or any trade mark as defined in the Trade Marks Act or any copyright as defined in the Copyright Act or of any other property which is of a similar nature, if such patent, design, trade mark, copyright or other property is used for the production of income or income is derived therefrom; or

(iv) the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use of such film, sound recording, advertising matter, patent, design, trade mark, copyright or other property as aforesaid; or

(v) the right of use of any pipeline, transmission line or cable or railway line contemplated in the definition of "affected asset" in section 12D, other than an asset contemplated in paragraph (c) of that definition; or

[subparagraph (v) substituted by section 25(1)(a) of Act 23 of 2018; effective date 1 April 2019, applicable in respect of assets brought into use on or after that date]

(vi) the right of use of any line or cable used for the transmission of electronic communications contemplated in paragraph (c) of the definition of "affected asset" in section 12D:

[subparagraph (vi) added by section 25(1)(b) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

Provided that—

(aa) the allowance under sub-paragraph (i), (ii), (ii)*bis*, (iii) or (v) shall not exceed for any one year such portion of the amount of the premium or consideration so paid as is equal to the said amount divided by the number of years for which the taxpayer is entitled to the use or occupation, or one twenty-fifth of the said amount, whichever is the greater;

(bb) if the taxpayer is entitled to such use or occupation for an indefinite period, or if, in the case of any such right of use or occupation granted under an agreement concluded on or after 1 July 1983, the taxpayer or the person by whom such right of use or occupation was granted holds a right or option to extend or renew the original period of such use or occupation, he shall be deemed, for the purposes of this paragraph, to be entitled to such use or occupation for the period of the probable duration of such use or occupation; and

(cc) the allowance under sub-paragraph (iv) shall not exceed for any one year such portion (not being less than one twenty-fifth) of the amount of the premium or consideration so paid as may be determined having regard to the period during which the taxpayer will enjoy the right to use such film, sound recording, advertising matter, patent, design, trade mark, copyright or other property as aforesaid and any other circumstances which are relevant;

(dd) the provisions of this paragraph shall not apply in relation to any such premium or consideration paid by the taxpayer which does not for the purposes of this Act constitute income of the person to whom it is paid, unless such premium or consideration is paid in respect of a right of use of a line or cable—

(A) used for the transmission of electronic communications; and

(B) substantially the whole of which is located outside the territorial waters of the Republic,

where the term of the right of use is 10 years or more;

[words following subparagraph (B) substituted by section 25(1)(c) of Act 23 of 2018; effective date 1 April 2019]

(ee) the allowance under subparagraph (vi) shall not exceed for any one year such portion of the amount of the premium or consideration so paid as is equal to the said amount divided by the number of years for which the taxpayer is entitled to the use or occupation, or one tenth of the said amount, whichever is the greater;

[paragraph (ee) added by section 25(1)(d) of Act 23 of 2018; effective date 1 April 2019]

(g) an allowance in respect of any expenditure actually incurred by the taxpayer, in pursuance of an obligation to effect improvements on land or to buildings, incurred under an agreement whereby the right of use or occupation of the land or buildings is granted by any other person, where the land or buildings are used or occupied for the production of income or income is derived therefrom: Provided that—

(i) the aggregate of the allowances under this paragraph shall not exceed the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements or, if no amount is so stipulated, an amount representing the fair and reasonable value of the improvements;

(ii) any such allowance shall not exceed for any one year such portion of the aggregate of the allowances under this paragraph as is equal to the said aggregate divided by the number of years (calculated from the date on which the improvements are completed, but not more than 25 years) for which the taxpayer is entitled to the use or occupation;

(iii) if—

(aa) the taxpayer is entitled to such use or occupation for an indefinite period; or

(bb) the taxpayer or the person by whom such right of use or occupation was granted holds a right or option to extend or renew the original period of such use or occupation,

the taxpayer shall for the purposes of this paragraph be deemed to be entitled to such use or occupation for such period as represents the probable duration of such use or occupation;

(iv) the aggregate of the allowances under this paragraph in respect of any building or improvements referred to in section 13(1) or 27(2)(b) shall not exceed the cost (after the deduction of any amount which has been set off against the cost of such building or improvements under section 13(3) or section 27(4)) to the taxpayer of such building or improvements less the aggregate of the allowances in respect of such building or improvements made to the taxpayer under the said section 13(1) or 27(2)(b) or the corresponding provisions of any previous Income Tax Act;

(vi) the provisions of this paragraph shall not apply in relation to any such expenditure incurred if the value of such improvements or the amount to be expended on such improvements, as contemplated in paragraph (h) of the definition of "gross income" in section 1, does not for the purposes of this Act constitute income of the person to whom the right to have such improvements effected has accrued;

(vii) if during any year of assessment the agreement whereby the right of use or occupation of the land or buildings is granted is terminated before expiry of the period to which that taxpayer was entitled to the use or occupation, as contemplated in paragraph (ii) or (iii), so much of the allowance which may be allowed under this paragraph, which has not yet been allowed in that year or any previous year of assessment, shall be allowable as a deduction in that year of assessment;

(gA) an allowance in respect of any expenditure (other than expenditure which has qualified in whole or part for deduction or allowance under any of the other provisions of this section or the corresponding provisions of any previous Income Tax Act) actually incurred by the taxpayer—

(i) in devising or developing any invention as defined in the Patents Act or in creating or producing any design as defined in the Designs Act or any trade mark as defined in the Trade Marks Act or any copyright as defined in the Copyright Act or any other property which is of a similar nature;

(ii) in obtaining any patent or the restoration of any patent under the Patents Act or the registration of any design under the Designs Act or the registration of any trade mark under the Trade Marks Act or under similar laws of any other country; or

(iii) in acquiring by assignment from any other person any such patent, design, trade mark or copyright or in acquiring any other property of a similar nature or any knowledge essential to the use of such patent, design, trade mark, copyright or other property or the right to have such knowledge imparted,

if such invention, patent, design, trade mark, copyright, other property or knowledge, as the case may be, is used by the taxpayer in the production of his income: Provided that—

(aa) where such expenditure exceeds R5 000, and was incurred—

(A) before 29 October 1999, the allowance shall not exceed for any one year such portion of the amount of the expenditure as is equal to such amount divided by the number of years, which represents the probable duration of use of the invention, patent, design, trade mark, copyright, other property or knowledge, or four per cent of the said amount, whichever is the greater;

(B) on or after 29 October 1999, the allowance shall not for any one year exceed an amount equal to—

(AA) five per cent of the amount of the expenditure in the case of any invention, patent, trade mark, copyright or other property of a similar nature or any knowledge essential to the use of such invention, patent, trade mark, copyright or other property or the right to have such knowledge imparted; or

(BB) 10 per cent of the amount of the expenditure in the case of any design or other property of a similar nature or any knowledge essential to the use of such design or other property or the right to have such knowledge imparted;

(bb) where such expenditure was incurred before the commencement of the year of assessment in question the allowance shall be calculated on the amount of such expenditure, less an amount equivalent to the sum of the allowances to which the taxpayer was entitled under this paragraph and the allowances to which the taxpayer would have been entitled under this paragraph if this paragraph had been applicable, in respect of such expenditure in respect of previous years of assessment, including any year of assessment under any previous Income Tax Act;

(cc) no allowance shall be made in respect of any such invention, patent, design, trade mark, copyright or other property or knowledge so acquired or obtained by the taxpayer on or after 24 June 1988, but prior to 1 July 1993 from any other person who is a resident of the Republic or who is ordinarily resident in a neighbouring country (or, in the case of a company, is incorporated or has its place of effective management in a neighbouring country), if—

(A) the taxpayer or such other person is a company and such other person or the taxpayer, as the case may be, is interested in more than 50 per cent of any class of shares issued by such company, whether directly as a holder of shares in that company or indirectly as a holder of shares in any other company; or

(B) both the taxpayer and such other person are companies and any third person is interested in more than 50 per cent of any class of shares issued by one of those companies and in more than 50 per cent of any class of shares issued by the other company, whether directly as a holder of shares in the company by which the shares in question were issued or indirectly as a holder of shares in any other company;

(dd) where any such invention, patent, design, trade mark, copyright or other property or knowledge was so acquired or obtained by the taxpayer on or after 1 July 1993 from any other person who is a resident of the Republic or who is ordinarily resident in a neighbouring country (or, in the case of a company, is incorporated or has its place of effective management in a neighbouring country), and who is a connected person in relation to the taxpayer, the allowance under this paragraph shall be calculated on an amount not exceeding the lesser of the cost of such invention, patent, design, trade mark, copyright or other property or knowledge to such connected person or the market value thereof as determined on the date upon which such invention, patent, design, trade mark, copyright or other property or knowledge was acquired or obtained by the taxpayer;

(ee) no allowance shall be made in respect of any expenditure incurred by such taxpayer on or after 29 October 1999, in respect of the acquisition from any other person of any trade mark or other property of a similar nature or any knowledge essential to the use of such trade mark or the right to have such knowledge imparted;

(ff) no deduction shall be allowed under this paragraph in respect of any expenditure incurred by the taxpayer during any year of assessment commencing on or after 1 January 2004;

(gB) expenditure (other than expenditure which has qualified in whole or part for deduction or allowance under any of the other provisions of this section) actually incurred by the taxpayer during the year of assessment in obtaining the grant of any patent or the restoration of any patent, or the extension of the term of any patent under the Patents Act or the registration of any design, or extension of the registration period of any design under the Designs Act or the registration of any trade mark, or the renewal of the registration of any trade mark under the Trade Marks Act or under similar laws of any other country, if such patent, design or trade mark is used by the taxpayer in the production of his or her income;

(gC) an allowance in respect of any expenditure actually incurred by the taxpayer during any year of assessment commencing on or after 1 January 2004 to acquire (otherwise than by way of devising, developing or creating) any—

(i) invention or patent as defined in the Patents Act;

(ii) design as defined in the Designs Act;

(iii) copyright as defined in the Copyright Act;

(iv) other property which is of a similar nature (other than trade marks as defined in the Trade Marks Act); or

(v) knowledge essential to the use of such patent, design, copyright or other property or the right to have such knowledge imparted,

which shall be allowed during the year of assessment in which that invention, patent, design, copyright, other property or knowledge is brought into use for the first time by the taxpayer for the purposes of the taxpayer's trade, if that invention, patent, design, copyright, other property or knowledge, as the case may be, is used by the taxpayer in the production of his or her income: Provided that—

(aa) where that expenditure actually incurred by the taxpayer exceeds R5 000, that allowance shall not exceed in any year of assessment—

(A) five per cent of the amount of the expenditure in respect of any invention, patent, copyright or other property of a similar nature or any knowledge essential to the

use of such invention, patent, copyright or other property or the right to have such knowledge imparted; or

(B) 10 per cent of the amount of the expenditure in respect of any design or other property of a similar nature or any knowledge essential to the use of such design or other property or the right to have such knowledge imparted;

(gD) where that trade constitutes the provision of telecommunication services, the exploration, production or distribution of petroleum or the provision of gambling facilities, any expenditure (other than in respect of infrastructure) incurred to acquire a licence from the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a), or an institution or entity contemplated in Schedule 1 or Part A or C of Schedule 3 to the Public Finance Management Act, where that expenditure is incurred in terms of the licence and the licence is required to carry on that trade, which deduction must not exceed for any one year such portion of the expenditure as is equal to the amount of the expenditure divided by the number of years for which the taxpayer has the right to the licence after the date on which the expenditure was incurred, or 30, whichever is the lesser;

(h) such allowance in respect of amounts included in the taxpayer's gross income under paragraph (g) or paragraph (h) of the definition of "gross income" in section 1 as the Commissioner may deem reasonable having regard to any special circumstances of the case and, in the case of an amount so included under the said paragraph (h), to the original period for which the right of use or occupation was granted or, in the case of any amount so included under the said paragraph (h) in consequence of an agreement concluded on or after 1 July 1983, to the number of years taken into account in the determination of the relevant allowance granted to any other person under the provisions of paragraph (g) of this section: Provided that where there has on or after the twenty-ninth day of March, 1972, accrued to the taxpayer the right to have improvements effected on land or to buildings by any other person and an amount is required to be included in the taxpayer's gross income under the said paragraph (h) with respect to such improvements, no allowance shall be made to the taxpayer under this paragraph in respect of such amount, if—

(i) the taxpayer or such other person is a company and such other person or the taxpayer, as the case may be, is interested in more than 50 per cent of any class of shares issued by such company, whether directly as a holder of shares in that company or indirectly as a holder of shares in any other company; or

(ii) both the taxpayer and such other person are companies and any third person is interested in more than 50 per cent of any class of shares issued by one of those companies and in more than 50 per cent of any class of shares issued by the other company, whether directly as a holder of shares in the company by which the shares in question were issued or indirectly as a holder of shares in any other company;

(hB) an allowance in respect of expenditure actually incurred and paid in the production of income to discharge all consideration, royalties or compensation otherwise payable to a community or natural person in respect of any existing consideration, contractual royalty, future consideration or compensation that accrued to that community or natural person as contemplated in Item 11 of Schedule II of the Petroleum Resources Development Act, 2002 (Act No. 28 of 2002): Provided that for any year of assessment, the allowance shall not exceed an amount equal to the expenditure incurred and paid divided by the number of years for which all consideration, royalties or compensation otherwise payable has been discharged;

(i) the amount of any debt due to the taxpayer which has during the year of assessment become bad, provided such amount is included in the current year of assessment or was included in previous years of assessment in the taxpayer's income;

(j) an allowance in respect of any debt due to the taxpayer, if that debt would have been allowed as a deduction under any other provision of this Part had that debt become bad, of an amount equal to—

(i) if IFRS 9 is applied to that debt by that person for financial reporting purposes, other than in respect of lease receivables as defined in IFRS 9 that have not been included in income, the sum of—

[words preceding item (aa) substituted by section 13(1)(a) of Act 23 of 2020; effective date 28 October 2020, applicable in respect of years of assessment commencing on or after that date]

(aa) 40 per cent of the aggregate of—

(A) the loss allowance relating to impairment that is measured at an amount equal to the lifetime expected credit loss, as contemplated in IFRS 9, in respect of debt; and

[subitem (A) substituted by section 13(1)(b) of Act 23 of 2020; effective date 28 October 2020, applicable in respect of years of assessment commencing on or after that date]

(B) the amounts of debts included in the income of the taxpayer in the current or any previous year of assessment that are disclosed as bad debt written off for financial reporting purposes and that have not been allowed as a deduction under section 11(a) or (i) for the current or any previous year of assessment; and

(bb) 25 per cent of the loss allowance relating to impairment, as contemplated in IFRS 9, in respect of debt other than in respect of debt taken into account under item (aa); or

[item (bb) substituted by section 13(1)(c) of Act 23 of 2020; effective date 28 October 2020, applicable in respect of years of assessment commencing on or after that date]

(ii) if IFRS 9 is not applied to that debt by that person for financial reporting purposes, the sum of—

(aa) 40 per cent of so much of any debt, other than a debt contemplated in subparagraph (i), due to the taxpayer, if that debt is 120 days or more in arrears, after taking into account the value of any security in respect of that debt; and

[item (aa) substituted by section 13(1)(d) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of years of assessment commencing on or after that date]

(bb) 25 per cent of so much of any debt, other than a debt contemplated in subparagraph (i) or item (aa), due to the taxpayer, if that debt is 60 days or more in arrears, after taking into account the value of any security in respect of that debt:

[item (bb) substituted by section 13(1)(d) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of years of assessment commencing on or after that date]

Provided that an allowance under this paragraph must be included in the income of the taxpayer in the following year of assessment:

Provided further that the Commissioner may, on application by a taxpayer, issue a directive that the percentage contemplated in subparagraph (i)(aa) or (ii)(aa) may be increased, to a percentage not exceeding 85 per cent after taking into account—

(a) the history of a debt owed to that taxpayer, including the number of repayments not met, and the duration of the debt;

(b) steps taken to enforce repayment of the debt;

(c) the likelihood of the debt being recovered;

(d) any security available in respect of that debt;

(e) the criteria applied by the taxpayer in classifying debt as bad; and

(f) such other considerations as the Commissioner may deem relevant;

[paragraph (j) substituted by section 18(1)(i) of Act 25 of 2015 (retroactively deleted by section 85(1) of Act 34 of 2019), by section 25(1)(e) of Act 23 of 2018; effective date 1 January 2019, and by section 15(1)(a) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(jA) notwithstanding paragraph (j), an allowance equal to 25 per cent of the loss allowance relating to impairment, as contemplated in IFRS 9, other than in respect of lease receivables as defined in IFRS 9 that have not been included in income, if the person is a covered person, other than a person that is a controlling company as defined in the Banks Act, as determined by applying the criteria in paragraphs (c)(i) to (iii) and (d) of the definition of "covered person" in section 24JB(1): Provided that the allowance must be increased—

[words preceding the proviso substituted by section 25(1)(f) of Act 23 of 2018; effective date 1 January 2018, by section 15(1)(b) of Act 34 of 2019; effective date 1 January 2018, and by section 13(1)(e) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of years of assessment commencing on or after that date]

(a) to 85 per cent of so much of that loss allowance relating to impairment as is equal to the amount that is in default, as determined by applying to any credit exposure, including any retail exposure, the criteria in paragraphs (a)(ii) to (vi) and (b) of the definition of "default" as defined in Regulation 67 of the regulations issued in terms of section 90 of the Banks Act (contained in Government Notice No. R.1029 published in *Government Gazette* No. 35950 of 12 December 2012); and

(b) to 40 per cent of so much of that loss allowance relating to impairment as is equal to the difference between—

(i) the amount of the loss allowance relating to impairment that is measured at an amount equal to the lifetime expected credit losses; and

(ii) the amount that is in default as determined under paragraph (a):

Provided further that the allowance must be included in the income of that person in the following year of assessment:

Provided further that the loss allowance relating to impairment must exclude any loss allowance in respect of a financial asset that would not be allowed to be deducted under paragraph (a) or (i) if it became bad;

[further proviso added by section 13(1)(f) of Act 23 of 2020; effective date 28 October 2020, applicable in respect of years of assessment commencing on or after that date]

(l) any amount contributed by a person that is an employer during the year of assessment for the benefit of or on behalf of any employee or former employee of the employer or for any dependant or nominee of a deceased employee or former employee of that employer to any pension fund, provident fund or retirement annuity fund in terms of the rules of that fund: Provided that for the purposes of this paragraph a partner in a partnership must be deemed to be an employee of the partnership and a partnership must be deemed to be the employer of the partners in that partnership;

[paragraph (l) substituted by section 25(1)(g) of Act 23 of 2018; effective date 1 March 2018]

(lA) an amount equal to the market value of any qualifying equity share granted to an employee of that person as contemplated in section 8B, as determined on the date of grant as defined in that section less any consideration given by that employee for that qualifying equity share, which applies in lieu of any other deduction which may otherwise be allowed to that person or any other person in respect of the granting of that share: Provided that the deduction under this paragraph may not during any year of assessment in aggregate exceed an amount of R10 000 in respect of all qualifying equity shares granted to a single employee and so much as exceeds that amount may be carried

forward to the immediately succeeding year of assessment and that excess is deemed to be the market value of qualifying equity shares granted to the relevant employee during that immediately succeeding year for purposes of this paragraph;

(m) any amount paid by way of annuity during the year of assessment by any taxpayer—

(i) to a former employee who has retired from the taxpayer's employ on grounds of old age, ill health or infirmity; or

(ii) to a person who was for a period of at least five years a partner in an undertaking carried on by the taxpayer and who retired from the partnership in respect of that undertaking on grounds of old age, ill health or infirmity, provided that the amount so paid to such person is reasonable, having regard to the services rendered by such person as a partner in such undertaking prior to his retirement and the profits made in such undertaking, and that the said amount does not represent consideration payable to such person in respect of his interest in the partnership; or

(iii) to any person who is dependent for his maintenance upon a former employee or a former partner in an undertaking carried on by the taxpayer or (where such former employee or former partner is deceased) was so dependent immediately prior to his death;

(nA) so much of any amount, including any voluntary award, received or accrued in respect of services rendered or to be rendered or any amount received or accrued in respect of or by virtue of any employment or the holding of any office as was included in the taxable income of that person and is refunded by that person;

(nB) so much of any amount contemplated in paragraph (cA) or (cB) of the definition of "gross income" received by or accrued to any person as is refunded by that person;

[paragraph (nB) substituted by section 25(1)(h) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(o) at the election of the taxpayer, an amount by which the cost to that taxpayer of any depreciable asset—

(i) which qualified for an allowance or deduction in terms of section 11(e), 11D, 12B, 12C, 12DA, 12E, or 37B(2)(a); and

[subparagraph (i) substituted by section 25(1)(i) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(ii) the expected useful life of which for tax purposes did not exceed ten years as determined on the date of original acquisition,

exceeds the sum of the amount received or accrued from the alienation, loss or destruction of that asset and the amount of any allowance or deduction allowed in respect of that asset in that year or any previous year of assessment or which was deemed to have been allowed in terms of section 12B(4B), 12C(4A), 12DA(4) or 37B(4) or taken into account in terms of section 11(e)(ix), as the case may be: Provided that for the purposes of this paragraph—

(aa) the cost of any plant, machinery, implements, utensils or articles shall be deemed to be the actual cost plus the amount by which the value of such plant, machinery, implements, utensils or articles has been increased in terms of paragraph (v) of the proviso to paragraph (e);

(bb) the actual cost of any plant, machinery, implement, utensil or article acquired by the taxpayer on or after 15 March 1984 shall be deemed to be the cost of that plant, machinery, implement, utensil or article as determined under paragraph (vii) of the proviso to paragraph (e):

Provided further that no election may be made in terms of this paragraph by the taxpayer if the amount received or accrued from the alienation, loss or destruction of the asset was received or accrued from a person that is a connected person in relation to the taxpayer;

(w) expenditure incurred by a taxpayer in respect of any premiums payable under a policy of insurance (other than a policy of insurance that relates to the death, disablement or illness of an employee or director of the taxpayer arising solely out of and in the course of employment of such employee or director) of which the taxpayer is the policyholder, where—

(i) (aa) the policy relates to the death, disablement or illness of an employee or director of the taxpayer; and

(bb) the amount of expenditure incurred by the taxpayer in respect of the premiums payable under the policy is deemed to be a taxable benefit granted to an employee or director of the taxpayer in terms of paragraph 2(k) of the Seventh Schedule; or

(ii) (aa) the taxpayer is insured against any loss by reason of the death, disablement or illness of an employee or director of the taxpayer;

(bb) the policy is a risk policy with no cash value or surrender value;

(cc) the policy is not the property of any person other than the taxpayer at the time of the payment of the premium; and

(dd) in respect of any policy entered into—

(A) on or after 1 March 2012, the policy agreement states that this paragraph applies in respect of premiums payable under that policy; or

(B) before 1 March 2012, it is stated in an addendum to the policy agreement by no later than 31 August 2012 that this paragraph applies in respect of premiums payable under that policy;

(x) any amounts which in terms of any other provision in this Part, are allowed to be deducted from the income of the taxpayer.

11A. Deductions in respect of expenditure and losses incurred prior to commencement of trade

(1) For purposes of determining the taxable income derived during any year of assessment by a person from carrying on any trade, there shall be allowed as a deduction from the income so derived, any expenditure and losses—

(a) actually incurred by that person prior to the commencement of and in preparation for carrying on that trade;

(b) which would have been allowed as a deduction in terms of section 11 (other than section 11(x)), 11D or 24J, had the expenditure or losses been incurred after that person commenced carrying on that trade; and

[paragraph (b) substituted by section 20 of Act 17 of 2017; effective date 18 December 2017, date of promulgation of that Act]

(c) which were not allowed as a deduction in that year or any previous year of assessment.

(2) So much of the expenditure and losses contemplated in subsection (1) as exceeds the income derived during the year of assessment from carrying on that trade after deduction of any amounts allowable in that year of assessment in terms of any other provision of this Act, shall not be set off against any income of that person which is derived otherwise than from carrying on that trade, notwithstanding section 20(1)(b).

11D. Deductions in respect of scientific or technological research and development

(1) For the purposes of this section "research and development" means systematic investigative or systematic experimental activities of which the result is uncertain for the purpose of—

(a) discovering non-obvious scientific or technological knowledge;

(b) creating or developing—

(i) an invention as defined in section 2 of the Patents Act;

(ii) a functional design—

(aa) as defined in section 1 of the Designs Act, capable of qualifying for registration under section 14 of that Act; and

(bb) that is innovative in respect of the functional characteristics or intended uses of that functional design;

(iii) a computer program as defined in section 1 of the Copyright Act which is of an innovative nature; or

(iv) knowledge essential to the use of such invention, functional design or computer program other than creating or developing operating manuals or instruction manuals or documents of a similar nature intended to be utilised in respect of that invention, functional design or computer program subsequent to the research and development being completed; or

(c) making a significant and innovative improvement to any invention, functional design, computer program or knowledge contemplated in paragraph (a)or (b) for the purposes of—

(i) new or improved function;

(ii) improvement of performance;

(iii) improvement of reliability; or

(iv) improvement of quality,

of that invention, functional design, computer program or knowledge;

(d) creating or developing a multisource pharmaceutical product, as defined in the World Health Organisation Technical Report Series, No. 937, 2006 Annex 7 Multisource (generic) pharmaceutical products: guidelines on registration requirements to establish interchangeability issued by the World Health Organisation, conforming to such requirements as must be prescribed by regulations made by the Minister after consultation with the Minister for Science and Technology; or

(e) conducting a clinical trial as defined in Appendix F of the Guidelines for good practice in the conduct of clinical trials with human participants in South Africa issued by the Department of Health (2006), conforming to such requirements as must be prescribed by regulations made by the Minister after consultation with the Minister for Science and Technology:

Provided that for the purposes of this definition, research and development does not include activities for the purpose of—

(a) routine testing, analysis, collection of information or quality control in the normal course of business;

(b) development of internal business processes unless those internal business processes are mainly intended for sale or for granting the use or right of use or permission to use thereof to persons who are not connected persons in relation to the person carrying on that research and development;

(c) market research, market testing or sales promotion;

(d) social science research, including the arts and humanities;

(e) oil and gas or mineral exploration or prospecting except research and development carried on to develop technology used for that exploration or prospecting;

(f) the creation or development of financial instruments or financial products;

(g) the creation or enhancement of trademarks or goodwill; or

(h) any expenditure contemplated in section 11(gB) or (gC).

(2) (a) For the purposes of determining the taxable income of a taxpayer that is a company in respect of any year of assessment there shall be allowed as a deduction from the income of that taxpayer an amount equal to 150 per cent of so much of any expenditure actually incurred by that taxpayer directly and solely in respect of the carrying on of research and development in the Republic if—

(i) that expenditure is incurred in the production of income;

(ii) that expenditure is incurred in the carrying on of any trade;

(iii) that research and development is approved in terms of subsection (9); and

(iv) that expenditure is incurred on or after the date of receipt of the application by the Department of Science and Technology for approval of that research and development in terms of subsection (9).

(b) No deduction may be allowed under this subsection in respect of expenditure incurred in respect of—

(i) immovable property, machinery, plant, implements, utensils or articles excluding any prototype or pilot plant created solely for the purpose of the process of research and development and that prototype or pilot plant is not intended to be utilised or is not utilised for production purposes after that research and development is completed;

(ii) financing, administration, compliance and similar costs.

(4) Where any amount of expenditure is incurred by a taxpayer to fund expenditure of another person carrying on research and development on behalf of that taxpayer, the taxpayer may deduct an amount contemplated in subsection (2)—

(a) if that research and development is approved by the Minister of Science and Technology in terms of subsection (9);

(b) if that expenditure is incurred in respect of research and development carried on by that taxpayer;

(c) to the extent that the other person carrying on the research and development is—

(i) (aa) an institution, board or body that is exempt from normal tax under section 10(1)(cA); or

(bb) the Council for Scientific and Industrial Research; or

(ii) a company forming part of the same group of companies, as defined in section 41, if the company that carries on the research and development does not claim a deduction under subsection (2); and

(d) if that expenditure is incurred on or after the date of receipt of the application by the Department of Science and Technology for approval of that research and development in terms of subsection (9).

(5) Where a company funds expenditure incurred by another company as contemplated in subsection (4)(c)(ii), any deduction under that subsection by the company that funds the expenditure must be limited to an amount of 150 per cent of the actual expenditure incurred directly and solely in respect of that research and development carried on by the other company that is being funded.

(6) For the purposes of subsections (2) and (4)—

(a) a person carries on research and development if that person may determine or alter the methodology of the research;

(b) notwithstanding paragraph (a), certain categories of research and development designated by the Minister by notice in the *Gazette* are deemed to constitute the carrying on of research and development.

(7) Where any amount is received by or accrues to a taxpayer from—

(a) a department of the Government of the Republic in the national, provincial or local sphere;

(b) a public entity that is listed in Schedule 2 or 3 to the Public Finance Management Act; or

(c) a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000),

to fund expenditure in respect of any research and development, an amount equal to the amount that is funded must not be taken into account for purposes of the deduction under subsection 2 or (4).

(9) The Minister of Science and Technology or a person appointed by the Minister of Science and Technology must approve any research and development being carried on or funded for the purposes of subsections (2) and (4) having regard to—

(a) whether the taxpayer has proved to the committee that the research and development in respect of which the approval is sought complies with the criteria contemplated in the definition of "research and development" in subsection (1); and;

(c) such other criteria as the Minister of Finance in consultation with the Minister of Science and Technology may prescribe by regulation.

(10) If research and development is approved under subsection (9) and—

(a) any material fact changes which would have had the effect that approval under subsection (9) would not have been granted had that fact been known to the Minister of Science and Technology at the time of granting approval;

(b) the taxpayer carrying on that research and development fails to submit a report to the committee as required by subsection (13); or

(c) the taxpayer carrying on that research and development is guilty of fraud, or misrepresentation or non-disclosure of material facts which would have had the effect that approval under subsection (9) would not have been granted,

the Minister of Science and Technology may, after taking into account the recommendations of the committee, withdraw the approval granted in respect of that research and development with effect from a date specified by that Minister.

(11) (a) A committee must be appointed for the purposes of approving research and development under subsection (9) consisting of—

(i) three persons employed by the Department of Science and Technology, appointed by the Minister of Science and Technology;

(ii) one person employed by the National Treasury, appointed by the Minister of Finance; and

(iii) three persons from the South African Revenue Service, appointed by the Minister of Finance.

(b) The Minister of Science and Technology or the Minister of Finance may appoint alternative persons to the committee if a person appointed in terms of paragraph (a) is not available to perform any function as a member of the committee.

(c) If any person is appointed as an alternative in terms of paragraph (a), that person may perform the function of any other person from the Department of Science and Technology, or the South African Revenue Service in respect of which institution that person is appointed as alternative.

(12) (a) The committee appointed in terms of subsection (11) must perform its functions impartially and without fear, favour or prejudice.

(b) The committee may—

(i) appoint its own chairperson and determine the procedures for its meetings;

(ii) evaluate any application and make recommendations to the Minister of Science and Technology for purposes of the approval of research and development in terms of subsection (9);

(iii) investigate or cause to be investigated research and development approved under subsection (9);

(iv) monitor all research and development approved under subsection (9)—

(aa) to determine whether the objectives of this section are being achieved; and

(bb) to advise the Minister of Finance and the Minister of Science and Technology on any future proposed amendment or adjustment of this section;

(v) for a specific purpose and on the conditions and for the period as it may determine, obtain the assistance of any person to advise the committee relating to any function assigned to that committee in terms of this section; and

(vi) require any taxpayer applying for approval of research and development in terms of subsection (9), to furnish any information or documents necessary for the Minister of Science and Technology and the committee to perform their functions in terms of this section.

(13) A taxpayer carrying on research and development approved under subsection (9) must report to the committee annually with respect to—

(a) the progress of that research and development; and

(b) the extent to which that research and development requires specialised skills,

within 12 months after the close of each year of assessment, starting with the year following the year in which approval is granted under subsection (9) in the form and in the manner that the Minister of Science and Technology may prescribe.

(14) Notwithstanding Chapter 6 of the Tax Administration Act, the Commissioner may disclose to the Minister of Science and Technology information in relation to research and development—

(a) as may be required by that Minister for the purposes of submitting a report to Parliament in terms of subsection (17); and

(b) if that information is material in respect of the granting of approval under subsection (9) or a withdrawal of that approval in terms of subsection (10).

(15) The members of the committee appointed in terms of subsection (11) and any person whose assistance has been obtained by that committee may not—

(a) act in any way that is inconsistent with the provisions of subsection (12)(a) or expose themselves to any situation involving the risk of a conflict between their responsibilities and private interests; or

(b) use their position or any information entrusted to them to enrich themselves or improperly benefit any other person.

(16) The Minister of Science and Technology or the person appointed by the Minister of Science and Technology contemplated in subsection (9) must—

(a) provide written reasons for any decision to grant or deny any application for approval of any research and development under subsection (9), or for any withdrawal of approval contemplated in subsection (10);

(b) inform the Commissioner of the approval of any research and development under subsection (9), setting out such particulars as are required by the Commissioner to determine the amount of the deduction in terms of subsection (2) or (4); and

(c) inform the Commissioner of any withdrawal of approval in terms of subsection (10) and of the date on which that withdrawal takes effect.

(17) The Minister of Science and Technology must annually submit a report to Parliament advising Parliament of the direct benefits of the research and development in terms of economic growth, employment and other broader government objectives and the aggregate expenditure in respect of such activities without disclosing the identity of any person.

(18) Every employee of the Department of Science and Technology, every member of the committee appointed in terms of subsection (11) and any person whose assistance has been obtained by that committee—

(a) must preserve and aid in preserving secrecy with regard to all matters that may come to their knowledge in the performance of their functions in terms of this section; and

(b) may not communicate any such matter to any person whatsoever other than to the taxpayer concerned or its legal representative, nor allow any such person to have access to any records in the possession or custody of the Department of Science and Technology or committee, except in terms of the law or an order of court.

(19) For the purposes of subsection (1), the Commissioner may, notwithstanding the provisions of sections 99 and 100 of the Tax Administration Act, raise an additional assessment for any year of assessment with respect to a deduction in respect of research and development which has been allowed, where approval has been withdrawn in terms of subsection (10).

(20) (a) A taxpayer may, notwithstanding Chapter 8 of the Tax Administration Act, apply to the Commissioner to allow all deductions provided for under this section in respect of research and development if—

(i) expenditure in respect of that research and development was incurred on or after the date of receipt of an application by the Department of Science and Technology for the approval of that research and development;

(ii) that expenditure was not allowable in respect of a year of assessment solely by reason of the absence of approval of that research and development under subsection (9); and

(iii) that research and development is approved in terms of subsection (9) after that year of assessment.

(b) The Commissioner may, notwithstanding the provisions of sections 99 and 100 of the Tax Administration Act, make a reduced assessment for a year of assessment where expenditure

incurred during that year in respect of research and development would have been allowable as a deduction in terms of this section had the approval in terms of subsection (9) been granted during that year of assessment.

11E. Deduction of certain expenditure incurred by sporting bodies

For the purpose of determining the taxable income derived by—

(a) any non-profit company as defined in the Companies Act; or

(b) an association of persons that has been incorporated, formed or established in the Republic,

from carrying on any sporting activities falling under a code of sport administered and controlled by a national federation as contemplated in section 1 of the National Sport and Recreation Act, 1998 (Act No. 110 of 1998), there shall be allowed as a deduction from the income of that company or association—

(i) expenditure, not of a capital nature, incurred by that company or association on the development and promotion, directly by that company or association; or

(ii) any payment made to any other company or association contemplated in this section for expenditure to be incurred on the development and promotion,

of sporting activities contemplated in paragraph 9 of Part I of the Ninth Schedule falling under that code of sport.

11F. Deduction in respect of contributions to retirement funds

(1) Notwithstanding section 23(g), for the purposes of determining the taxable income of a natural person in respect of any year of assessment there must be allowed as a deduction from the income of that person any amount contributed during a year of assessment to any pension fund, provident fund or retirement annuity fund in terms of the rules of that fund by a person that is a member of that fund.

(2) The total deduction allowed in terms of subsection (1) must not in a year of assessment exceed the lesser of—

(a) R350 000;

[paragraph (a) amended by section 26(1)(a) of Act 23 of 2018; effective date 1 March 2019]

(b) 27,5 per cent of the higher of the person's—

(i) remuneration (other than in respect of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) as defined in paragraph 1 of the Fourth Schedule; or

(ii) taxable income (other than in respect of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) as determined before allowing any deduction under this section and sections 6quat(1C) and 18A; or

[subparagraph (ii) substituted by section 26(1)(b) of Act 23 of 2018; effective date 1 March 2019]

(c) the taxable income (other than in respect of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) of that person before—

[words preceding subparagraph (i) substituted by section 26(1)(c) of Act 23 of 2018; effective date 1 March 2019]

(i) allowing any deduction under this section and sections 6quat(1C) and 18A; and

[subparagraph (i) substituted by section 26(1)(c) of Act 23 of 2018; effective date 1 March 2019]

(ii) the inclusion of any taxable capital gain.

(3) Any amount contributed to a pension fund, provident fund or retirement annuity fund in any previous year of assessment which has been disallowed solely by reason of the fact that the amount that was contributed exceeds the amount of the deduction allowable in respect of that year of assessment is deemed to be an amount contributed in the current year of assessment, except to the extent that the amount contributed has been—

(a) allowed as a deduction against income in any year of assessment;

(b) accounted for under paragraph 5(1)(a) or 6(1)(b)(i) of the Second Schedule; or

(c) taken into account in determining the amounts exempt under section 10C.

[paragraph (c) substituted by section 26(1)(d) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(4) Any amount paid or contributed by an employer of the person on behalf of or for the benefit of that person must be deemed—

(a) (i) to be equal to the amount of the cash equivalent of the value of the taxable benefit contemplated in paragraph 2(l) of the Seventh Schedule determined in accordance with paragraph 12D of that Schedule; or

(ii) if that amount is paid by an employer to a retirement annuity fund, to be equal to the amount of the cash equivalent of the value of the taxable benefit contemplated in paragraph 2(h) of the Seventh Schedule determined in accordance with paragraph 13 of that Schedule; and

(b) to have been contributed by that person.

[subsection (4) substituted by section 26(1)(e) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(5) For the purposes of this section—

(a) a partner in a partnership must be deemed to be an employee of the partnership; and

(b) a partnership must be deemed to be the employer of the partners in that partnership.

11sex. Deduction of compensation for railway operating losses

For the purpose of determining the taxable income derived by any taxpayer from carrying on any trade within the Republic, there shall be allowed as a deduction from the income of the taxpayer so derived the amount of any compensation due to Transnet Limited and paid by the taxpayer (whether directly or through any trade association of which the taxpayer is a member) in respect of any loss incurred by Transnet Limited in operating any railway line, if—

(a) such railway line was constructed under or in pursuance of a written agreement with Transnet Limited in terms of which Transnet Limited undertook to operate the railway line;

(b) the compensation so paid was paid in order to discharge an obligation under the said agreement to pay such compensation; and

(c) the taxpayer's liability to pay such compensation was incurred in connection with his trade.

12B. Deduction in respect of certain machinery, plant, implements, utensils and articles used in farming or production of renewable energy

(1) In respect of any—

(f) machinery, implement, utensil or article (other than livestock) which is owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated

in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act and brought into use for the first time by that taxpayer and used by him or her in the carrying on of his or her farming operations, except any motor vehicle the sole or primary function of which is the conveyance of persons or any caravan or any aircraft (other than an aircraft used solely or mainly for the purpose of crop-spraying) or any office furniture or equipment;

(g) machinery, plant, implement, utensil or article owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act and which was or is brought into use for the first time by the taxpayer for the purpose of his or her trade to be used for the production of bio-diesel or bio-ethanol;

(h) machinery, plant, implement, utensil or article owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act and which was or is brought into use for the first time by that taxpayer for the purpose of his or her trade to be used by that taxpayer in the generation of electricity from—

(i) wind power;

(ii) (aa) photovoltaic solar energy of more than 1 megawatt;

(bb) photovoltaic solar energy not exceeding 1 megawatt; or

(cc) concentrated solar energy;

(iii) hydropower to produce electricity of not more than 30 megawatts; or

[subparagraph (iii) amended by section 16 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(iv) biomass comprising organic wastes, landfill gas or plant material; or

(i) improvements (other than repairs) to—

(a) any machinery, plant, implement, utensil or article referred to in paragraph (f), (g) or (h); and

(b) any foundation or supporting structure that is, in terms of the proviso to this subsection, deemed to be part of the machinery, plant, implement, utensil or article referred to in paragraph (h),

which is during the year of assessment used as contemplated in the relevant paragraph,

a deduction calculated in terms of subsection (2) shall be allowed in respect of the year of assessment during which such machinery, plant, implement, utensil or article or any improvement thereto (hereinafter referred to as an asset) is so brought into use and each of the two succeeding years of assessment, such succeeding years of assessment hereinafter in this section referred to as the second and third years, in chronological order: Provided that where any machinery, plant, implement, utensil, article or improvement for which a deduction is allowed under paragraph (h) is mounted on or affixed to any concrete or other foundation or supporting structure and—

(a) the foundation or supporting structure is designed for such machinery, plant, implement, utensil, article or improvement and constructed in such manner that it is or should be regarded as being integrated with the machinery, plant, implement, utensil, article or improvement;

(b) the useful life of the foundation or supporting structure is or will be limited to the useful life of the machinery, plant, implement, utensil, article or improvement mounted thereon or affixed thereto; and

(c) the foundation or supporting structure was brought into use on or after 1 January 2013,

the foundation or supporting structure shall be deemed to be a part of the machinery, plant, implement, utensil, article or improvement mounted thereon or affixed thereto.

(2) The deduction contemplated in subsection (1) shall be calculated on the cost to the taxpayer of the asset and the rate of the allowance shall be—

(a) in the case of an asset other than an asset contemplated in paragraph (b)—

(i) in respect of the year of assessment during which the asset is so brought into use, 50 per cent of such cost;

(ii) in respect of the second year, 30 per cent of such cost; and

(iii) in respect of the third year, 20 per cent of such cost;

(b) in the case of an asset contemplated in subsection (1)(h)(ii)(bb), 100 per cent of such cost.

(3) For the purposes of this section the cost to a taxpayer of any asset acquired by that taxpayer shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if he or she had acquired the asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of the asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the installation or erection thereof.

(4) No deduction shall be allowed under this section in respect of—

(a) any asset which has been let by the taxpayer under a lease other than an operating lease as defined in section 23A(1), unless—

(i) the lessee under such lease derives in the carrying on of his trade amounts constituting income for the purposes of this Act; and

(ii) the period for which the asset is let under such lease is at least 5 years or such shorter period as is shown by the taxpayer to be the useful life of the asset;

(c) any asset brought into use by any company during any year of assessment if such asset was previously brought into use by any other company during such year and both such companies are managed, controlled or owned by substantially the same persons, and a deduction under this section was previously granted to such other company;

(d) any asset which has been disposed of by the taxpayer during any previous year of assessment;

(f) any asset in respect of which an allowance has been granted to the taxpayer under section 12E; or

(g) any asset the ownership of which is retained by the taxpayer as a seller in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act.

(4B) Where any asset in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such previous year or any subsequent year that such asset was used by such taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

(5) The deductions which may be allowed in terms of this section in respect of any asset shall not in the aggregate exceed the cost to the taxpayer of such asset.

(6) Where a lessor of any asset under a lease contemplated in subsection (4)(a) has within the period contemplated in subparagraph (ii) of that paragraph, reckoned from the commencement of the period for which the asset is let under that lease, disposed of the whole or a portion of that lessor's interest in the lease or of his or her right to receive rent under the lease, there must be included in that lessor's income for the year of assessment during which the disposal is made a sum equal to the aggregate of any deductions allowed to that lessor under this section, less a proportionate amount in respect of the expired portion of the lease or any portion of that interest or right which has not been disposed of by the lessor.

12C. Deduction in respect of assets used by manufacturers or hotel keepers and in respect of aircraft and ships, and in respect of assets used for storage and packing of agricultural products

[heading substituted by section 27(a) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(1) In respect of any—

(a) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (b)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act and which was or is brought into use for the first time by the taxpayer for the purposes of the taxpayer's trade (other than mining or farming) and is used by the taxpayer directly in a process of manufacture carried on by the taxpayer or any other process carried on by the taxpayer which is of a similar nature;

(b) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (a)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act and which was or is let by the taxpayer and was or is brought into use for the first time by the lessee for the purposes of the lessee's trade (other than mining or farming) and is used by the lessee directly in a process of manufacture carried on by the lessee or any other process carried on by the lessee which is of a similar nature;

(bA) machinery or plant owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act and which was or is made available for use by the taxpayer in terms of a contract to another person for no consideration and was or is brought into use for the first time by that other person for the purposes of that other person's trade (other than mining or farming) and is used by that other person solely for the benefit of that taxpayer for the purposes of the performance of that other person's obligations under that contract in a process of manufacture under the Automotive Production and Development Programme administered by the Department of Trade, Industry and Competition or Automotive Investment Scheme administered by that Department;

[paragraph (bA) substituted by section 14 of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(c) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (a)) owned by the taxpayer or acquired by the taxpayer as a purchaser in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act and which was or is brought into use for the first time by any agricultural co-operative registered or deemed to be incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981), or registered under the Co-operatives Act, 2005 (Act No. 14 of 2005) and is used by it directly for storing or packing pastoral, agricultural or other farm products of its members (including

any person who is a member of another agricultural co-operative which is itself a member of such agricultural co-operative) or for subjecting such products to a primary process as defined in section 27(9);

(d) machinery, implement, utensil or article (other than any machinery, implement, utensil or article in respect of which an allowance has been granted to the taxpayer under paragraph (e)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act and which was or is brought into use for the first time by the taxpayer for the purposes of the taxpayer's trade as hotel keeper and is used by the taxpayer in a hotel, except any vehicle or equipment for offices or managers' or servants' rooms;

[paragraph (d) substituted by section 27(b) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(e) machinery, implement, utensil or article (other than any machinery, implement, utensil or article in respect of which an allowance has been granted to the taxpayer under paragraph (d)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act and which was or is let by the taxpayer and was or is brought into use for the first time by the lessee for the purposes of the lessee's trade as hotel keeper and used by the lessee in a hotel, except any vehicle or equipment for offices or managers' or servants' rooms;

[paragraph (e) substituted by section 27(c) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(f) aircraft owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act and which was or is brought into use for the first time by the taxpayer for the purposes of his or her trade (other than an aircraft in respect of which an allowance has been granted to the taxpayer under section 12B);

(g) ship owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act and which was or is brought into use for the first time by the taxpayer for the purposes of his or her trade (other than a South African ship contemplated in section 12Q(1));

(gA) new or unused machinery or plant, which is owned by a taxpayer, or acquired by a taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act and is first brought into use by that taxpayer for purposes of research and development as defined in section 11D; or

(h) improvement (other than repairs) to any machinery, plant, implement, utensil or article referred to in paragraph (a), (b), (c), (d), (e) or (gA) which is during the year of assessment used as contemplated in that paragraph,

a deduction equal to 20 per cent of the cost to that taxpayer to acquire that machinery, plant, implement, utensil, article, ship, aircraft or improvement (hereinafter referred to as the asset) shall be allowed in the year of assessment during which the asset is so brought into use and in each of the four succeeding years of assessment: Provided that where—

(c) any new or unused machinery or plant referred to in paragraph (a) of this subsection or improvement referred to in paragraph (h) of this subsection, is or was—

(i) acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement on or after 1 March 2002; and

(ii) brought into use by the taxpayer on or after that date in a process of manufacture or process which is of a similar nature, carried on by that taxpayer in the course of its business (other than banking, financial services, insurance or rental business),

the deduction under this subsection shall be increased to 40 per cent of the cost to that taxpayer of that machinery, plant or improvement in respect of the year of assessment during which the plant, machinery or improvement was or is so brought into use for the first time and shall be 20 per cent in each of the three subsequent years of assessment:

(d) any new or unused machinery or plant referred to in paragraph (gA) of this subsection or improvement referred to in paragraph (h) of this subsection, is or was—

(i) acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement on or after 1 January 2012; and

(ii) brought into use by the taxpayer on or after that date for the purpose of research and development as defined in section 11D,

the deduction under this subsection shall be—

(aa) increased to 50 per cent of the cost to that taxpayer of that machinery, plant or improvement in respect of the year of assessment during which the plant, machinery or improvement is or was so brought into use for the first time;

(bb) 30 per cent of that cost in the year of assessment immediately succeeding the year of assessment contemplated in item (aa); and

(cc) 20 per cent of that cost in the year of assessment immediately succeeding the year of assessment contemplated in item (bb),

Provided further that where any machinery, plant, implement, utensil, article or improvement qualifying for an allowance under this section is mounted on or affixed to any concrete or other foundation or supporting structure and—

(a) the foundation or supporting structure is designed for such machinery, plant, implement, utensil, article or improvement and constructed in such manner that it is or should be regarded as being integrated with the machinery, plant, implement, utensil, article or improvement; and

(b) the useful life of the foundation or supporting structure is or will be limited to the useful life of the machinery, plant, implement, utensil, article or improvement mounted thereon or affixed thereto,

the foundation or supporting structure shall be deemed to be a part of the machinery, implement, utensil, article or improvement mounted thereon or affixed thereto.

(2) For the purposes of this section the cost to a taxpayer of any asset shall be deemed to be the lesser of the actual cost to the taxpayer to acquire that asset or the cost which a person would, if he had acquired that asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of that asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the installation or erection thereof.

(3) No deduction shall be allowed under this section in respect of—

(a) any asset which has been let by the taxpayer under a lease other than an operating lease as defined in section 23A(1), unless the lessee under such lease derives in the carrying on of his trade amounts constituting income for the purposes of this Act;

(c) any asset which has been disposed of by the taxpayer during any previous year of assessment;

(d) any asset in respect of which an allowance has been granted to the taxpayer under section 12E; or

(e) any asset the ownership of which is retained by the taxpayer as a seller in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act.

(4A) Where any asset in respect of which any deduction is claimed in terms of this section was during any previous year of assessment used by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such previous year or any subsequent year that such asset was used by such taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

(5) The deductions which may be allowed or deemed to have been allowed in terms of this section and section 11(o) in respect of any asset shall not in the aggregate exceed the cost to the taxpayer of such asset.

(6) Any expenditure (other than expenditure referred to in section 11(a)) incurred by a taxpayer during any year of assessment in moving an asset in respect of which a deduction was allowed or is allowable under this section or section 12B from one location to another shall—

(a) where the taxpayer is entitled to a deduction in respect of such asset under subsection (1) in that year and one or more succeeding years, be allowed to be deducted from his income in equal instalments in each year in which such a deduction is allowable; or

(b) in any other case, be allowed to be deducted from his income in that year.

12D. Deduction in respect of certain pipelines, transmission lines and railway lines

(1) For the purposes of this section—

"affected asset" means any—

(a) pipeline used for the transportation of natural oil;

(aA) pipeline for the transportation of water used by power stations in the process of generating electricity;

(b) line or cable used for the transmission of electricity;

(c) line or cable used for the transmission of electronic communications; and

(d) railway line used for the transportation of persons, goods or things,

and includes any earthworks or supporting structures and equipment forming part of or ancillary to such pipeline, transmission line or cable or railway line and any improvement to such pipeline, transmission line or cable or railway line;

"natural oil" means any liquid or solid hydrocarbon or combustible gas existing in a natural condition in the earth's crust and includes any refined by-products of such liquid or solid hydrocarbon or combustible gas.

(2) There shall be allowed to be deducted an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition of—

(a) (i) any new and unused affected asset; or

(ii) in the case of an asset contemplated in paragraph (c) of the definition of "affected asset" any asset,

owned by the taxpayer that is brought into use for the first time by the taxpayer; and;

(b) the asset as contemplated in paragraph (a) which is used directly by such taxpayer for purposes contemplated in the definition of "affected asset",

to the extent that such affected asset is used in the production of his income.

(2A) For the purposes of this section, if a taxpayer completes an improvement as contemplated in section 12N, the expenditure incurred by the taxpayer to complete that improvement shall be deemed to be the cost actually incurred by the taxpayer in respect of the acquisition of any new and unused affected asset contemplated in subsection (2).

(3) The allowance contemplated in subsection (2) shall not for any one year exceed—

(a) 10 per cent of the cost incurred in respect of any asset contemplated in paragraph (a) of the definition of "affected asset";

(b) 5 per cent of the cost incurred in respect of any asset contemplated in paragraph (aA), (b) or (d) of the definition of affected asset; or

(c) 10 per cent of the cost incurred in respect of any asset contemplated in paragraph (c) of the definition of "affected asset".

[paragraph (c) substituted by section 28(1) of Act 23 of 2018; effective date 1 April 2019, applicable in respect of assets acquired on or after that date]

(3A) Where any affected asset in respect of which any deduction is claimed in terms of this section was during any previous year of assessment used by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such previous year or any subsequent year in which such asset was used by such taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

(4) For the purposes of this section the cost to a taxpayer of any affected asset shall be deemed to be the lesser of—

(a) the actual cost of the asset incurred by the taxpayer; or

(b) the cost which the taxpayer would, if the taxpayer had acquired or improved the said asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition or improvement of the said asset was in fact concluded, have incurred in respect of the direct cost of acquisition or improvement of the asset (including the direct cost of the installation or erection thereof).

(5) No deduction shall be allowed under this section in respect of any affected asset which has been disposed of by the taxpayer during any previous year of assessment.

(6) The deductions which may be allowed or deemed to have been allowed in terms of this section and any other provision of this Act in respect of the cost of any affected asset shall not in the aggregate exceed the amount of such cost.

12DA. Deduction in respect of rolling stock

(1) There shall be allowed to be deducted from the income of the taxpayer an allowance, in respect of rolling stock brought into use by the taxpayer on or before 28 February 2022, in the carrying on of a trade, in respect of the cost actually incurred by the taxpayer in respect of the acquisition or improvement of any rolling stock which is owned by the taxpayer, or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act and is used directly by the taxpayer

wholly or mainly for the transportation of persons, goods or things to the extent that such rolling stock is used in the production of that taxpayer's income.

[subsection (1) substituted by section 15 of Act 23 of 2020; effective date 20 January 2021, and by section 12 of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(2) The allowance contemplated in subsection (1) shall, in respect of any one year of assessment, be 20 per cent of the cost incurred in respect of any rolling stock.

(3) For the purposes of this section the cost to a taxpayer of any rolling stock shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if that person had acquired or improved the rolling stock under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition or improvement of the rolling stock was in fact concluded, have incurred in respect of the direct cost of the acquisition or improvement of the rolling stock.

(4) Where any rolling stock in respect of which any deduction is claimed in terms of this section was during any previous year of assessment used by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such year or any subsequent year in which such asset was used by the taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

(5) No deduction shall be allowed under this section in respect of any rolling stock that has been disposed of by the taxpayer during any previous year of assessment.

(6) The deductions which may be allowed or deemed to have been allowed in terms of this section and any other provision of this Act in respect of the cost of any rolling stock shall not in the aggregate exceed the amount of such cost.

12E. Deductions in respect of small business corporations

(1) Where any plant or machinery (hereinafter referred to as an asset) owned by a taxpayer which qualifies as a small business corporation or acquired by such a taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act—

(a) is brought into use for the first time by that taxpayer on or after 1 April 2001 for the purpose of that taxpayer's trade (other than mining or farming); and

(b) is used by that taxpayer directly in a process of manufacture (or any other process which is of a similar nature) carried on by that taxpayer,

a deduction equal to the cost of such asset shall be allowed in the year that such asset is so brought into use.

(1A) Subject to subsection (1), where any machinery, plant, implement, utensil, article, aircraft or ship in respect of which a deduction is allowable under section 11(e) ("the asset") is acquired by a small business corporation under an agreement formally and finally signed by every party to the agreement on or after 1 April 2005, the amount allowed to be deducted in respect of the asset must, at the election of the small business corporation and subject to the provisions of that section, be either—

(a) the amount allowable in terms of and subject to that section; or

(b) an amount equal to 50 per cent of the cost of the asset in the year of assessment during which it was first brought into use, 30 per cent in the first succeeding year and 20 per cent in the second succeeding year.

(2) For the purposes of this section the cost to a taxpayer of any asset shall be deemed to be the lesser of the actual cost to the taxpayer to acquire that asset or the cost which a person would, if he had

acquired the said asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of the said asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the installation or erection thereof.

(3) Any expenditure (other than expenditure referred to in section 11(a)) incurred by a taxpayer during any year of assessment in moving an asset in respect of which a deduction was allowed or is allowable under this section from one location to another must—

(a) where the taxpayer is or was entitled to a deduction in respect of that asset under subsection (1A) in that year and one or more succeeding years, be allowed to be deducted from his or her income in equal instalments in that year and each succeeding year in which that deduction is allowable; or

(b) in any other case, be allowed to be deducted from that taxpayer's income in that year.

(4) For the purposes of this section—

(a) "small business corporation" means any close corporation or co-operative or any private company as defined in section 1 of the Companies Act or a personal liability company as contemplated in section 8(2)(c) of the Companies Act if at all times during the year of assessment all the holders of shares in that company, co-operative, close corporation or personal liability company are natural persons, where—

(i) the gross income for the year of assessment does not exceed an amount equal to R20 million: Provided that where the close corporation, co-operative or company during the relevant year of assessment carries on any trade, for a period which is less than 12 months, that amount shall be reduced to an amount which bears to that amount, the same ratio as the number of months (in the determination of which a part of a month shall be reckoned as a full month), during which that company, co-operative or close corporation carried on that trade bears to 12 months;

(ii) at any time during the year of assessment, no holder of shares in the company or member of the close corporation or co-operative holds any shares or has any interest in the equity of any other company as defined in section 1, other than—

(aa) a company contemplated in paragraph (a) of the definition of "listed company";

(bb) any portfolio in a collective investment scheme contemplated in paragraph (e) of the definition of "company";

(cc) a company contemplated in section 10(1)(e)(i)(aa), (bb) or (cc);

(dd) less than 5 per cent of the interest in a social or consumer co-operative or a co-operative burial society as defined in section 1 of the Co-operatives Act, 2005 (Act No. 14 of 2005), or any other similar co-operative if all of the income derived from the trade of that co-operative during any year of assessment is solely derived from its members;

(ee) any friendly society as defined in section 1 of the Friendly Societies Act, 1956 (Act No. 25 of 1956);

(ff) less than 5 per cent of the interest in a primary savings co-operative bank or a primary savings and loans co-operative bank as defined in the Co-operative Banks Act, 2007, that may provide, participate in or undertake only the following—

(a) in the case of a primary savings co-operative bank, banking services contemplated in section 14(1)(a) to (d) of that Act; and

(b) in the case of a primary savings and loans co-operative bank, banking services contemplated in section 14(2)(a) or (b) of that Act;

(gg) a venture capital company as defined in section 12J;

(hh) any company, close corporation or co-operative if the company, close corporation or co-operative—

(A) has not during any year of assessment carried on any trade; and

(B) has not during any year of assessment owned assets, the total market value of which exceeds R5 000; or

(ii) any company, co-operative or close corporation if the company, co-operative or close corporation has taken the steps contemplated in section 41(4) to liquidate, wind up or deregister: Provided that this item ceases to apply if the company, co-operative or close corporation has at any stage withdrawn any step so taken or does anything to invalidate any step so taken, with the result that the company, co-operative or close corporation will not be liquidated, wound up or deregistered;

(iii) not more than 20 per cent of the total of all receipts and accruals (other than those of a capital nature) and all the capital gains of the company, close corporation or co-operative consists collectively of investment income and income from the rendering of a personal service; and

(iv) such company is not a personal service provider as defined in the Fourth Schedule;

(c) "investment income" means—

(i) any income in the form of dividends, foreign dividends, royalties, rental derived in respect of immovable property, annuities or income of a similar nature;

(ii) any interest as contemplated in section 24J (other than any interest received by or accrued to any co-operative bank as contemplated in paragraph (a)(ii)(gg)), any amount contemplated in section 24K and any other income which, by the laws of the Republic administered by the Commissioner, is subject to the same treatment as income from money lent; and

(iii) any proceeds derived from investment or trading in financial instruments (including futures, options and other derivatives), marketable securities or immovable property;

(d) "personal service", in relation to a company, co-operative or close corporation, means any service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, consulting, draftsmanship, education, engineering, financial service broking, health, information technology, journalism, law, management, real estate broking, research, sport, surveying, translation, valuation or veterinary science, if—

(i) that service is performed personally by any person who holds an interest in that company, co-operative or close corporation or by any person that is a connected person in relation to any person holding such an interest; and

(ii) that company, co-operative or close corporation does not throughout the year of assessment employ three or more full-time employees (other than any employee who is a holder of a share in the company or a member of the co-operative or close corporation, as the case may be, or who is a connected person in relation to a holder of a share in the company or a member), who are on a full-time basis engaged in the business of that company, co-operative or close corporation of rendering that service.

12F. Deduction in respect of airport and port assets

(1) For the purposes of this section—

"airport asset" means any aircraft hangar, apron, runway or taxiway on any designated airport, and includes any earthworks or supporting structures forming part of such aircraft hangar, apron, runway or taxiway and any improvements to such aircraft hangar, apron, runway or taxiway; and

"designated airport" means an airport approved by the Minister, in consultation with the Minister of Transport, as a designated airport by notice in the *Gazette* for purposes of this section; and

"port asset" means any port terminal, breakwater, sand trap, berth, quay wall, bollard, graving dock, slipway, single point mooring, dolos, fairway, surfacing, wharf, seawall, channel, basin, sand bypass, road, bridge, jetty or off-dock container depot, and includes any earthworks or supporting structures forming part of such terminal, breakwater, sand trap, berth, quay wall, bollard, graving dock, slipway, single point mooring, dolos, fairway, surfacing, wharf, seawall, channel, basin, sand bypass, road, bridge, jetty or depot and any improvements thereto.

(2) In respect of any new and unused airport asset or port asset which—

(a) is brought into use for the first time by such taxpayer; and

(b) is used directly by such taxpayer solely for the purposes of carrying on the taxpayer's business as airport, terminal or transport operator or port authority,

there shall be allowed to be deducted an allowance, in respect of an asset brought into use by the taxpayer on or before 28 February 2022, in the carrying on of a trade, in respect of the cost actually incurred by the taxpayer in respect of the acquisition (including the construction, erection or installation) of such asset to the extent that such asset is used in the production of the taxpayer's income.

[words following paragraph (b) substituted by section 16 of Act 23 of 2020; effective date 20 January 2021, and by section 13 of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(2A) For the purposes of this section where a taxpayer completes improvements as contemplated in section 12N, the expenditure incurred by the taxpayer to complete that improvement shall be deemed to be the cost actually incurred by that taxpayer in respect of the acquisition of a new and unused airport asset or port asset contemplated in subsection (2).

(3) The allowance contemplated in subsection (2) in respect of an asset shall, in respect of any one year of assessment, be five per cent of the cost incurred in respect of that asset.

(3A) Where any asset in respect of which any deduction is claimed in terms of this section was during any previous year of assessment used by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such year or any subsequent year in which such asset was used by the taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

(4) For the purposes of this section the cost to a taxpayer of any asset shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if he had acquired the said asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of the said asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the installation or erection thereof or, where the asset has been acquired to replace an asset which has been damaged or destroyed, such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed asset and has been excluded from the taxpayer's income in terms of section 8(4)(e), whether in the current or any previous year of assessment.

(5) No deduction shall be allowed under this section in respect of any asset which has been disposed of by the taxpayer during any previous year of assessment.

(6) The deductions which may be allowed or deemed to have been allowed in terms of this section and any other provision of this Act in respect of the cost of any asset shall not in the aggregate exceed the amount of such cost.

12H. Additional deduction in respect of learnership agreements

(1) For the purposes of this section—

"**associated institution**", in relation to any single employer, means—

(a) where the employer is a company, any other company which is associated with the employer company by reason of the fact that both companies are managed or controlled directly or indirectly by substantially the same persons;

(b) where the employer is not a company, any company which is managed or controlled directly or indirectly by the employer or by any partnership of which the employer is a member; or

(c) any fund established solely or mainly for providing benefits for employees or former employees of the employer or for employees or former employees of the employer and any company which is in terms of paragraph (a) or (b) an associated institution in relation to the employer, but excluding any fund established by a trade union or industrial council and any fund established for postgraduate research otherwise than out of moneys provided by the employer or by any associated institution in relation to the employer;

"**employer**" means—

(a) where only one employer is party to a registered learnership agreement, that employer; or

(b) in the case where more than one employer is a party to a registered learnership agreement, the employer which is identified in that agreement as the lead employer;

"**learner**" means a learner as defined in section 1 of the Skills Development Act, 1998;

"**registered learnership agreement**" means a learnership agreement that is—

(a) registered in accordance with the Skills Development Act, 1998; and

(b) entered into between a learner and an employer before 1 April 2027;

[paragraph (b) substituted by section 14(1) of Act 20 of 2021, as retroactively substituted by section 65(1) of Act 42 of 2024; effective date 1 April 2022, applies in respect of learnership agreements entered into on or after that date]

"**SETA**" means a sector education and training authority established in terms of section 9(1) of the Skills Development Act, 1998, and defined as such in section 1 of that Act;

"**Skills Development Act, 1998**" means the Skills Development Act, 1998 (Act No. 97 of 1998).

(2) (a) In addition to any deductions allowable in terms of this Act and subject to paragraph (b), where—

(i) during any year of assessment a learner who holds a qualification to which an NQF level from 1 up to and including 6 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), is a party to a registered learnership agreement with an employer; and

(ii) that agreement was entered into pursuant to a trade carried on by that employer,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R40 000.

(b) Where a learner is a party to a registered learnership agreement as contemplated in paragraph (a) for a period of less than 12 full months during the year of assessment contemplated in paragraph (a), the amount that is allowed to be deducted in terms of that

paragraph must be limited to an amount which bears to an amount of R40 000 the same ratio as the number of full months that the learner is a party to that agreement bears to 12.

(c) If a registered learnership agreement is registered as contemplated in paragraph (a) of the definition of "registered learnership agreement" within a period of 12 months after the last day of the year of assessment contemplated in paragraph (a), the registered learnership agreement must be deemed to have been so registered on the date on which the registered learnership agreement was entered into as contemplated in paragraph (b) of that definition.

(2A) (a) In addition to any deductions allowable in terms of this Act and subject to paragraph (b), where—

(i) during any year of assessment a learner who holds a qualification to which an NQF level from 7 up to and including 10 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), is a party to a registered learnership agreement with an employer; and

(ii) that agreement was entered into pursuant to a trade carried on by that employer,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R20 000.

(b) Where a learner is a party to a registered learnership agreement as contemplated in paragraph (a) for a period of less than 12 full months during the year of assessment contemplated in paragraph (a), the amount that is allowed to be deducted in terms of that paragraph must be limited to an amount which bears to an amount of R20 000 the same ratio as the number of full months that the learner is a party to that agreement bears to 12.

(c) If a registered learnership agreement is registered as contemplated in paragraph (a) of the definition of "registered learnership agreement" within a period of 12 months after the last day of the year of assessment contemplated in paragraph (a), the registered learnership agreement must be deemed to have been so registered on the date on which the registered learnership agreement was entered into as contemplated in paragraph (b) of that definition.

(3) In addition to any deductions allowable in terms of this Act, where—

(a) during any year of assessment a learner who holds a qualification to which an NQF level from 1 up to and including 6 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), is a party to a registered learnership agreement with an employer for a period of less than 24 full months;

(b) that agreement was entered into pursuant to a trade carried on by that employer; and

(c) that learner successfully completes that learnership during that year of assessment,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R40 000.

(3A) In addition to any deductions allowable in terms of this Act, where—

(a) during any year of assessment a learner who holds a qualification to which an NQF level from 7 up to and including 10 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), is a party to a registered learnership agreement with an employer for a period of less than 24 full months;

(b) that agreement was entered into pursuant to a trade carried on by that employer; and

(c) that learner successfully completes that learnership during that year of assessment,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R20 000.

(4) In addition to any deductions allowable in terms of this Act, where—

(a) during any year of assessment a learner who holds a qualification to which an NQF level from 1 up to and including 6 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), to a registered learnership agreement with an employer for a period that equals or exceeds 24 full months;

(b) that agreement was entered into pursuant to a trade carried on by that employer; and

(c) that learner successfully completes that learnership during that year of assessment,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R40 000 multiplied by the number of consecutive 12 month periods within the duration of that agreement.

(4A) In addition to any deductions allowable in terms of this Act, where—

(a) during any year of assessment a learner is a party who holds a qualification to which an NQF level from 7 up to and including 10 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), to a registered learnership agreement with an employer for a period that equals or exceeds 24 full months;

(b) that agreement was entered into pursuant to a trade carried on by that employer; and

(c) that learner successfully completes that learnership during that year of assessment,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R20 000 multiplied by the number of consecutive 12 month periods within the duration of that agreement.

(5) Where a learner contemplated in subsection (2), (3) or (4) is a person with a disability (as defined in section 6B (1)) at the time of entering into the learnership agreement, the amounts contemplated in subsection (2), (3) or (4) must be increased by an amount of R20 000.

(5A) Where a learner contemplated in subsection (2A), (3A) or (4A) is a person with a disability (as defined in section 6B (1)) at the time of entering into the learnership agreement, the amounts contemplated in subsection (2A), (3A) or (4A) must be increased by an amount of R30 000.

(6) This section does not apply in respect of any registered learnership agreement where—

(a) the learner that is the party to that agreement previously failed to complete any other registered learnership agreement to which the employer or an associated institution in relation to that employer was a party; and

(b) the registered learnership agreement contains the same education and training component as that other registered learnership agreement.

(7) Any SETA with which a learnership agreement has been registered as contemplated in the Skills Development Act, 1998, must submit to the Minister any information relating to that learnership agreement required by the Minister in the form and manner and at the place and time that the Minister prescribes.

(8) In respect of each year of assessment during which an employer is eligible for any deduction contemplated in this section, the employer must submit to the SETA with which the learnership agreement is registered any information relating to that learnership agreement required by the SETA in the form and manner and at the place and time indicated by the SETA.

12I. Additional investment and training allowances in respect of industrial policy projects

(1) For the purposes of this section—

"**adjudication committee**" means the committee contemplated in subsection (16);

"**brownfield project**" means a project that represents an expansion or upgrade of an existing industrial project;

"**compliance period**" means the period—

(a) commencing at the beginning of the year of assessment following the year of assessment in which assets are first brought into use; and

(b) ending at the end of the year of assessment three years after the year of assessment in which assets are first brought into use;

"**cost of training**" means—

(a) in the case of training provided by the taxpayer, the cost of remuneration of employees of the taxpayer who are employed exclusively to provide training to the taxpayer's employees and the cost of training materials;

(b) in the case of training provided by a person that is a connected person in relation to the taxpayer, so much of the cost charged by the connected person as is incurred in respect of the remuneration of employees who are employed to provide training to the taxpayer's employees and the cost of materials used by the connected person to provide the training; and

(c) in any other case, the cost to the taxpayer of the training charged by the person providing the training;

"**date of approval**" means the date of the approval contemplated in subsection (8);

"**greenfield project**" means a project that represents a wholly new industrial project which does not utilise any manufacturing assets other than wholly new and unused manufacturing assets;

"**industrial project**" means a trade solely or mainly for the manufacture of products, goods, articles, or other things within the Republic that—

(a) is classified under "Section C: Manufacturing" inversion 7 of the Standard Industrial Classification Code (referred to as the "SIC Code") issued by Statistics South Africa; or

(b) in the case of products, goods, articles or things which are not yet classified, the adjudication committee is of the view will be classified as contemplated in paragraph (a),

but does not include—

(i) distilling, rectifying and blending of spirits (SIC Code 1101);

(ii) manufacture of wines (SIC Code 1102);

(iii) manufacture of malt liquors and malt (SIC Code 103);

(iv) manufacture of tobacco products (SIC Code 12);

(v) manufacture of weapons and ammunition (SIC Code 252);

(vi) manufacture of bio-fuels if that manufacture negatively impacts on food security in the Republic;

"**manufacturing asset**" means any building, plant or machinery acquired, contracted for or brought into use by a company, which—

(a) will mainly be used by that company in the Republic for the purposes of carrying on an industrial project of that company within the Republic; and

(b) will qualify for a deduction in terms of section 12C(1)(a), 13 or 13quat,

and includes any improvement to such building, plant or machinery.

(1A) For the purposes of this section, if a taxpayer completes an improvement as contemplated in section 12N, the improvement shall be deemed to be a new and unused manufacturing asset and the expenditure incurred by the taxpayer to complete the improvement shall be deemed to be the cost of that new and unused manufacturing asset contemplated in subsection (2).

(1B) For the purposes of this section, if a taxpayer completes an improvement on any land not owned by that taxpayer and that improvement consists of machinery or plant as contemplated in section 12C(1)(a), that taxpayer shall be deemed to be the owner of that improvement.

(2) In addition to any other deductions allowable in terms of this Act, a company may, subject to subsection (3), deduct an amount (hereinafter referred to as an additional investment allowance) equal to—

(a) (i) 55 per cent of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status; or

(ii) 100 per cent of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status that is located within a special economic zone; or

(b) (i) 35 per cent of the cost of any new and unused manufacturing asset used in any industrial policy project other than an industrial policy project with preferred status; or

(ii) 75 per cent of the cost of any new and unused manufacturing asset used in any industrial policy project other than an industrial policy project with preferred status that is located within a special economic zone,

in the year of assessment during which that asset is first brought into use by the company as owner thereof for the furtherance of the industrial policy project carried on by that company, if that asset was acquired and contracted for on or after the date of approval and was brought into use within four years from the date of approval.

(3) The additional investment allowance contemplated in subsection (2) may not exceed—

(a) R900 million in the case of any greenfield project with preferred status, or R550 million in the case of any other greenfield project from the date of approval;

(b) R550 million in the case of any brownfield project with preferred status, or R350 million in the case of any other brownfield project from the date of approval.

(4) In addition to any other deductions allowable in terms of this Act, a company may, subject to subsection (5), deduct an amount (hereinafter referred to as an additional training allowance) equal to the cost of training provided to employees in the year of assessment during which the cost of training is incurred for the furtherance of the industrial policy project carried on by that company.

(5) (a) The cost of training contemplated in subsection (4) must be incurred by the end of the compliance period.

(b) Notwithstanding subsection (2), there must be allowed to be deducted, not earlier than the year of assessment preceding the year in which the asset is brought into use, any amount in respect of the additional training allowance.

(c) The additional training allowance contemplated in subsection (4) allowed to a company may not exceed R36 000 per employee.

(d) The additional training allowance contemplated in subsection (4) allowed to a company at the end of the compliance period from the date of approval may not exceed—

(i) R30 million in the case of an industrial policy project with preferred status; and

(ii) R20 million in the case of any other industrial policy project.

(6) (a) Where a taxpayer is allowed a deduction in terms of subsection (2) in the current or any previous year of assessment, any balance of assessed loss carried forward by the taxpayer during a year of assessment must be increased by the amount by which that balance of assessed loss exceeds an amount equal to any balance of assessed loss that would have been carried forward during that year had that deduction not been allowed, multiplied by the rate contemplated in paragraph (a) of the definition of "prescribed rate" as at the end of the year of assessment.

(b) Paragraph (a) does not apply in respect of any balance of assessed loss incurred by a taxpayer during any year of assessment more than four years after the year during which the approval contemplated in subsection (8) is granted.

(7) An industrial project of a company constitutes an industrial policy project if—

(a) the Minister of Trade and Industry, after taking into account the recommendations of the adjudication committee, is satisfied that—

(i) the cost of all manufacturing assets to be acquired by the company for the purposes of the project will exceed—

(aa) in the case of greenfield projects, R200 million; and

(bb) in the case of brownfield projects, the higher of—

(A) R30 million; or

(B) the lesser of R50 million or 25 per cent of the expenditure incurred to acquire assets previously used in the project;

(ii) the project does not constitute an industrial participation project and does not receive any concurrent industrial incentive provided by any national sphere of government; and

(iii) the project is not integrally related to any other project of the company (or any other company that forms part of the same group of companies as that company) that has been approved as contemplated in subsection (8);

(c) more than 50 per cent of the manufacturing assets to be acquired by the company for the purposes of the project will be brought into use by that company within four years from the date of approval; and

(d) the application for approval of the project by the company is received by the Minister of Trade and Industry not later than 31 March 2020, in such form and containing such information as the Minister of Trade and Industry may prescribe.

(8) The Minister of Trade and Industry must, after taking into account the recommendations of the adjudication committee, approve an industrial project as an industrial policy project, either with or without preferred status, where that Minister is satisfied that the industrial policy project will significantly contribute to the Industrial Policy Programme within the Republic having regard to—

(a) the extent to which the project will upgrade an industry within the Republic by—

(i) utilising innovative processes;

(ii) utilising new technology that results in—

(aa) improved energy efficiency; and

(bb) cleaner production technology; and

(iii) providing skills development;

(b) the extent to which the project will provide general business linkages within the Republic;

(c) the extent to which the project will acquire goods or services from small, medium and micro enterprises;

(e) the extent to which the project will provide skills development in the Republic; and

(f) in the case of a greenfield project, the location of the project within a special economic zone.

(9) Notwithstanding subsection (8), the Minister of Trade and Industry may not approve any industrial project where the potential additional investment and training allowances in respect of that project and all other approved industrial projects (other than those projects where the approval thereof has been withdrawn under subsection (12)), will in the aggregate exceed R20 billion.

(10) The Minister of Finance, in consultation with the Minister of Trade and Industry, must make regulations prescribing—

(a) the factors to be taken into account in determining whether the industrial project will significantly contribute to the Industrial Policy Programme within the Republic;

(b) the factors to be taken into account in determining whether the project will provide general business linkages within the Republic;

(c) the factors to be taken into account in determining whether goods or services will be acquired from small, medium and micro enterprises;

(d) the factors to be taken into account in determining the extent to which the project creates direct employment within the Republic;

(e) the extent to which the project must provide skills development in the Republic and the factors to be taken into account in determining whether the project provides skills development in the Republic;

(f) the factors to be taken into account in determining the location of the project within an Industrial Development Zone;

(g) the extent to which the project must improve energy efficiency and the factors to be taken into account in determining the extent to which the project must utilise new technology that results in improved energy efficiency and cleaner production technology; and

(h) what constitutes an industrial participation project and a concurrent industrial incentive.

(11) Within 12 months after the close of each year of assessment, starting with the year in which approval is granted in terms of subsection (8), a company carrying on an industrial policy project must report until the end of the compliance period to the adjudication committee with respect to the progress of the industrial policy project in terms of the requirements of subsections (7) and (8) within such time, in such form and in such manner as the Minister of Finance may prescribe.

(12) Where in respect of any company carrying on an industrial policy project—

(a) (i) during any year of assessment—

(aa) any material fact changes; or

(bb) the company fails to comply with any requirement contemplated in subsection (7), which would have had the effect that approval in terms of subsection (8) would not have been granted had such change in fact or such failure been known to the Minister of Trade and Industry at the time of granting approval; or

(ii) the company fails to comply with any requirement contemplated in subsection (8) at the end of the compliance period;

(b) the company fails to submit a report to the adjudication committee as required in terms of subsection (11); or

(c) the approval granted in terms of subsection (8) was based on fraudulent information or misrepresentation or non-disclosure of material facts,

the Minister of Trade and Industry may, after taking into account the recommendations of the adjudication committee, withdraw the approval granted in respect of that industrial policy project with effect from a date specified by that Minister, and must inform the Commissioner of that withdrawal and of that date.

(12A) Where in respect of any company carrying on an industrial policy project the Minister of Trade and Industry approved that project as an industrial policy project with preferred status in terms of subsection (8) in accordance with Regulation 4 of the Regulations (GNR.639 of 23 July 2010: (*Government Gazette* No. 33385) as amended) and that project did not comply with the criteria of a project with preferred status at the end of the compliance period, the Minister of Trade and Industry may, after taking into account the recommendations of the adjudication committee, withdraw the approval granted in respect of that industrial policy project as an industrial policy project with preferred status and substitute that approval with an approval of the industrial policy project as a project with qualifying status with effect from a date specified by that Minister, and must inform the Commissioner of that withdrawal, substitution and of that date.

(13) The Commissioner may, notwithstanding the provisions of Chapter 6 of the Tax Administration Act —

(a) notify the Minister of Trade and Industry whenever the Commissioner discovers information that may cause a withdrawal of approval in terms of subsection (12);

(b) disallow all deductions otherwise provided for under this section starting with the date of approval if the company is guilty of fraud or misrepresentation or non-disclosure of material facts with regard to any tax, duty or levy administered by the Commissioner and must notify the Minister of Trade and Industry accordingly; and

(c) inform the Minister of Trade and Industry where any company has requested the Commissioner to issue a certificate contemplated in subsection (7)(b)(ii) and that certificate was denied;

(d) where the approval granted in respect of that industrial policy project as an industrial policy project with preferred status was withdrawn and substituted as an industrial policy project with qualifying status as contemplated in subsection (12A), make an appropriate adjustment to the taxable income of that company during the year of assessment in which that approval is substituted in relation to all deductions of the company as at the end of that year of assessment, having regard to all amounts which would have been deemed to have been incurred by that company had the provisions of this paragraph not been applicable during all years of assessment before that year of assessment and all amounts which have been deducted from the income of that company during those years of assessment.

(14) The Commissioner may, notwithstanding the provisions of sections 99 and 100 of the Tax Administration Act, raise an additional assessment for any year of assessment where—

(a) an additional investment allowance which has been allowed in any previous year must be disallowed in terms of subsection (12) or (13); or

(b) an adjustment must be made as contemplated in subsection (13)(d).

(16) There shall for the purposes of this section be an adjudication committee which must consist of at least—

(a) three persons employed by the Department of Trade and Industry, appointed by the Minister of Trade and Industry; and

(b) three persons employed by the National Treasury or the South African Revenue Service, appointed by the Minister of Finance:

Provided that the Minister of Trade and Industry or the Minister of Finance, as the case may be, may appoint alternative persons so employed if any person appointed in terms of paragraph (a) or (b) is not available to perform any function as a member of the committee.

(17) The adjudication committee is an independent committee which performs its functions impartially and without fear, favour or prejudice and for the purpose of this section, the adjudication committee may—

(a) evaluate any application and make recommendations to the Minister of Trade and Industry for purposes of the approval of any industrial project in terms of subsection (8);

(b) investigate or cause to be investigated any industrial policy project for the purposes of this section;

(c) monitor all industrial policy projects—

(i) to determine whether the objectives of this section are being achieved; and

(ii) to advise the Minister of Finance and the Minister of Trade and Industry on any future proposed amendment or adjustment thereof;

(d) require any company applying for approval of any industrial project as an industrial policy project in terms of this section to furnish such information or documents as are necessary for the committee and Minister of Trade and Industry to perform their functions in terms of this section;

(e) for a specific purpose and on such conditions and for such period as it may determine obtain the assistance of any person to advise the adjudication committee relating to any function assigned to the committee in terms of this section; and

(f) appoint its own chairperson and determine the procedures for its meetings provided that all procedures must be properly recorded and minuted.

(18) The members of the adjudication committee and any person whose assistance has been obtained by that committee may not—

(a) act in any way that is inconsistent with the provisions of subsection (17) or expose themselves to any situation involving the risk of a conflict between their responsibilities and private interests; or

(b) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

(19) The Minister of Trade and Industry—

(a) may, after taking into account the recommendations of the adjudication committee, extend the periods contemplated in subsections (2), (6)(b) and (7)(c) by a period not exceeding one year;

(aA) may, if application is made to the adjudication committee, after taking into account the recommendations of the adjudication committee in respect of that application, extend the periods contemplated in—

(i) paragraph (b) of the definition of “compliance period” in subsection (1); and

(ii) subsections (2), (6)(b) and (7)(c),

by a period not exceeding two years, in addition to the extension of periods contemplated in paragraph (a), if it is shown that the fundamental reason for non-compliance was the COVID-19 pandemic or any circumstances arising therefrom;

[paragraph (aA) inserted by section 15(1) of Act 20 of 2021; effective date 1 January 2020]

(b) must provide written reasons for any decision to grant or deny any application for approval of an industrial project as an industrial policy project in terms of subsection (8), or for any withdrawal of approval as contemplated in subsection (12);

(c) must inform the Commissioner of the approval of any industrial project as an industrial policy project in terms of subsection (8), setting out such particulars as are required by the Commissioner to determine the amount of the additional investment allowance allowable in terms of this section;

(d) must publish the particulars of any application received from a company for approval of an industrial project as an industrial policy project in the *Gazette* not later than 30 days after providing to that company the written reasons for any decision as contemplated in paragraph (b);

(e) must submit an annual report to Parliament, and must provide a copy of that report to the Auditor-General, setting out the following information in respect of each company that received approval in terms of subsection (8):

(i) The name of each company;

(ii) the description of each industrial policy project;

(iii) the potential national revenue forgone by virtue of the deductions allowable in respect of that industrial policy project in terms of this section;

(iv) the annual progress relating to the direct benefits of the industrial policy project in terms of economic growth or employment, setting out the details of the factors contemplated in subsections (7) and (8) on the basis of which approval of the industrial project as an industrial policy project was granted;

(v) any decision to withdraw the approval of an industrial policy project in terms of subsection (12); and

(vi) any decision not to withdraw the approval of an industrial policy project, despite any material change in facts.

(21) Notwithstanding the provisions of Chapter 6 of the Tax Administration Act, the Commissioner must disclose to the Minister of Trade and Industry and the adjudication committee, including any person whose assistance has been obtained by that committee, such information relating to the affairs of any company carrying on an industrial policy project as is necessary to enable the Minister of Trade and Industry and the adjudication committee to perform their functions in terms of this section.

(22) Every employee of the Department of Trade and Industry and every member of the adjudication committee, including any person whose assistance has been obtained by that committee, must preserve and aid in preserving secrecy with regard to all matters that may come to their knowledge in the performance of their functions in terms of this section, and may not communicate any such matter to any person whatsoever other than to the company concerned or its legal representative, nor allow any such person to have access to any records in the possession or custody of that Department or committee, except in terms of the law or an order of court.

(23) Any person who contravenes the provisions of subsections (18) and (22), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(24) For the purposes of this section the cost to a taxpayer of any manufacturing asset is deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if the person had acquired that manufacturing asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition was in fact concluded, have incurred in respect of the direct cost of the acquisition of the manufacturing asset.

12J. Deductions in respect of expenditure incurred in exchange for issue of venture capital company shares

(1) For the purposes of this section—

"impermissible trade" means—

(a) any trade carried on in respect of immovable property, other than a trade carried on as an hotel keeper;

(b) any trade carried on by a bank as defined in the Banks Act, a long-term insurer as defined in the Long-term Insurance Act, a short term insurer as defined in the Short-term Insurance Act and any trade carried on in respect of money-lending or hire-purchase financing;

(c) any trade carried on in respect of financial or advisory services, including trade in respect of legal services, tax advisory services, stock broking services, management consulting services, auditing or accounting services;

(d) any trade carried on in respect of gambling;

(e) any trade carried on in respect of liquor, tobacco, arms or ammunition; or

(g) any trade carried on mainly outside the Republic;

"junior mining company" means any company that is solely carrying on a trade of mining exploration or production which is either an unlisted company as defined in section 41 or listed on the alternative exchange division of the JSE Limited;

"qualifying company" means any company if—

(a) that company is a resident;

(b) the company is not a controlled group company in relation to a group of companies of which a venture capital company to which that company has issued any share forms part from the date of issue of any such share and at any time during any year of assessment after that date;

[paragraph (b) substituted by section 29(1)(a) of Act 23 of 2018; effective date 1 January 2019, and by section 17(1)(a) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(c) the tax affairs of the company are in order and the company has complied with all the relevant provisions of the laws administered by the Commissioner;

(d) the company is an unlisted company as defined in section 41 or a junior mining company;

(e) the company is not carrying on any impermissable trade;

(f) during any year of assessment of that company that ends after the expiry of a period of 36 months commencing on the first date on which that company issued any share to a venture capital company—

(i) the sum of the investment income, as defined in section 12E(4)(c), derived by that company does not exceed an amount equal to 20 per cent of the gross income of that company for that year; and

(ii) not more than 50 per cent of the aggregate amount received by or that accrued to that company from the carrying on of any trade was derived, directly or indirectly, from a person—

(aa) who holds a share in that venture capital company; or

(bb) who is a connected person in relation to a person referred to in item (aa);

[paragraph (f) substituted by section 29(1)(b) of Act 23 of 2018; effective date 24 October 2018]

(g) no person who holds a share in a venture capital company to which that company has issued any share holds, directly or indirectly and whether alone or together with any connected person in relation to that person, more than 50 per cent of the participation rights, as defined in section 9D(1), or of the voting rights in that company; and

[paragraph (g) added by section 29(1)(c) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of participation rights acquired on or after that date]

(h) that company does not carry on any trade in relation to a venture, business or undertaking or part thereof that was acquired by that company, directly or indirectly, from a person—

(i) who holds a share in a venture capital company to which that company has issued any share; or

(ii) who is a connected person in relation to a person referred to in subparagraph (i);

[paragraph (h) added by section 29(1)(d) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of any trade carried on which commenced on or after that date]

"qualifying share" means an equity share held by a venture capital company which is issued to that company by a qualifying company, and does not include any share which—

(b) would have constituted a hybrid equity instrument, as defined in section 8E(1), but for the three-year period requirement contemplated in paragraph (b)(i) of the definition of "hybrid equity instrument" in that section; or

[paragraph (b) substituted by section 29(1)(e) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]

(c) constitutes a third-party backed share as defined in section 8EA(1);

"venture capital company" means a company that has been approved by the Commissioner in terms of subsection (5) and in respect of which such approval has not been withdrawn in terms of subsection (3A), (3B), (6) or (6A);

[definition of "venture capital company" substituted by section 29(1)(f) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]

"venture capital share" means an equity share held by a taxpayer in a venture capital company which was issued to that taxpayer by that venture capital company, and does not include any share which—

[words preceding paragraph (b) substituted by section 29(1)(g) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]

(b) would have constituted a hybrid equity instrument, as defined in section 8E(1), but for the three-year period requirement contemplated in paragraph (b)(i) of the definition of "hybrid equity instrument" in that section;

[paragraph (b) substituted by section 29(1)(h) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]

(c) constitutes a third-party backed share as defined in section 8EA(1); or

(d) was issued to that taxpayer solely in respect or by reason of services rendered or to be rendered by that taxpayer in respect of the incorporation, marketing, management or administration of that venture capital company or of any qualifying company in which that venture capital company holds or acquires any share.

[paragraph (d) added by section 29(1)(i) of Act 23 of 2018; effective date 24 October 2018]

(2) Subject to subsections (3), (3A), (3B) and (4), there must be allowed as a deduction from the income of a taxpayer in respect of a year of assessment expenditure actually incurred by that taxpayer in acquiring any venture capital share issued to that taxpayer during that year of assessment.

[subsection (2) substituted by section 17(1)(b) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(3) (a) Where, during any year of assessment—

(i) any loan or credit has been used by a taxpayer for the payment or financing of the whole or any portion of any expenditure contemplated in subsection (2); and

(ii) any portion of that loan or credit is owed by the taxpayer on the last day of the year of assessment,

the amount which may be taken into account as expenditure that qualifies for a deduction in terms of subsection (2) must be limited to the amount for which the taxpayer is in terms of paragraph (b) deemed to be at risk on the last day of the year of assessment.

(b) For the purposes of paragraph (a), a taxpayer must be deemed to be at risk to the extent that —

(i) the incurral of the expenditure contemplated in subsection (2); or

(ii) the repayment of any loan or credit used by the taxpayer for the payment or financing of any expenditure contemplated in subsection (2),

would (having regard to any transaction, agreement, arrangement, understanding or scheme entered into before or after such expenditure is incurred) result in an economic loss to the taxpayer were no income to be received by or accrue to the taxpayer in future years from the disposal of any venture capital share issued to the taxpayer as a result of the incurral of that expenditure: Provided that the taxpayer must not be deemed to be at risk to the extent that—

(aa) the loan or credit is not repayable within a period of five years from the date on which that loan or credit was advanced to the taxpayer; and

(bb) any loan or credit used by the taxpayer for the payment or financing of the whole or any portion of any expenditure contemplated in subsection (2) is (having regard to any transaction, agreement, arrangement, understanding or scheme entered into before or after such expenditure is incurred) granted directly or indirectly to the taxpayer by the venture capital company by which the qualifying shares are issued as a result of the incurral of that expenditure.

(3A) If, at the end of any year of assessment, after the expiry of a period of 36 months commencing on the first date of the issue of venture capital shares a taxpayer has incurred expenditure as contemplated in subsection (2) and that taxpayer is a connected person in relation to that venture capital company—

(a) no deduction must be allowed in terms of subsection (2) in respect of that year of assessment in respect of any expenditure incurred by the taxpayer in acquiring any venture capital share issued to that taxpayer by that venture capital company;

(b) the Commissioner must, after due notice to the venture capital company, withdraw any approval in terms of subsection (5) with effect from the date of that approval by the

Commissioner of that company as a venture capital company in terms of that subsection; and

(c) the Commissioner must withdraw the approval of that company in terms of subsection (5) and an amount equal to 125 per cent of the expenditure incurred by any person to acquire shares issued by the company must be included in the income of the company in the year of assessment in which the approval is withdrawn by the Commissioner,

if corrective steps acceptable to the Commissioner are not taken by the company within a period stated in the notice contemplated in paragraph (b).

[subsection (3A) substituted by section 32(1) of Act 15 of 2016; effective date, retroactively amended by section 87(1) of Act 34 of 2019 to 21 July 2019, applicable in respect of any taxpayer to whom that venture capital company has issued any venture capital shares for the first time on or after that date]

(3B) If any taxpayer holds, at the end of any year of assessment following the expiry of a period of 36 months commencing on the first date of the issue by a venture capital company of venture capital shares of any class, more than 20 per cent of the venture capital shares of that class—

(a) no deduction must be allowed in terms of subsection (2) in respect of that year of assessment in respect of any expenditure incurred by the taxpayer in acquiring any venture capital share of that class issued to that taxpayer by that venture capital company;

(b) the Commissioner must, after due notice to the venture capital company, withdraw any approval in terms of subsection (5) with effect from the commencement of that year of assessment; and

(c) an amount equal to 125 per cent of the expenditure incurred by any person to acquire shares issued by the company must be included in the income of the company in the year of assessment in which the approval is withdrawn by the Commissioner under paragraph (b):

Provided that—

(a) this subsection must not apply during any year of assessment where that taxpayer holds more than 20 per cent of the venture capital shares of a class and that venture capital company during that year of assessment gives notice to the Commissioner in writing that the venture capital company will cancel all the issued shares in that class of shares; and

(b) that venture capital company cancels all the issued shares in that class of shares within six months from the date on which that notice is given.

[proviso added by section 17(1) of Act 23 of 2020; effective date 31 July 2020, applicable in respect of years of assessment ending on or after that date]

[subsection (3B) inserted by section 29(1)(j) of Act 23 of 2018; effective date, retroactively amended by section 88(1) of Act 34 of 2019 to 21 July 2019, applicable in respect of any share issued on or after that date]

(3C) The deduction to be allowed in terms of subsection (2) in respect of a year of assessment in respect of expenditure incurred during that year by a taxpayer that is—

(a) a company must not exceed R5 million; and

(b) a person other than a company must not exceed R2,5 million.

[subsection (3C) inserted by section 17(1)(c) of Act 34 of 2019; effective date 21 January 2019, applicable in respect of expenditure incurred by the taxpayer on or after that date]

(4) A claim for a deduction in terms of subsection (2) must be supported by a certificate issued by the venture capital company stating the amounts invested in that company and that the Commissioner approved that company as contemplated in subsection (5).

(5) The Commissioner must approve a venture capital company if that company has applied for approval and the Commissioner is satisfied that—

(a) the company is a resident;

(b) the sole object of the company is the management of investments in qualifying companies;

(e) the tax affairs of the company are in order and the company has complied with all the relevant provisions of the laws administered by the Commissioner;

(g) the company is licensed in terms of section 8(5) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002).

[paragraph (g) substituted by section 29(1)(k) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]

(6) If the Commissioner is satisfied that any venture capital company approved in terms of subsection (5) has during a year of assessment failed to comply with the provisions of that subsection, the Commissioner must after due notice to the company withdraw that approval from the commencement of that year if corrective steps acceptable to the Commissioner are not taken by the company within a period stated in that notice.

(6A) If, at the end of any year of assessment, after the expiry of a period of 48 months commencing on the first date of the issue of venture capital shares—

[words preceding paragraph (a) substituted by section 17(1)(d) of Act 34 of 2019; effective date 21 July 2019]

(b) less than 80 per cent of the expenditure incurred by the company to acquire assets held by the company was incurred to acquire qualifying shares issued to the company by qualifying companies, each of which, immediately after the issue, held assets with a book value not exceeding—

(i) R500 million, where the qualifying company was a junior mining company; or

(ii) R50 million, where the qualifying company was a company other than a junior mining company; or

(c) more than 20 per cent of any amounts received in respect of the issue of shares in the company was utilised to acquire qualifying shares issued to the company by any one qualifying company,

the Commissioner must after due notice to the company withdraw that approval with effect from the commencement of the year of assessment during which the period ends that is stated in that notice during which corrective steps acceptable to the Commissioner must be taken if corrective steps acceptable to the Commissioner are not taken by the company within the period stated in that notice.

[words following paragraph (c) substituted by section 29(1)(l) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]

(7) A company may apply for approval in terms of subsection (5) in respect of the year of assessment following the year of assessment during which approval was withdrawn in respect of that company in terms of subsection (6) or (6A) if the non-compliance which resulted in the withdrawal has been rectified to the satisfaction of the Commissioner.

(8) If the Commissioner withdraws the approval of a company in terms of subsection (6) or (6A), an amount equal to 125 per cent of the expenditure incurred by any person for the issue of shares held in the company must be included in the income of the company in the year of assessment in which the approval is withdrawn by the Commissioner.

(9) Notwithstanding section 8(4), no amount shall be recovered or recouped in respect of the disposal of a venture capital share or in respect of a return of capital if that share has been held by the taxpayer for a period longer than five years.

(10) A venture capital company must submit to the Minister a report providing the Minister with the information that the Minister may prescribe.

(11) No deduction shall be allowed under this section in respect of shares acquired after 30 June 2021.

12K. ***

[section 12K repealed by section 18(1) of Act 34 of 2019; effective date 1 June 2019]

12L. Deduction in respect of energy efficiency savings

(1) For the purpose of determining the taxable income derived by any person from carrying on any trade in respect of any year of assessment ending before 1 January 2023, there must be allowed as a deduction from the income of that person an amount in respect of energy efficiency savings by that person in respect of that year of assessment determined in accordance with subsection (2), subject to subsection (3).

[subsection (1) substituted by section 19(1) of Act 34 of 2019; effective date 1 January 2020]

(2) The amount of the deduction contemplated in subsection (1) must be calculated at 95 cents per kilowatt hour or kilowatt hour equivalent of energy efficiency savings.

(3) A person claiming the deduction allowed in terms of subsection (1) during any year of assessment must obtain a certificate issued by an institution, board or body prescribed by the regulations contemplated in subsection (5) in respect of the energy efficiency savings for which a deduction is claimed in respect of that year of assessment containing—

(a) the baseline at the beginning of the year of assessment;

(b) the reporting period energy use at the end of the year of assessment;

(c) the annual energy efficiency savings expressed in kilowatt hours or kilowatt hours equivalent for the year of assessment including the full criteria and methodology used to calculate the energy efficiency savings; and

(d) any other information prescribed by the regulations contemplated in subsection (5).

(4) A deduction must not be allowed in terms of this section if the person claiming the allowance receives any concurrent benefit in respect of energy efficiency savings.

(5) The Minister of Finance, in consultation with the Minister of Energy and the Minister of Trade and Industry, must make regulations prescribing—

(a) the institution, board or body that must issue the certificate contemplated in subsection (3);

(b) the powers and responsibilities of the institution, board or body contemplated in paragraph (a);

(c) the information that must be contained in the certificate contemplated in subsection (3) in addition to the information contemplated in that subsection;

(d) those benefits that constitute concurrent benefits for the purpose of subsection (4); and

(e) any limitation of energy sources in respect of which the allowance may be claimed.

12M. Deduction of medical lump sum payments

(1) For the purposes of this section—

"dependant", in relation to a former employee, means a spouse or any dependant (as defined in section 1 of the Medical Schemes Act);

"insurer" means an insurer as defined in section 29A.

(2) In determining the taxable income derived by any taxpayer in any year of assessment from carrying on any trade, there must be allowed as a deduction from the income of that taxpayer so derived any amount paid by way of a lump sum during the year of assessment by that taxpayer—

(a) to any former employee of the taxpayer who has retired from the taxpayer's employ on grounds of old age, ill health or infirmity or to any dependant of that former employee; or

(b) under any policy of insurance taken out with an insurer solely in respect of one or more former employees or dependants contemplated in paragraph (a),

but only to the extent that the amount is paid for the purposes of making any contribution, in respect of any former employee or dependant contemplated in paragraph (a), to any medical scheme or fund contemplated in section 6A(2)(a)(i) or (ii): Provided that no deduction may be allowed in terms of this section if the taxpayer making the payment, or a connected person in relation to that taxpayer, retains any further obligation, whether actual or contingent, relating to the mortality risk of any former employee or dependant contemplated in paragraph (a).

12N. Deductions in respect of improvements not owned by taxpayer

(1) If a taxpayer—

(a) holds a right of use or occupation of land or a building;

(b) effects an improvement on the land or to the building in terms of—

(i) a Public Private Partnership;

(ii) an agreement in terms of which the right of use or occupation is granted, if the land or building is owned by—

(aa) the government of the Republic in the national, provincial or local sphere; or

(bb) any entity of which the receipts and accruals are exempt from tax in terms of section 10(1)(cA) or (t); or

(iii) the Independent Power Producer Procurement Programme administered by the Department of Energy;

(c) incurs expenditure to effect the improvement contemplated in paragraph (b); and

(e) uses or occupies the land or building for the production of income or derives income from the land or building,

the taxpayer must, for the purposes of any deduction contemplated in section 11D, 12B, 12C, 12D, 12F, 12I, 12S, 13, 13ter, 13quat, 13quin, 13sex or 36, and for the purposes of the Eighth Schedule, be deemed to be the owner of the improvement so completed.

[words following paragraph (e) substituted by section 30 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(2) (a) When the right of use or occupation terminates, the taxpayer must be deemed to have disposed of the improvement to the owner of the land or building on the later of the date when—

(i) the right of use or occupation terminated; or

(ii) the use or occupation ended.

(b) If the right of use or occupation terminates and the taxpayer—

(i) continues to use or occupy the land or building; or

(ii) renews the right of use or occupation,

the renewed right of use or occupation must be deemed to be the same right of use or occupation as the right of use or occupation previously held by the taxpayer.

(3) This section does not apply if the taxpayer—

(a) is a person carrying on any banking, financial services or insurance business; or

(b) enters into an agreement whereby the right of use or occupation of the land or building is granted to any other person, unless—

(i) the land or building is occupied by that other person and that other person is a company that is a member of the same group of companies as that taxpayer in terms of such an agreement;

(ii) the cost of maintaining the land or building and of carrying out repairs thereto required in consequence of normal wear and tear is borne by the taxpayer; and

(iii) subject to any claim that the taxpayer may have against the other person by reason of the other person's failure to take proper care of the land or building, the risk of destruction or loss of or other disadvantage to the land or building is not assumed by that other person.

12NA. Deductions in respect of improvements on property in respect of which government holds a right of use or occupation

(1) There shall be allowed to be deducted from the income of a person, expenditure actually incurred by that person to effect an improvement to land or to a building in terms of an obligation to effect those improvements to that land or to that building in terms of a Public Private Partnership if the government of the Republic in the national, provincial or local sphere holds the right of use or occupation of that land or building.

(2) The amount allowed to be deducted in terms of this section in respect of any year of assessment shall be equal to the amount of expenditure contemplated in subsection (1) that has not been allowed to be deducted in terms of this section, divided by the number of years (including that year of assessment) for which the taxpayer will derive income in respect of the Public Private Partnership in terms of the agreement or 25 years, whichever is the lesser.

(3) Where any amount as contemplated in section (10)(1)(zI) is received by or accrues to a person from the government of the Republic in the national, provincial or local sphere for the purpose of effecting an improvement to land or a building or in respect of the defraying of the cost of any improvements in terms of the Public Private Partnership contemplated in subsection (1), the expenditure to be deducted in terms of this section shall be reduced in an amount equal to an amount that is exempt in terms of that section.

(4) This section shall not apply if the person effecting an improvement to land or to a building is a person carrying on any banking, financial services or insurance business.

12O. Exemption in respect of films

(1) For the purposes of this section—

"completion date" means the date on which a qualifying film is for the first time in a form in which it can be regarded as ready for copies of it to be made and distributed, for presentation to the general public;

"exploitation rights" means the right to any receipts and accruals in respect of—

(a) the use of;

(b) the right of use of; or

(c) the granting of permission to use,

any film to the extent that those receipts and accruals are wholly dependent on profits and losses in respect of the film;

"film" means—

(a) a feature film;

(b) a documentary or documentary series; or

(c) an animation,

conforming to the requirements stipulated by the Department of Trade and Industry in the Programme Guidelines for the South African Film and Television Production and Co-production Incentive;

"National Film and Video Foundation" means the National Film and Video Foundation established by the National Film and Video Foundation Act, 1997 (Act No. 73 of 1997); and

"special purpose corporate vehicle" means a company responsible for the production of a film as required by the Department of Trade and Industry in terms of the Programme Guidelines for the South African Film and Television Production and Co-production Incentive.

(2) There must be exempt from normal tax the receipts and accruals in respect of income derived from the exploitation rights of a film—

(a) if the National Film and Video Foundation has approved the film in terms of section 3(c) read with section 4(1) of the National Film and Video Foundation Act, 1997 (Act No. 73 of 1997), as a local production or co-production whereby a film is co-produced in terms of an international co-production agreement between the government of the Republic and the government of another country, which agreement must be subject to the Constitution;

(b) if income is derived from the exploitation rights of the film—

(i) by a person who acquired the exploitation rights in respect of that film prior to the date that the principal photography of that film commenced; or

(ii) by a person who acquired the exploitation rights in respect of that film after the date that principal photography of that film commenced but before the completion date of that film if consideration for those exploitation rights was not directly or indirectly paid or applied for the benefit of a person contemplated in subparagraph (i); and

(c) to the extent that the income is received or accrues within a period of 10 years after the completion date of that film.

(3) No exemption shall be allowed under this section to a person that is a broadcaster as defined in section 1 of the Broadcasting Act, 1999 (Act No. 4 of 1999), or any person that is a connected person in relation to that broadcaster.

(4) (a) Any—

(i) special purpose corporate vehicle; or

(ii) collection account manager that—

(aa) manages exploitation rights under a collection account management agreement; and

(bb) is approved by the Minister for the purpose of this section by notice in the *Gazette*,

must provide a report to the National Film and Video Foundation containing such information, within such time and in such manner as is prescribed by the Minister when income arising from exploitation rights of a film is distributed to a person within a period of 10 years commencing from the completion date of the film.

(b) The National Film and Video Foundation must provide a report annually to the Minister in respect of all films approved in terms of subsection (2)(a) containing such information, within such time and in such manner as is prescribed by the Minister for a period of 10 years commencing from the completion date of a film if—

(i) any income is received or accrues in respect of the film; and

(ii) the income is eligible for the exemption under subsection (2).

(5) (a) Notwithstanding section 23(f), a taxpayer may deduct from the income of the taxpayer an amount in respect of any expenditure incurred to acquire exploitation rights in respect of a film in accordance with paragraph (b).

(b) The amount of the deduction contemplated in paragraph (a) is equal to the amount of any expenditure incurred as contemplated in that paragraph less any amount received or accrued during any year of assessment in respect of that film.

(c) No deduction may be made under this subsection to the extent that the expenditure was funded from a loan, credit or similar financing.

(d) The deduction contemplated in paragraph (a) may only be made in any year of assessment commencing at least two years after the completion date of the film to the extent that the amount of expenditure incurred exceeds the total amount received by or accrued to that taxpayer in respect of the exploitation rights.

(e) Subsection (2) and paragraph (a) of this subsection cease to apply to any income derived from a film in any year of assessment subsequent to the date of a deduction made under paragraph (a) in respect of that film.

(6) (a) In addition to the exemption under subsection (2), any amount received by or accrued to a special purpose corporate vehicle by way of a grant payable by the State under the South African Film and Television Production and Co-production Incentive administered by the Department of Trade and Industry shall be exempt from normal tax subject to section 8(4).

(b) Where a special purpose corporate vehicle that received a grant contemplated in paragraph (a), or to whom such grant has accrued, pays the whole or any portion of the amount of the grant to another person pursuant to any exploitation rights in respect of that film, the exemption under this paragraph must also apply to the amount received by or accrued to that other person to the extent that the amount does not exceed any amount that the other person contributed to the production of the film.

12P. Exemption of amounts received or accrued in respect of government grants

(1) For the purposes of this section—

"allowance asset" means an asset as defined in paragraph 1 of the Eighth Schedule, other than trading stock, in respect of which a deduction or allowance is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss;

"base cost" means base cost as defined in paragraph 1 of the Eighth Schedule;

"government grant" means a grant-in-aid, subsidy or contribution by the government of the Republic in the national, provincial or local sphere.

(2) There must be exempt from normal tax any amount received by or accrued to a person as a beneficiary of a government grant if that government grant—

(a) is listed in the Eleventh Schedule; or

(b) is identified by the Minister by notice in the *Gazette* for the purpose of exempting that government grant with effect from a date specified by the Minister in that notice (including any date that precedes the date of that notice), after having regard to—

(i) the implications of the exemption for the National Revenue Fund; and

(ii) whether the tax implications were taken into account in allocating that grant.

(2A) Notwithstanding subsection (2), there must be exempt from normal tax any amount received by or accrued to or in favour of any person from the Government in the national, provincial or local sphere, where—

(a) that amount is granted for the performance by that person of its obligations pursuant to a Public Private Partnership; and

(b) that person is required in terms of that Public Private Partnership to expend an amount at least equal to that amount in respect of any improvements on land or to buildings owned by any sphere of government or over which any sphere of government holds a servitude.

(3) Where during any year of assessment any amount is received by or accrues to a person by way of a government grant as contemplated in subsection (2) or 2(A), other than a government grant in kind, for the acquisition, creation or improvement, or as a reimbursement for expenditure incurred in respect of the acquisition, creation or improvement of—

(a) trading stock—

(i) any expenditure incurred in respect of that trading stock allowed as a deduction in terms of section 11(a); or

(ii) any amount taken into account in respect of the value of trading stock as contemplated in section 22(1) or (2); or

(b) an allowance asset, the base cost of that allowance asset,

must be reduced to the extent that the amount of that government grant is applied for that purpose.

(4) Where any amount is received by or accrues to a person by way of a government grant as contemplated in subsection (2) or 2A for the acquisition, creation or improvement of an allowance asset or as a reimbursement for expenditure incurred in respect of that acquisition, creation or improvement, the aggregate amount of the deductions or allowances allowable to that person in respect of that allowance asset may not exceed an amount equal to the aggregate of the expenditure incurred in the acquisition, creation or improvement of that allowance asset, reduced by an amount equal to the sum of—

(a) the amount of the government grant; and

(b) the aggregate amount of all deductions and allowances previously allowed to that person in respect of that allowance asset.

(5) Where during any year of assessment any amount is received by or accrues to a person by way of a government grant as contemplated in subsection (2) or (2A), other than a government grant in kind —

(a) for the purpose of the acquisition, creation or improvement of an asset other than an asset contemplated in subsection (3) or (4); or

(b) as a reimbursement for expenditure incurred for the acquisition, creation or improvement of an asset other than an asset contemplated in subsection (3) or (4),

the base cost of that asset must be reduced to the extent that the amount of the government grant is applied for that acquisition, creation or improvement.

(6) (a) Where during any year of assessment—

(i) any amount is received by or accrues to a person by way of a government grant as contemplated in subsection (2) or (2A), other than a government grant in kind; and

(ii) subsection (3), (4) or (5) does not apply to that amount,

any amount allowed to be deducted from that person's income in terms of section 11 for that year of assessment must be reduced to the extent of the amount of that government grant.

(b) To the extent that the amount received or accrued by way of a government grant exceeds the amount allowed to be deducted as contemplated in paragraph (a), that excess is deemed to be an amount received or accrued in respect of that government grant during the following year of assessment for the purposes of paragraph (a).

12Q. Exemption of income in respect of ships used in international shipping

(1) For the purposes of this section—

"international shipping" means the conveyance for compensation of passengers or goods by means of the operation of a South African ship mainly engaged in international traffic;

"international shipping company" means a company that is a resident that operates one or more South African ships that are utilised in international shipping;

"international shipping income" means the receipts and accruals of a person derived from international shipping mainly from the operation of one or more ships contemplated in paragraph (a) of the definition of "South African ship";

[definition of "international shipping income" substituted by section 31(1)(a) of Act 23 of 2018; effective date 1 April 2019, applicable in respect of years of assessment commencing on or after that date]

"South African ship" means a ship—

(a) which is registered in the Republic in accordance with Part 1 of Chapter 4 of the Ship Registration Act, 1998 (Act No. 58 of 1998); or

(b) another ship or ships used temporarily in lieu of the ship contemplated in paragraph (a) by virtue of that ship being subject to repair or maintenance.

[definition of "South African ship" substituted by section 31(1)(b) of Act 23 of 2018; effective date 1 April 2019, applicable in respect of years of assessment commencing on or after that date]

(2) (a) There must be exempt from normal tax any international shipping income of any international shipping company.

(b) Any capital gain or capital loss in respect of any year of assessment of any international shipping company determined in respect of a South African ship engaged in international shipping must be disregarded in determining the aggregate capital gain or aggregate capital loss of that international shipping company.

(3) The rate of dividends tax contemplated in section 64E that is paid by an international shipping company on the amount of any dividend derived from international shipping income must not exceed zero per cent of the amount of that dividend.

(4) There must be exempt from the withholding tax on interest any amount of interest if that amount is paid to any foreign person, as defined in section 50A, by an international shipping company in respect of debt utilised to fund the acquisition, construction or improvement of a South African ship utilised for international shipping.

12R. Special economic zones

(1) For the purposes of this section—

"qualifying company" means a company—

(a) (i) incorporated by or under any law in force in the Republic or in any part thereof; or

(ii) that has its place of effective management in the Republic;

(b) that carries on a trade in a special economic zone designated by the Minister of Trade and Industry in terms of the Special Economic Zones Act and approved by the Minister of Finance after consultation with the Minister of Trade and Industry for the purposes of this section by notice in the *Gazette*;

(c) if the trade contemplated in paragraph (b) is carried on from a fixed place of business situated within a special economic zone;

(d) if not less than 90 per cent of the income of that company is derived from the carrying on of a trade within one or more special economic zones; and

(e) that—

(i) was carrying on any trade before 1 January 2013 in a location that is subsequently approved for the purpose of this section as a zone in terms of subsection (3);

(ii) commenced, on or after 1 January 2013, the carrying on, in a location that is approved or subsequently approved for the purpose of this section as a zone in terms of subsection (3), of any trade not previously carried on by that company or any connected person in relation to that company in the Republic; or

(iii) commenced, on or after 1 January 2013, the carrying on, in a location that is approved or subsequently approved for the purpose of this section as a zone in terms of subsection (3), of any trade and that trade—

(aa) comprises of the production of goods not previously produced by that company or any connected person in relation to that company in the Republic;

(bb) utilises the use of new technology in that company's production processes; or

(cc) represents an increase in the production capacity of that company in the Republic;

[paragraph (e) added by section 20(1) of Act 34 of 2019; effective date 1 January 2019, applicable in respect of years of assessment ending on or after that date]

"SIC Code" means version 7 of the Standard Industrial Classification Code issued by Statistics South Africa;

"special economic zone" means a special economic zone as defined in the Special Economic Zones Act that is approved for the purposes of this section by the Minister of Finance under subsection (3);

"Special Economic Zones Act" means the Special Economic Zones Act, 2014 (Act No. 16 of 2014).

(3) The Minister of Finance must approve a special economic zone for purposes of this section after taking into account the financial implications for the State should a special economic zone be approved under this section.

(4) Notwithstanding a qualifying company being located in a special economic zone—

(a) a company is not a qualifying company if that company conducts any of the following activities classified under "Section C: Manufacturing" in the "SIC Code".

(i) Distilling, rectifying and blending of spirits (SIC Code 1101);

(ii) Manufacture of wines (SIC Code 1102);

(iii) Manufacture of malt liquors and malt (SIC Code 103);

(iv) Manufacture of tobacco products (SIC Code 12);

(v) Manufacture of weapons and ammunition (SIC Code 252);

(vi) Manufacture of bio-fuels if that manufacture negatively impacts on food security in the Republic;

(b) a company that conducts any activity classified in the SIC Code, which the Minister of Finance may designate by notice in the *Gazette* is not a qualifying company; or

(c) a company is not a qualifying company if—

(i) more than 20 per cent of expenditure that is deductible under this Act is incurred; or

(ii) more than 20 per cent of the income of that company is received or accrued,

in respect of transactions with any connected person in relation to that company if that connected person—

(aa) is a resident; or

(bb) is not a resident and those transactions are attributable to a permanent establishment of that connected person in the Republic.

(5) This provision ceases to apply in respect of any year of assessment commencing on or after 1 January 2031.

[subsection (5) substituted by section 18(1) of Act 23 of 2020; effective date 9 February 2016]

12S. Deduction in respect of buildings in special economic zones

(1) For the purposes of this section, "qualifying company" means a qualifying company as defined in section 12R, notwithstanding section 12R(4).

(2) A qualifying company may deduct from the income of that qualifying company an allowance equal to ten per cent of the cost to the qualifying company of any new and unused building owned by the qualifying company, or any new and unused improvement to any building owned by the qualifying company, if that building or improvement is wholly or mainly used by the qualifying company during the year of assessment for purposes of producing income within a special economic zone, as defined in section 12R(1), in the course of the taxpayer's trade, other than the provision of residential accommodation.

(3) If a qualifying company completes an improvement as contemplated in section 12N, the expenditure incurred by the qualifying company to complete the improvement must be deemed to be the cost to the qualifying company of any new and unused building or of any new and unused improvement to a building contemplated in subsection (2).

(4) For the purposes of this section the cost to a qualifying company of any building or improvement must be deemed to be the lesser of the actual cost to the qualifying company or the cost which

a person would, if that person had acquired, erected or improved the building under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition, erection or improvement of the building was in fact concluded, have incurred in respect of the direct cost of the acquisition, erection or improvement of the building.

(5) No deduction may be allowed under this subsection in respect of any building that has been disposed of by the qualifying company during any previous year of assessment.

(6) A deduction may not be allowed under any other section of this Act in respect of the cost of a building or improvement if any of that cost has qualified or will qualify for deduction from the qualifying company's income as a deduction of expenditure or an allowance in respect of expenditure under this section.

(7) The deductions which may be allowed or deemed to have been allowed in terms of this section and any other provision of this Act in respect of the cost of any building or improvement may not in the aggregate exceed the amount of such cost.

(8) The Commissioner may, notwithstanding the provisions of sections 99 and 100 of the Tax Administration Act disallow all deductions otherwise provided for under this section if a qualifying company is guilty of fraud or misrepresentation or non-disclosure of material facts with regard to any tax, duty or levy administered by the Commissioner.

(9) The Commissioner may, notwithstanding the provisions of sections 99 and 100 of the Tax Administration Act, raise an additional assessment for any year of assessment where a deduction that has been allowed in any previous year must be disallowed in terms of subsection (8).

(10) This provision ceases to apply in respect of expenditure incurred during any year of assessment commencing on or after 1 January 2031.

[subsection (10) substituted by section 19(1) of Act 23 of 2020; effective date 9 February 2016]

12T. Exemption of amounts received or accrued in respect of tax free investments

(1) For the purposes of this section—

"**tax free investment**" means any financial instrument or policy as defined in section 29A—

(a) administered by a person or entity designated by notice by the Minister in the *Gazette*;

(b) owned by—

(i) a natural person; or

(ii) the deceased estate or insolvent estate of a natural person that is deemed to be one and the same person as that natural person in respect of the contributions made by that person; and

(c) that complies with the requirements of the Regulations contemplated in subsection (8).

(2) There shall be exempt from normal tax any amount received by or accrued to a natural person or deceased estate or insolvent estate of that person in respect of a tax free investment.

(3) In determining the aggregate capital gain or aggregate capital loss of a person in respect of any year of assessment, any capital gain or capital loss in respect of the disposal of a tax free investment shall be disregarded.

(4) Contributions in respect of tax free investments shall be—

(a) limited to an amount of R36 000 in aggregate during any year of assessment;

[paragraph (a) substituted by section 7(1)(a) of Act 22 of 2020; effective date 1 March 2020, applicable in respect of years of assessment commencing on or after that date]

(b) an amount in cash; and

(c) limited to an amount of R500 000 in aggregate.

(5) Any amount contemplated in subsection (2) shall not be taken into account in determining whether a person contributed in excess in respect of the amounts contemplated in subsections (4)(a) and (c).

(6) Any—

(a) transfer of an amount in respect of a tax free investment of a person to another tax free investment of that person; or

(b) amount received by or accrued in respect of a tax free investment,

shall not be taken into account in determining whether that person contributed in excess of the amounts contemplated in subsections (4)(a) and (c) as a contribution in respect of that other tax free investment.

(7) (a) If during any year of assessment any person contributes in excess of the amount of R36 000 in respect of tax free investments, an amount equal to 40 per cent of that excess is deemed to be an amount of normal tax payable by the person contemplated in subsection (1)(b) in respect of that year of assessment.

[paragraph (a) substituted by section 7(1)(b) of Act 22 of 2020; effective date 1 March 2020, applicable in respect of years of assessment commencing on or after that date]

(b) If any person contributes in excess of R500 000 in aggregate in respect of tax free investments, an amount equal to 40 per cent of so much of that excess as has not previously been taken into account in terms of this subsection shall be deemed to be an amount of normal tax payable by the person contemplated in subsection 1(b) in respect of the year of assessment in which that excess is contributed.

(8) The Minister shall make regulations prescribing the requirements—

(a) to which any financial instrument or policy as defined in section 29A shall conform for the purposes of constituting a tax free investment;

(b) that must be complied with when a tax free investment is transferred; and

(c) in respect of disclosure by any person contemplated in paragraph (a) of the definition of "tax free investment" in subsection (1) in respect of a tax free investment.

(9) (a) The Financial Sector Conduct Authority shall be responsible for supervising and enforcing compliance with any regulations made by the Minister in terms of subsection (8).

(b) The supervising and enforcing compliance contemplated in paragraph (a) shall form part of the legislative mandate of the Financial Sector Conduct Authority.

(c) The Financial Sector Conduct Authority, acting through the Registrar, as defined in section 1 of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), in supervising and enforcing compliance as contemplated in paragraph (a), shall exercise any power afforded to the Registrar as defined in section 1 of that Act and in any of the Acts contemplated in the definition of "law" in section 1 of that Act.

[subsection (9) substituted by section 32(1) of Act 23 of 2018; effective date 1 April 2018, applicable in respect of years of assessment commencing on or after that date]

12U. Additional deduction in respect of roads and fences in respect of production of renewable energy

(1) There must be allowed to be deducted by a person any amount actually incurred during the year of assessment in which that expenditure is incurred, subject to subsection (3), in respect of—

(a) the construction of any road or the erecting of any fence and a foundation or supporting structure designed for such a fence for the purpose of trade of that person of generation of electricity which exceeds 5 megawatts from—

(i) wind power;

(ii) solar energy;

(iii) hydropower to produce electricity of not more than 30 megawatts; or

(iv) biomass comprising organic wastes, landfill gas or plant material; or

(b) improvements (other than repairs) to—

(i) any road or fence contemplated in paragraph (a); or

(ii) foundation or supporting structure designed for such a fence,

subject to subsection (2).

(2) For the purpose of any deduction under subsection (1)—

(a) the foundation or supporting structure designed for a fence must be constructed in such manner that the foundation or supporting structure is or should be regarded as being integrated with that fence; and

(b) the useful life of the foundation or supporting structure is or will be limited to the useful life of that fence.

(3) For purposes of deduction under subsection (1) any expenditure—

(a) actually incurred by that person prior to the commencement of and in preparation for carrying on that trade;

(b) which would have been allowed as a deduction in terms of subsection (1) had the expenditure been incurred after that person commenced carrying on that trade; and

(c) which was not allowed as a deduction in any previous year of assessment,

shall be allowed as a deduction in terms of this section.

13. Deductions in respect of buildings used in a process of manufacture

(1) Notwithstanding anything to the contrary contained in paragraph (ii) of the proviso to section 11(e), there shall be allowed to be deducted from the income of the taxpayer an allowance equal to two per cent of the cost (after the deduction of any amount referred to in subsection (3) or (7) or the corresponding provisions of any previous Income Tax Act) to the taxpayer of—

(b) any building the erection of which was commenced by the taxpayer on or after the fifteenth day of March, 1961, if such building was wholly or mainly used by the taxpayer during the year of assessment for the purpose of carrying on therein in the course of his trade (other than mining or farming) any process of manufacture, research and development or any other process which is of a similar nature, or such building was let by the taxpayer and was wholly or mainly used by a tenant or subtenant for the purpose of carrying on therein any process as aforesaid in the course of any trade (other than mining or farming); or

(d) any building the erection of which was commenced on or after the fifteenth day of March, 1961, if such building has been acquired by the taxpayer by purchase from any other person who was entitled to an allowance in respect thereof under paragraph (b) or this paragraph or the corresponding provisions of any previous Income Tax Act, and such building was wholly or mainly used during the year of assessment by the taxpayer for the purpose of carrying on therein in the course of his trade (other than mining or farming) a process of manufacture, research and development or any other process which is of a similar nature, or such building was let by the taxpayer and was wholly or mainly used by a tenant or subtenant for the purpose of carrying on therein in the course of any trade (other than mining or farming) any process as aforesaid; or

(dA) any building that has never been used, if such building has been acquired by the taxpayer by purchase from any other person and such building was wholly or mainly used during the year of assessment by the taxpayer for the purpose of carrying on therein in the course of his trade (other than mining or farming) a process of manufacture, research and development or any other process which is of a similar nature, or such building was let by the taxpayer and was wholly or mainly used by a tenant or subtenant for the purpose of carrying on therein in the course of any trade (other than mining or farming) any process as aforesaid; or

(e) any improvements (other than repairs) to any building referred to in paragraph (a), (b), (c) or (d) which is during the year of assessment used as contemplated in that paragraph, if such improvements were commenced not later than the thirty-first day of March, 1971; or

(f) any improvements (other than repairs) to any building, if such improvements were commenced on or after the first day of April, 1971, and such building was wholly or mainly used by the taxpayer during the year of assessment for the purpose of carrying on therein in the course of his trade (other than mining or farming) any process of manufacture or any other process which is of a similar nature, or such building was let by the taxpayer and was wholly or mainly used by a tenant or subtenant for the purpose of carrying on therein any process as aforesaid in the course of any trade (other than mining or farming):

Provided that—

(a) no allowance shall be made under this subsection in respect of such portion of the cost of any building the erection of which was commenced on or after 1 July 1961, or any improvements effected thereto as has been taken into account in the calculation of any allowance to the taxpayer under section 11(g) whether in the current or any previous year of assessment;

(b) in the case of any such building the erection of which has or is commenced on or after 1 January 1989 and any such improvements which have or are commenced on or after that date, other than any building or improvements in respect of which the increased allowance contemplated in paragraph (c) of this proviso applies, the allowance under this subsection shall be increased to 5 per cent of the cost (after the deduction of any amount as provided in subsection (3)) to the taxpayer of such building or improvements; and

(d) in the case of an improvement completed by a taxpayer as contemplated in section 12N, the expenditure incurred by the taxpayer to complete the improvement shall for the purposes of this section be deemed to be the cost to the taxpayer of any building or improvement contemplated in this subsection.

(1A) Where any building in respect of which any deduction of an allowance is claimed in terms of this section was during any previous financial year or years used by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year or years, any deduction which could have been allowed during such previous year or years in terms of this section shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

(2) The aggregate of the allowances allowed under subsection (1) or the corresponding provisions of any previous Income Tax Act, or deemed to have been allowed in terms of subsection (1A), in respect of any building or improvements shall not exceed the cost (after the deduction of any amount referred to in subsection (3) or the corresponding provisions of any previous Income Tax Act) of such building or improvements, as the case may be, less the aggregate of any allowances made to the taxpayer in respect of such building or improvements, as the case may be, under subsection (7) or section 11(g) or the corresponding provisions of any previous Income Tax Act.

(3) If in any year of assessment there falls to be included in a taxpayer's income in terms of paragraph (a) of section 8(4) an amount which has been recovered or recouped in respect of any allowance made under subsection (1) or the corresponding provisions of any previous Income Tax Act in respect of any building or improvements, such portion of the amount so recovered or recouped as is set off against the cost of a further building as hereinafter provided shall, notwithstanding the provisions of the said paragraph, at the option of the taxpayer and provided the taxpayer purchases or erects within twelve months or such further period as the Commissioner may allow from the date on which the event giving rise to the recovery or recoupment occurred, any other building to which the provisions of subsection (1) apply, not be included in the taxpayer's income for that year of assessment, but shall be set off against so much of the cost to the taxpayer of that further building purchased or erected by the taxpayer as remains after the deduction of any portion of such cost in respect of which an allowance has been granted to the taxpayer under section 11(g), whether in the current or any previous year of assessment.

(8) The provisions of this section shall *mutatis mutandis* apply with reference to any permanent shipbuilding structure the erection of which was commenced by the taxpayer on or after the first day of January, 1966, and the cost of improvements (other than repairs) effected thereto if such structure was wholly or mainly used during the year of assessment for the purposes of the shipbuilding trade, and for the purposes of this subsection any reference in the said provisions to a building shall be construed as a reference to a shipbuilding structure and any reference therein to improvements to a building shall be construed as a reference to improvements to a shipbuilding structure.

(9) For the purposes of this section—

"improvements", in relation to any improvements commenced on or after the first day of April, 1971, means any extension, addition or improvements (other than repairs) to a building which is or are effected for the purpose of increasing or improving the industrial capacity of the building;

"shipbuilding structure" means any launching way, fitting-out quay or craneway which is not part of a building.

13bis. Deductions in respect of buildings used by hotel keepers

(1) Notwithstanding anything to the contrary contained in paragraph (ii) of the proviso to paragraph (e) of section eleven, there shall be allowed to be deducted from the income of any taxpayer for any year of assessment ending on or after the first day of January, 1964, an allowance equal to two per cent. of the cost (after the set-off of any amount as provided in subsection (6)) to the taxpayer—

(c) of any building the erection of which was commenced by the taxpayer on or after the first day of January, 1964, and of any improvements (other than repairs) thereto commenced not later than the thirtieth day of June, 1965, if such building—

(i) was brought into use not later than the thirtieth day of June, 1965; and

(ii) was during the year of assessment wholly or mainly used by the taxpayer for the purpose of carrying on therein his trade of hotel keeper or was during such year let by the taxpayer and wholly or mainly used by the lessee for the purpose of carrying on therein the lessee's trade of hotel keeper;

(d) of such portion—

(i) of any building (other than a building in respect of the cost of which an allowance under the preceding provisions of this subsection is or was deductible from the income of the taxpayer for the current or any previous year of assessment) the erection of which was commenced by the taxpayer on or after the first day of January, 1964; or

(ii) of any improvements (other than repairs) to any building referred to in this paragraph, if such improvements were commenced on or after the first day of January, 1964; or

(iii) of any improvements (other than repairs) to any building referred to in paragraph (c), if such improvements were commenced on or after the first day of July, 1965,

as—

(aa) was during the year of assessment used by the taxpayer for the purpose of carrying on therein his trade of hotel keeper; or

(bb) was during such year let by the taxpayer and used by the lessee for the purpose of carrying on therein the lessee's trade of hotel keeper; or

(e) of such portion of any building improvements (other than repairs and other than improvements in respect of the cost of which, or of any portion thereof, an allowance under the preceding provisions of this subsection is or was deductible from the income of the taxpayer for the current or any previous year of assessment) commenced on or after 1 January 1964, as was during the year of assessment in question used by the taxpayer for the purposes of the taxpayer's trade of hotel keeper or was during the year of assessment in question let by the taxpayer and used by the lessee for the purposes of the lessee's trade of hotel keeper:

[paragraph (e) substituted by section 33(a) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

Provided that no allowance shall be made under this subsection in respect of such portion of the cost of any building the erection of which was commenced on or after the first day of July, 1961, or any improvements effected thereto, as has been taken into account in the calculation of any allowance to the taxpayer under paragraph (g) of section eleven, whether in the current or any previous year of assessment: Provided further that in the case of any such building the erection of which has or is commenced on or after 4 June 1988 and any such improvements which have or are commenced on or after that date the allowance under this subsection shall be increased to 5 per cent of the cost (after the set-off of any amount as provided in subsection (6)) to the taxpayer of such building or improvements: Provided further that to the extent to which any portion of any such improvements which have or are commenced on or after 17 March 1993 does not extend the existing exterior framework of the building, the allowance under this subsection shall be increased to 20 percent of the cost of such portion.

[first further proviso substituted by section 21 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(1A) *[subsection (1A) deleted by section 33(b) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]*

(2) In addition to any allowance under subsection (1), there shall be allowed to be deducted from the income of the taxpayer an allowance in respect of the cost (after the set-off of any amount as provided in subsection (6)) of any building or improvements referred to in paragraph (c) of subsection (1) or of any portion of any building or improvements referred to in paragraph (d) or (e) of subsection (1), provided such building (or a portion thereof), or the building (or a portion thereof) to which such improvements were effected, as the case may be, was during the year of assessment in question registered as an hotel under the Hotels Act, 1965, and such hotel was on the last day of such year graded by the board established under that Act: Provided that no allowance

shall be made under this subsection in respect of such portion of the cost of any building or any improvements as has been taken into account in the calculation of any allowance to the taxpayer under paragraph (g) of section eleven, whether in the current or any previous year of assessment.

(3) The allowance under subsection (2) in respect of the cost (as reduced in terms of that subsection) of any building (or portion thereof) or of any improvements (or a portion thereof) shall be such percentage of such cost as may be fixed by the Minister of Finance by regulation under subsection (4) for the grade of hotel which is, in terms of a determination of the board referred to in subsection (2), applicable in respect of the hotel in question on the last day of the year of assessment: Provided that where such hotel is graded by the said board for the first time during any year of assessment (hereinafter referred to as the subsequent year) subsequent to any year of assessment (hereinafter referred to as the earlier year) during which such building (or the relevant portion thereof) or such improvements (or the relevant portion thereof) was or were used in carrying on the trade of hotel keeper, and the taxpayer is entitled to the said allowance in respect of the subsequent year, the allowance for the subsequent year (as determined in accordance with the said regulation) shall, if—

[words preceding paragraph (a) substituted by section 33(c) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(a) such building (or the relevant portion thereof) or such improvements (or the relevant portion thereof), as the case may be, is or are completed not later than the thirty-first day of December, 1969; and

(b) where such hotel was not during the earlier year registered under the Hotels Act, 1965, it became so registered during the period ending on the thirty-first day of December, 1969, or the period of twelve months reckoned from the date of completion of such building (or the relevant portion thereof) or of such improvements (or the relevant portion thereof), as the case may be, whatever period ends later,

be increased by an amount equal to the allowance to which the taxpayer would have been entitled under the said regulation in respect of the said cost if such regulation had at all relevant times been in force and the grading of such hotel by the said board which was applicable on the last day of the subsequent year had also applied on the last day of the earlier year.

(3A) Where any building in respect of which any deduction of an allowance is claimed in terms of this section was during any previous financial year or years used by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year or years, any deduction which could have been allowed during such previous year or years in terms of this section shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

(4) The Minister of Finance may make regulations prescribing the rates of the allowances under subsection (2) in respect of the various grades of hotels determined under the provisions of subsection (1) of section fifteen of the Hotels Act, 1965, and may in such regulations prescribe rates which vary according to the grade of hotel or the year of assessment for which any such allowance may be made: Provided that any rate so prescribed in respect of any year of assessment in respect of any grade of hotel shall not exceed eight per cent of the cost or portion thereof on which the relevant allowance is to be calculated.

(5) The deductions which may be allowed or deemed to have been allowed in terms of this section and any other provision of this Act in respect of the cost of any building or improvement shall not in the aggregate exceed the amount of such cost.

(6) (a) If in any year of assessment there falls to be included in a taxpayer's income in terms of paragraph (a) of subsection (4) of section eight an amount which has been recovered or recouped in respect of any allowance made under the preceding provisions of this section or the provisions of subsection (1) of section thirteen, as applied by subsection (4) of that section, or the corresponding provisions of any previous Income Tax Act, in respect of any building or portion thereof or any improvements or portion thereof, so much of the amount

so recovered or recouped as is set off against the cost of a further building as hereinafter provided shall, notwithstanding the provisions of the said paragraph, at the option of the taxpayer and provided the taxpayer erects within twelve months or such further period as the Commissioner may allow from the date on which the event giving rise to the recovery or recoupment occurred, any other building in respect of the cost of which an allowance is made under the preceding provisions of this section, not be included in the taxpayer's income for that year of assessment, but shall be set off against so much of the cost to the taxpayer of such further building erected by the taxpayer as remains after the deduction of any portion of that cost in respect of which an allowance has been granted to the taxpayer under paragraph (g) of section eleven, whether in the current or any previous year of assessment.

(b) Where any allowance has been made under the provisions of subsection (1) of section thirteen, as applied by subsection (4) of that section, in respect of the cost of any building, any amount which has in terms of subsection (3) of that section been set off against such cost, shall be set off against such cost in the calculation of any allowance made in respect thereof under the preceding provisions of this section.

(9) The allowance under subsection (2) shall not be granted in respect of—

(a) any building the erection of which has or is commenced on or after 4 June 1988; and

(b) any improvements which have or are commenced on or after that date.

13ter. Deductions in respect of residential buildings

(1) For the purposes of this section—

"housing project" means any project for the erection of a building or buildings in the Republic consisting of or including at least five residential units;

"residential unit" means any self-contained residential accommodation consisting of more than one room (but excluding any hostel, hotel or similar accommodation), the erection of which was commenced by the taxpayer on or after 1 April 1982 and before 21 October 2008 and which was erected under a housing project of the taxpayer—

(a) in order to be let to a tenant for the purpose of deriving a profit for the taxpayer; or

(b) in order to be occupied by a *bona fide* full-time employee of the taxpayer.

(2) Notwithstanding anything to the contrary contained in paragraph (ii) of the proviso to section 11(e), there shall, subject to the provisions of this section, be allowed to be deducted from the income of the taxpayer for the year of assessment referred to in subsection (6) of this section and each succeeding year of assessment, an allowance, to be known as the residential building annual allowance, equal to two per cent of the cost to the taxpayer of any residential unit erected by the taxpayer under a housing project of the taxpayer.

(2A) For the purposes of this section where a taxpayer completes an improvement as contemplated in section 12N, the expenditure incurred by the taxpayer to complete the improvement shall be deemed to be the cost to the taxpayer of a residential unit contemplated in subsection (2).

(3) In addition to the deduction provided for in subsection (2), there shall, subject to the provisions of this section, be allowed to be deducted from the income of the taxpayer for the year of assessment referred to in subsection (5), an allowance, to be known as the residential building initial allowance, equal to ten per cent of the cost to the taxpayer of the residential unit referred to in subsection (2).

(4) The allowances under this section shall not be made in respect of any portion of the cost of any residential unit on any premises not owned by the taxpayer, unless the taxpayer, at the date on which the erection of such residential unit is commenced, is entitled to the occupation of such premises for a period ending not less than ten years after such date.

(5) The residential building initial allowance in relation to any residential unit shall be made for the year of assessment during which such residential unit is for the first time let or occupied as

contemplated in the definition of "residential unit" in subsection (1): Provided that if at the end of such year of assessment less than five of the residential units of the relevant housing project have for the first time been let or occupied as contemplated in the definition of "residential unit" in subsection (1), the residential building initial allowance relating to such residential unit shall not be made for that year of assessment but shall be made for the first succeeding year of assessment in which at least five of the residential units in that housing project have been so let or occupied for the first time.

(6) The residential building annual allowance relating to any residential unit shall be made for the first time for the year of assessment in which the residential building initial allowance is made in respect of that residential unit.

(6A) Where any building in respect of which any deduction of an allowance is claimed in terms of this section was during any previous financial year or years used by the taxpayer for the purposes of any trade carried on by him the receipts and accruals of which were not included in the income of such taxpayer during such year or years, any deduction which could have been allowed during such previous year or years in terms of this section shall for the purposes of this section (excluding the provisions of subsection (7)(a)) be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

(7) If in any year of assessment any residential unit in respect of the cost of which any allowance has been made to the taxpayer under the provisions of this section, whether in the current or any previous year of assessment, is so used or dealt with by the taxpayer that it ceases to be available either for letting to a tenant or for occupation by an employee as contemplated in the definition of "residential unit" in subsection (1)—

(a) there shall be included in the income of the taxpayer for the year of assessment in which such residential unit is so used or dealt with, the amount of the residential building initial allowance made to him in respect of the cost of such residential unit, less one-tenth of such amount for each completed period of one year, but not exceeding ten years, from the date on which such residential unit was first let or occupied as contemplated in the definition of "residential unit" in subsection (1) until the date on which such residential unit was used or dealt with as aforesaid; and

(b) the residential building annual allowance shall not be made in respect of the cost of the said residential unit for the year of assessment during which such residential unit was used or dealt with as aforesaid nor in respect of any succeeding year of assessment during which it continued to be unavailable for the letting or occupation contemplated in the definition of "residential unit" in subsection (1).

(8) The provisions of sections 8(4)(a) and 11(o) shall not apply to so much of the amount of any residential building initial allowance as has been included in the taxpayer's income under the provisions of subsection (7)(a) of this section, whether in the current or any previous year of assessment.

(9) No allowance shall be made under this section in respect of so much of the cost of any residential unit as has qualified or will qualify for deduction from the taxpayer's income by way of a deduction of expenditure or an allowance in respect of expenditure under any other provision of this Act, whether for the current or any preceding or subsequent year of assessment.

(10) The aggregate of the allowances allowed or deemed to have been allowed under the preceding provisions of this section in respect of the cost of any residential unit shall not exceed such cost or, if such allowances have been calculated on a portion of such cost, such portion.

(11) Where any company is mainly engaged in the provision of housing facilities for the employees of the sole or principal holder of shares in that company or for the employees of any other company the shares in which are held wholly by the sole or principal holder of shares in such first-mentioned company, the employees of such holder of shares or such other company, as the case may be, shall for the purposes of this section be deemed to be the employees also of such first-mentioned company.

13quat. Deductions in respect of erection or improvement of buildings in urban development zones

(1) For the purposes of this section—

"cost" means the costs (other than borrowing or finance costs) actually incurred in erecting or extending, adding to or improving a building or part thereof and includes any costs incurred—

(a) in demolishing any existing building or part thereof;

(b) in excavating the land for purposes of that erection, extension, addition or improvement; and

(c) in respect of structures or works directly adjoining the building or part so erected, extended, added to or improved, for purposes of providing—

(i) water, power or parking with respect to that building or part;

(ii) drainage or security for that building or part;

(iii) means of waste disposal for that building or part; or

(iv) access to that building or part, including the frontage thereof;

"developer" means a person who erects, extends, adds to or improves a building or part of a building—

(a) with the purpose of disposing of that building or part thereof immediately after completion of that erection, extension, addition or improvement; and

(b) disposes of the building or part of a building within three years after completion of that erection, extension, addition or improvement;

"purchase price" in relation to any building or part of a building purchased by the taxpayer means the lesser of—

(a) the actual cost to the taxpayer to purchase that building or part; or

(b) the cost which a person would have incurred had that person purchased that building or part under a cash transaction concluded at arm's length on the date on which that taxpayer purchased that building or part;

"urban development zone" means an area demarcated by a municipality in terms of subsection (6), the particulars of which were published in the *Gazette* in terms of subsection (8);

(2) There must be allowed to be deducted from the income of the taxpayer an allowance determined in terms of subsection (3) or (3A), in respect of the cost of the erection, extension, addition or improvement of any commercial or residential building or part of a building which is owned by the taxpayer and is used solely for purposes of that taxpayer's trade, if—

(a) that building is situated within an urban development zone;

(b) the erection, extension, addition or improvement was commenced by the taxpayer or the developer, as the case may be, on or after the date of publication of the notice contemplated in subsection (8) in respect of that urban development zone, in terms of a contract formally and finally signed by all parties thereto on or after that date;

(c) the erection, extension, addition to or improvement by the taxpayer or developer covers either the entire building or a floor area of at least 1 000 m^2 of that building; and

(d) in the case where the taxpayer purchased that building or part from a developer—

(i) the agreement to purchase was concluded on or after 8 November 2005;

(ii) that developer has not claimed any allowance under this section in respect of that building or part; and

(iii) if the developer improved the building or part as contemplated in subsection (3)(b) or (3A)(b), that developer has incurred expenditure in respect of those improvements which is equal to at least 20 per cent of the purchase price paid by the taxpayer in respect of that building or part.

(2A) For the purposes of this section, if a taxpayer completes an improvement as contemplated in section 12N, the expenditure incurred by the taxpayer to complete the improvement shall be deemed to be the cost of the erection, extension, addition or improvement contemplated in subsection (2).

(3) The amount of the allowance contemplated in subsection (2)—

(a) in the case of the erection of any new building or the extension of or addition to any building (other than a building in respect of which paragraph (b) applies), is equal to—

(i) 20 per cent of the cost to the taxpayer of the erection or extension of or addition to that building, which is deductible in the year of assessment during which that building is brought into use by that taxpayer solely for the purposes of that taxpayer's trade; and

(ii) eight per cent of that cost in each of the 10 succeeding years of assessment;

(b) in the case of the improvement of any existing building or part of a building (including any extension or addition which is incidental to that improvement) where the existing structural or exterior framework thereof is preserved, is equal to—

(i) 20 percent of the cost to the taxpayer of the improvement, extension or addition which is deductible in the year of assessment during which the part of the building so improved, extended or added is brought into use by the taxpayer solely for the purposes of that taxpayer's trade; and

(ii) 20 per cent of that cost in each of the four succeeding years of assessment.

(3A) The amount of the allowance contemplated in subsection (2)—

(a) in the case of the erection of any new building or the extension of or addition to any building, to the extent that it relates to a low-cost residential unit, (other than any improvement in respect of which paragraph (b) applies) is equal to—

(i) 25 per cent of the cost to the taxpayer of the erection or extension of or addition to that building, which is deductible in the year of assessment during which that building is brought into use by that taxpayer;

(ii) 13 per cent of that cost in each of the five succeeding years of assessment; and

(iii) 10 per cent of that cost in the year of assessment following the last year contemplated in subparagraph (ii);

(b) in the case of the improvement of any existing building or part of a building, to the extent that it relates to a low-cost residential unit, (including any extension or addition which is incidental to that improvement) where the existing structural or exterior framework thereof is preserved, is equal to—

(i) 25 per cent of the cost to the taxpayer of the improvement, which is deductible in the year of assessment during which the part of the building so improved, is brought into use by the taxpayer; and

(ii) 25 per cent of that cost in each of the three succeeding years of assessment.

(3B) For purposes of subsection (3) or (3A), where the taxpayer purchased a building or part of a building from a developer—

(a) 55 per cent of the purchase price of that building or part of a building, in the case of a new building erected, extended or added to by that developer as contemplated in subsection (3)(a) or (3A)(a); and

(b) 30 per cent of the purchase price of that building or part of a building, in the case of a building improved by that developer as contemplated in subsection (3)(b) or (3A)(b),

is deemed to be costs incurred by that taxpayer in respect of the erection, extension, addition to or improvement of that building or part of a building.

(4) No deduction shall be allowed under this section, unless the taxpayer has obtained or determined the following for submission to the Commissioner in such form and within such time as may be prescribed by the Commissioner—

(a) a certificate issued by the municipality to the taxpayer confirming that the building is located within an urban development zone within that municipality;

(b) the total amount of the costs to the taxpayer (other than a taxpayer contemplated in paragraph (d)) of the erection, extension, addition or improvement and the extent that those costs relate to any portion of a building;

(c) particulars as to whether the costs referred to paragraph (b) were incurred in respect of the erection or extension of or addition to a building as contemplated in subsection (3)(a) or the improvement of a building as contemplated in subsection (3)(b); and

(d) in the case of a taxpayer who purchased the building or part of a building from a developer—

(i) the purchase price of that building or part;

(ii) the amount of the purchase price deemed to be a cost incurred by the taxpayer in terms of subsection (3A); and

(iii) a certificate from the developer in the form prescribed by the Commissioner confirming that the requirements in subsection (2)(b), (c) and (d) have been met.

(5) No deduction shall be allowed under this section in respect of any building or part of a building—

(a) where that taxpayer ceased to use that building, or part solely for purposes of that taxpayer's trade during any previous year of assessment in or prior to which an allowance contemplated in subsection (2) was claimed;

(b) which has been disposed of by the taxpayer during any previous year of assessment; or

(c) which is brought into use by the taxpayer after 31 March 2025.

[paragraph (c) substituted by section 20 of Act 23 of 2020; effective date 20 January 2021, by section 16(1) of Act 20 of 2021; effective date 1 April 2021, and by section 21(1) of Act 17 of 2023; effective date deemed to have been 1 April 2021, applies in respect of any building, part thereof or improvement that is brought into use on or after that date]

(6) For the purposes of this section, one area may be demarcated by a municipality where—

(a) (i) that area is a developed urban location with the municipality of Buffalo City, Cape Town, Ekurhuleni, Emalahleni, Emfuleni, eThekwini, Johannesburg, Mahikeng, Mangaung, Matjhabeng, Mbombela, Msunduzi, Nelson Mandela, Polokwane, Sol Plaatje or Tshwane;

(ii) that area is demarcated through formal resolution by the relevant municipal council;

(iii) that area is prioritised in that municipality's integrated development plan adopted and undertaken in terms of Chapter 5 of the Local Government: Municipal Systems

Act, 2000 (Act No. 32 of 2000) as a priority area for further investments to promote business or industrial activity or residential settlements to support such activity;

(iv) that area proportionately contributes or previously contributed a significant portion of the total revenue collections for all areas located within the current boundaries of that municipality, as measured in the form of—

(aa) property rates; or

(bb) assessed property values,

and where the contribution from that area is undergoing a sustained real or nominal decline; and

(v) significant fiscal measures have been implemented by that municipality to support the regeneration of that area, including—

(aa) the appropriation of significant funds for developing the area in the annual budget of the municipality;

(bb) special tariffs for categories of residential, commercial or industrial users; or

(cc) partnership arrangements with the business community for the promotion of urban development within that area; or

(b) that area is approved by the Minister by notice in the *Gazette*, after application by a municipality in the form and manner and at the place and time that the Minister prescribes, if the area complies with criteria as the Minister must prescribe by regulation.

(7) (a) Subject to paragraph (d), the area demarcated in terms of subsection (6) may not exceed—

(i) where that municipality has a population of not more than 500 000 persons, a total area of 150 hectares; or

(ii) where that municipality has a population of more than 500 000 persons, 150 hectares plus 20 hectares for each additional 100 000 persons included in that population.

(b) Where that municipality has a population of 1 million persons or more, the municipal council may demarcate two areas in lieu of the one area demarcated in terms of subsection (6): Provided that—

(i) the two areas do not in total exceed the one area contemplated in paragraph (a)(ii); and

(ii) each area otherwise satisfies the requirements of subsection (6).

(bA) Where a municipality has a population of less than 1 million persons, the Minister may by notice in the *Gazette* approve that municipality for the purposes of paragraph (b) in terms of subsection (6)(b).

[paragraph (bA) substituted by section 34 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(c) For purposes of this subsection, the population of a municipality shall be the population figures as determined by Statistics South Africa in the Census for 2011 and the total population of that municipality must be rounded to the nearest multiple of 100 000.

(d) The area demarcated in terms of subsection (6) may exceed the limits contemplated in paragraph (a) where—

(i) the municipality proves to the Minister that the excess area is integrally related to the area within the limitation contemplated in paragraph (a);

(ii) the municipality can prove to the Minister that sound economic reasons exist for demarcating a larger area; and

(iv) the Minister is satisfied that the demarcation of the excess area would fall within Government's affordability constraints.

(8) The Minister must publish by notice in the *Gazette* particulars of an area demarcated by a municipality after that municipality has proved to the Minister that the area so demarcated complies with the provisions of subsection (6).

(9) Every municipality must provide a report annually to the Commissioner and the Minister in respect of each urban development zone located within that municipality containing such information, within such time and in such manner as is prescribed by the Minister.

(10) Where—

(a) a municipality does not provide an annual report as contemplated in subsection (9) or the Commissioner reports to the Minister that the municipality has issued a certificate contemplated in subsection (4)(a) in respect of a building that is located outside an urban development zone; and

(b) corrective steps are not taken by that municipality within a period specified by the Minister,

the Minister may withdraw the notice contemplated in subsection (8) for that municipality in respect of contracts formally and finally signed by all parties thereto on or after the date of withdrawal.

(10A) Every developer who erects, extends, adds to or improves any building within an urban development zone must, if the estimated cost of that erection, extension, addition or improvement is likely to exceed R5 million—

(a) inform the Commissioner within 30 days after commencement of the erection, extension, addition or improvement of the estimated costs thereof in respect of the building or the parts which the developer intends to sell and the estimated selling price of that building or those parts; and

(b) inform the Commissioner within 30 days after sale of the building or all anticipated sales of any parts of the building have been concluded of the actual costs incurred in respect of that building or parts and the actual selling price of that building or parts thereof.

(10B) If the Commissioner has reason to believe that the information provided in the certificate by a developer as contemplated in subsection (4)(d)(iii) is not correct, the Commissioner must disallow any deduction claimed under this section, unless sufficient information is provided to the Commissioner to prove that the information contained in that certificate is correct.

(11) The Commissioner must on an annual basis submit a report to the Minister containing information relating to—

(a) the number of taxpayers which have during the relevant year claimed an allowance in terms of this section;

(b) the total amount of the deductions by taxpayers allowed in that year in terms of this section; and

(c) the total amount of the costs to those taxpayers which are or will be allowable as a deduction in terms of this section.

13quin. Deduction in respect of commercial buildings

(1) There shall be allowed to be deducted from the income of the taxpayer an allowance equal to five per cent of the cost to the taxpayer of any new and unused building owned by the taxpayer, or any new and unused improvement to any building owned by the taxpayer, if that building or improvement is wholly or mainly used by the taxpayer during the year of assessment for purposes of producing income in the course of the taxpayer's trade, other than the provision of residential accommodation.

(1A) For the purposes of this section, if a taxpayer completes an improvement as contemplated in section 12N, the expenditure incurred by the taxpayer to complete the improvement shall be deemed to be the cost to the taxpayer of any new and unused building or of any new and unused improvement to a building contemplated in subsection (1).

(2) For the purposes of this section the cost to a taxpayer of any building or improvement shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if he had acquired, erected or improved the building under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition, erection or improvement of the building was in fact concluded, have incurred in respect of the direct cost of the acquisition, erection or improvement of the building.

(3) Where any building or improvement in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such year or any subsequent year in which such asset was used by the taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

(4) No deduction shall be allowed under this section in respect of any building that has been disposed of by the taxpayer during any previous year of assessment.

(5) No deduction shall be allowed under this section in respect of the cost of a building or improvement if any of that cost has qualified or will qualify for deduction from the taxpayer's income as a deduction of expenditure or an allowance in respect of expenditure under any other section of this Act.

(6) The deductions which may be allowed or deemed to have been allowed in terms of this section and any other provision of this Act in respect of the cost of any building or improvement shall not in the aggregate exceed the amount of such cost.

(7) For the purposes of subsection (1), to the extent that the taxpayer acquires a part of a building without erecting or constructing that part—

(a) 55 per cent of the acquisition price, in the case of a part being acquired; and

(b) 30 per cent of the acquisition price, in the case of an improvement being acquired,

is deemed to be the cost incurred by that taxpayer in respect of that part or improvement, as the case may be.

13sex. Deduction in respect of certain residential units

(1) Subject to section 36, there must be allowed to be deducted from the income of a taxpayer an allowance equal to five per cent of the cost to the taxpayer of any new and unused residential unit (or of any new and unused improvement to a residential unit) owned by the taxpayer if—

(a) that unit or improvement is used by the taxpayer solely for the purposes of a trade carried on by the taxpayer;

(b) that unit is situated within the Republic; and

(c) the taxpayer owns at least five residential units within the Republic, which are used by the taxpayer for the purposes of a trade carried on by the taxpayer:

Provided that if a taxpayer completes an improvement as contemplated in section 12N, the expenditure incurred by the taxpayer to complete the improvement shall be deemed to be the cost to the taxpayer of any new and unused residential unit (or of any new and unused improvement to a residential unit), for the purposes of this section.

(2) There shall be allowed to be deducted from the income of the taxpayer an additional allowance of five per cent of the cost of a low-cost residential unit of a taxpayer for a year of assessment if deductions are allowable to that taxpayer in respect of that unit in terms of subsection (1) during that year of assessment.

(3) For the purposes of this section, the cost to the taxpayer of a residential unit (or an improvement thereto) shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if that person had acquired or improved the residential unit under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of the new and unused residential unit (or of the new and unused improvement to the residential unit) was in fact concluded, have incurred in respect of the direct cost of the acquisition or erection of the residential unit or improvement.

(4) Where any residential unit (or an improvement to the residential unit) in respect of which any deduction is claimed in terms of this section was during any year of assessment used by the taxpayer for the purpose of any trade carried on by that taxpayer, the receipt and accruals of which were not included in the income of that taxpayer during that year, any deduction which could have been allowed in terms of this section during that year or any subsequent year in which that residential unit (or an improvement to the residential unit) was used by the taxpayer shall for the purposes of this section be deemed to have been allowed during that previous year or those years as if the receipts and accruals of that trade had been included in the income of that taxpayer.

(5) No deduction shall be allowed under this section in respect of the cost of any residential unit (or an improvement to a residential unit) that has been disposed of by the taxpayer during any previous year of assessment.

(6) No deduction shall be allowed under this section in respect of the cost of a residential unit (or an improvement to a residential unit) if any of the cost has qualified or will qualify for deduction from the taxpayer's income as a deduction of expenditure or an allowance in respect of expenditure under any other section of this Act.

(7) The deductions which may be allowed or deemed to have been allowed in terms of this section and any other provision of this Act in respect of the cost of any residential unit (or any improvement to a residential unit) shall not in the aggregate exceed the amount of such cost.

(8) For the purposes of this section, to the extent that the taxpayer acquires a residential unit (or improvement to a residential unit) representing only a part of a building without erecting or constructing that unit or improvement—

(a) 55 per cent of the acquisition price, in the case of the unit being acquired; and

(b) 30 per cent of the acquisition price, in the case of the improvement being acquired,

is deemed to be the cost incurred by that taxpayer in respect of that unit or improvement, as the case may be.

13sept. Deduction in respect of sale of low-cost residential units on loan account

(1) Subject to section 36, there must be allowed as a deduction from the income of the taxpayer, in respect of any year of assessment ending on or before 28 February 2022, an amount determined in terms of subsection (2) in respect of the disposal of any low-cost residential unit by the taxpayer to an employee of the taxpayer (or an associated institution as defined in the Seventh Schedule in relation to the taxpayer).

[subsection (1) substituted by section 21 of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(2) The deduction contemplated in subsection (1) is an amount equal to 10 per cent of any amount owing to the taxpayer by the employee in respect of the unit at the end of the taxpayer's year of assessment: Provided that no such deduction shall be allowed in the eleventh and subsequent years of assessment after the disposal of that low-cost residential unit, as contemplated in subsection (1).

(3) No deduction is allowed in terms of this section in respect of any disposal by the taxpayer if—

(a) the disposal is subject to any condition other than a condition in terms of which the employee is required—

(i) on termination of employment; or

(ii) in the case of consistent failure for a period of three months on the part of the employee to pay an amount owing to the taxpayer (or an associated institution, as defined in the Seventh Schedule, in relation to the taxpayer) in respect of a low-cost residential unit,

to dispose of the low-cost residential unit to the taxpayer (or an associated institution, as defined in the Seventh Schedule, in relation to the taxpayer) for an amount equal to the actual cost (other than borrowing or finance costs) to the employee of the unit and the land on which the unit is erected;

(b) the employee must pay interest to the taxpayer in respect of the amount owing to the taxpayer by the employee in respect of the unit; or

(c) the disposal is for an amount that exceeds the actual cost (other than borrowing or finance costs) to the taxpayer of the unit and the land on which the unit is erected.

(4) If the amount owing contemplated in subsection (2) or any part thereof is paid to the taxpayer, the taxpayer is deemed to have recovered or recouped an amount equal to the lesser of—

(a) the amount so paid; or

(b) the amount allowed as a deduction in terms of this section in the current and any previous year of assessment.

15. Deductions from income derived from mining operations

There shall be allowed to be deducted from the income derived by the taxpayer from mining operations—

(a) an amount to be ascertained under the provisions of section 36, in lieu of the allowances in sections 11(e), (f), (gA), (gC), (o), 12D, 12DA, 12F and 13quin;

(b) any expenditure incurred by the taxpayer during the year of assessment on prospecting operations (including surveys, boreholes, trenches, pits and other prospecting work preliminary to the establishment of a mine) in respect of any area within the Republic together with any other expenditure which is incidental to such operations: Provided that—

(i) except in the case of any person who derives income from mining for diamonds in the Republic, any expenditure referred to in this paragraph shall be deducted in a series of annual instalments, so that only a portion of such expenditure is deducted in the year of assessment in which it is incurred, and the residue in such subsequent years of assessment and in such proportions as may be determined by public notice issued by the Commissioner, until the expenditure is extinguished;

(ii) in the case of any company which derives income from different classes of mining operations, the deduction under this paragraph shall be made from the income derived from such class or classes of mining operations and in such proportions as may be determined by public notice issued by the Commissioner;

(iii) any expenditure which has been allowed to be deducted from the income of any person in terms of this paragraph shall not be included in such person's capital expenditure as defined in subsection (11) of section thirty-six.

15A. Amounts to be taken into account in respect of trading stock derived from mining operations

For the purposes of section 22, trading stock related to mining operations—

(a) includes anything that is—

(i) won or in any other manner acquired during the course of mining operations by a taxpayer for the purposes of extraction, processing, separation, refining, beneficiation, manufacture, sale or exchange by the taxpayer or on the taxpayer's behalf; and

(ii) taken into account as inventory in terms of South African Generally Accepted Accounting Practice; and

(b) must not be valued at an amount less than the amount so taken into account.

17A. Expenditure incurred by a lessor of land let for farming purposes, in respect of soil erosion works

(1) Subject to the provisions of subsection (2), there shall be allowed to be deducted from the income derived by any taxpayer from letting any land on which *bona fide* pastoral, agricultural or other farming operations were carried on during the year of assessment, the expenditure incurred by him during such year in respect of the construction of soil erosion works, provided a certificate by the Executive Officer designated under section 4 of the Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983), or his assignee is produced to the effect that such works have been approved under the provisions of the said Act.

(2) Where expenditure incurred by the taxpayer during any year of assessment and ranking for deduction from income under subsection (1) exceeds the taxable income (as calculated before allowing any deduction under that subsection) derived by the taxpayer from letting land on which *bona fide* pastoral, agricultural or other farming operations were carried on during such year, the amount allowed to be deducted under subsection (1) in respect of the said year shall be limited to an amount equal to such taxable income (calculated as aforesaid), and the excess shall be carried forward and be deemed for the purposes of this section to be expenditure incurred by the taxpayer during the next succeeding year of assessment in respect of the construction of soil erosion works.

18A. Deduction of donations to certain organisations

(1) Notwithstanding the provisions of section 23, there shall be allowed to be deducted in the determination of the taxable income of any taxpayer so much of the sum of any *bona fide* donations by that taxpayer in cash or of property made in kind, which was actually paid or transferred during the year of assessment to—

[words preceding paragraph (a) substituted by section 22 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(a) any—

(i) public benefit organisation contemplated in paragraph (a)(i) of the definition of "public benefit organisation" in section 30(1) approved by the Commissioner under section 30; or

(ii) institution, board or body contemplated in section 10(1)(cA)(i),

which—

(aa) carries on in the Republic any public benefit activity contemplated in Part II of the Ninth Schedule, or any other activity determined from time to time by the Minister by notice in the *Gazette* for the purposes of this section;

(bb) complies with the requirements contemplated in subsection (1C), if applicable, and any additional requirements prescribed by the Minister in terms of subsection (1A); and

(cc) has been approved by the Commissioner for the purposes of this section;

(b) any public benefit organisation contemplated in paragraph (a)(i) of the definition of "public benefit organisation" in section 30(1) approved by the Commissioner under section 30, which provides funds or assets to any public benefit organisation, institution, board or body contemplated in paragraph (a) and which has been approved by the Commissioner for the purposes of this section; or

(bA) (i) any agency contemplated in the definition of "specialized agencies" in section 1 of the Convention on the Privileges and Immunities of the Specialized Agencies, 1947, set out in Schedule 4 to the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001);

(ii) the United Nations Development Programme (UNDP);

(iii) the United Nations Children's Fund (UNICEF);

(iv) the United Nations High Commissioner for Refugees (UNHCR);

(v) the United Nations Population Fund (UNFPA);

(vi) the United Nations Office on Drugs and Crime (UNODC);

(vii) the United Nations Environmental Programme (UNEP);

(viii) the United Nations Entity for Gender, Equality and the Empowerment of Women (UN Women);

(ix) the International Organisation for Migration (IOM);

(x) the Joint United Nations Programme on HIV/AIDS (UNAIDS);

(xi) the Office of the High Commissioner for Human Rights (OHCHR); or

(xii) the United Nations Office for the Coordination of Humanitarian Affairs (OCHA),

if that agency, programme, fund, High Commissioner, office, entity or organisation—

(aa) carries on in the Republic any public benefit activity contemplated in Part II of the Ninth Schedule, or any other activity determined from time to time by the Minister by notice in the *Gazette* for the purposes of this section;

(bb) furnishes the Commissioner with a written undertaking that such agency will comply with the provisions of this section; and

(cc) waives diplomatic immunity for the purposes of subsection (5)(i); or

(c) any department of government of the Republic in the national, provincial or local sphere as contemplated in section 10(1)(a), which has been approved by the Commissioner for the purposes of this section, to be used for purpose of any activity contemplated in Part II of the Ninth Schedule,

as does not exceed—

(A) where the taxpayer is a portfolio of a collective investment scheme, an amount determined in accordance with the following formula:

$A = B \times 0,005$

in which formula:

(AA) "A" represents the amount to be determined;

(BB) "B" represents the average value of the aggregate of all of the participatory interests held by investors in the portfolio for the year of assessment, determined by using the aggregate value of all of the participatory interests in the portfolio at the end of each day during that year; or

(B) in any other case, ten per cent of the taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) of the taxpayer as calculated before allowing any deduction under this section or section 6quat(1C):

[paragraph (B) substituted by section 35(1)(a) of Act 23 of 2018; effective date 1 March 2018]

Provided that any amount of a donation made as contemplated in this subsection and which has been disallowed solely by reason of the fact that it exceeds the amount of the deduction allowable in respect of the year of assessment shall be carried forward and shall, for the purposes of this section, be deemed to be a donation actually paid or transferred in the next succeeding year of assessment.

(1A) The Minister may, by regulation, prescribe additional requirements with which a public benefit organisation, institution, board or body or the department carrying on any specific public benefit activity identified by the Minister in the regulations, must comply before any donation made to that public benefit organisation, institution, board or body or the department shall be allowed as a deduction under subsection (1).

(1B) Any activity determined by the Minister in terms of subsection (1)(a) or any requirements prescribed by the Minister in terms of subsection (1A), must be tabled in Parliament within a period of 12 months after the date of publication by the Minister of that activity or those requirements, as the case may be, in the *Gazette*, for incorporation into this Act.

(1C) The constitution or founding document of a public benefit organisation carrying on the activity contemplated in paragraph 4(d) of Part II of the Ninth Schedule, must expressly provide that the organisation—

(a) may not issue any receipt contemplated in subsection (2) in respect of any donation made by a person to that public benefit organisation, unless—

(i) that donation is made by that person on or after 1 August 2002; and

(ii) that person (in the case of a company, together with any other company in the same group of companies as that company) has during the relevant year of assessment of that person donated an amount of at least R1 million to that organisation;

(b) must ensure that every donation contemplated in paragraph (a), in respect of which such a receipt has been issued, will be matched by a donation to that organisation of the same amount made by a person who is not a resident and which is made from funds generated and held outside the Republic; and

(c) must utilise the amount of—

(i) all donations contemplated in paragraph (a), in respect of which such a receipt has been issued, and all income derived therefrom, in the Republic in carrying on that activity; and

(ii) all donations contemplated in paragraph (b), either in the Republic in carrying on that activity, or in respect of a transfrontier conservation area of which the Republic forms part.

(2) Any claim for a deduction in respect of any donation under subsection (1) shall not be allowed unless supported by—

(a) a receipt issued by the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation or the department concerned containing—

[words preceding subparagraph (i) substituted by section 35(1)(b) of Act 23 of 2018; effective date 1 March 2017]

(i) the reference number of the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation or the department issued by the Commissioner for the purposes of this section;

[subparagraph (i) substituted by section 35(1)(c) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(ii) the date of the receipt of the donation;

(iii) the name of the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation or the department which received the donation, together with an address to which enquiries may be directed in connection therewith;

[subparagraph (iii) substituted by section 35(1)(c) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(iv) the name and address of the donor;

(v) the amount of the donation or the nature of the donation (if not made in cash);

(vi) a certification to the effect that the receipt is issued for the purposes of section 18A of the Income Tax Act, 1962, and that the donation has been or will be used exclusively for the object of the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation concerned or, in the case of the department in carrying on the relevant public benefit activity; and

[subparagraph (vi) substituted by section 35(1)(c) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(vii) such further information as the Commissioner may prescribe by public notice; or

[item (vii) added by section 2 of Act 21 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(b) an employees' tax certificate as defined in the Fourth Schedule on which the amount of donations contemplated in paragraph 2(4)(f) of that Schedule, for which the employer has received a receipt contemplated in paragraph (a), is given.

(2A) A public benefit organisation, institution, board, body or department may only issue a receipt contemplated in subsection (2) in respect of any donation to the extent that—

(a) in the case of a public benefit organisation, institution, board or body contemplated in subsection (1)(a) which carries on activities contemplated in Parts I and II of the Ninth Schedule, that donation will be utilised solely in carrying on activities contemplated in Part II of the Ninth Schedule;

(b) in the case of a public benefit organisation contemplated in subsection (1)(b)—

(i) that organisation will within 12 months after the end of the relevant year of assessment distribute or incur the obligation to distribute at least 50 per cent of all funds received by way of donation during that year in respect of which receipts were issued: Provided that the Commissioner may, upon good cause shown and subject

to such conditions as he or she may determine, either generally or in a particular instance, waive, defer or reduce the obligation to distribute any funds, having regard to the public interest and the purpose for which the relevant organisation wishes to accumulate those funds; and

(ii) if that public benefit organisation provides funds to public benefit organisations, institutions, boards or bodies that carry on public benefit activities contemplated in Part II of the Ninth Schedule and to other entities, that donation will be utilised solely to provide funds to a public benefit organisation, institution, board or body contemplated in subsection (1)(a), which will utilise those funds solely in carrying on activities contemplated in Part II of the Ninth Schedule; or

(c) in the case of a department, that donation will be utilised solely in carrying on activities contemplated in Part II of the Ninth Schedule.

(2B) A public benefit organisation, institution, board or body contemplated in subsection (2A), must obtain and retain an audit certificate confirming that all donations received or accrued in that year in respect of which receipts were issued in terms of subsection (2), were utilised in the manner contemplated in subsection (2A).

(2C) The accounting officer or accounting authority contemplated in the Public Finance Management Act or an accounting officer contemplated in the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for the department which issued any receipts in terms of subsection (2), must on an annual basis submit an audit certificate to the Commissioner confirming that all donations received or accrued in the year in respect of which receipts were so issued were utilised in the manner contemplated in subsection (2A).

[subsection (2C) substituted by section 2 of Act 33 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(2D) Any public benefit organisation contemplated in subsection (1)(b), in respect of any amount that is not distributed referred to in subsection (2A)(b)(i), shall distribute or incur the obligation to distribute all amounts received in respect of investment assets held by it, other than amounts received in respect of disposals of those investment assets to any public benefit organisation, institution, board or body contemplated in subsection (1)(a), no later than six months after—

(a) every five years from the date on which the Commissioner issued a reference number referred to in subsection (2)(a)(i) to that public benefit organisation referred to in subsection (1)(b), if that public benefit organisation is incorporated, formed or established on or after 1 March 2015; or

(b) every five years from 1 March 2015, if that public benefit organisation referred to in subsection (1)(b) was incorporated, formed or established and issued with a reference number referred to in subsection (2)(a)(i) prior to 1 March 2015.

(3) If any deduction is claimed by any taxpayer under the provisions of subsection (1) in respect of any donation of property in kind, other than immovable property of a capital nature where the lower of market value or municipal value exceeds cost, the amount of such deduction shall be deemed to be an amount equal to—

(a) where such property constitutes—

(i) a financial instrument which is trading stock of the taxpayer, the lower of fair market value of that financial instrument on the date of that donation or the amount which has been taken into account for the purposes of section 22(8)(C); or

(ii) any other trading stock of the taxpayer (including any livestock or produce in respect of which the provisions of paragraph 11 of the First Schedule are applicable), the amount which has been taken into account for the purposes of section 22(8)(C) or, in the case of such livestock or produce, the said paragraph 11, in relation to the donation of such property; or

(b) where such property (other than trading stock) constitutes an asset used by the taxpayer for the purposes of his trade, the lower of—

(i) the fair market value of that property on the date of that donation; or

(ii) the cost to the taxpayer of such property less any allowance (other than any investment allowance) allowed to be deducted from the income of the taxpayer under the provisions of this Act in respect of that asset; or

(c) where such property does not constitute trading stock of the taxpayer or an asset used by him for the purposes of his trade, the lower of—

(i) the fair market value of that property on the date of that donation; or

(ii) the cost to the taxpayer of such asset, less, in the case of a movable asset which has deteriorated in condition by reason of use or other causes, a depreciation allowance calculated in the manner contemplated in section 8(5)(bB)(i); or

(d) where such property is purchased, manufactured, erected, assembled, installed or constructed by or on behalf of the taxpayer in order to form the subject of the said donation, the lower of—

(i) the fair market value of that property on the date of that donation; or

(ii) the cost to the taxpayer of such property.

(3A) If any deduction is claimed by any taxpayer under the provisions of subsection (1) in respect of any donation of immovable property of a capital nature where the lower of market value or municipal value exceeds cost, the amount of such deduction shall be determined in accordance with the formula:

$A = B + (C \times D)$

in which formula:

(a) "A" represents the amount deductible in respect of subsection (1);

(b) "B" represents the cost of the immovable property being donated;

(c) "C" represents the amount of a capital gain (if any), that would have been determined in terms of the Eighth Schedule had the immovable property been disposed of for an amount equal to the lower of market value or municipal value on the day the donation is made; and

[paragraph (c) substituted by section 22 of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(d) "D" represents 60 per cent in the case of a natural person or special trust or 20 per cent in any other case.

[paragraph (d) substituted by section 35(1)(d) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(3B) No deduction shall be allowed under this section in respect of the donation of any property in kind which constitutes, or is subject to any fiduciary right, usufruct or other similar right, or which constitutes an intangible asset or financial instrument, unless that financial instrument is—

(a) a share in a listed company; or

(b) issued by an eligible financial institution as defined in section 1 of the Financial Sector Regulation Act.

[paragraph (b) substituted by section 35(1)(e) of Act 23 of 2018; effective date 1 April 2018]

(4) The provisions of section 30(10) shall apply *mutatis mutandis* in respect of any institution, board or body contemplated in subsection (1)(a).

(5) If the Commissioner has reasonable grounds for believing that any person who is in a fiduciary capacity responsible for the management or control of the income or assets of any public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation (other than an institution, board or body in respect of which subsection (5B) applies) has—

(a) in any material way failed to ensure that the objects for which the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation was established are carried out or has expended moneys belonging to the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation for purposes not covered by such objects;

(b) issued or allowed a receipt to be issued to any taxpayer for the purposes of this section in respect of any fees or other emoluments payable to that organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation by that taxpayer; or

(c) issued or allowed a receipt to be issued in contravention of subsection (2A) or utilised a donation in respect of which a receipt was issued for any purpose other than the purpose contemplated in that subsection,

the Commissioner may by notice in writing addressed to that person direct that—

(i) any donation in respect of which a receipt was issued by that public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation during any year of assessment specified in that notice, will be deemed to be taxable income of that public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation in that year; and

(ii) if corrective steps are not taken by that public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation within a period stated by the Commissioner in that notice, any receipt issued by that public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation in respect of any donation made on or after the date specified in that notice shall not qualify as a valid receipt for purposes of subsection (2).

[subsection (5) substituted by section 35(1)(f) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(5A) If the Commissioner has reasonable grounds for believing that any regulating or co-ordinating body of a group of public benefit organisations, institutions, boards or bodies contemplated in section 30(3A) or subsection (6) fails to—

(a) take any steps contemplated in section 30(3A) or subsection (6), to exercise control over any public benefit organisation, institution, board or body in that group; or

(b) notify the Commissioner where it becomes aware of any material failure by any public benefit organisation, institution, board or body over which it exercises control to comply with any provision of this section,

the Commissioner may by notice in writing addressed to that regulating or co-ordinating body direct that if corrective steps are not taken by that regulating or co-ordinating body within a period stated by the Commissioner in that notice, any receipt issued by public benefit organisations, institutions, boards or bodies in that group in respect of any donation made on or after the date specified in that notice shall not qualify as a valid receipt for purposes of subsection (2).

(5B) If the Commissioner has reasonable grounds for believing that any accounting officer or accounting authority contemplated in the Public Finance Management Act or an accounting officer contemplated in the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for any institution in respect of which that Act applies, has issued

or allowed a receipt to be issued in contravention of subsection (2A) or utilised a donation in respect of which a receipt was issued for any purpose other than the purpose contemplated in that subsection, the Commissioner—

(a) must notify the National Treasury and the Provincial Treasury (if applicable) of the contravention; and

(b) may by notice in writing addressed to that accounting officer or accounting authority direct that, if corrective steps are not taken by that accounting officer or accounting authority within a period stated by the Commissioner in that notice, any receipt issued by that institution in respect of any donation made on or after the date specified in that notice shall not qualify as a valid receipt for purposes of subsection (2).

(5C) If any public benefit organisation contemplated in subsection (1)(b), has not distributed amounts as contemplated in subsection (2D), or has not incurred the obligation to distribute those amounts received in respect of investment assets held by it, those amounts shall be deemed to be taxable income of that public benefit organisation in that year of assessment.

(6) The Commissioner may, for the purposes of this section, approve a group of institutions, boards or bodies contemplated in subsection (1)(a)(ii), sharing a common purpose which carry on any public benefit activity under the direction or supervision of a regulating or co-ordinating body, where that body takes such steps, as prescribed by the Commissioner, to exercise control over those institutions, boards or bodies in order to ensure that they comply with the provisions of this section.

(7) Any person who is—

(i) in a fiduciary capacity responsible for the management or control of the income and assets of any public benefit organisation, institution, board or body contemplated in this section; or

(ii) the accounting officer or accounting authority contemplated in the Public Finance Management Act or the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for any institution in respect of which that Act applies,

who intentionally fails to comply with any provisions of this section, or a provision of the constitution, will or other written instrument under which such organisation is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

19. Concession or compromise in respect of a debt

(1) For the purposes of this section—

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

"**capital asset**" means an asset as defined in paragraph 1 of the Eighth Schedule that is not trading stock;

"**concession or compromise**" means any arrangement in terms of which—

(a) a debt is—

(i) cancelled or waived; or

(ii) extinguished by—

(aa) redemption of the claim in respect of that debt by the person owing that debt or by any person that is a connected person in relation to that person; or

(bb) merger by reason of the acquisition by the person owing that debt of the claim in respect of that debt,

otherwise than as the result or by reason of the implementation of an arrangement described in paragraph (b);

(b) a debt owed by a company is settled, directly or indirectly—

(i) by being converted to or exchanged for shares in that company; or

(ii) by applying the proceeds from shares issued by that company;

[definition of "concession or compromise" substituted by section 36(1)(a) of Act 23 of 2018; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

"**debt**" means any amount that is owed by a person in respect of—

(a) expenditure incurred by that person; or

(b) a loan, advance or credit that was used, directly or indirectly, to fund any expenditure incurred by that person,

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

[definition of "debt" substituted by section 36(1)(b) of Act 23 of 2018; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

"**debt benefit**", in respect of a debt owed by a person to another person, means—

(a) in the case of an arrangement described in paragraph (a)(i) of the definition of "concession or compromise", the amount cancelled or waived;

(b) in the case of the extinction of that debt by means of an arrangement described in paragraph (a)(ii) of the definition of "concession or compromise", the amount by which the face value of the claim in respect of that debt held by the person to whom the debt is owed prior to the entering into of that arrangement exceeds the expenditure incurred in respect of—

(i) the redemption of that debt; or

(ii) the acquisition of the claim in respect of that debt;

(c) in the case of the settling of that debt by means of an arrangement described in paragraph (b) of the definition of "concession or compromise", where the person who acquired shares in a company in terms of that arrangement did not hold an effective interest in the shares of that company prior to the entering into of that arrangement, the amount by which the face value of the claim held in respect of that debt prior to the entering into of that arrangement exceeds the market value of the shares acquired by reason or as a result of the implementation of that arrangement; or

(d) in the case of the settling of that debt by means of an arrangement described in paragraph (b) of the definition of "concession or compromise", where the person who acquired shares in a company in terms of that arrangement held an effective interest in the shares of that company prior to the entering into of that arrangement, the amount by which the face value of the claim held in respect of that debt prior to the entering into of that arrangement exceeds the amount by which the market value of any effective interest held by that person in the shares of that company immediately after the implementation of that arrangement exceeds, solely as a result of the implementation of that arrangement, the market value of the effective interest held by that person in the shares of that company immediately prior to the entering into of that arrangement;

[definition of "debt benefit" substituted by section 36(1)(c) of Act 23 of 2018; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

"**group of companies**" means a group of companies as defined in section 41; and

[definition of "group of companies" amended by section 17(1)(a) of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

"**market value**", in relation to shares acquired or held by reason or as a result of implementing a concession or compromise in respect of a debt, means the market value of those shares immediately after the implementation of that concession or compromise.

[definition of "market value" inserted by section 36(1)(d) of Act 23 of 2018; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

(2) Subject to subsection (8), this section applies where—

(a) a debt benefit in respect of a debt owed by a person arises in respect of a year of assessment by reason or as a result of a concession or compromise in respect of that debt during that year of assessment; and

[paragraph (a) substituted by section 36(1)(e) of Act 23 of 2018; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

(b) the amount of that debt is owed by that person in respect of or was used by that person to fund, directly or indirectly, any expenditure in respect of which a deduction or allowance was granted in terms of this Act.

[paragraph (b) substituted by section 36(1)(e) of Act 23 of 2018; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

(3) Where—

(a) a debt benefit arises in respect of a debt owed by a person as contemplated in subsection (2); and

(b) the amount of that debt is owed in respect of or was used as contemplated in paragraph (b) of that subsection to fund expenditure incurred in respect of trading stock that is held and not disposed of by that person at the time the debt benefit arises,

[paragraph (b) substituted by section 36(1)(f) of Act 23 of 2018; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

the debt benefit in respect of that debt must, to the extent that an amount is taken into account by that person in respect of that trading stock in terms of section 11(a) or 22(1) or (2) for the year of assessment in which the debt benefit arises, be applied to reduce the amount so taken into account in respect of that trading stock.

(4) Where—

(a) a debt benefit arises in respect of a debt owed by a person as contemplated in subsection (2);

(b) the amount of that debt is owed in respect of or was used as contemplated in paragraph (b) of that subsection to fund expenditure incurred in respect of trading stock that is held and not disposed of by that person at the time the debt benefit arises; and

[paragraph (b) substituted by section 36(1)(f) of Act 23 of 2018; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

(c) subsection (3) has been applied to reduce an amount taken into account by that person in respect of trading stock as contemplated in that subsection to the full extent of that amount so taken into account,

the debt benefit in respect of that debt, less any amount of that debt benefit that has been applied to reduce an amount as contemplated in subsection (3) must, to the extent that a deduction or allowance was granted in terms of this Act to that person in respect of that expenditure, be deemed,

for the purposes of section 8(4)(a), to be an amount that has been recovered or recouped by that person for the year of assessment in which the debt benefit arises.

(5) Where—

(a) a debt benefit arises in respect of a debt owed by a person as contemplated in subsection (2); and

(b) the amount of that debt is owed in respect of or was used as contemplated in paragraph (b) of that subsection to fund any expenditure other than expenditure incurred—

[paragraph (b) (words preceding subparagraph (i)) substituted by section 36(1)(g) of Act 23 of 2018; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

(i) in respect of trading stock that is held and not disposed of by that person at the time the debt benefit arises; or

(ii) in respect of an allowance asset,

the debt benefit in respect of that debt must, to the extent that a deduction or allowance was granted in terms of this Act to that person in respect of that expenditure, be deemed, for the purposes of section 8(4)(a), to be an amount that has been recovered or recouped by that person for the year of assessment in which the debt benefit arises.

(6) Where—

(a) a debt benefit arises in respect of a debt owed by a person as contemplated in subsection (2); and

(b) the amount of that debt is owed in respect of or was used as contemplated in paragraph (b) of that subsection to fund expenditure incurred in respect of an allowance asset that was not disposed of in a year of assessment prior to that in which that debt benefit arises,

[paragraph (b) substituted by section 36(1)(h) of Act 23 of 2018; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

the debt benefit in respect of that debt must, to the extent that—

(i) a deduction or allowance was granted in terms of this Act to that person in respect of that expenditure; and

(ii) the debt benefit has not been applied as contemplated in paragraph 12A of the Eighth Schedule to reduce the amount of expenditure as contemplated in paragraph 20 of that Schedule in respect of that allowance asset,

be deemed, for the purposes of section 8(4)(a), to be an amount that has been recovered or recouped by that person for the year of assessment in which the debt benefit arises.

(6A) Where—

(a) a debt benefit arises during any year of assessment in respect of a debt owed by a person as contemplated in subsection (2); and

(b) the amount of that debt is owed in respect of or was used as contemplated in paragraph (b) of that subsection to fund expenditure incurred in respect of an allowance asset that was disposed of in a year of assessment prior to that in which that debt benefit arises,

that person must, if the amount determined in respect of that disposal as a recovery or recoupment of a deduction or allowance is less than the amount that would have been so determined had that debt benefit been taken into account in the year of assessment in which the disposal occurred, treat

the amount of that difference as an amount recovered or recouped for purposes of section 8(4)(a) in the year of assessment in which that debt benefit arises.

[subsection (6A) inserted by section 36(1)(i) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]

(7) Where a debt benefit arises in respect of a debt owed by a person that was used to fund expenditure incurred in respect of an allowance asset, the aggregate amount of the deductions and allowances allowable to that person in respect of that allowance asset may not exceed an amount equal to the aggregate of the expenditure incurred in the acquisition of that allowance asset, reduced by an amount equal to the sum of—

(a) the debt benefit in respect of that debt; and

(b) the aggregate amount of all deductions and allowances previously allowed to that person in respect of that allowance asset.

(8) This section must not apply to a debt benefit in respect of any debt owed by a person—

(a) that is an heir or legatee of a deceased estate, to the extent that—

(i) the debt is owed to that deceased estate;

(ii) the debt is reduced by the deceased estate; and

(iii) the amount by which the debt is reduced by the deceased estate forms part of the property of the deceased estate for the purposes of the Estate Duty Act;

(b) to the extent that the debt is reduced by way of—

(i) a donation as defined in section 55(1); or

(ii) any transaction to which section 58 applies,

in respect of which donations tax is payable;

[words following subparagraph (ii) substituted by section 17(1)(b) of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

[paragraph (b) substituted by section 36(1)(j) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]

(c) to an employer of that person, to the extent that the debt is reduced in the circumstances contemplated in paragraph 2(h) of the Seventh Schedule;

(d) to another person where the person that owes that debt is a company if—

(i) that company owes that debt to a company that forms part of the same group of companies as that company; and

(ii) that company has not carried on any trade,

during the year of assessment in which that debt benefit arises as well as during the immediately preceding year of assessment: Provided that this paragraph must not apply in respect of any debt—

(aa) incurred, directly or indirectly by that company to fund expenditure incurred in respect of any asset that was subsequently disposed of by that company by way of an asset-for-share, intra-group or amalgamation transaction or a liquidation distribution in respect of which the provisions of section 42, 44, 45 or 47, as the case may be, applied; or

(bb) incurred or assumed by that company in order to settle, take over, refinance or renew, directly or indirectly, any debt incurred by—

(A) any other company that forms part of the same group of companies; or

(B) any company that is a controlled foreign company in relation to any company that forms part of the same group of companies;

(e) to another person where the person that owes that debt is a company that—

(i) owes that debt to a company that forms part of the same group of companies as that company; and

(ii) reduces or settles that debt, directly or indirectly, by means of shares issued by that company:

Provided that this paragraph must not apply in respect of any debt that was incurred or assumed by that company in order to settle, take over, refinance or renew, directly or indirectly, any debt incurred by another company which—

(aa) did not form part of that same group of companies at the time that that other company incurred that debt; or

(bb) does not form part of that same group of companies at the time that that company reduces or settles that debt, directly or indirectly, by means of shares issued by that company; or

(f) to the extent that the debt so owed—

(i) is settled by means of an arrangement described in paragraph (b) of the definition of "concession or compromise"; and

(ii) does not consist of or represent an amount owed by that person in respect of any interest as defined in section 24J incurred by that person during any year of assessment.

[subparagraph (ii) substituted by section 17(1)(c) of Act 20 of 2021; effective date 1 January 2022, applicable in respect of years of assessment commencing on or after that date]

[paragraph (f) added by section 36(1)(k) of Act 23 of 2018; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

20. Set-off of assessed losses

(1) For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall, subject to section 20A, be set off against the income so derived by such person—

(a) any balance of assessed loss incurred by that person in any previous year which has been carried forward from the preceding year of assessment: Provided that no person whose estate has been voluntarily or compulsorily sequestrated shall be entitled to carry forward any assessed loss incurred prior to the date of sequestration, unless the order of sequestration has been set aside, in which case the amount to be so carried forward shall be reduced by an amount which was allowed to be set off against the income of the insolvent estate of such person from the carrying on of any trade;

(b) any assessed loss incurred by a person during the same year of assessment in carrying on any other trade either alone or in partnership with others, otherwise than as a member of a company the capital whereof is divided into shares:

Provided that there shall not be set off against any amount—

(b) derived by any person from a source within the Republic, any—

(i) assessed loss incurred by such person during such year; or

(ii) any balance of assessed loss incurred in any previous year of assessment,

in carrying on any trade outside the Republic; or

(c) that is a retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit included in taxable income, any—

(i) balance of assessed loss;

(ii) "assessed loss" as defined in subsection (2) incurred in such year before taking into account that retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit.

(2) For the purposes of this section "assessed loss" means any amount by which the deductions admissible under section 11 exceeded the income in respect of which they are so admissible.

(2A) In the case of any person other than a company—

(a) the provisions of subsections (1) and (2) shall *mutatis mutandis* apply for the purpose of determining the taxable income derived by such person otherwise than from carrying on any trade, the reference in subsection (1) to "taxable income derived by any person from carrying on any trade" and the reference in that subsection to "the income so derived" being respectively construed as including a reference to taxable income derived by that person otherwise than from carrying on any trade and a reference to income so derived; and

(b) the said person shall, subject to the provisos to subsection (1), not be prevented from carrying forward a balance of assessed loss merely by reason of the fact that he has not derived any income during any year of assessment.

20A. Ring-fencing of assessed losses of certain trades

(1) Subject to subsection (3), where the circumstances in subsection (2) apply during any year of assessment in respect of any trade carried on by a natural person, any assessed loss incurred during that year in carrying on that trade may not be set off against any income of that person derived during that year otherwise than from carrying on that trade, notwithstanding section 20(1)(b).

(2) Subsection (1) applies where the sum of the taxable income of a person for a year of assessment (determined without having regard to the other provisions of this section) and any assessed loss and balance of assessed loss which were set off in terms of section 20 in determining that taxable income, equals or exceeds the amount at which the maximum marginal rate of tax chargeable in respect of the taxable income of individuals becomes applicable, and where—

(a) that person has, during the five year period ending on the last day of that year of assessment, incurred an assessed loss in at least three years of assessment in carrying on the trade contemplated in subsection (1) (before taking into account any balance of assessed loss carried forward); or

(b) the trade contemplated in subsection (1), in respect of which the assessed loss was incurred constitutes—

(i) any sport practised by that person or any relative;

(ii) any dealing in collectibles by that person or any relative;

(iii) the rental of residential accommodation, unless at least 80 per cent of the residential accommodation is used by persons who are not relatives of that person for at least half of the year of assessment;

(iv) the rental of vehicles, aircraft or boats as defined in the Eighth Schedule, unless at least 80 per cent of the vehicles, aircraft or boats are used by persons who are not relatives of that person for at least half of the year of assessment;

(v) animal showing by that person or any relative;

(vi) farming or animal breeding, unless that person carries on farming, animal breeding or activities of a similar nature on a full-time basis;

(vii) any form of performing or creative arts practised by that person or any relative;

(viii) any form of gambling or betting practised by that person or any relative; or

(ix) the acquisition or disposal of any crypto asset.

[subparagraph (ix) added by section 37 of Act 23 of 2018; effective date 17 January 2019, and substituted by section 23 of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(3) The provisions of subsection (1) do not apply in respect of an assessed loss incurred by a person during any year of assessment from carrying on any trade contemplated in subsection (2)(a) or (b), where that trade constitutes a business in respect of which there is a reasonable prospect of deriving taxable income (other than taxable capital gain) within a reasonable period having special regard to—

(a) the proportion of the gross income derived from that trade in that year of assessment in relation to the amount of the allowable deductions incurred in carrying on that trade during that year;

(b) the level of activities carried on by that person or the amount of expenses incurred by that person in respect of advertising, promoting or selling in carrying on that trade;

(c) whether that trade is carried on in a commercial manner, taking into account—

(i) the number of full-time employees appointed for purposes of that trade (other than persons partly or wholly employed to provide services of a domestic or private nature);

(ii) the commercial setting of the premises where the trade is carried on;

(iii) the extent of the equipment used exclusively for purposes of carrying on that trade; and

(iv) the time that the person spends at the premises conducting that business;

(d) the number of years of assessment during which assessed losses were incurred in carrying on that trade in relation to the period from the date when that person commenced carrying on that trade and taking into account—

(i) any unexpected events giving rise to any of those assessed losses; and

(ii) the nature of the business involved;

(e) the business plans of that person and any changes thereto to ensure that taxable income is derived in future from carrying on that trade; and

(f) the extent to which any asset attributable to that trade is used, or is available for use, by that person or any relative of that person for recreational purposes or personal consumption.

(4) Subsection (3) does not apply in respect of a trade contemplated in subsection (2)(b) (other than farming) carried on by a person during any year of assessment where that person has, during the ten year period ending on the last day of that year of assessment, incurred an assessed loss in at least six years of assessment in carrying on that trade (before taking into account any balance of assessed loss carried forward).

[subsection (4) substituted by section 23 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(5) Notwithstanding section 20(1)(a), any balance of assessed loss carried forward from the preceding year of assessment, which is attributable to an assessed loss in respect of which subsection (1) applied in that preceding year or any prior year of assessment, may not be set off against any income derived by that person otherwise than from carrying on the trade contemplated in subsection (1).

(6) For the purposes of this section and section 20, the income derived from any trade referred to in subsections (1) or (5), includes any amount—

(a) which is included in the income of that person in terms of section 8 in respect of an amount deducted in any year of assessment in carrying on that trade; or

(b) derived from the disposal after cessation of that trade of any assets used in carrying on that trade.

(7) Notwithstanding anything to the contrary contained in this Act, all farming activities carried on by a person shall be deemed to constitute a single trade carried on by that person for the purposes of this section.

(8) Where the provisions of subsection (2) apply during any year of assessment in respect of any trade carried on by a person, that person must indicate the nature of the business in his or her return contemplated in section 66 for that year of assessment.

(9) For the purposes of subsections (2)(a) and (4), any assessed loss incurred in any year of assessment ending on or before 29 February 2004 shall not be taken into account.

(10) For the purposes of this section—

(a) "assessed loss" means "assessed loss" as defined in section 20(2); and

(b) "relative" in relation to a person means a spouse, parent, child, stepchild, brother, sister, grandchild or grandparent of that person.

20B. Limitation of losses from disposal of certain assets

(1) Any deduction which is allowable during any year of assessment under section 11(o) in respect of the disposal by a person during that year of any asset the full consideration of which will not accrue to that person during that year, must be disregarded in that year.

(2) So much of any amount disregarded in terms of subsection (1), which has not otherwise been allowed as a deduction, may be deducted from the income of that person in any subsequent year of assessment to the extent that any consideration which is received by or accrued to that person in that subsequent year from that disposal is included in the income of that person.

(3) If during any year of assessment a person contemplated in subsection (1) proves that no further consideration will accrue to him or her in that year and any subsequent year as contemplated in subsection (2), so much of the amount which was disregarded in terms of subsection (1) as has not been allowed as a deduction in any year, must be allowed as a deduction from the income of that person in that year of assessment.

20C. Ring-fencing of interest and royalties incurred by headquarter companies

(1) For the purposes of this section—

"financial assistance" means financial assistance contemplated in section 31(1); and

"royalty" means any amount that is, before taking into account section 49D(c), subject to the withholding tax on royalties in terms of Part IVA.

(2) Where a headquarter company has during any year of assessment incurred any interest in respect of any financial assistance granted to that headquarter company by a person—

(a) that is not a resident; and

(b) if that person is a company, that directly or indirectly (and whether alone or together with any other company forming part of the same group of companies as that person) holds at least 10 per cent of the equity shares and voting rights in that headquarter company,

the amount of that interest in respect of which a deduction is allowable to that headquarter company in that year of assessment is limited to so much of the amount of interest received by or accrued to the headquarter company as relates to any portion of that financial assistance that is directly applied as financial assistance to any foreign company in which the headquarter company directly or indirectly (whether alone or together with any other company forming part of the same group of companies as that headquarter company) holds at least 10 per cent of the equity shares and voting rights.

(2A) Where a headquarter company has during any year of assessment incurred any amount that constitutes a royalty payable to a person—

(a) that is not a resident; and

(b) if that person is a company, that directly or indirectly (and whether alone or together with any other company forming part of the same group of companies as that person) holds at least 10 per cent of the equity shares and voting rights in that headquarter company,

the amount of that royalty in respect of which a deduction is allowable to that headquarter company in that year of assessment is limited to so much of any amounts received by or accrued to the headquarter company in respect of—

(i) the use or right of use of or permission to use any intellectual property as defined in section 23I; or

(ii) the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information, or the rendering of or the undertaking to render, any assistance or service in connection with the application or utilisation of such knowledge or information,

from any foreign company in which the headquarter company directly or indirectly (whether alone or together with any other company forming part of the same group of companies as that headquarter company) holds at least 10 per cent of the equity shares and voting rights.

(3) Any amount that is disallowed as a deduction in any year of assessment of a headquarter company in terms of subsection (2) or (2A) must—

(a) be carried forward to the immediately succeeding year of assessment of the headquarter company; and

(b) where that amount is disallowed as a deduction—

(i) in terms of subsection (2), be deemed to be an amount of interest actually incurred by the headquarter company during that succeeding year in respect of financial assistance granted to that headquarter company by a person that is not a resident; or

(ii) in terms of subsection (2A), be deemed to be an amount actually incurred by the headquarter company during that succeeding year that constitutes a royalty payable to a person that is not a resident.

21. Deduction of alimony, allowance or maintenance

The taxpayer shall have his taxable income reduced by so much of any amount payable by him to or on behalf of his spouse or former spouse under any order of divorce or judicial separation granted in

consequence of proceedings instituted not later than the twenty-first day of March, 1962, or under any written agreement of separation entered into not later than that date, by way of alimony or allowance or maintenance of his spouse or former spouse and any children, as the Commissioner is satisfied has been or will in respect of the year or period of assessment in question be paid out of the taxable income of the taxpayer: Provided that for the purposes of this section any order of divorce or judicial separation (hereinafter referred to as the subsequent order) which in effect supersedes any such first-mentioned order of judicial separation or written agreement of separation and does not vary the amount of alimony, allowance or maintenance payable thereunder, shall not affect the rights which any person may have under this section, and in the case of any such person and the spouse or former spouse of such person the subsequent order shall, for the purposes of this section and the provisions of section 10(1)(u), be deemed to have been granted in consequence of proceedings instituted on or before the said date.

22. Amounts to be taken into account in respect of values of trading stocks

(1) The amount which shall, in the determination of the taxable income derived by any person during any year of assessment from carrying on any trade (other than farming), be taken into account in respect of the value of any trading stock held and not disposed of by him at the end of such year of assessment, shall be—

(a) in the case of trading stock other than trading stock contemplated in paragraph (b), the cost price to such person of such trading stock, less such amount as the Commissioner may think just and reasonable as representing the amount by which the value of such trading stock, not being any financial instrument, has been diminished by reason of damage, deterioration, change of fashion, decrease in the market value or for any other reason satisfactory to the Commissioner: Provided that for the purposes of this subsection—

(i) the amount of trading stock must be taken into account in determining taxable income by including such amount in gross income; and

(ii) in determining any diminution in the value of trading stock, no account must be taken of the fact that the value of some items of trading stock held and not disposed of by the taxpayer may exceed their cost price; and

[proviso to paragraph (a) added by section 24 of Act 34 of 2019; effective date 1 January 2020, applicable in respect of years of assessment commencing on or after that date]

(b) in the case of any trading stock which consists of any instrument, interest rate agreement or option contract in respect of which a company has made an election which has taken effect as contemplated in section 24J(9), the market value of such trading stock as contemplated in such section.

(1A) Where in respect of any year of assessment ending after the commencement date defined in section 1 of the Value-Added Tax Act any amount of sales tax referred to in section 23C(2) which was included in the cost price to the taxpayer of any trading stock is deemed by that section to have been recovered or recouped for the purposes of section 8(4)(a), the cost of such trading stock held and not disposed of by the taxpayer at the end of such year shall be deemed to have been reduced by the said amount.

(2) The amount which shall in the determination of the taxable income derived by any person during any year of assessment from carrying on any trade (other than farming), be taken into account in respect of the value of any trading stock held and not disposed of by him at the beginning of any year of assessment, shall—

(a) if such trading stock formed part of the trading stock of such person at the end of the immediately preceding year of assessment be the amount which was, in the determination of the taxable income of such person for such preceding year of assessment, taken into account in respect of the value of such trading stock at the end of such preceding year of assessment; or

(b) if such trading stock did not form part of the trading stock of such person at the end of the immediately preceding year of assessment, be the cost price to such person of such trading stock.

(2A) (a) Where any person carries on any construction, building, engineering or other trade in the course of which improvements are effected by him to fixed property owned by any other person, any such improvements effected by him and any materials delivered by him to such fixed property which are no longer owned by him shall, until the contract under which such improvements are effected has been completed, be deemed for the purposes of this section to be trading stock held and not disposed of by him.

(b) For the purposes of paragraph (a), a contract shall be deemed to have been completed when the taxpayer has carried out all the obligations imposed upon him under the contract and has become entitled to claim payment of all amounts due to him under the contract.

(3) (a) For the purposes of this section the cost price at any date of any trading stock in relation to any person shall—

(i) subject to subparagraphs (iA) and (ii), be the cost incurred by such person, whether in the current or any previous year of assessment in acquiring such trading stock, plus any further costs incurred by such person, in terms of IFRS (in the case of a company), up to and including the said date in getting such trading stock into its then existing condition and location, but excluding any exchange difference as defined in section 24I(1) relating to the acquisition of such trading stock;

(iA) include an amount that has been included in that person's income in terms of section 8(5), which was applied in reduction or towards settlement of the purchase price of that trading stock;

(ii) in the case of any trading stock which is in terms of paragraph 12(2)(c) of the Eighth Schedule treated as having been acquired at a cost equal to the market value, be that market value; or

(iii) in the case of—

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

(bb) a right in a controlled foreign company held directly by another controlled foreign company, include an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10 of the Eighth Schedule) of that first-mentioned controlled foreign company and of any other controlled foreign company in which both the firstand second-mentioned controlled foreign companies directly or indirectly have an interest, which during any year of assessment would have been included in the income of that second-mentioned controlled foreign company in terms of section 9D had it been a resident, reduced by the amount of any foreign dividend distributed by that first-mentioned controlled foreign company to the second-mentioned controlled foreign company if that dividend would have been exempt from tax in terms of section 10B(2)(a) or (c) had that second-mentioned controlled foreign company been a resident;

(3A) For the purposes of this section the cost price of trading stock referred to in subsection (2A) shall be the sum of the cost to the taxpayer of material used by the taxpayer in effecting the relevant improvements, and such further costs incurred by the taxpayer as in accordance with IFRS are to be regarded as having been incurred directly in connection with the relevant contract, and such portion of any other costs incurred by the taxpayer in connection with the relevant contract and other contracts as in accordance with IFRS are to be regarded as having been incurred in connection with the relevant contract, less a deduction of so much of—

(a) any income received by or accrued to the taxpayer in respect of the relevant contract;

(b) any portion of an amount payable to the taxpayer under the relevant contract (but not exceeding 15 per cent of the total amount payable to him under such contract) the payment of which has been withheld as a retention; and

(c) any of the said costs included under this subsection as exceed that portion of the contract price which relates to the improvements actually effected by him,

as does not exceed the said sum.

(4) If any trading stock has been acquired by any person for no consideration or for a consideration which is not measurable in terms of money, other than a government grant in kind, such person shall for the purposes of subsection (3), unless subsection (3)(a)(iA) applies, be deemed to have acquired such trading stock at a cost equal to the current market price of such trading stock on the date on which it was acquired by such person.

(4A) For the purposes of subsection (4), where—

(a) any security has been lent by a lender to a borrower in terms of a securities lending arrangement, such security shall be deemed not to have been acquired by such borrower; or

(b) another security that is an identical security has been returned by such borrower to such lender, such other security shall be deemed not to have been acquired by such lender.

(4B) For the purposes of subsection (4), where—

(a) any share has been transferred by a transferor to a transferee in terms of a collateral arrangement, that share shall be deemed not to have been acquired by that transferee; or

(b) a share that is an identical share to the share contemplated in paragraph (a) has been returned by that transferee to that transferor in terms of that collateral arrangement, the share so returned shall be deemed not to have been acquired by that transferor.

(5) No person may for the purpose of determining the cost price of any trading stock, adopt the basis of trading stock valuation whereunder the last item of any class of trading stock acquired by him on any date is deemed to be the first item of that class of trading stock disposed of by him on or after that date.

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

(a) where the period assessed is less than twelve months, a reference to the beginning or end, as the case may be, of the period assessed;

(b) where accounts are accepted under section 66(13A) or (13C) to a date agreed to by the Commissioner, a reference to the beginning or end, as the case may be, of the period covered by the accounts.

(8) If during any year of assessment—

(a) any taxpayer has applied trading stock to his private or domestic use or consumption; or

(b) any—

(i) taxpayer has applied trading stock for the purpose of making any donation thereof;

(ii) taxpayer has disposed of trading stock, other than in the ordinary course of his or her trade for a consideration less than the market value thereof;

(iii) trading stock of any company has on or after 21 June 1993 been distributed *in specie* to any holder of shares in that company;

(iv) taxpayer has applied any trading stock for any other purpose other than the disposal thereof in the ordinary course of his trade and under circumstances other than those contemplated in paragraph (a) or subparagraph (i), (ii) or (iii) of this paragraph; or

(v) assets which were held as trading stock by any taxpayer cease to be held as trading stock by such taxpayer,

and the cost price of such trading stock has been taken into account in the determination of the taxable income of the taxpayer for any year of assessment, the taxpayer shall be deemed to have recovered or recouped—

(A) where such trading stock has been applied in a manner contemplated in paragraph (a), an amount equal to the cost price to him of such trading stock (less any sum which has been deducted therefrom under the provisions of subsection (1)) or where the cost price cannot be readily determined, the market value of such trading stock; or

(B) where such trading stock has been applied, disposed of or distributed in a manner contemplated in paragraph (b) (otherwise than in the manner contemplated in paragraph (C)) or ceases to be held as trading stock, an amount equal to the market value of such trading stock; or;

(C) where such trading stock has been applied for the purpose of making a donation in respect of which the provisions of section 18A apply, an amount equal to the amount which was taken into account for that year of assessment in respect of the value of that trading stock,

and such amount shall be included in the income of the taxpayer for the year of assessment during which such trading stock was so applied, disposed of, distributed or ceased to be held as trading stock: Provided that where—

(a) an asset consisting of trading stock so applied is used or consumed by the taxpayer in carrying on his trade, the amount included in his income under this subsection shall for the purposes of this Act be deemed to be expenditure incurred in respect of the acquisition by him of such asset;

(b) the provisions of paragraph (b)(ii) apply and any consideration contemplated in that paragraph has been received by or accrued to the taxpayer, the amount included in his income in terms of this subsection shall be reduced by such consideration;

(c) such trading stock consists of livestock or produce in respect of which the provisions of paragraph 11 of the First Schedule are applicable, the provisions of this subsection shall not apply; or

(d) such trading stock consists of assets in respect of which any amount received or accrued from the disposal thereof is or will be included in the gross income of the taxpayer in terms of paragraph (jA) of the definition of "gross income", the provisions of paragraph (b)(iv) shall not apply.

(9) Where—

(a) (i) the trading stock of any person during any year of assessment includes any—

(aa) security or any bond issued by the government of the Republic in the national or local sphere; or

(bb) bond issued by any sphere of government of any country other than the Republic,

if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule;

(ii) such person has, during such year of assessment, lent such security or such bond to a borrower in terms of a securities lending arrangement; and

(iii) a security or a bond that is an identical security or such same bond has not been returned by the borrower to such person at the end of such year of assessment,

such security or such bond shall, for the purposes of this section, be deemed to be trading stock held and not disposed of by such person at the end of such year of assessment;

(b) (i) the trading stock of any other person during any year of assessment includes any—

(aa) security or any bond issued by the government of the Republic in the national or local sphere; or

(bb) bond issued by any sphere of government of any country other than the Republic,

if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule;

(ii) such other person has, during such year of assessment, borrowed such security or such bond from a lender in terms of a securities lending arrangement; and

(iii) a security that is an identical security or that same bond has not been returned by such other person to such lender at the end of such year of assessment,

such security or such bond shall, for the purposes of this section, be deemed not to be trading stock held and not disposed of, by such other person at the end of such year of assessment; or

(c) (i) the trading stock of any person during any year of assessment includes any—

(aa) share or any bond issued by the government of the Republic in the national or local sphere; or

(bb) bond issued by any sphere of government of any country other than the Republic,

if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule;

(ii) that person has, during that year of assessment, transferred that share or that bond to a transferee in terms of a collateral arrangement; and

(iii) a share that is an identical share to the share contemplated in subparagraph (ii) or that same bond has not been returned by the transferee to that person at the end of that year of assessment,

such share or such bond shall, for the purposes of this section, be deemed to be trading stock held and not disposed of by that person at the end of that year of assessment; or

(d) (i) the trading stock of any transferee during any year of assessment includes any—

(aa) share or any bond issued by the government of the Republic in the national or local sphere; or

(bb) bond issued by any sphere of government of any country other than the Republic,

if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule;

(ii) that transferee has, during such year of assessment, acquired such share or such bond from a transferor in terms of a collateral arrangement; and

(iii) a share that is an identical share to the share contemplated in subparagraph (ii) or that same bond has not been returned by such transferee to such transferor at the end of such year of assessment,

such share or such bond shall, for the purposes of this section, be deemed not to be trading stock held and not disposed of, by such transferee at the end of such year of assessment.

22A. Schemes of arrangement involving trading stock

(1) If, under any scheme of arrangement or reconstruction of any company or its affairs (including any scheme for the amalgamation of two or more companies and any other scheme) which is sanctioned by any order of court on or after the first day of April, 1971, any company (hereinafter referred to as the transferee company) has before 1 October 2001, acquired from any other company (hereinafter referred to as the transferor company) any asset which was trading stock of the transferor company, and in respect of such acquisition—

(a) no consideration measurable in terms of money accrued from the transferee company to the transferor company; or

(b) a consideration accrued from the transferee company to the transferor company the money value of which was less than the market value of such asset on the date on which the transferee company acquired such asset,

such asset shall for the purposes of this Act be deemed to be trading stock of the transferee company, and, where paragraph (a) is applicable—

(i) the transferee company shall be deemed to have acquired such asset at a price equal to the cost price thereof to the transferor company; and

(ii) notwithstanding the provisions of section 22(2), no deduction shall, in the determination of the taxable income of the transferor company for the year of assessment of that company during which the transferee company acquired such asset, be made in respect of the value of such asset as trading stock.

(2) Any amount which is received by or accrues to the transferee company from the disposal of the said asset (or of any interest therein) shall be included in that company's income, whether such amount is derived in carrying on any trade or otherwise or is derived from a source within or outside the Republic.

22B. Dividends treated as income on disposal of certain shares

(1) For the purposes of this section—

"deferral transaction" means a transaction in respect of which the provisions of Part III of this Chapter were applied;

[definition of "deferral transaction" inserted by section 38(1)(a) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of disposals on or after that date]

"exempt dividend" means any dividend or foreign dividend to the extent that the dividend or foreign dividend is—

(a) not subject to tax under Part VIII of Chapter II; and

(b) exempt from normal tax in terms of section 10(1)(k)(i) or section 10B(2)(a) or (b);

"extraordinary dividend" means, in relation to—

(a) a preference share, so much of the amount of any dividend received or accrued in respect of that share as exceeds the amount that would have accrued in respect of that share had that amount been determined with reference to the consideration for which that share was issued by applying an interest rate of 15 per cent per annum for the period in respect of which that dividend was received or accrued;

[paragraph (a) substituted by section 38(1)(b) of Act 23 of 2018; effective date 19 July 2017, applicable in respect of disposals on or after that date]

(b) any other share, so much of the amount of any dividend received or accrued:

(i) within a period of 18 months prior to the disposal of that share; or

(ii) in respect, by reason or in consequence of that disposal,

as exceeds 15 per cent of the higher of the market value of that share as at the beginning of the period of 18 months and as at the date of disposal of that share:

Provided that a dividend *in specie* that was distributed in terms of a deferral transaction must not be taken into account to the extent to which that distribution was made in terms of an unbundling transaction as defined in section 46(1)(a) or a liquidation distribution as defined in section 47(1)(a);

[proviso added by section 25(1)(a) of Act 34 of 2019; effective date 30 October 2019, applicable in respect of dividends received or accrued on or after that date]

"preference share" means a preference share as defined in section 8EA(1); and

[definition of "preference share" inserted by section 38(1)(c) of Act 23 of 2018; effective date 19 July 2017, applicable in respect of disposals on or after that date, and amended by section 25(1)(b) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

"qualifying interest" means an interest held by a company in another company, whether alone or together with any connected persons in relation to that company, that constitutes—

(a) if that other company is not a listed company, at least—

(i) 50 per cent of the equity shares or voting rights in that other company; or

(ii) 20 per cent of the equity shares or voting rights in that other company if no other person (whether alone or together with any connected person in relation to that person) holds the majority of the equity shares or voting rights in that other company; or

(b) if that other company is a listed company, at least 10 per cent of the equity shares or voting rights in that other company.

(2) Subject to subsection (3), where a company holds shares in another company and disposes of any of those shares in terms of a transaction that is not a deferral transaction and that company held a qualifying interest in that other company at any time during the period of 18 months prior to that disposal, the amount of any exempt dividend received by or that accrued to that company in respect of the shares disposed of must—

[words preceding paragraph (a) substituted by section 38(1)(d) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of disposals on or after that date, and by section 25(1)(c) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(a) to the extent that the exempt dividend constitutes an extraordinary dividend; and

(b) if that company immediately before that disposal held the shares disposed of as trading stock,

be included in the income of that company in the year of assessment in which those shares are disposed of or, where that dividend is received or accrues after that year of assessment, the year of assessment in which that dividend is received or accrues:

Provided that where a company disposes of shares that are treated as having been disposed of previously by that company in terms of subsection (4), the amount of any extraordinary dividend in respect of those shares must be included in the income of that company only to the extent to which it has not previously been included in the income of that company in terms of this subsection.

[proviso added to subsection (2) by section 25(1)(d) of Act 34 of 2019; effective date 20 February 2019, applicable in respect of shares held by a company in a target company if the effective interest held by that company in the shares of that target company is reduced on or after that date]

(3) Where a company holds shares in another company and disposes of any of those shares in terms of a transaction that is not a deferral transaction within a period of 18 months after having acquired those shares in terms of a deferral transaction, other than an unbundling transaction and—

[words preceding paragraph (a) substituted by section 25(1)(e) of Act 34 of 2019; effective date 15 January, date of promulgation of that Act]

(a) within a period of 18 months prior to the disposal of those shares by that company an exempt dividend in respect of those shares accrued to or was received by a person that—

(i) disposed of those shares in terms of a deferral transaction; and

(ii) was a connected person in relation to that company at any time within that period,

that dividend must for purposes of this section be treated as a dividend that accrued to or was received by that company in respect of those shares within the period during which that company held those shares; and

(b) if that company acquired those shares (hereinafter referred to as "new shares") in terms of that deferral transaction in return for or by virtue of the holding, by that company, of other shares (hereinafter referred to as "old shares") that were disposed of in terms of that deferral transaction and an exempt dividend in respect of the old shares, other than a dividend consisting of new shares, accrued to or was received by that company within a period of 18 months prior to the disposal by that company of the new shares, that dividend must for purposes of this section be treated as an amount that accrued to or was received by that company as an exempt dividend in respect of the new shares.

[subsection (3) added by section 38(1)(e) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of disposals on or after that date]

(4) Where a company holds equity shares in another company (hereinafter referred to as the "target company") and—

(a) the target company issues shares (hereinafter referred to as the "new shares") to a person other than that company; and

(b) the effective interest of that company in the equity shares of the target company is reduced by reason of the new shares issued by the target company,

that company must for purposes of this section be treated as having disposed, immediately after the new shares were issued, of a percentage of those equity shares that is equal to the percentage by which the effective interest of that company in the equity shares of the target company has been reduced by reason of the new shares issued by the target company: Provided that any new

shares that are convertible to equity shares must for purposes of this subsection be treated as equity shares.

[subsection (4) added by section 25(1)(f) of Act 34 of 2019; effective date 20 February 2019, applicable in respect of shares held by a company in a target company if the effective interest held by that company in the shares of that target company is reduced on or after that date]

23. Deductions not allowed in determination of taxable income

No deductions shall in any case be made in respect of the following matters, namely—

(a) the cost incurred in the maintenance of any taxpayer, his family or establishment;

(b) domestic or private expenses, including the rent of or cost of repairs of or expenses in connection with any premises not occupied for the purposes of trade or of any dwelling-house or domestic premises except in respect of such part as may be occupied for the purposes of trade: Provided that —

(a) such part shall not be deemed to have been occupied for the purposes of trade, unless such part is specifically equipped for purposes of the taxpayer's trade and regularly and exclusively used for such purposes; and

(b) no deduction shall in any event be granted where the taxpayer's trade constitutes any employment or office unless—

(i) his income from such employment or office is derived mainly from commission or other variable payments which are based on the taxpayer's work performance and his duties are mainly performed otherwise than in an office which is provided to him by his employer; or

(ii) his duties are mainly performed in such part;

(c) any loss or expense, the deduction of which would otherwise be allowable, to the extent to which it is recoverable under any contract of insurance, guarantee, security or indemnity, except where section 23L(3) applies;

[paragraph (c) substituted by section 24(1) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of years of assessment commencing on or after that date]

(d) any tax imposed under this Act or any interest or penalty imposed under any other Act administered by the Commissioner;

(e) income carried to any reserve fund or capitalized in any way;

(f) any expenses incurred in respect of any amounts received or accrued which do not constitute income as defined in section one;

(g) any moneys, claimed as a deduction from income derived from trade, to the extent to which such moneys were not laid out or expended for the purposes of trade;

(h) interest which might have been made on any capital employed in trade;

(i) any expenditure, loss or allowance to the extent to which it is claimed as a deduction from any retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit;

(k) any expense incurred by—

(i) a labour broker as defined in the Fourth Schedule, other than a labour broker in respect of which a certificate of exemption has been issued in terms of paragraph 2(5) of the said Schedule; or

(ii) a personal service provider as defined in the said Schedule,

other than any expense which constitutes an amount paid or payable to any employee of such labour broker or personal service provider for services rendered by such employee, which is or will be taken into account in the determination of the taxable income of such employee and, in the case of such personal service provider, any expense, deduction or contribution contemplated in paragraphs (c), (i), (l), (nA) or (nB) of section 11, expenses in respect of premises, finance charges, insurance, repairs and fuel and maintenance in respect of assets, if such premises or assets are used wholly and exclusively for purposes of trade;

(l) any expense incurred in respect of the payment of any restraint of trade, except as provided for in section 11(cA);

(m) subject to paragraph (k), any expenditure, loss or allowance, contemplated in section 11, which relates to any employment of, or office held by, any person (other than an agent or representative whose remuneration is normally derived mainly in the form of commissions based on his or her sales or the turnover attributable to him or her) in respect of which he or she derives any remuneration, as defined in paragraph 1 of the Fourth Schedule, other than—

(i) any contributions to a pension fund, provident fund or retirement annuity fund as may be deducted from the income of that person in terms of section 11F;

(ii) any allowance or expense which may be deducted from the income of that person in terms of section 11(c), (e), (i) or (j);

(iiA) any deduction which is allowable under section 11(nA) or (nB); and

(iv) any deduction which is allowable under section 11(a) or (d) in respect of any rent of, cost of repairs of or expenses in connection with any dwelling house or domestic premises, to the extent that the deduction is not prohibited under paragraph (b);

(n) any deduction or allowance in respect of any asset or expenditure to the extent that amount—

(i) is granted or paid to the taxpayer and is exempt from tax in terms of section 10(1)(yA); and

(ii) is so granted or paid for purposes of the acquisition of that asset or funding of that expenditure;

(o) any expenditure incurred—

(i) where the payment of that expenditure or the agreement or offer to make that payment constitutes an activity contemplated in Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);

(ii) which constitutes a fine charged or penalty imposed as a result of an unlawful activity carried out in the Republic or in any other country if that activity would be unlawful had it been carried out in the Republic; or

(iii) any expenditure incurred constituting fruitless and wasteful expenditure as defined in section 1 of the Public Finance Management Act, determined in accordance with that Act;

[subparagraph (iii) added by section 39(1) of Act 23 of 2018; effective date 1 April 2019, applicable in respect of years of assessment commencing on or after that date]

(p) the value in respect of any cession of a policy of insurance ceded by a taxpayer to—

(i) any—

(aa) employee (or former employee);

(bb) director (or former director); or

(cc) dependant or nominee of the employee (or former employee) or director (or former director),

of the taxpayer; or

(ii) any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for the benefit of any—

(aa) employee (or former employee);

(bb) director (or former director); or

(cc) dependant or nominee of the employee (or former employee) or director (or former director),

of the taxpayer;

(q) any expenditure incurred in the production of income in the form of foreign dividends; or

(r) any deduction in respect of any premium paid by a person in terms of an insurance policy if that insurance policy covers that person against illness, injury, disability, unemployment or death of that person.

23A. Limitation of allowances granted to lessors of certain assets

(1) For the purposes of this section—

"affected asset" means any machinery, plant, implement, utensil, article, aircraft or ship which has been let and in respect of which the lessor is or was entitled to an allowance under section 11(e), 12B, 12C, 12DA or 37B(2)(a), whether in the current or a previous year of assessment, but excluding any such asset let by the lessor under an operating lease or any such asset which was during the year of assessment mainly used by him in the course of any trade carried on by him, other than the letting of any such asset;

[definition of "affected asset" substituted by section 25(a) of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

"operating lease" means a lease of movable property concluded by a lessor in the ordinary course of a business (not being a banking, financial services or insurance business) of letting such property, if —

(a) such property may be hired by members of the general public directly from that lessor in terms of such a lease, for a period of less than one month;

(b) the cost of maintaining such property and of carrying out repairs thereto required in consequence of normal wear and tear, is borne by the lessor; and

(c) subject to any claim that the lessor may have against the lessee by reason of the lessee's failure to take proper care of the property, the risk of destruction or loss of or other disadvantage to such property is not assumed by the lessee;

"rental income" means income derived by way of rent from the letting of any affected asset in respect of which an allowance has been granted to the lessor under section 11(e), 12B, 12C, 12DA or 37B(2)(a), whether in the current or any previous year of assessment, and includes any amount—

(a) which is included in the income of that person in terms of section 8(4) in respect of an amount deducted in any year of assessment in respect of any affected asset; and

(b) derived from the disposal of any affected asset.

(2) Notwithstanding the provisions of sections 11(e) and (o), 12B, 12C, 12DA and 37B(2)(a), the sum of the deductions which may be allowed to any taxpayer in any year of assessment under those provisions in respect of any affected assets let by him shall not exceed the taxable income (as

determined before making the said deductions) derived by him during such year from rental income.

[subsection (2) substituted by section 25(b) of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(3) For the purposes of subsection (2), where the taxpayer is entitled to any deduction which relates to rental income and other income derived by him, an appropriate portion of such deduction shall be taken into account in the determination of the taxable income derived by him from rental income.

(4) Any deduction which is disallowed under the provisions of subsection (2) shall be carried forward to the succeeding year of assessment and shall, subject to the provisions of this section as applicable in relation to that year, be deemed to be a deduction to which the taxpayer is entitled in that year.

23B. Prohibition of double deductions

(1) Where, but for the provisions of this subsection, an amount—

(a) qualifies or has qualified for a deduction or an allowance; or

(b) is otherwise taken into account in determining the taxable income of any person,

under more than one provision of this Act, that amount or any portion thereof, shall not be allowed or taken into account more than once in the determination of the taxable income of any person.

(2) The provisions of subsection (1) shall not apply to expenditure in respect of which a deduction or an allowance has been determined, if any section under which such deduction or allowance is allowed, expressly requires such expenditure to be deductible under any other section as a prerequisite for a deduction under such section.

(3) No deduction shall be allowed under section 11(a) in respect of any expenditure or loss of a type for which a deduction or allowance may be granted under any other provision of this Act, notwithstanding that—

(a) such other provision may impose any limitation on the amount of such deduction or allowance; or

(b) that deduction or allowance in terms of that other provision may be granted in a different year of assessment.

(5) No deduction shall be allowed under section 11(a) in respect of any expenditure incurred by a person in respect of any premium paid under a policy of insurance, where the policy relates to death, disablement or illness of an employee or director, or former employee or director, of the person that is the policyholder (other than a policy that relates to death, disablement or illness arising solely out of and in the course of employment of the employee or director).

23C. Reduction of cost or market value of certain assets

(1) Notwithstanding the Seventh Schedule, where regard is to be had to the cost to the taxpayer or the market value of any asset acquired by him or her or to the amount of any expenditure incurred by him or her, and—

[words preceding paragraph (a) substituted by section 26 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(a) the taxpayer is a vendor as defined in section 1 of the Value-Added Tax Act; and

(b) the taxpayer is or was in any previous year of assessment entitled under section 16(3) of the last-mentioned Act to a deduction of input tax as defined in section 1 of that Act,

the amount of such input tax shall be excluded from the cost or the market value of such asset or the amount of such expenditure: Provided that in the case of any lease as contemplated in paragraph (b) of the definition of "instalment credit agreement" in section 1 of that Act, there

shall be excluded by the lessee from each rental payment made by him in respect of such lease, an amount which bears to such input tax the same ratio as such rental payment bears to the sum of all rental payments in connection with such lease.

(2) Where a taxpayer (being a vendor as defined in section 1 of the Value-Added Tax Act) has in respect of any tax period applicable to the vendor under that Act which has ended during the vendor's year of assessment, included in input tax deducted by the vendor under section 16(3) of that Act an amount of sales tax, as permitted by section 78 of that Act so to be included—

(a) that amount shall, if it was included in capital expenditure taken into account for the purposes of any deduction in respect of any mine under section 15(a) of this Act, be deemed for the purposes of paragraph (j) of the definition of "gross income" in section 1 of this Act to be an amount received by or accrued to the taxpayer during the said year of assessment in respect of a disposal of assets referred to in the said paragraph; or

(b) that amount (not being an amount accounted for under paragraph (a)), shall for the purposes of section 8(4)(a) of this Act be deemed to be an amount which has been recovered or recouped by the taxpayer during the said year of assessment.

23D. Limitation of allowances granted in respect of certain assets

(2) Where any depreciable asset which is let or licensed by a taxpayer to a lessee or licensee was held within a period of two years preceding the commencement of the lease or licence—

(a) by the lessee or licensee, or by any sublessee or sublicensee in relation to the asset; or

(b) by a person who was at any time during that period a connected person in relation to the lessee, licensee, sublessee or sublicensee,

the cost or value of the depreciable asset for the purpose of this section and any deduction or allowance claimed by the taxpayer in respect of the asset shall not exceed the amount determined in accordance with subsection (2A).

(2A) The amount to be determined for purposes of subsection (2) is the sum of—

(a) the cost of the asset to the most recent lessee, licensee, sublessee, sublicensee or connected person contemplated in subsection (2) that previously held that asset, less the sum of—

(i) all deductions which have been allowed to the lessee, licensee, sublessee, sublicensee or connected person in respect of the asset; and

(ii) all deductions that are deemed to have been allowed to the lessee, licensee, sublessee, sublicensee or connected person in respect of the asset in terms of section 11(e)(ix), 12B(4B), 12C(4A), 12D(3A), 12DA(4), 12F(3A), 13(1A), 13bis(3A), 13ter(6A), 13quin(3) or 37B(4);

(b) any amount contemplated in paragraph (n) of the definition of "gross income" in section 1 that is required to be included in the income of the lessee, licensee, sublessee, sublicensee or connected person that arises as a result of the disposal of the asset; and

(c) the applicable percentage in paragraph 10 of the Eighth Schedule, of the capital gain of the lessee, licensee, sublessee, sublicensee, or connected person that arises as a result of the disposal.

23F. Acquisition or disposal of trading stock

(1) Where any taxpayer has during any year of assessment incurred expenditure for the acquisition of trading stock which was neither disposed of by him during such year nor held by him at the end of such year, any deduction which may be allowed to him under the provisions of section 11(a) in respect of such expenditure shall not be allowed in such year, but such expenditure shall for the

purposes of such provisions be deemed to have been incurred by him in the first subsequent year of assessment in which—

(a) such trading stock is disposed of by him;

(b) the value of such trading stock falls to be included in his income under the provisions of section 22(1); or

(c) it is shown by him that by reason of the loss or destruction of such trading stock or the termination of the agreement in terms of which such trading stock was acquired by him or for any other reason, such trading stock will neither be disposed of nor held by him, to the extent that such expenditure was actually paid.

(2) Where a taxpayer has during any year of assessment disposed of any trading stock in the ordinary course of his or her trade for any consideration the full amount of which will not accrue to him or her during that year of assessment and any expenditure incurred in respect of the acquisition of that trading stock was allowed as a deduction under the provisions of section 11(a) during that year or any previous year of assessment, any amount which would otherwise be deducted must, to the extent that it exceeds any amount received or accrued from the disposal of that trading stock be disregarded during that year of assessment.

(2A) So much of any amount disregarded in terms of subsection (2) may be deducted from the income of that person in any subsequent year of assessment to the extent that any amount which is received by or accrued to that person in that subsequent year from that disposal is included in the income of that person.

(2B) If during any year of assessment a person contemplated in subsection (2) proves that no further amounts will accrue to him or her in that year and any subsequent year as contemplated in subsection (2A), so much of the amount which was disregarded in terms of subsection (2) as has not been allowed as a deduction in any year, must be allowed as a deduction from the income of that person in that year of assessment.

(3) Where—

(a) any taxpayer has during any year of assessment in the ordinary course of his trade disposed of any right or interest in any asset which constitutes trading stock which has the effect that the remaining right or interest in such asset held and not disposed of will not be included in trading stock at the end of such year; and

(b) any expenditure incurred in respect of the acquisition of such asset was allowed as a deduction under the provisions of section 11(a) or was otherwise taken into account during such year or any previous year of assessment,

there shall be deemed to have been recovered or recouped by such taxpayer and be included in the income of such taxpayer for such year of assessment, so much of such expenditure as relates to the remaining right or interest contemplated in paragraph (a).

23G. Sale and leaseback arrangements

(1) For the purposes of this section—

"asset" means any asset, whether movable or immovable, or corporeal or incorporeal;

"sale and leaseback arrangement" means any arrangement whereby—

(a) any person disposes of any asset (whether directly or indirectly) to any other person; and

(b) such person or any connected person in relation to such person leases (whether directly or indirectly) such asset from such other person.

(2) Where the receipts or accruals of any person, who is a lessee or sublessee in relation to a sale and leaseback arrangement, do not for the purposes of this Act constitute income of such person—

(a) any amount which is received by or accrues to any lessor in relation to such sale and leaseback arrangement, shall be limited to an amount which constitutes interest as contemplated in section 24J; and

(b) such lessor shall, notwithstanding the provisions of this Act, not be entitled to any deduction in terms of section 11(e), (f), (gA) or (gC) or sections 12B, 12C, 12DA, 13 or 13quin in respect of an asset which is the subject matter of such sale and leaseback arrangement.

[paragraph (b) substituted by section 40 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(3) Where the receipts or accruals of any person, who is a lessor in relation to a sale and leaseback arrangement, arising from such arrangement do not for the purposes of this Act constitute income of such person, any deduction to which a lessee or sublessee in relation to such sale and leaseback arrangement is entitled under the provisions of this Act shall, subject to the provisions of section 11(f), be limited to an amount which constitutes interest as contemplated in section 24J.

(4) The provisions of subsection (2)(a) shall not apply to any person who is both a lessor and a lessee in relation to the same sale and leaseback arrangement during any year of assessment.

23H. Limitation of certain deductions

(1) Where any person has during any year of assessment actually incurred any expenditure (other than expenditure incurred in respect of the acquisition of any trading stock)—

(a) which is allowable as a deduction in terms of the provisions of section 11(a), (c), (d), (w), or section 11A; and

(b) in respect of—

(i) goods or services, all of which will not be supplied or rendered to such person, during such year of assessment; or

(ii) any other benefit, the period to which the expenditure relates extends beyond such year of assessment,

the amount of the expenditure in respect of which a deduction shall be allowable in terms of such section in the said year and any subsequent year of assessment, shall be limited to, in the case of expenditure incurred in respect of—

(i) goods to be supplied, so much of the expenditure as relates to the goods actually supplied to such person in such year of assessment; or

(ii) services to be rendered, an amount which bears to the total amount of such expenditure the same ratio as the number of months in such year during which such services are rendered bears to the total number of months during which such services will be rendered or, where the period during which such services will be rendered is not determinable, such period during which the services are likely to be rendered; or

(iii) any other benefit to which such expenditure relates, an amount which bears to the total amount of such expenditure the same ratio as the number of months in such year during which such person will enjoy such benefit bears to the total number of months during which such person will enjoy such benefit or where the period of such benefit is not determinable, such period over which the benefit is likely to be enjoyed:

Provided that the provisions of this section shall not apply—

(aa) where all the goods or services are to be supplied or rendered within six months after the end of the year of assessment during which the expenditure was incurred, or such person

will have the full enjoyment of such benefit in respect of which the expenditure was incurred within such period, unless the expenditure is allowable as a deduction in terms of section 11D(2); or

(bb) where the aggregate of all amounts of expenditure incurred by such person, which would otherwise be limited by this section, does not exceed R100 000; or

(cc) to any expenditure to which the provisions of section 24K or 24L apply; or

(dd) to any expenditure actually paid in respect of any unconditional liability to pay an amount imposed by legislation.

(2) If in any case the apportionment of the expenditure in accordance with subsection (1) does not reasonably represent a fair apportionment of such expenditure in respect of the goods, services or benefits to which it relates, such apportionment must be made in such other manner as is fair and reasonable.

(3) Notwithstanding the provisions of subsections (1) and (2), where it is during any year of assessment shown by any person that—

(a) the goods or services in respect of which the expenditure is incurred will never be received by or be rendered to such person; or

(b) such person will never enjoy such other benefit in respect of which any expenditure is incurred,

such expenditure shall be allowed in such year, to the extent that such expenditure has been actually paid by such person.

23I. Prohibition of deductions in respect of certain intellectual property

(1) For the purposes of this section—

"end user" means a taxable person or a person with a permanent establishment within the Republic that uses intellectual property or any corresponding invention during a year of assessment to derive income, other than a person that derives income mainly by virtue of the grant of use or right of use or permission to use intellectual property or any corresponding invention;

"intellectual property" means any—

(a) patent as defined in the Patents Act including any application for a patent in terms of that Act;

(b) design as defined in the Designs Act;

(c) trade mark as defined in the Trade Marks Act;

(d) copyright as defined in the Copyright Act;

(e) patent, design, trade mark or copyright defined or described in any similar law to that in paragraph (a), (b), (c) or (d) of a country other than the Republic;

(f) property or right of a similar nature to that in paragraph (a), (b), (c), (d) or (e); and

(g) knowledge connected to the use of such patent, design, trade mark, copyright, property or right;

"tainted intellectual property" means intellectual property—

(a) which was the property of the end user or of a taxable person that is or was a connected person, as defined in section 31(4), in relation to the end user;

(b) which is the property of a taxable person;

(c) a material part of which was used by a taxable person in carrying on a business while that property was the property of a taxable person and the end user of that property acquired that business or a material part thereof as a going concern; or

(d) which was discovered, devised, developed, created or produced by the end user of that property, or by a taxable person that is a connected person, as defined in section 31(4), in relation to the end user, if that end user, together with any taxable person that is a connected person in relation to that end user, holds at least 20 per cent of the participation rights, as defined in section 9D, in a person by or to whom an amount is received or accrues—

(i) by virtue of the grant of use or right of use or permission to use that property; or

(ii) where that receipt, accrual or amount is determined directly or indirectly with reference to expenditure incurred for the use or right of use or permission to use that property;

"taxable person" means any person other than—

(a) a person that is not a resident;

(b) the government of the Republic in the national, provincial or local sphere contemplated in section 10(1)(a);

(c) an institution, board or body contemplated in section 10(1)(cA);

(d) any public benefit organisation as defined in section 30 that has been approved by the Commissioner in terms of that section;

(e) any recreational club as defined in section 30A that has been approved by the Commissioner in terms of that section;

(f) any company or trust contemplated in section 37A;

(g) any fund contemplated in section 10(1)(d)(i) or (ii); or

(h) any person contemplated in section 10(1)(t).

(2) Other than a deduction allowed in terms of section 11(gC) or a deduction allowed in respect of trading stock, a deduction is not allowed in respect of—

(a) any amount of expenditure incurred for the use or right of use of or permission to use tainted intellectual property; or

(b) expenditure the incurral or amount of which is determined directly or indirectly with reference to expenditure incurred for the use or, right of use of or permission to use tainted intellectual property,

to the extent that the amount of expenditure does not constitute income received by or accrued to any other person or to the extent that the amount of expenditure does not constitute a proportional amount of net income of a controlled foreign company an amount equal to which is included in the income of any resident in terms of section 9D.

(3) Notwithstanding any provision of subsection (2) to the contrary, an amount equal to—

(a) one third of any expenditure contemplated in subsection (2) must be allowed to be deducted if withholding tax on royalties contemplated inPart IVA is payable in respect of that amount at a rate of10 per cent; or

(b) one half of any expenditure contemplated in subsection (2) must be allowed to be deducted if withholding tax on royalties contemplated in Part IVA is payable in respect of that amount at a rate of 15 per cent.

(4) Subsection (2) must not apply where the aggregate amount of taxes on income payable to all spheres of government of any country other than the Republic by a controlled foreign company

contemplated in that subsection in respect of the foreign tax year of that controlled foreign company is at least 67,5 per cent of the amount of normal tax that would have been payable in respect of any taxable income of the controlled foreign company had the controlled foreign company been a resident for that foreign tax year: Provided that the aggregate amount of tax payable by a controlled foreign company in respect of a foreign tax year of that controlled foreign company must be determined—

[words preceding paragraph (a) substituted by section 27(1) of Act 34 of 2019; effective date 1 January 2020, applicable in respect of years of assessment ending on or after that date]

(a) after taking into account any applicable agreement for the prevention of double taxation and any credit, rebate or other right of recovery of tax from any sphere of government of any country other than the Republic; and

(b) after disregarding any loss in respect of a year other than that foreign tax year or from a company other than that controlled foreign company.

23K. Limitation of deductions in respect of reorganisation and acquisition transactions

(1) For the purposes of this section—

"acquiring company" means—

(a) a transferee company contemplated in the definition of "intra-group transaction" in section 45(1);

(b) a holding company contemplated in the definition of "liquidation distribution" in section 47(1); or

(c) a company that acquires an equity share in another company in terms of an acquisition transaction;

"acquisition transaction" means an acquisition transaction as defined in section 24O(1) to which section 24O applies;

"interest" means interest as defined in section 24J;

"reorganisation transaction" means—

(a) an intra-group transaction as defined in section 45(1) to which section 45 applies; or

(b) a liquidation distribution as defined in section 47(1) to which section 47 applies.

(2) Subject to subsections (3), (9) and (10), no deduction is allowed in respect of any amount of interest incurred by an acquiring company in terms of—

(a) a debtif that debtwas issued, assumed or used directly or indirectly—

(i) for the purpose of procuring, enabling, facilitating or funding the acquisition by that acquiring company of any asset in terms of a reorganisation transaction; or

(ii) in substitution for any debtissued, assumed or used as contemplated in subparagraph (i); or

(b) a debt if that debt was issued, assumed or used—

(i) for the purpose of financing the acquisition of an equity share in a company in terms of an acquisition transaction; or

(ii) in substitution for any other debt issued, assumed or used as contemplated in subparagraph (i).

(3) Subject to subsection (5), the Commissioner may, on application by an acquiring company, issue a directive that subsection (2) does not apply in respect of an amount of interest incurred as contemplated in that subsection.

(4) In considering an application for a directive contemplated in subsection (3), the Commissioner—

(a) must take into account—

(i) the amount of interest incurred as contemplated in subsection (2) by an acquiring company in terms of a debtcontemplated in that subsection; and

(ii) all amounts of interest incurred, received or accrued in respect of alldebts issued, assumed or used directly or indirectly to fund a debtin respect of which any amount of interest is incurred by an acquiring company as contemplated in subsection (2); and

(b) may only issue a directive contemplated in subsection (3) if and to the extent that the Commissioner is, having regard to the criteria prescribed by the Regulations contemplated in subsection (7), satisfied that the issuing of that directive will not lead nor be likely to lead to a significant reduction of the aggregate taxable income of all parties who incur, receive or accrue interest—

(i) in respect of; and

(ii) for all periods during which any amounts are outstanding in terms of,

any debt contemplated in subparagraphs (i) and (ii) of paragraph (a):

Provided that in determining whether a reduction of taxable income is significant for the purpose of this subsection, the Commissioner must have regard to the criteria prescribed by the regulations contemplated in subsection (7).

(5) Any directive issued by the Commissioner in terms of subsection (3) may be made subject to such conditions and limitations as may be determined by the Commissioner.

(6) A directive issued by the Commissioner in terms of subsection (3) in respect of an amount of interest incurred in terms of a debtmust be effective from—

(a) the date on which that debtwas issued or assumed if the application for that directive is made—

(i) on or before 31 December 2011, where that debtwas issued or assumed before 25 October 2011; or

(ii) within 60 days of the date of issue of that debt, where that debtis issued or assumed on or after 25 October 2011; or

(b) the date on which the application for that directive is made if—

(i) that debtwas issued or assumed before 25 October 2011 and that application is made after 31 December 2011; or

(ii) that debtis issued or assumed on or after 25 October 2011 and that application is made later than 60 days after the date of issue or assumption of that debt.

(7) The Minister must make regulations that prescribe criteria that the Commissioner must, in terms of subsection (4)(b), have regard to in considering any application made in terms of subsection (3) by an acquiring company in respect of any amount of interest incurred by such an acquiring company in terms of any debt, which criteria must relate to—

(a) all amounts of debt in relation to total equity of such an acquiring company;

(b) total amounts of interest to be incurred by such an acquiring company in relation to total income of such an acquiring company;

(c) terms of such a debt, including the economic effect of such a debt, having regard to any debt or equity features of such a debt;

(d) the direct or indirect holding of shares in such an acquiring company by any holder (or any company that forms part of the same group of companies as the holder) of such a debt; and

(e) any other factor prescribed by the Minister.

(8) (a) If, subsequent to the date on which a directive is issued by the Commissioner pursuant to an application made by an acquiring company in terms of subsection (3)—

(i) there is any material change in respect of any fact or circumstance which influenced any decision of the Commissioner relating to the issuing of that directive; and

(ii) that change would, had the change been anticipated by the Commissioner at the time of issuing the directive, have resulted in the Commissioner not issuing the directive or issuing the directive on terms that are less favourable to that acquiring company,

the directive will cease to apply with effect from the date on which that change takes effect.

(b) Where any decision relating to the issuing of a directive by the Commissioner in terms of subsection (3) was made by the Commissioner as a direct or indirect result of fraud, misrepresentation or non-disclosure of material facts, that directive will cease to apply with effect from the date that the directive took effect.

(9) The Minister may make regulations prescribing circumstances in which subsection (2) does not apply.

(10) Subsection (2) does not apply in respect of any amount of interest incurred by an acquiring company—

(a) in terms of a debt if that debt was issued, assumed or used directly or indirectly for the purpose of—

(i) procuring, enabling, facilitating or funding the acquisition by that acquiring company of any asset in terms of a reorganisation transaction entered into on or after 1 April 2014; or

(ii) redeeming, refinancing, substituting or settling, on or after 1 April 2014, a debt issued, assumed or used directly or indirectly for the purpose of procuring, enabling, facilitating or funding the acquisition by that acquiring company of any asset in terms of a reorganisation transaction entered into on or after 3 June 2011 and on or before 31 March 2014; or

(b) in terms of a debt—

(i) issued, assumed or used in terms of an acquisition transaction entered into on or after 1 April 2014; or

(ii) issued, assumed or used, on or after 1April 2014, directly or indirectly for the purpose of redeeming, refinancing, substituting or settling a debt that was issued, assumed or used in terms of an acquisition transaction entered into on or after 1 January 2013 and on or before 31 March 2014.

23L. Limitation of deductions in respect of certain short-term insurance policies

(1) For the purposes of this section—

"policy" means a policy of insurance or reinsurance other than a long-term policy as defined in section 1 of the Long-term Insurance Act;

"policy benefits" means any amount, in cash or otherwise, received or accrued under a policy;

"premium" means the consideration given or to be given in return for an undertaking to provide policy benefits.

(2) No deduction is allowed in respect of any premium incurred by a person in terms of a policy to the extent that the premium is not taken into account as an expense for the purposes of financial reporting pursuant to IFRS in either the current year of assessment or a future year of assessment.

(3) Where policy benefits are received by or accrue to a person in terms of a policy during a year of assessment, and where that person has been denied, whether in the current or any previous year of assessment, a deduction in terms of section 23L(2) for any premiums paid under such policy, there must be included in the gross income of that person an amount equal to the aggregate amount of all policy benefits received by or accrued to that person during that year of assessment and previous years of assessment in respect of that policy, less—

[words preceding paragraph (a) substituted by section 26(1) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of years of assessment commencing on or after that date]

(a) the aggregate amount of premiums incurred in terms of that policy that were not deductible in terms of subsection (2); and

(b) the aggregate amount of policy benefits in respect of that policy that were included in the gross income of that person during previous years of assessment.

23M. Limitation of interest deductions in respect of debts owed to persons not subject to tax

(1) For the purposes of this section—

"**adjusted taxable income**" means taxable income calculated before applying this section—

(a) reduced by—

(i) any amount of interest received or accrued that forms part of taxable income;

(ii) any amount included in the income of a person as contemplated in section 9D(2);

(iii) any amount recovered or recouped in respect of an allowance contemplated in this Act in respect of a capital asset as defined in section 19; and

(b) with the addition of—

(i) any amount of interest incurred that has been allowed as a deduction from income;

(ii) any amount allowed as a deduction in terms of this Act in respect of a capital asset as defined in section 19 for purposes other than the determination of any capital gain or capital loss;

(iii) any assessed loss or balance of assessed loss allowed to be set off against income in terms of section 20, before applying this section; and

(iv) any qualifying distribution as defined in section 25BB that is deductible under subsection (2) of that section;

[definition of "adjusted taxable income" amended by section 41 of Act 23 of 2018; effective date 17 January 2019]

"**average repo rate**" in relation to a year of assessment means the average of all ruling repo rates determined by using the daily repo rates during that year of assessment;

"**controlling relationship**" means a relationship where a person directly or indirectly holds at least 50 per cent of the equity shares in a company or at least 50 per cent of the voting rights in a company is exercisable by a person;

"**debtor**" means a debtor who is—

(a) a person that is a resident; or

(b) any other person who is not a resident that has a permanent establishment in the Republic in respect of any debt claim that is effectively connected with that permanent establishment;

"**interest**" means interest as defined in section 24J;

"**lending institution**" means a foreign bank which is comparable to a bank contemplated in the Banks Act;

"**repo rate**" means the interest rate at which the South African Reserve Bank enters into a repurchase agreement contemplated in section 10(1)(j) of the South African Reserve Bank Act.

(2) Where an amount of interest is incurred by a debtor during a year of assessment in respect of a debt owed to—

(a) a creditor that is in a controlling relationship with that debtor; or

(b) a creditor that is not in a controlling relationship with that debtor, if that creditor obtained the funding for the debt advanced to the debtor from a person that is in a controlling relationship with that debtor,

and the amount of interest so incurred is not during that year of assessment—

(i) (aa) subject to tax in the hands of the person to which the interest accrues; or

(bb) included in the net income of a controlled foreign company as contemplated in section 9D in the foreign tax year of the controlled foreign company commencing or ending within that year of assessment; and

(ii) disallowed under section 23N,

the amount of interest allowed to be deducted may not exceed the amount determined in accordance with subsection (3).

(3) The amount of interest allowed to be deducted in respect of all debts owed as contemplated in subsection (2), in respect of any year of assessment must not exceed the sum of—

(a) the amount of interest received by or accrued to the debtor; and

(b) an amount determined by multiplying the adjusted taxable income of that debtor for that year of assessment by a percentage to be determined in accordance with the formula—

[words preceding the formula substituted by section 28 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

$$A = B \times \frac{C}{D}$$

in which formula—

(a) "A" represents the percentage to be determined;

(b) "B" represents the number 40;

(c) "C" represents the average repo rate plus 400 basis points; and

(d) "D" represents the number 10,

but not exceeding 60 per cent of the adjusted taxable income of that debtor,

reduced by so much of any amount of interest incurred by the debtor in respect of debts other than debts contemplated in subsection (2) as exceeds any amount not allowed to be deducted in terms of section 23N.

(4) So much of any amount of interest as exceeds the amount determined in terms of subsection (3) may be carried forward to the immediately succeeding year of assessment and, subject to subsection (2), must be deemed to be an amount of interest incurred in that succeeding year of assessment.

(5) Where an amount of interest is to be taken into account in terms of this section and in terms of section 23N, that amount of interest shall only be taken into account in terms of this section after section 23N has been applied.

(6) (a) This section does not apply to so much of the interest as is incurred by a debtor in respect of a debt owed to a creditor as contemplated in subsection (2) where—

(i) that creditor funded that debt amount advanced to that debtor with funding granted by a lending institution that is not in a controlling relationship with that debtor; and

(ii) that interest is determined with reference to a rate of interest that does not exceed the official rate of interest plus 100 basis points.

[subparagraph (ii) substituted by section 39(c) of Act 17 of 2017 (retroactively deleted by section 76(1) of Act 23 of 2020), and by section 41(d) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(b) to any interest incurred by a debtor in respect of any linked unit that is held by a creditor as contemplated in subsection (2) where that creditor is a long-term insurer as defined in the Long-term Insurance Act, a pension fund or a provident fund, if—

(i) the long-term insurer, pension fund or provident fund holds at least 20 per cent of the linked units in that debtor;

(ii) the long-term insurer, pension fund or provident fund acquired those linked units before 1 January 2013; and

(iii) at the end of the previous year of assessment 80 per cent or more of the value of the assets of that debtor, reflected in the annual financial statements prepared in accordance with the Companies Act for the previous year of assessment, is directly or indirectly attributable to immovable property.

23N. Limitation of interest deductions in respect of reorganisation and acquisition transactions

(1) For the purposes of this section—

"acquired company" means—

(a) a transferor company or a liquidating company that disposes of assets pursuant to a reorganisation transaction; or

(b) a company in which equity shares are acquired by another company in terms of an acquisition transaction;

"acquiring company" means—

(a) a transferee company contemplated in the definition of "intra-group transaction" in section 45(1);

(b) a holding company contemplated in the definition of "liquidation distribution" in section 47(1); or

(c) a company that acquires an equity share in another company in terms of an acquisition transaction;

"acquisition transaction" means any transaction—

(a) in terms of which an acquiring company acquires an equity share in an acquired company that isa company ascontemplated in paragraph (a) or (b) of the definition of "acquisition transaction" in section24O(1); and

(b) as a result of which that acquiring company, as at theend of the day of that transaction, becomes a controlling group company in relation to thatacquired company;

"adjusted taxable income" means taxable income calculated before applying this section—

[words preceding paragraph (a) substituted by section 42(1)(a) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(a) reduced by—

(i) any amount of interest received or accrued that forms part of taxable income;

[subparagraph (i) substituted by section 42(1)(b) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(ii) any amount included in the income of a person as contemplated in section 9D(2);

(iii) any amount recovered or recouped in respect of an allowance contemplated in this Act in respect of a capital asset as defined in section 19; and

(b) with the addition of—

(i) any amount of interest incurred that has been allowed as a deduction from income;

[subparagraph (i) substituted by section 42(1)(c) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(ii) any amount allowed as a deduction in terms of this Act in respect of a capital asset as defined in section 19 for purposes other than the determination of any capital gain or capital loss;

(iii) 75 per cent of the receipts or accruals derived from the letting of any immovable property; and

(iv) any assessed loss or balance of assessed loss allowed to be set off against income in terms of section 20;

"average repo rate" in relation to a year of assessment means the average of all ruling repo rates determined by using the daily repo rates during that year of assessment;

"interest" means interest as defined in section 24J;

"issue" in relation to a debt, means the creation of a liability to pay or of a right to receive an amount in terms of that debt;

"reorganisation transaction" means—

(a) an intra-group transaction as defined in section 45(1) to which section 45 applies; or

(b) a liquidation distribution as defined in section 47(1) to which section 47 applies;

"repo rate" means the interest rate at which the South African Reserve Bank enters into a repurchase agreement contemplated in section 10(1)(j) of the South African Reserve Bank Act.

(2) Where an amount of interest is incurred by an acquiring company in terms of a debt—

(a) directly or indirectly assumed or applied for the purpose of procuring, enabling, facilitating or funding the acquisition by that acquiring company of any asset in terms of a reorganisation transaction;

(b) used directly or indirectly for the purpose of redeeming, refinancing or settling the debt contemplated in paragraph (a);

(c) issued, assumed or used in terms of an acquisition transaction; or

(d) used directly or indirectly for the purpose of redeeming, refinancing or settling the debt contemplated in paragraph (c),

the amount of interest allowed to be deducted must not exceed the amount determined in terms of subsection (3).

(3) The amount of interest allowed to be deducted in terms of all debts owed as contemplated in subsection (2), in respect of any year of assessment in which the acquisition transaction or reorganisation transaction is entered into and in respect of five years of assessment immediately following that year of assessment, must not exceed the sum of—

(a) the amount of interest received by or accrued to the acquiring company; and

(b) the highest of the amounts determined by multiplying the percentage determined under subsection (4) by the adjusted taxable income of the acquiring company for each of the years of assessment—

(i) in which the acquisition transaction or reorganisation transaction is entered into;

(ii) in which the amount of interest is incurred by that acquiring company; or

(iii) immediately prior to the year of assessment contemplated in subparagraph (i),

reduced by any amount of interest incurred by the acquiring company in respect of debtsother than debts contemplated in subsection (2).

(4) The percentage contemplated in subsection (3)(b) must be determined in accordance with the formula—

$$A = B \times \frac{C}{D}$$

in which formula—

(a) "A" represents the percentage to be determined;

(b) "B" represents the number 40;

(c) "C" represents the average repo rate plus 400 basis points; and

(d) "D" represents the number 10,

but not exceeding 60 per cent of the adjusted taxable income of that acquiring company.

(5) *[subsection (5) deleted by section 42(1)(d) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of amounts incurred on or after that date]*

23O. Limitation of deductions by small, medium or micro-sized enterprises in respect of amounts received or accrued from small business funding entities

(1) For the purposes of this section—

"allowance asset" means an asset as defined in paragraph 1 of the Eighth Schedule, other than trading stock, in respect of which a deduction or allowance is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss;

"base cost" means base cost as defined in paragraph 1 of the Eighth Schedule.

(2) Where during any year of assessment any amount is received by or accrues to a small, medium or micro-sized enterprise from a small business funding entity for the acquisition, creation or improvement, or as a reimbursement for expenditure incurred in respect of the acquisition, creation

or improvement of trading stock, any expenditure incurred in respect of that trading stock allowed as a deduction in terms of section 11(a) or any amount taken into account in respect of the value of trading stock as contemplated in section 22(1) or (2) must be reduced to the extent that the amount is received or accrued from the small business funding entity for that purpose.

[subsection (2) substituted by section 29(a) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(3) Where during any year of assessment any amount is received by or accrues to a small, medium or micro-sized enterprise from a small business funding entity for the acquisition, creation or improvement, or as a reimbursement for expenditure incurred in respect of the acquisition, creation or improvement of an allowance asset, the base cost of that allowance asset must be reduced to the extent that the amount is received or accrued from the small business funding entity for that purpose.

[subsection (3) substituted by section 29(a) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(4) Where during any year of assessment any amount is received by or accrues to a small, medium or micro-sized enterprise from a small business funding entity for the acquisition, creation or improvement of an allowance asset or as a reimbursement for expenditure incurred in respect of that acquisition, creation or improvement, the aggregate amount of the deductions or allowances allowable to that person in respect of that allowance asset may not exceed an amount equal to the aggregate of the expenditure incurred in the acquisition, creation or improvement of that allowance asset, reduced by an amount equal to the sum of—

(a) the amount is received or accrued for that purpose; and

[paragraph (a) substituted by section 29(b) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(b) the aggregate amount of all deductions and allowances previously allowed to that person in respect of that allowance asset.

(5) Where during any year of assessment any amount is received by or accrues to a small, medium or micro-sized enterprise from a small business funding entity—

(a) for the purpose of the acquisition, creation or improvement of an asset other than an asset contemplated in subsection (2) or (3); or

(b) as a reimbursement for expenditure incurred for the acquisition, creation or improvement of an asset other than an asset contemplated in subsection (2) or (3),

the base cost of that asset must be reduced to the extent that the amount is received by or accrued from the small business funding entity for that acquisition, creation or improvement.

[words following paragraph (b) substituted by section 29(c) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(6) (a) Where during any year of assessment—

(i) any amount is received by or accrues to a small, medium or micro-sized enterprise from a small business funding entity; and

(ii) subsection (2), (3), (4) or (5) does not apply to that amount,

any amount allowed to be deducted from the income of that small, medium or micro-sized enterprise in terms of section 11 for that year of assessment must be reduced to the extent of the amount received or accrued from a small business funding entity.

(b) To the extent that the amount received or accrued from a small business funding entity exceeds the amount allowed to be deducted as contemplated in paragraph (a), that excess is

deemed to be an amount received or accrued from a small business funding entity during the following year of assessment for the purposes of paragraph (a).

24. Credit agreements and debtors allowance

(1) Subject to the provisions of section 24J, if any taxpayer has entered into any agreement with any other person in respect of any property the effect of which is that, in the case of movable property, the ownership shall pass or, in the case of immovable property, transfer shall be passed from the taxpayer to that other person, upon or after the receipt by the taxpayer of the whole or a certain portion of the amount payable to the taxpayer under the agreement, the whole of that amount shall for the purposes of this Act be deemed to have accrued to the taxpayer on the day on which the agreement was entered into.

(2) In the case of such an agreement in terms of which at least 25 per cent of the said amount payable only becomes due and payable on or after the expiry of a period of not less than 12 months after the date of the said agreement, taking into consideration any allowancemade under section 11(j), there shall be made such further allowance as under the special circumstances of the trade of the taxpayer, as set out in a public notice issued by the Commissioner, is reasonable, in respect of all amounts which are deemed to have accrued under such agreements but which have not been received at the close of the taxpayer's accounting period: Provided that any allowance so made shall be included as income in the taxpayer's returns for the following year of assessment and shall form part ofthe taxpayer's income.

24A. Transactions whereby fixed property is or company shares are exchanged for shares

(1) If, under any transaction entered into before 1 October 2001 for the disposal by any person (hereinafter referred to as the trader) of any trading stock consisting of fixed property or any shares in any company, the consideration received by or accrued to the trader for such trading stock in effect consists of or includes—

(a) shares in a public company; or

(b) company shares quoted by a recognized stock exchange at the time of such transaction or within six months thereafter; or

(c) shares in any other company, if such shares are, under a scheme for the consolidation or merger of the interests of two or more persons, issued or transferred to the trader,

the value of the shares which constitute or are included in such consideration shall, if the trader and the Commissioner agree thereto, be excluded from the trader's income for the year of assessment during which such consideration is received by or accrues to him.

(2) For the purposes of this Act—

(a) the shares which constitute or are included in the said consideration and any capitalization shares issued in respect of such shares (which shares and capitalization shares are hereinafter referred to as new trading stock) shall be deemed to be trading stock of the trader; and

(b) the cost price to the trader of the shares which constitute or are included in the said consideration shall be deemed to be the cost to him of the trading stock referred to in subsection (1) or, if such last-mentioned trading stock was held by him and had not been disposed of by him at the beginning of the year of assessment, the amount taken into account under section 22(2) as the value thereof, less an amount which bears to the said cost or the amount so taken into account, as the case may be, the same ratio as the value of such portion (if any) of the said consideration as does not consist of the said shares bears to the total value of the said consideration (including the said shares).

(3) Any amount (including the value of any benefit or advantage) which is received by or accrues to the trader from the disposal of new trading stock (or a portion thereof) shall be included in the trader's

income, whether such amount is derived in carrying on any trade or otherwise or is derived from a source within or outside the Republic: Provided that the provisions of this subsection shall not be construed so as to prevent the provisions of subsection (1) being applied in respect of such amount.

(4) If on or after the date of promulgation of the Income Tax Act, 1971, the trader disposes of or ceases to be the owner of new trading stock for any reason other than his death or insolvency or, in the case of a company, the winding-up or liquidation thereof and no consideration accrues to him in respect of such new trading stock or a consideration accrues to him in respect of such new trading stock which in whole or part is not measurable in terms of money (the part of the consideration which is so measurable being less in value than the market value of such new trading stock at the date on which it was disposed of or on which the trader ceased to be the owner thereof), he shall for the purposes of this Act be deemed to have disposed of such new trading stock for a consideration equal to the market value thereof at the date on which it was disposed of or on which the trader ceased to be the owner thereof) or the market value thereof on the date of the transaction referred to in subsection (1), whichever value is the lower, reduced by the amount (if any) included in the trader's income under subsection (3) in respect of the disposal, and such value, as so reduced, shall be included in his income: Provided that the foregoing provisions of this subsection shall not apply where the trader disposes of or ceases to be the owner of new trading stock by reason of the carrying out of any scheme referred to in section 22A and the trader is a transferor company as contemplated in that section.

(5) Where the trader has until his death or the prior sequestration of his estate or, in the case of a company, the commencement of the winding-up or liquidation thereof, continued to hold new trading stock, the trader shall for the purposes of this Act be deemed to have disposed of such new trading stock on the day preceding the date of his death or the sequestration of his estate (whichever first occurs) or, in the case of a company the date on which the winding-up or liquidation thereof commenced, for a consideration equal to the market value on the said day of such new trading stock or the market value thereof on the date of the transaction referred to in subsection (1), whichever value is the lower, and such value shall be included in his income for the period of assessment within which the said day falls.

(6) For the purposes of this section—

(a) "fixed property" means property as defined in section 1 of the Transfer Duty Act, 1949 (Act No. 40 of 1949); and

(b) a company which has not yet been recognized under the provisions of this Act as a public company, may at the request of the taxpayer, be deemed to be a public company, if the Commissioner is satisfied that such company will be so recognized.

24BA. Transactions where assets are acquired as consideration for shares issued

(1) For the purposes of this section, "asset" means an asset as defined in paragraph 1 of the Eighth Schedule or a number of such assets.

(2) Subject to subsection (4), this section applies where—

(a) in terms of any transaction, a company, for consideration, acquires an asset from a person in exchange for the issue by that company to that person of shares in that company; and

(b) the consideration contemplated in paragraph (a) is (before taking into account any other transaction, operation, scheme, agreement or understanding that directly or indirectly affects that consideration) different from the consideration that would have applied had that asset been acquired in exchange for the issue of those shares in terms of a transaction between independent persons dealing at arm's length.

(3) Notwithstanding paragraph 11(2)(b) of the Eighth Schedule, where a company acquires an asset from a person in exchange for the issue by that company to that person of shares in that company as contemplated in subsection (2) and the market value of—

(a) that asset immediately before that disposal exceeds the market value of the shares immediately after that issue, the amount of the excess must—

(i) be deemed to be a capital gain in respect of a disposal by that company of the shares; and

(ii) where those shares are acquired by that person as—

(aa) a capital asset, be applied to reduce any amount of expenditure incurred by that person in acquiring those shares that is allowable in terms of paragraph 20 of the Eighth Schedule; or

(bb) trading stock, be applied to reduce any amount that must be taken into account by the person in respect of the shares in terms of section 11(a) or 22(1) or (2); or

(b) the shares immediately after that issue exceeds the market value of that asset immediately before the disposal, the amount of the excess must, for the purposes of Part VIII, be deemed to be a dividend as defined in section 64D that—

(i) consists of a distribution of an asset *in specie*; and

(ii) is paid by the company on the date of that issue.

(4) This section must not apply where a company acquires an asset from a person as contemplated in subsection (2)(a) if—

(a) (i) that company and that person form part of the same group of companies immediately after that company acquires that asset; or

(ii) that person holds all the shares in that company immediately after that company acquires that asset; or

(b) paragraph 38 of the Eighth Schedule applies.

24C. Allowance in respect of future expenditure on contracts

(1) For the purposes of this section, "future expenditure" in relation to any year of assessment means an amount of expenditure which will be incurred after the end of such year—

(a) in such manner that such amount will be allowed as a deduction from income in a subsequent year of assessment; or

(b) in respect of the acquisition of any asset in respect of which any deduction will be admissible under the provisions of this Act.

(2) If the income of any taxpayer in any year of assessment includes or consists of an amount received by or accrued to him in terms of any contract andsuch amount will be utilised in whole or in part to finance future expenditure which will be incurred by the taxpayer in the performance of the taxpayer's obligations under such contract, there shall be deducted in the determination of the taxpayer's taxable income for such year such allowance (not exceeding the said amount) in respect of so much of such future expenditure asrelates to the said amount.

(3) The amount of any allowance deducted under subsection (2) in any year of assessment shall be deemed to be income received by or accrued to the taxpayer in the following year of assessment.

24D. Deduction of certain expenditure incurred in respect of any National Key Point or specified important place or area

(1) There shall be allowed to be deducted from the income of any taxpayer for any year of assessment so much of any expenditure actually incurred by the taxpayer during such year—

(a) directly in the performance of any act ordered, performed or executed under the provisions of the National Key Points Act, 1980 (Act No. 102 of 1980), in respect of any National Key Point or Key Point as defined in section 1 of that Act; or

(b) directly in providing efficient security against loss, damage, disruption or immobilization of any place or area as defined in section 1 of the said Act which, although not declared a National Key Point under the provisions of the said Act, has been evaluated and approved by the Minister of Defence or any person or committee appointed by him as such a place or area in respect of which measures for the efficient security thereof ought to be taken by such taxpayer.

(2) The amount of any expenditure allowed to be deducted under the provisions of subsection (1) shall be restricted to expenditure—

(a) actually incurred by the taxpayer on or after 1 September 1978; and

(b) which was or is not otherwise allowable as a deduction under the provisions of this Act,

and no expenditure shall be deducted under the provisions of this section unlessthe Minister of Defence or any person or committee appointed by that Ministerhas confirmed in writing that it was deemed necessary or expedient that the expenditure in question be incurred by the taxpayer concerned.

(3) Where an amount has been paid by the State to a taxpayer in respect of expenditure incurred by him prior to 1 July 1983 which has qualified for deduction from his income under subsection (1) and the Minister, person or committee referred to in subsection (2) confirms that such amount was paid as a supplement to the benefit which the taxpayer has enjoyed or will enjoy by way of the said deduction, the provisions of section 8(4)(a) shall not apply in respect of the said amount.

24E. Allowance in respect of future expenditure by sporting bodies

(1) If income is received by or accrued to a taxpayer contemplated in section 11E in respect of an event that will not recur in the following year of assessment, the taxpayer may for the purposes of determining taxable income deduct so much of that income as will be required to fund expenditure contemplated in section 11E that will be incurred in a future year of assessment.

(2) Any amount allowed to be deducted in terms of subsection (1) in any year of assessment must be deemed to be income received by or accrued to the taxpayer in the following year of assessment.

24F. Allowance in respect of films

(1) In this section—

"completion date", in relation to—

(a) the production of a film, means the date on which it is first in a form in which it can be regarded as ready for copies of it to be made and distributed, for presentation to the general public; or

(b) the acquisition of a film, means the date it was acquired;

"film" means a recording of moving visual images and sound by means of cinematographic film, video tape, video disc or otherwise, including any copy of the film and any right therein;

"film owner" means any person who owns, whether solely or jointly, a film;

"post-production cost", in relation to a film, means any expenditure of the nature referred to in the definition of "production cost" which is incurred after the completion date, but excluding any print cost in relation to such film;

"print cost", in relation to a film, means any expenditure incurred by the film owner in the making of copies of the film;

"production cost", in relation to a film, means the total expenditure incurred by a film owner in respect of the acquisition or production of such film, excluding expenditure incurred in the erection, construction or acquisition of any buildings or other structures or works of a permanent nature, but including, without in any way limiting the scope of this definition—

(a) any remuneration, salary, legal, accounting or other fee, commission or other amount paid or payable to any person for the purposes of or in connection with the production of the film;

(b) the cost of acquiring the story rights, script, screenplay, copyright or other rights in relation to the film;

(c) insurance premiums in respect of insurance against injury to or death of persons, or loss of or damage to property employed or used, as the case may be, in the production of the film;

(d) premiums or commission payable in order to secure a guarantee that the cost of the film will not exceed a specified amount;

(e) interest, finance charges and raising fees incurred for the purposes of or in connection with the production of the film;

(f) the cost of acquiring or creating music, sound and other effects which will form part of the film;

(g) any allowance which but for the provisions of this section would be allowed under section 11(e) or (o) or 12C in respect of any machinery, implements, utensils or articles used in the production of a film:

Provided that—

(i) any such allowance shall be deemed to be an amount of expenditure incurred;

(ii) an amount equal to the total amount of any such allowance which may be granted in respect of any year of assessment divided by the number of days in that year shall be deemed to have been incurred on each day of that year;

(iii) such expenditure shall be deemed to have been incurred in the country in which the asset in respect of which the allowance may be granted was acquired; and

(iv) no deduction or allowance shall be granted in respect of the cost of acquisition of any such machinery, implements, utensils or articles otherwise than as provided in this paragraph or paragraph (h); and

(h) expenditure incurred in respect of—

(i) the purchase, hire or construction of sets; and

(ii) the hire of any machinery, implements, utensils or articles used in the production of the film,

but excluding any such expenditure incurred after the completion date and any expenditure incurred in the marketing or promotion of, or soliciting of orders for, the film:

Provided that where a film owner acquired the film directly or indirectly from a connected person the total expenditure incurred by the film owner in respect of the acquisition of the film must be limited to the total expenditure incurred by the connected person in respect of the acquisition thereof or production cost to that connected person in respect of the production of the film;

(2) (a) There must be allowed as a deduction from the income of any film owner—

(i) the total amount of all production costs or post-production costs actually incurred by that film owner in connection with any film used by that film owner in the production of income, if at least 75 per cent of the total amount of those production costs and post-production costs incurred is paid or payable in the Republic in respect of services rendered or goods supplied in the Republic;

(ii) the total amount of all production costs or post-production costs actually incurred by that film owner in connection with any film used by that film owner in the production of income where the film is approved as a co-production in terms of an agreement on audiovisual or film co-production between the South African Government and any other government; or

(iii) in any other case, so much of any production costs or post-production costs actually incurred by that film owner in connection with any film used by that film owner in the production of income, as is paid or payable by that film owner in the Republic in respect of services rendered or goods supplied in the Republic.

(b) There must be allowed as a deduction from the income of a film owner any production costs or post-production costs actually incurred by that film owner in connection with any film used by that film owner in the production of income and which are not allowed under paragraph (a): Provided that the deduction must be limited to 10 per cent of the amount of those costs in the year of assessment in which the completion date of the film falls and 10 per cent in each of the nine following years of assessment.

(c) The deductions in terms of paragraphs (a) and (b) which may be granted in respect of any film may not in the aggregate exceed the production cost and post-production cost thereof and shall be in lieu of any deduction or allowance in respect of such production cost or postproduction cost which may otherwise be allowable in terms of the provisions of this Act.

(d) No deduction shall be allowed under this section in respect of any expenditure incurred in respect of—

(i) any film of which principal photography commences on or after 1 January 2012; or

(ii) any film after 31 December 2012.

(3) Subject to the provisions of subsections (4) and (5), the amount of the film allowance which may be granted in terms of subsection (2), in respect of any one film, is the sum of—

(a) in the year of assessment in which the completion date of such film falls, the production cost of such film and any post-production cost of such film incurred during such year; and

(b) in any subsequent year of assessment, any post-production cost of such film incurred during such year and the amount of any film allowance disallowed in the preceding year of assessment under the provisions of subsection (4).

(4) The film allowance which may be granted in respect of any one film in any year of assessment must, together with the total film allowances granted in respect of that film in any preceding years of assessment, not exceed the sum of—

(a) the amounts of production cost and post-production cost in respect of the film which have been paid by the film owner: Provided that where any loan or credit has been used by the film owner for the payment or financing of the whole or any portion of such production cost or post-production cost and any portion of such loan or credit is owed by the film owner on the last day of the year of assessment, the amount which may be taken into account under this paragraph must be reduced by any portion of such loan or credit so owed by the film owner for which the film owner is not under the provisions of subsection (8) deemed to be at risk on the last day of the year of assessment; and

(b) the amounts of any production cost and post-production cost which have been actually incurred but have not been paid by the film owner and for which he or she is under the provisions of subsection (8) deemed to be at risk on the last day of the year of assessment.

(5) An amount actually incurred in respect of production costs or postproduction costs of a film shall not be allowed as a deduction in terms of this section unless there is a binding, unconditional obligation to pay that amount within a period of 18 months from the completion date of that film.

(8) For the purposes of subsection (4), a film owner shall be deemed to be at risk to the extent that the payment of the production cost or post-production cost actually incurred by the film owner, or the repayment of any loan or credit used by the film owner for the payment or financing of any such production cost or post-production cost would (having regard to any transaction, agreement, arrangement, understanding or scheme entered into before or after such production cost or post-production cost is incurred) result in an economic loss to the film owner were no income to be received by or accrue to the film owner in future years from the exploitation by the film owner of the film: Provided that where the full amount of the loan or credit is not repayable within a period of ten years from the completion date, the film owner is deemed not to be at risk for purposes of this section to the extent the loan or credit is not repayable within a period of ten years from the completion date of the film.

24G. Taxable income of toll road operators

(1) For the purposes of this section—

"agreement" means an agreement concluded by the taxpayer in terms of which the taxpayer is entitled to operate a toll road;

"ancillary service" in relation to a toll road, means any—

(a) vehicle service station, breakdown or repair facility;

(b) shop or restaurant;

(c) park, recreation or rest area;

(d) emergency medical or first-aid facility;

(e) hotel or other accommodation; or

(f) entertainment facility,

or other service or facility to which persons or vehicles may gain access from the toll road;

"permanent work" means—

(a) any earthwork, tunnel, bridge, or structure forming part of a toll road, including any building erected for the purpose of housing toll equipment, but excluding any such work constructed or erected solely for the purposes of the repair or maintenance of a toll road; and

(b) the reimbursement for the cost of acquisition or expropriation of land required for the purposes of the toll road; and

(c) any payment made to the South African National Roads Agency Limited in respect of the acquisition of the right to operate a toll road;

"road pavement" means the road surface, road shoulders, sub base, base course, wearing courses, road signage, road markings, lighting, guard rails, tolling equipment, emergency telephone systems, emergency telephone repeater stations, access roads to emergency telephone repeater station sites and other parts and road furniture of a toll road, excluding any permanent work or ancillary service;

"single toll road" means—

(a) a single continuous toll road or portion thereof, or two or more toll roads or portions thereof which are not contiguous but which the Minister of Transport Affairs, after consultation with the Minister of Finance, considers should be regarded as a single toll road; or

(b) two or more toll roads or portions thereof in respect of which a single agreement has been concluded with the South African National Roads Agency Limited;

"South African National Roads Agency Limited" means the South African National Road Agency Limited incorporated in terms of section 3 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998);

"tolling period", in relation to a toll road, means the initial period during which the South African National Roads Agency Limited has granted to the taxpayer or any other person the right to operate such toll road, including any period in respect of which such right was so granted in terms of an interim agreement concluded by the South African National Roads Agency Limited, but excluding any extension of such first-mentioned period in respect of which a right of renewal may be exercised;

"toll road" means a road or section thereof, including any access road, crossroad or ramp constituting a necessary adjunct to such road or section, in respect of which the taxpayer derives or will derive income through the imposition of a toll or the exploitation of the right to impose a toll.

(2) Subject to the provisions of subsection (5), there shall be deducted in the determination of the taxable income derived by the taxpayer during any year of assessment—

(a) the sum of any annual allowances determined under subsection (3) in relation to expenditure incurred during the current or any previous year of assessment in respect of any permanent work, road pavement, major rehabilitation of the road pavement or erection or construction of ancillary services in relation to a toll road;

(b) any expenditure incurred during the year of assessment in respect of the repair or maintenance of a toll road or any ancillary service in relation to such toll road, other than expenditure incurred on major rehabilitation of the road pavement;

(c) any interest (other than interest which is deductible under section 11(a)) incurred by the taxpayer during the year of assessment in respect of any loan utilized for the purpose of financing any expenditure contemplated in paragraph (a) or (b); and

(d) any amount which has been disallowed in the preceding year of assessment under the provisions of subsection (5):

Provided that the aggregate of the allowances which may be granted under paragraph (a) shall not exceed the total expenditure incurred by the taxpayer on such permanent work, road pavement, major rehabilitation of road pavement or erection or construction of ancillary services.

(3) For the purposes of subsection (2), an annual allowance shall be calculated in respect of expenditure incurred by the taxpayer on permanent works, road pavements, major rehabilitation of road pavements or the erection, construction, installation or provision of ancillary services during any year of assessment, such allowance to be equal to the expenditure so incurred during the year divided by the lesser of the number of years reckoned from the commencement of that year until the end of the tolling period (for which purpose a portion of a year shall be regarded as a year) and—

(a) in the case of expenditure incurred on permanent works or the erection or construction of ancillary services, 25 years; and

(b) in the case of such expenditure incurred on road pavements or major rehabilitation of road pavements, 8 years.

(4) No deduction or allowance shall be granted under this Act in respect of expenditure contemplated in subsection (2) otherwise than as provided in that subsection.

(5) The allowances which may be granted under subsection (2)(a), (b) and (d) in any year of assessment in respect of any single toll road shall not in the aggregate exceed the taxable income (as determined before the deduction of the said allowances) derived by the taxpayer during such year from—

(a) the exploitation of such toll road or any ancillary service in relation to such toll road; and

(b) any interest derived in the ordinary course of such exploitation and the financing of any expenditure contemplated in subsection (3) which relates to such toll road.

24H. Persons carrying on trade or business in partnership

(1) For the purposes of this section, "limited partner" means any member of a partnership *en commandite*, an anonymous partnership, any similar partnership or a foreign partnership, if such member's liability towards a creditor of the partnership is limited to the amount which the member has contributed or undertaken to contribute to the partnership or is in any other way limited.

(2) Where any trade or business is carried on in partnership, each member of such partnership shall, notwithstanding the fact that he may be a limited partner, be deemed for the purposes of this Act to be carrying on such trade or business.

(3) Notwithstanding anything to the contrary in this Act contained, the amount of any allowance or deduction which may be granted to any taxpayer under any provision of this Act in respect of or in connection with any trade or business carried on by him in a partnership in relation to which he is a limited partner shall not in the aggregate exceed the sum of—

(a) the amount, whether it consists of the taxpayer's contribution to the partnership or of any other amount, for which the taxpayer is or may be held liable to any creditor of the partnership; and

(b) any income received by or accrued to the taxpayer from such trade or business.

(4) Any allowance or deduction which has been disallowed under the provisions of subsection (3) shall be carried forward and be deemed to be an allowance or deduction to which the taxpayer is entitled in the succeeding year of assessment.

(5) (a) Where any income has in common been received by or accrued to the members of any partnership or foreign partnership, a portion (determined in accordance with any agreement between such members as to the ratio in which the profits or losses of the partnership are to be shared) of such income shall, notwithstanding anything to the contrary contained in any law or the relevant agreement of partnership, be deemed to have been received by or to have accrued to each such member individually on the date upon which such income was received by or accrued to them in common.

(b) Where a portion of any income is under the provisions of paragraph (a) deemed to have been received by or to have accrued to a taxpayer, a portion (determined as aforesaid) of any deduction or allowance which may be granted under the provisions of this Act in the determination of the taxable income derived from such income shall be granted in the determination of the taxpayer's taxable income so derived.

24I. Gains or losses on foreign exchange transactions

(1) For the purposes of this section—

"**acquisition rate**" means the exchange rate in respect of an exchange item obtained by dividing the amount of the expenditure incurred for the acquisition of such exchange item by the foreign currency amount in respect of such exchange item;

"**affected contract**" means any foreign currency option contract or forward exchange contract to the extent that the foreign currency option contract or forward exchange contract has been entered into by any person during any year of assessment to serve as a hedge in respect of a debt, where—

(a) that debt—

(i) is to be utilised by that person for the purposes of acquiring any asset or for financing any expenditure; or

(ii) will arise from the sale of any asset or supply of any services,

in terms of an agreement entered into by that person in the ordinary course of the person's trade prior to the end of the current year of assessment; and

(b) that debt has not yet been incurred by such person or the amount payable in respect of such debt has not yet accrued during that current year of assessment;

"**disposal rate**" means the exchange rate in respect of an exchange item obtained by dividing the amount received or accrued in respect of the disposal of such exchange item by the foreign currency amount in respect of such exchange item;

"**exchange difference**" means the foreign exchange gain or foreign exchange loss in respect of an exchange item during any year of assessment determined by multiplying such exchange item by the difference between—

(a) the ruling exchange rate on transaction date in respect of such exchange item during that year of assessment, and—

(i) the ruling exchange rate at which such exchange item is realised during that year of assessment; or

(ii) the ruling exchange rate at which such exchange item is translated at the end of that year of assessment; or

(b) the ruling exchange rate at which such exchange item was translated at the end of the immediately preceding year of assessment or at which it would have been translated had this section been applicable at the end of that immediately preceding year of assessment, and—

(i) the ruling exchange rate at which such exchange item is realised during that year of assessment; or

(ii) the ruling exchange rate at which such exchange item is translated at the end of that year of assessment;

"**exchange item**" of or in relation to a person means an amount in a foreign currency—

(a) which constitutes any unit of currency acquired and not disposed of by that person;

(b) owing by or to that person in respect of adebt incurred by or payable to such person;

(c) owed by or to that person in respect of a forward exchange contract; or

(d) where that person has the right or contingent obligation to buy or sell that amount in terms of a foreign currency option contract;

"**foreign currency**" in relation to any exchange item of a person, means any currency which is not local currency;

"**foreign currency option contract**" means any agreement in terms of which any person acquires or grants the right to buy from or to sell to any other person a certain amount of a nominated foreign currency on or before a future expiry date at a specified exchange rate;

"**forward exchange contract**" means any agreement in terms of which any person agrees with another person to exchange an amount of currency for another currency at some future date at a specified exchange rate;

"**forward rate**" means the specified exchange rate as referred to in the definition of "forward exchange contract";

"**intrinsic value**", in relation to a foreign currency option contract, means the value for the holder or writer thereof, as the case may be, determined by applying the difference between—

(a) the spot rate on translation date or the date on which the foreign currency option contract is realised, as the case may be; and

(b) the option strike rate,

to the amount of foreign currency as specified in such foreign currency option contract: Provided that such foreign currency option contract shall have a nil value for the holder or writer thereof if such holder thereof would have sustained a loss had he exercised his right in terms of such foreign currency option contract on such translation date or date realised due to the unfavourable difference between the option strike rate and the spot rate on such translation date or date realised;

"**local currency**" means in relation to—

(a) any person in respect of an exchange item which is attributable to any permanent establishment outside the Republic, the functional currency of that permanent establishment: Provided that for purposes of this paragraph any exchange item shall be deemed not to be attributable to any such permanent establishment if the functional currency of that permanent establishment is the currency of a country which has an official rate of inflation of 100 per cent or more throughout the relevant year of assessment;

(b) any resident, other than a headquarter company, a domestic treasury management company and an international shipping company as defined in section 12Q(1), in respect of an exchange item which is not attributable to a permanent establishment outside the Republic, the currency of the Republic;

[paragraph (b) substituted by section 30 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(c) any person that is not a resident in respect of any exchange item which is attributable to a permanent establishment in the Republic, the currency of the Republic;

(d) any headquarter company in respect of an exchange item which is not attributable to a permanent establishment outside the Republic, the functional currency of that headquarter company;

(e) any domestic treasury management company in respect of an exchange item which is not attributable to a permanent establishment outside the Republic, the functional currency of that domestic treasury management company;

(f) any international shipping company defined in section 12Q, in respect of an amount which is not attributable to a permanent establishment outside the Republic, the functional currency of that international shipping company;

"**market value**", in relation to a foreign currency option contract, means—

(a) in the case of a person who for accounting purposes uses a market-related valuation method in terms of a practice consistently applied by him to determine the value of all his foreign currency option contracts, the market-related value so determined; or

(b) in the case of any other person, the intrinsic value of such foreign currency option contract;

"**option strike rate**" means the specified exchange rate as referred to in the definition of "foreign currency option contract";

"**realised**" means, in relation to an exchange item, where such exchange item is—

(a) a debt in any foreign currency, when and to the extent to which payment is received or made in respect of such debt, or when and to the extent to which such debt is settled or disposed of in any other manner;

(b) a forward exchange contract, when payment is received or made in respect of such forward exchange contract;

(c) a foreign currency option contract, when payment is received or made in respect of the right in terms of such foreign currency option contract having been exercised, or when such foreign currency option contract expires without such right having been exercised, or when such foreign currency option contract is disposed of; or

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

"**ruling exchange rate**" means, in relation to an exchange item, where such exchange item is—

(a) a debt in a foreign currency on—

(i) transaction date, the spot rate on such date;

(ii) the date it is translated, the spot rate on such date; or

(iii) the date it is realised, the spot rate on such date:

Provided that where the rate prescribed in respect of a debt in terms of this definition is the spot rate on transaction date or the spot rate on the date on which such debt is realised, and any consideration paid or incurred or received or accrued in respect of the acquisition or disposal of such debt was determined by applying a rate other than such spot rate on transaction date or date realised, such spot rate shall be deemed to be the acquisition rate or disposal rate, as the case may be;

(b) a forward exchange contract on—

(i) transaction date, the forward rate in terms of such forward exchange contract;

(ii) the date it is translated, the market-related forward rate available for the remaining period of such forward exchange contract or in respect of a forward exchange contract which is an affected contract, the forward rate in terms of such forward exchange contract;

(iii) the date it is realised, the spot rate on such date; or

(c) a foreign currency option contract on—

(i) transaction date, a nil rate;

(ii) the date it is translated—

(aa) in relation to a foreign currency option contract which is not an affected contract, the rate obtained by dividing the market value of such foreign currency option contract on that date by the foreign currency amount as specified in such foreign currency option contract; or

(bb) in relation to a foreign currency option contract which is an affected contract, the rate obtained by dividing any amount included or deducted, as the case may be, in terms of subsection (3)(b) by the foreign currency amount, as specified in such affected contract;

(iii) the date it is realised, the rate obtained by dividing the market value of such foreign currency option contract on that date by the foreign currency amount as specified in such foreign currency option contract: Provided that where such foreign currency option contract is realised by the disposal thereof, the rate shall be obtained by

dividing the amount received or accrued as a result of the disposal of such foreign currency option contract, by the foreign currency amount as specified in such foreign currency option contract;

(d) an amount which constitutes a unit of currency, on—

(i) transaction date, the spot rate on that date;

(ii) the date it is translated, the spot rate on that date; or

(iii) the date it is realised, the spot rate on that date:

Provided that the Commissioner may, having regard to the particular circumstances of the case, prescribe an alternative rate to any of the aforementioned prescribed rates to be applied by a person in such particular circumstances, if such alternative rate is used for the purposes of financial reporting pursuant to IFRS;

"**transaction date**" means, in relation to—

(b) a debt owing by a person, the date on which such debt was actually incurred;

(d) a debt owing to a person, the date on which the amount payable in respect of such debt accrued to such person or the date on which such debt was acquired by such person in any other manner;

(e) a forward exchange contract, the date on which such contract was entered into;

(f) a foreign currency option contract, the date on which such contract was entered into or acquired; and

(g) an amount which constitutes a unit of currency, the date on which that amount was acquired;

"**translate**" means the restatement of an exchange item in the local currency at the end of any year of assessment, by applying the ruling exchange rate to such exchange item.

(2) The provisions of this section shall apply in respect of any—

(a) company;

(b) trust carrying on any trade;

(c) natural person who holds any amount contemplated in paragraph (a) or (b) of the definition of "exchange item" as trading stock; and

(d) natural person or trust in respect of any amount contemplated in paragraph (c) or (d) of the definition of "exchange item".

Provided that this section does not apply in respect of any exchange item of a person who is not a resident (other than a controlled foreign company), unless that exchange item is attributable to a permanent establishment of that person in the Republic.

(3) In determining the taxable income of any person contemplated in subsection (2), there shall be included in or deducted from the income, as the case may be, of that person—

(a) any exchange difference in respect of an exchange item of or in relation to that person, subject to subsection (10A); and

(b) (i) any premium or like consideration received by, or paid by, such person in terms of a foreign currency option contract entered into by such person; or

(ii) any consideration paid by such person in respect of a foreign currency option contract acquired by such person.

(4) Subject to section 11, in determining the taxable income of any person contemplated in subsection (2) in respect of a debt owing to that person as referred to in paragraph (b) of the definition of "exchange item"—

(a) to the extent that on realisation the debt was irrecoverable by reason of becoming bad; or

(b) the realisation of the debt resulted in a loss determined in the foreign currency due to a decline in the market value of that debt,

the amount of—

(i) any foreign exchange gain, relating to the debt as described in paragraph (a) or (b), that is or was included in the income of that person in the current or any previous year of assessment must be deducted from the income of that person; and

(ii) the amount of any foreign exchange loss, relating to the debt as described in paragraph (a) or (b), that is or was deducted from the income of that person in the current or any previous year of assessment must be included in the income of that person.

[subsection (4) substituted by section 43(1)(a) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]

(6) Any inclusion in or deduction from income in terms of this section shall be in lieu of any deduction or inclusion which may otherwise be allowed or included under any other provision of this Act.

(7) Notwithstanding the provisions of subsection (3), but subject to the provisions of section 36—

(a) any exchange difference arising from a debt having been utilised by a person in respect of—

(i) the acquisition, installation, erection or construction of any machinery, plant, implement, utensil, building or improvements to any building, as the case may be; or

(ii) the devising, developing, creation, production, acquisition or restoration of any invention, patent, design, trade mark, copyright or other similar property or knowledge contemplated in section 11(gC);

[subparagraph (ii) substituted by section 43(1)(b) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(b) any exchange difference arising from a forward exchange contract or a foreign currency option contract which has been entered into by a person contemplated in paragraph (a), to the extent to which such forward exchange contract or foreign currency option contract is entered into to serve as a hedge in respect of a debt incurred or to be incurred for the utilisation thereof as contemplated in paragraph (a); and

(c) any premium or other consideration paid or payable in respect of or in terms of a foreign currency option contract entered into or acquired by a person contemplated in paragraph (a), to the extent to which such foreign currency option contract is entered into or obtained in order to serve as a hedge in respect of a debt incurred or to be incurred for the utilisation thereof as contemplated in paragraph (a),

shall, where such exchange difference arose or such premium or other consideration was paid or became payable in a year of assessment prior to the year of assessment during which such machinery, plant, implement, utensil, building, improvements to any building, invention, patent, design, trade mark, copyright or other similar property or knowledge was or is brought into use for the purposes of such person's trade, be carried forward and be taken into account in the determination of the taxable income of such person in the year of assessment during which such machinery, plant, implement, utensil, building, improvements to any building, invention, patent, design, trade mark, copyright or other similar property or knowledge was or is so brought into use for the purposes of such person's trade: Provided that where during any year of assessment subsequent to the year of assessment during which such exchange difference arose or such premium or other consideration was paid or became payable—

(a) the debt to be incurred as contemplated in paragraph (b) or (c) of this subsection will no longer be so incur;

(b) such debt has not been utilised as contemplated in paragraph (a); or

(c) any such asset, property or knowledge will no longer be brought into use for the purpose of such person's trade,

such exchange difference or premium or other consideration shall no longer be carried forward, but shall be taken into account in the determination of such person's taxable income in such subsequent year of assessment.

(8) Any foreign exchange loss sustained in respect of a transaction entered into by a person, or any premium or other consideration paid in respect of or in terms of a foreign currency option contract entered into or acquired by a person, shall not be allowed as a deduction from such person's income under subsection (3), if such transaction was entered into or such foreign currency option contract was entered into or acquired solely or mainly to enjoy a reduction in tax by way of a deduction from income.

(10A) (a) Subject to paragraph (b), no exchange difference arising during any year of assessment in respect of an exchange item contemplated in paragraph (b) of the definition of "exchange item" shall be included in or deducted from the income of a person in terms of this section—

(i) if, at the end of that year of assessment—

(aa) that person and the other party to the contractual provisions of that exchange item—

(A) form part of the same group of companies; or

(B) are connected persons in relation to each other; and

(bb) no forward exchange contract and no foreign currency option contract has been entered into by that person to serve as a hedge in respect of that exchange item; and

(ii) that exchange item—

(aa) or any portion thereof does not represent for that person a current asset or a current liability for the purposes of financial reporting pursuant to IFRS; and

(bb) is not directly or indirectly funded by any debt owed to any person that—

(A) does not form part of the same group of companies as; or

(B) is not a connected person in relation to,

that person or the other party to the contractual provisions of that exchange item.

(b) Where paragraph (a) was applied during any year of assessment to any exchange difference in respect of an exchange item and—

(i) that exchange difference was not included in nor deducted from the income of a person in that year of assessment; and

(ii) during any year of assessment—

(aa) subsequent to that year of assessment, paragraph (a) no longer applies to that exchange difference; or

(bb) that exchange item is realised,

an amount in respect of that exchange item must be included in or deducted from the income of that person in that subsequent year of assessment or in the year of assessment

during which the exchange item is realised which amount shall be determined by multiplying that exchange item by the difference between the ruling exchange rate on the last day of the year of assessment immediately preceding that subsequent year of assessment and the ruling exchange rate on transaction date, less any amount of the exchange differences included in or deducted from the income of that person in terms of this section in respect of that exchange item for all years of assessment preceding that subsequent year of assessment during which the person was a party to the contractual provisions of the exchange item.

(12) Where a person holds any exchange item and the provisions of this section at any time during a year of assessment—

(a) become applicable to that person, that exchange item shall be deemed to have been acquired at that time for the purposes of this section; or

(b) cease to apply to that person, that exchange item shall be deemed to have been realised at that time for the purposes of this section.

24J. Incurral and accrual of interest

(1) For the purposes of this section, unless the context otherwise indicates—

"accrual amount", in relation to an accrual period, means an amount determined in accordance with the following formula:

$A = B \times C$

in which formula—

(a) "A" represents the amount to be determined;

(b) "B" represents the yield to maturity; and

(c) "C" represents the adjusted initial amount:

Provided that—

(i) where the commencement or end of any year of assessment falls within an accrual period, the amount so determined shall be apportioned on a day to day basis over the term of such accrual period in order to determine the relevant portion of such amount relating to that part of such accrual period falling within the year of assessment so commencing or ending, as the case may be;

(ii) where an instrument is transferred on a date other than at the end of an accrual period, the amount so determined shall be apportioned on a day to day basis over the term of such accrual period in order to determine the relevant portion of such amount relating to the relevant transferor or transferee, as the case may be, in relation to such instrument; and

(iii) the amount so determined shall be appropriately adjusted by taking into account amounts received or payments made other than at the end of an accrual period;

"accrual period", in relation to an instrument, means—

(a) where in terms of such instrument regular payments at intervals of equal length and not exceeding 12 months per interval are to be made throughout the term of such instrument, the period between such regular payments; or

(b) any period not exceeding 12 months elected by the holder or issuer, as the case may be,

which period shall be applied consistently throughout the term of such instrument;

"adjusted gain on transfer or redemption of an instrument" means—

(a) in relation to the holder of any income instrument, where—

(i) an alternative method has not been applied, the amount by which the sum of the transfer price or redemption payment of such income instrument in relation to such holder and any payments received by such holder in terms of such income instrument during the accrual period in which such income instrument is transferred or redeemed, exceeds the sum of the adjusted initial amount in relation to such income instrument and the accrual amount in relation to such accrual period and any payments made by such holder in terms of such income instrument during such accrual period; or

(ii) an alternate method has been applied, the amount by which the sum of the transfer price or redemption payment of such income instrument in relation to such holder and any payments received by such holder in terms of such income instrument during the period from acquisition until transfer or redemption of such income instrument by such holder, exceeds the sum of the initial amount and all amounts determined in accordance with such alternative method and any other payments made by such holder in terms of such income instrument during the period from acquisition until transfer or redemption of such income instrument by such holder; or

(b) in relation to the issuer of any instrument, where—

(i) an alternative method has not been applied, the amount by which the sum of the adjusted initial amount in relation to such instrument and the accrual amount in relation to the accrual period during which such instrument is transferred or redeemed and any payments received by such issuer in terms of such instrument during the accrual period, exceeds the sum of the transfer price or redemption payment in relation to such instrument in relation to such issuer and any payments made by such issuer in terms of such instrument during such accrual period; or

(ii) an alternative method has been applied, the amount by which the sum of the initial amount and all amounts determined in accordance with such alternative method and any other payments received by such issuer in terms of such instrument during the period from issue or acquisition until transfer or redemption of such instrument by such issuer, exceeds the sum of the transfer price or redemption payment in relation to such instrument in relation to such issuer and any payments made by such issuer in terms of such instrument during the period from issue or acquisition until transfer or redemption of such instrument by such issuer;

"adjusted initial amount" means—

(a) in relation to the holder of an income instrument with regard to a particular accrual period, the sum of the initial amount and the accrual amounts in relation to all previous accrual periods and any other payments made by such holder during all such previous accrual periods less any payments received by such holder during all such previous accrual periods, in terms of such income instrument; or

(b) in relation to the issuer of an instrument with regard to a particular accrual period, the sum of the initial amount and the accrual amounts in relation to all previous accrual periods and any other payments received by such issuer during all such previous accrual periods less any payments made by such issuer during all such previous accrualperiods, in terms of such instrument: Provided that where that instrument forms part of any transaction, operation or scheme—

(i) any payments made by the issuer to any other person pursuant to that transaction, operation or scheme with a purpose or with the probable effect of making payment directly or indirectly to the holder or a connected person in relation to the holder, must be deducted for purposes of this paragraph; and

(ii) in the case where any party to that transaction, operation or scheme is a connected person in relation to that issuer, any payments made by that connected person to any other person pursuant to that transaction, operation or scheme with a purpose or with the probable effect of making payment directly or indirectly to the holder or a connected person in relation to the holder, must be deducted for purposes of this paragraph;

"adjusted loss on transfer or redemption of an instrument" means—

(a) in relation to the holder of any income instrument, where—

(i) an alternative method has not been applied, the amount by which the sum of the adjusted initial amount in relation to such income instrument and the accrual amount in relation to the accrual period during which such income instrument is transferred or redeemed andany payments made by such holder in terms of such income instrument during such accrual period, exceeds the sum of the transfer price or redemption payment in relation to such income instrument in relation to such holder and any payments received by such holder in terms of such income instrument during such accrual period; or

(ii) an alternative method has been applied, the amount by which the sum of the initial amount and all amounts determined in accordance with such alternative method and any other payments made by such holder in terms of such income instrument during the period from acquisition until transfer or redemption of such income instrument by such holder, exceeds the sum of the transfer price or redemption payment in relation to such income instrument in relation to such holder and any payments received by such holder in terms of such income instrument during the period from acquisition until transfer or redemption of such income instrument by such holder; or

(b) in relation to the issuer of any instrument, where—

(i) an alternative method has not been applied, the amount by which thesum of the transfer price or redemption payment of such instrument in relation to such issuer and any payments made by such issuer in terms of such instrument during the accrual period during which such instrument is transferred or redeemed, exceeds the sum of the adjusted initial amount in relation to such instrument and the accrual amount in relation to such accrual period and any payments received by such issuer in terms of such instrument during such accrual period; or

(ii) an alternative method has been applied, the amount by which the sum of the transfer price or redemption payment of such instrument in relation to such issuer and any payments made by such issuer in terms of such instrument during the period from issue or acquisition until transfer or redemption of such instrument by such issuer, exceeds the sum of the initial amount and all amounts determined in accordance with such alternative method and any other payments received by such issuer in terms of such instrument during the period from issue or acquisition until transfer or redemption of such instrument by such issuer;

"alternative method" means a method of calculating interest in relation to any class of instruments which—

(a) is in accordance with IFRS;

(b) isconsistently applied in respect of all such instruments for all financial reporting purposes; and

(c) method achieves a result in so far as the timing of the accrual and incurral of interest is concerned which produces substantially the same result achieved by the application of the provisions of subsections (2)(a) and (3)(a);

"date of redemption", in relation to an instrument, means—

(a) where—

(i) the terms of that instrument specify a date on which all liability to pay all amounts in terms of that instrument will be discharged; and

(ii) the date so specified is not, in terms of the instrument, subject to change, whether as a result of any right, fixed or contingent, of the holder of that instrument or otherwise,

that date; or

(b) where—

(i) the terms of that instrument do not specify a date as contemplated in paragraph (a)(i); or

(ii) that date, if so specified, is subject to change as contemplated in paragraph (a)(ii),

the date on which, on a balance of probabilities, all liability to pay all amounts in terms of that instrument is likely to be discharged;

"deferred interest" includes—

(a) any interest where such interest (or any portion thereof), calculated in respect of any accrual period falling within the term of any instrument by applying a constant interest rate throughout the term of such instrument, is not payable or receivable in terms of such instrument within one year from the date of the commencement of such accrual period; and

(b) any interest payable or receivable in terms of any instrument where such interest is not calculated by applying a constant interest rate throughout the term of such instrument;

"fixed rate instrument" means an instrument in terms of which the amount or amounts payable or receivable is or are or consists of or consist of—

(a) a specified amount or specified amounts;

(b) an amount or amounts the method of calculation of which does not involve the application of a variable rate; or

(c) any combination of amounts referred to in paragraph (a) or (b);

"holder", in relation to an income instrument—

(a) means any person who has become entitled to any interest or amount receivable in terms of suchincome instrument; or

(b) at any particular time, means any person who, if any interest payable in terms of such income instrument was due and payable at that time, would be entitled to receive payment of such interest;

"income instrument" means—

(a) in the case of any person other than a company, any instrument—

(i) the term of which will, or is reasonably likely to, exceed one year; and

(ii) which is issued or acquired at a discount or premium or bears deferred interest; and

(b) in the case of any company, any instrument;

"initial amount" means the issue price or transfer price, as the case may be, in relation to an instrument;

"instrument" means—

(c) any interest-bearing arrangement or debt;

(d) any acquisition or disposal of any right to receive interest or the obligation to pay any interest, as the case may be, in terms of any other interest-bearing arrangement; or

(e) any repurchase agreement or resale agreement,

which was—

(i) issued or deemed to have been issued after 15 March 1995;

(ii) issued on or before 15 March 1995 and transferred on or after 19 July 1995; or

(iii) in so far as it relates to the holder thereof, issued on or before 15 March 1995 and was unredeemed on 14 March 1996 (excluding any arrangement contemplated in subparagraphs (i) and (ii)),

but excluding any lease agreement (other than a sale and leaseback arrangement as contemplated in section 23G) or any policy issued by an insurer as defined in section 29A;

"interest" includes the—

(a) gross amount of any interest or similar finance charges, discount or premium payable or receivable in terms of or in respect of a financial arrangement;

(b) amount (or portion thereof) payable by a borrower to the lender in terms of any lending arrangement as represents compensation for any amount to which the lender would, but for such lending arrangement, have been entitled; and

(c) absolute value of the difference between all amounts receivable and payable by a person in terms of a sale and leaseback arrangement as contemplated in section 23G throughout the full term of such arrangement, to which such person is a party,

irrespective of whether such amount is—

(i) calculated with reference to a fixed rate of interest or a variable rate of interest; or

(ii) payable or receivable as a lump sum or in unequal instalments during the term of the financial arrangement;

"interest rate agreement" means an interest rate agreement as defined in section 24K;

"issue", in relation to an instrument, means the creation of the liability to pay or the right to receive an amount or amounts in terms of such instrument;

"issue price", in relation to an instrument, means the market value of the consideration given or received, as the case may be, for the issue of the instrument as determined on the date on which that instrument is issued;

"issuer", in relation to any instrument—

(a) means any person who has incurred any interest or has any obligation to repay any amount in terms of such instrument; or

(b) at any particular time, means any person who, if any interest payable in terms of such instrument was due and payable at that time, would be liable to pay such interest;

"lending arrangement" means any arrangement or agreement in terms of which—

(a) a person (in this section referred to as the lender) lends any instrument to another person (in this section referred to as the borrower); and

(b) the borrower in return undertakes to return any instrument of the same kind and of the same or equivalent quantity and quality to the lender;

"redemption", in relation to an instrument, means the discharging of all liability to pay all amounts in terms of such instrument;

"redemption payment", in relation to an instrument, means any payment made or received which has the effect of redeeming such instrument;

"repurchase agreement" means the obtaining of money (which money shall for the purposes of this section be deemed to have been so obtained by way of a loan) through the disposal of an asset by any person to any other person subject to an agreement in terms of which such person undertakes to acquire from such other person at a future date the asset so disposed of or any other asset issued by the issuer of, and which has been so issued subject to the same conditions regarding term, interest rate and price as, the asset so disposed of;

"resale agreement" means the provision of money (which money shall for the purposes of this section be deemed to have been so provided in the form of a loan) through the acquisition of an asset by any person from any other person subject to an agreement in terms of which such person undertakes to dispose of to such other person at a future date the asset so acquired or any other asset issued by the issuer of, and which has been so issued subject to the same conditions regarding term, interest rate and price as, the asset so acquired;

"short selling" means the sale of any instrument by a person who is not the owner of such instrument, and in respect of which such person has the obligation to deliver such instrument at a future date;

"term", in relation to an instrument, means the period commencing on the date of issue or transfer of that instrument and ending on the date of redemption of that instrument;

"transfer", in relation to an instrument, includes—

(a) the transfer, sale, assignment or disposal in any other manner of such instrument by the holder or issuer thereof, as the case may be; or

(b) the acquisition of such instrument by the holder or issuer thereof, as the case may be, by way of a transfer, sale, assignment or disposal in any other manner,

but does not include the redemption of such instrument;

"transfer price", in relation to the transfer of an instrument, means the market value of the consideration payable or receivable, as the case may be, for the transfer of such instrument as determined on the date on which that instrument is transferred;

"variable rate" means a rate determined with reference to an interest or indexation rate or other similar factor, being a rate or factor that varies or may vary during the term of the instrument;

"variable rate instrument" means an instrument which is not a fixed rate instrument; and

"yield to maturity" means the rate of compound interest per accrual period at which the present value of all amounts payable or receivable in terms of any instrument in relation to a holder or an issuer, as the case may be, of such instrument during the term of such instrument equals the initial amount in relation to such holder or issuer of such instrument: Provided that where—

(a) such instrument is a variable rate instrument, such rate of compound interest shall be calculated with reference to the variable rate applicable on the date such rate of compound interest is to be calculated to determine all amounts payable or receivable after such date;

(b) in the case of a variable rate instrument the variable rate in relation to such instrument changes, the rate of compound interest shall be redetermined in relation to such variable rate instrument with reference to—

(i) the appropriate adjusted initial amount in relation to such variable rate instrument determined before such change in the rate; and

(ii) such changed variable rate applicable on the date such rate of compound interest is to be redetermined to determine all amounts payable or receivable after such date;

(c) any variation in the terms or conditions of such instrument takes place or any variation in any amount payable or receivable in terms of such instrument takes place which will result in a change in such rate of compound interest in relation to such instrument, the rate of compound interest shall be redetermined in relation to such instrument with reference to the appropriate adjusted initial amount in relation to such instrument determined before such variation;

(d) there is a variation or alteration—

(i) of the rights or interests of a holder in relation to an income instrument in respect of any amounts receivable in terms of such income instrument, the rate of compound interest in relation to such income instrument shall be redetermined in respect of such holder with reference to the appropriate adjusted initial amount in relation to such income instrument determined before such variation or alteration; or

(ii) in the obligations of an issuer in relation to an instrument in respect of any amounts payable in terms of such instrument, the rate of compound interest in relation to such instrument shall be redetermined in respect of such issuer with reference to the appropriate adjusted initial amount in relation to such instrument determined before such variation or alteration; or

(e) in the case of an instrument of which the date of redemption is subject to change during a year of assessment, the rate of compound interest shall be redetermined in relation to such instrument with reference to—

(i) the appropriate adjusted initial amount in relation to such instrument; and

(ii) the changed date of redemption:

Provided further that where that instrument forms part of any transaction, operation or scheme—

(a) any payments made by the issuer to any other person pursuant to that transaction, operation or scheme with a purpose or with the probable effect of making payment directly or indirectly to the holder or a connected person in relation to the holder; and

(b) in the case where any party to that transaction, operation or scheme is a connected person in relation to that issuer, any payments made by that connected person to any other person pursuant to that transaction, operation or scheme with a purpose or with the probable effect of making payment directly or indirectly to the holder or a connected person in relation to the holder,

must be taken into account as a reduction of amounts payable by that issuer for purposes of determining that rate of compound interest: Provided further that where the calculated rate of compound interest per accrual period results in a negative rate of interest, the rate of compound interest per accrual period must be treated to be zero.

(2) Where any person is the issuer in relation to an instrument during any year of assessment, such person shall for the purposes of this Act be deemed to have incurred an amount of interest during such year of assessment, which is equal to—

(a) the sum of all accrual amounts in relation to all accrual periods falling, whether in whole or in part, within such year of assessment in respect of such instrument; or

(b) an amount determined in accordance with an alternative method in relation to such year of assessment in respect of such instrument,

which must be deducted from the income of that person derived from carrying on any trade, if that amount is incurred in the production of the income.

(3) Where any person is the holder in relation to an income instrument during any year of assessment, there shall for the purposes of this Act be deemed to have accrued to that person and must be included in the gross income of that person during that year of assessment (whether or not that

amount constitutes a receipt or accrual of a capital nature), an amount of interest which is equal to —

(a) the sum of all accrual amounts in relation to all accrual periods falling, whether in part or in whole, within such year of assessment in respect of such income instrument; or

(b) an amount determined in accordance with an alternative method in relation to such year of assessment in respect of such income instrument.

(3A) Where any person is the holder of an income instrument which is an instrument as contemplated in paragraph (iii) of the definition of "instrument", the amount by which the sum of all accrual amounts in relation to all accrual periods falling within the period from the date of acquisition (whether by way of issue or transfer, as the case may be) of such income instrument by such person until 13 March 1996, exceeds the sum of all interest received by or accrued to such person during such period had the provisions of this section not been applicable during such period in respect of such income instrument, shall for the purposes of this Act be deemed to have accrued to such person in the year of assessment during which such income instrument is transferred by such holder or redeemed (whichever is the earlier): Provided that the provisions of this subsection shall not apply in so far as any interest in relation to such income instrument was assessed to tax in the hands of such person under an assessment raised with a date of assessment before the date of promulgation of this Act.

(4) Any—

(a) adjusted gain on transfer or redemption of an instrument calculated in relation to the transfer or redemption, as the case may be, of such instrument by a person during any year of assessment shall for the purposes of this Act be deemed to have accrued to such person in such year of assessment; and

(b) adjusted loss on transfer or redemption of an instrument calculated in relation to the transfer or redemption, as the case may be, of such instrument by a person during any year of assessment, shall for the purposes of this Act be deemed to have been incurred by such person in such year of assessment.

(4A) Where in the case of any—

(a) holder of an income instrument any adjusted loss on transfer or redemption of such income instrument which has been deemed to have been incurred by such holder in terms of subsection (4)(b) during any year of assessment, includes an amount in relation to such income instrument representing an—

(i) accrual amount; or

(ii) amount determined in accordance with an alternative method,

which amount has been included in the income of the holder during such year of assessment or any previous year of assessment, such amount shall be allowed as a deduction from the income of such holder during such year of assessment; or

(b) issuer of an instrument any adjusted gain on transfer or redemption which has been deemed to have been accrued to such issuer in terms of subsection (4)(a) during any year of assessment, includes an amount in relation to such instrument representing an—

(i) accrual amount; or

(ii) amount determined in accordance with an alternative method,

which amount has been allowed as a deduction from the income of such issuer during such year of assessment or any previous year of assessment, to the extent that such amount is not taken into account in terms of section 19, such amount shall be included in the income of such issuer during such year of assessment.

(5) Where any amount actually—

(a) paid by any person in terms of an instrument is to be taken into account in the determination of any accrual amount in relation to that instrument or any other amount determined in accordance with an alternative method in relation to that instrument which accrual amount or other amount is to be dealt with in terms of the provisions of subsection (2), no account shall for the purposes of section 11 be taken of any such amount so actually paid, save by way of the operation of such subsection; or

(b) received by any person in terms of an income instrument is to be taken into account in the determination of any accrual amount in relation to that income instrument or any other amount determined in accordance with an alternative method in relation to that income instrument which accrual amount or other amount is to be dealt with in terms of the provisions of subsection (3), no account shall for the purposes of the definition of "gross income" in section 1 be taken of any such amount so actually received, save by way of the operation of such subsection.

(5A) Any amount which has been deemed to have been incurred by or accrued to a person, as the case may be, in respect of an instrument in terms of the provisions of this section, shall for the purposes of this Act not be deducted from or included in, as the case may be, the income of such person more than once by reason of the application of this section.

(6) Where the term of an instrument issued on or before 15 March 1995 is extended or the terms or conditions of such instrument are materially varied after the said date, such instrument shall be deemed to have been issued after the said date and the provisions of this section shall apply to both the issuer and the holder in relation to such instrument as from the date of such extension or material variation.

(7) Where there is more than one—

(a) holder in relation to an income instrument and any accrual amount in relation to an accrual period with regard to any one of the holders in relation to such income instrument is to be determined, such accrual amount shall be so determined without taking into account any consideration or any amount or amounts paid or payable or received or receivable by any other holder in terms of such income instrument; and

(b) issuer in relation to an instrument and any accrual amount in relation to an accrual period with regard to any one of the issuers in relation to such instrument is to be determined, such accrual amount shall be sodetermined without taking into account any consideration or any amount or amounts paid or payable or received or receivable by any other issuer in terms of such instrument.

(8) Where in relation to an instrument any person is entitled to any interest in terms of such instrument and also liable to pay any interest in terms of such instrument, such person shall for the purposes of this section—

(a) where the interest which he is entitled to receive in terms of such instrument exceeds the interest which he is liable to pay in terms of such instrument, be deemed not to be an issuer in relation to such instrument; and

(b) where the interest which he is liable to pay in terms of such instrument exceeds the interest which he is entitled to receive in terms of such instrument, be deemed not to be a holder in relation to such instrument.

(9) (a) Any company whose business comprises the dealing in instruments (including the short selling of instruments), interest rate agreements or option contracts may elect that the provisions of subsections (2) to (8), inclusive, section 24K and section 24L shall not apply to all such instruments, interest rate agreements or option contracts in respect of which it so deals in.

(b) Any election referred to in paragraph (a) shall—

(i) be made in writing;

(ii) be accompanied by a statement setting forth full details of the methodology to be applied by the company to determine the market value as contemplated in paragraph (c) in relation to all instruments, interest rate agreements or option contracts contemplated in paragraph (a);

(iii) not take effect unless the Commissioner has, subject to such conditions as he may deem necessary, approved—

(A) the methodology to be applied by such company to determine the market value as contemplated in paragraph (c) in respect of such instruments, interest rate agreements or option contracts; and

(B) the manner in which such market value in relation to such instruments, interest rate agreements or option contracts is to be taken into account in the determination of the taxable income of such company during any year of assessment; and

(iv) subject to the provisions of paragraphs (e) and (f), be binding upon such company in respect of all such instruments, interest rate agreements and option contracts during the year of assessment in which it took effect and every succeeding year of assessment.

(c) The market value in relation to all instruments, interest rate agreements and option contracts contemplated in paragraph (a) of a company which made an election as contemplated in such paragraph shall be determined in accordance with commercially accepted practice which is applied by such company consistently in respect of all such instruments, interest rate agreements and option contracts for financial reporting purposes to its shareholders.

(d) Any instrument, interest rate agreement or option contract contemplated in paragraph (a) which as a result of an election made in terms of such paragraph is to be dealt with on a market value basis as contemplated in the aforegoing provisions of this subsection shall (subject to the provisions of paragraphs (e) and (f)) be so dealt with until the date of redemption or transfer of such instrument, interest rate agreement or option contract.

(e) Where the Commissioner is satisfied that the approval granted by him in terms of paragraph (b)(iii) was obtained by fraud or in consequence of any misrepresentation or failure to disclose any material fact by the company which made the election in terms of paragraph (a), he shall, if he is satisfied that in the light of the full facts the approval should not have been granted, withdraw such approval as from the date such approval was granted by him.

(f) Where any company during any year of assessment no longer complies with the provisions of this subsection—

(i) the approval granted by the Commissioner in terms of paragraph (b)(iii) shall be deemed to have been withdrawn by the Commissioner as from such year of assessment; and

(ii) an appropriate adjustment shall be made to the taxable income of such company during such year of assessment in relation to all instruments, interest rate agreements or option contracts contemplated in paragraph (a) of the company held and not disposed of or not redeemed by it, as the case may be, as at the end of such year of assessment, having regard to all interest or amounts which would have been deemed to have been incurred by or accrued to such company had the provisions of this subsection not been applicable during all years of assessment before such year of assessment and all amounts which have been included in or deducted from the income of such company during such years of assessment: Provided that the

provisions of this paragraph shall not have the effect that an amount be included in or deducted from the income of such company more than once.

(g) This subsection shall not apply—

(i) in respect of a company that is a covered person as defined in section 24JB, during any year of assessment ending on or after 1 January 2014; and

(ii) in respect of any other company, during any year of assessment commencing on or after 1 April 2014.

(9A) (a) Any company that made an election contemplated in subsection (9) and in respect of which the Commissioner granted an approval as contemplated in that subsection is deemed to have —

(i) disposed of all instruments, interest rate agreements or option contracts contemplated in subsection (9); and

(ii) reacquired the instruments, interest rate agreements or option contracts,

held and not disposed of at the end of the year of assessment for an amount equal to the market value, as contemplated in subsection (9)(c), on the last day of that year of assessment.

(b) Paragraph (a) applies—

(i) in the case of a company that is a covered person as defined in section 24JB, in respect of the year of assessment of that covered person immediately preceding the year of assessment ending on or after 1 January 2014; and

(ii) in the case of any other company, in respect of the year of assessment of the company immediately preceding the year of assessment commencing on or after 1 April 2014.

(10) Any reference in this section to any payment made or an amount paid or payable, consideration given or received or any payment received or an amount received or receivable, as the case may be, shall be construed as including a payment or an amount or consideration otherwise than in cash.

(12) This section must not apply to an instrument if—

(a) the holder of that instrument has, throughout any period during a year of assessment during which that holder holds that instrument, a right to require the redemption of that instrument at any time during that period; and

(b) that instrument does not provide for the payment of any deferred interest.

24JA. Sharia compliant financing arrangements

(1) For the purposes of this section—

"bank" means any—

(a) bank as defined in section 1 of the Banks Act;

(b) mutual bank as defined in section 1 of the Mutual Banks Act, 1993 (Act No. 124 of 1993); or

(c) co-operative bank as defined in section 1 of the Co-operative Banks Act, 2007 (Act No. 40 of 2007);

"diminishing musharaka" means a sharia arrangement between a bank and a client of that bank whereby—

(a) (i) the bank and the client jointly acquire an asset from a third party (the seller); or

(ii) the bank acquires an interest in an asset from the client;

(b) the client will acquire the bank's interest in the asset after the acquisition of the asset by the bank as contemplated in paragraph (a); and

(c) the amount of consideration payable by the client to the bank for the acquisition of the interest of the bank in the asset will be paid over a period of time as agreed between the client and the bank;

"listed company" means a listed company as contemplated in paragraph (a) of the definition of "listed company" in section 1(1);

"mudaraba" means a sharia arrangement between a bank and a client of that bank whereby—

(a) funds are deposited with the bank by the client;

(b) the anticipated return in respect of the sharia arrangement is dependent on the amount deposited by the client in combination with the duration of the period for which the funds are deposited;

(c) the bank invests the funds deposited by the client in other sharia arrangements;

(d) the client bears the risk of the loss in respect of the sharia arrangements contemplated in paragraph (c); and

(e) the return in respect of the sharia arrangements contemplated in paragraph (c) is divided between the client and the bank as agreed at the time that the client deposits the funds with the bank;

"murabaha" means a sharia arrangement between a financier and a client of that financier, one of which is a bank or a listed company, whereby—

(a) the financier will acquire an asset from a third party (the seller) for the benefit of the client on such terms and conditions as are agreed upon between the client and the seller;

(b) the client—

(i) will acquire the asset from the financier within 180 days after the acquisition of the asset by the financier contemplated in paragraph (a); and

(ii) agrees to pay to the financier a total amount that—

(aa) exceeds the amount payable by the financier to the seller as consideration to acquire the asset;

(bb) is calculated with reference to the consideration payable by the financier to the seller in combination with the duration of the sharia arrangement; and

(cc) may not exceed the amount agreed upon between the financier and the client when the sharia arrangement is entered into; and

(c) no amount is received by or accrues to the financier in respect of that asset other than an amount contemplated in paragraph (b)(ii);

"sharia arrangement" means an arrangement that is—

(a) open for participation by members of the general public; and

(b) presented as compliant with sharia law when the members of the general public are invited to participate therein;

"sukuk" means a sharia arrangement whereby—

(a) the government of the Republic or any public entity that is listed in Schedule 2 to the Public Finance Management Act or a listed company disposes of an interest in an asset to a trust; and

(b) the disposal of the interest in the asset to the trust by the government, the public entity or the listed company contemplated in paragraph (a) is subject to an agreement in terms of which the government, that public entity or that listed company undertakes to reacquire on a future date from that trust the interest in the asset disposed of at a cost equal to the cost paid by the trust to the government, to that public entity or to that listed company to obtain the asset.

(2) Any amount received by or accrued to a client in terms of a mudaraba is deemed to be interest as contemplated in paragraph (a) of the definition of "interest" in section 24J(1).

(3) Where any murabaha is entered into between a financier and a client of that financier as contemplated in paragraph (a) of the definition of "murabaha"—

(a) the financier is deemed not to have acquired or disposed of the asset under the sharia arrangement;

(b) the client is deemed to have acquired the asset from the seller—

(i) for consideration equal to the amount paid by the financier to the seller; and

(ii) at such time as the financier acquired the asset from the seller by virtue of the transaction between the seller and the financier;

(c) the murabaha is deemed to be an instrument for the purposes of section 24J;

(d) the difference between the amount of consideration paid for the asset by the financier to the seller and the consideration payable to the financier by the client to acquire the asset as contemplated in paragraph (b)(ii) of the definition of "murabaha" is deemed to be a premiumpayable or receivable contemplated in paragraph (a) of the definition of "interest" in section 24J(1); and

(e) the amount of consideration paid by the financier to acquire the asset as contemplated in paragraph (a) of the definition of "murabaha" is deemed to be an issue price for the purposes of section 24J.

(5) For the purposes of determining the tax on income of the client in respect of a diminishing musharaka—

(a) where the bank and the client jointly acquire an asset, the client is deemed to have acquired the bank's interest in the asset—

(i) for an amount equal to the amount paid by the bank in respect of its interest in the asset; and

(ii) at the time that the seller of the asset was divested of its interest in the asset by virtue of the transaction between the seller and the bank; or

(b) where the bank acquires an interest in an asset from the client, the client is deemed not to have disposed of the interest in the asset or to have acquired that interest from the bank.

(6) (a) For the purposes of subsection (5), where an instalment is paid by the client to the bank, a portion of that instalment, the amount of which must be determined in accordance with paragraph (b), is deemed to be interest as defined in section 24J(1).

(b) The amount contemplated in paragraph (a) must be determined in accordance with the formula—

$X = A - B$

in which formula—

(i) "X" represents the amount to be determined;

(ii) "A" represents the total amount of the instalment payable by the client to the bank;

(iii) "B" represents the expenditure incurred by the bank to acquire the portion of the interest in the asset transferred to the client in exchange for the instalment payable by the client to the bank.

(7) Where any sukuk is entered into—

(a) the trust is deemed not to have acquired the asset from the government of the Republic or the public entity that is listed in Schedule 2 to the Public Finance Management Act or the listed company under the sharia arrangement;

(b) the government, that public entity or that listed company is deemed not to have disposed of or reacquired the asset; and

(c) any consideration paid by the government, that public entity or that listed company in respect of the use of the asset held by the trust is deemed to be interest ascontemplated in paragraph (a) of the definition of "interest" in section 24I(1).

24JB. Taxation in respect of financial assets and liabilities of certain persons

(1) For the purposes of this section—

"covered person" means—

(a) any authorised user as defined in section 1 of the Financial Markets Act that is a company, other than any company of which the principal trading activities constitute the activities of a treasury operation;

(b) the South African Reserve Bank;

(c) any—

(i) bank;

(ii) branch;

(iii) branch of a bank; or

(iv) controlling company,

as defined in section 1 of the Banks Act;

(d) any company or trust that forms part of a banking group as defined in section 1 of the Banks Act, excluding—

(i) a company that is a long-term insurer as defined in section 1 of the Long-term Insurance Act;

(ii) a company that is a short-term insurer as defined in section 1 of the Short-term Insurance Act;

(iii) a company of which more than 50 per cent of the shares are directly or indirectly held by a company contemplated in subparagraph (i) or (ii) if that company does not form part of the same group of companies as a bank;

(iv) any subsidiary, as defined in section 1 of the Companies Act, of a company contemplated in subparagraph (i) or (ii);

"derivative" means a derivative as defined in and within the scope of IFRS9;

"financial asset" means—

(a) a financial asset defined in and within the scope of International Accounting Standard 32 of IFRS or any other International Accounting Standard that replaces International Accounting Standard 32; and

(b) a commodity taken into account in terms of IFRS at fair value less cost to sell in profit or loss in the statement of comprehensive income;

"financial liability" means a financial liability defined in and within the scope of International Accounting Standard 32 of IFRS or any International Accounting Standard that replaces International Accounting Standard 32;

"financial reporting value", in relation to a financial asset or a financial liability, means the value, as determined for the purposes of financial reporting pursuant to IFRS, of that financial asset or financial liability;

"post-realisation years", in relation to a covered person, means—

(a) the year of assessment immediately succeeding the realisation year;

(b) the year of assessment immediately succeeding the year of assessment contemplated in paragraph (a); and

(c) the year of assessment immediately succeeding the year of assessment contemplated in paragraph (b);

"realisation year", in relation to a person, means—

(a) where that person is a covered person, the year of assessment of that person immediately preceding the year of assessment ending on or after 1 January 2014; or

(b) where that person becomes a covered person during any year of assessment ending after 1 January 2014, the year of assessment of that person that precedes the first year of assessment of that person in which that person becomes a covered person;

"tax base" means tax base as defined in International Accounting Standard 12 of IFRS or any International Accounting Standard replacing International Accounting Standard 12.

(2) Subject to sections 8F, 8FA and subsection (4), there must be included in or deducted from the income, as the case may be, of any covered person for any year of assessment all amounts in respect of financial assets and financial liabilities of that covered person that are recognised in profit or loss in the statement of comprehensive income in respect of financial assets and finanical liabilities of that covered person that are measured at fair value in profit or loss in terms of IFRS 9 or, in the case of commodities, at fair value less cost to sell in profit or loss in terms of IFRS for that year of assessment, excluding any amount in respect of—

(a) a financial asset that is—

(i) a share;

(ii) an endowment policy;

(iii) an interest held in a portfolio of a collective investment scheme;

(iv) an interest in a trust; or

(v) an interest in a partnership,

if that financial asset does not constitute trading stock; or

(b) a dividend or foreign dividend received by or accrued to a covered person; or

(c) a dividend distributed.

[paragraph (c) added by section 27(1) of Act 23 of 2020; effective date 1 January 2021, applicable to dividends declared on or after that date]

(2A) A covered person must include in or deduct from income for a year of assessment a realised gain or realised loss that is recognised in a statement of other comprehensive income as contemplated in IFRS 9 if that realised gain or realised loss is attributable to a change in the credit risk of

the financial liability as contemplated in IFRS 9 and that instrument was issued in any year of assessment commencing on or after 1 January 2018.

[subsection (2A) substituted by section 44(1) of Act 23 of 2018; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

(2B) Where a covered person has, during any year of assessment preceding the year of assessment commencing on or after 1 January 2018, included in or deducted from income any amount attributable to a change in the credit risk of a financial liability issued by that covered person measured at fair value through profit or loss in terms of subsection (2), such covered person must include in or deduct from income, as the case may be, any amount in respect of a change in credit risk of that financial liability recognised in other comprehensive income during any year of assessment commencing on or after 1 January 2018.

(3) Any amount required to be taken into account in determining the taxable income in terms of any provision of Part I of Chapter II, or in determining any assessed capital loss of a covered person in respect of a financial asset or a financial liability contemplated in subsection (2) must only be taken into account in terms of this section.

(4) Subsection (2) does not apply to any amount in respect of a financial asset or a financial liability of a covered person where—

(a) a covered person and another person that is not a covered person, are parties to an agreement in respect of a financial asset or financial liability; and

(b) the agreement contemplated in paragraph (a) was entered into solely or mainly for the purpose of a reduction, postponement or avoidance of liability for tax, which, but for that agreement, would have been or would become payable by the covered person.

(5) In addition to any amount included in or deducted from the income of any person in terms of subsection (2), there must be included in or deducted from the income, as the case may be, of any person for the post-realisation years of that person an amount determined in terms of subsection (6).

(6) For the purposes of subsection (5)—

(a) if—

(i) the financial reporting values of all financial assets of a nature as described in subsection (2) held by that person as at the end of the realisation year of that person exceed the tax base amount attributed to those financial assets as at the end of the realisation year of that person; or

(ii) the tax base amount attributed to all financial liabilities of a nature as described in subsection (2) held by that person as at the end of the realisation year of that person exceeds the financial reporting values of those financial liabilities as at the end of the realisation year of that person,

one-third of the excess must be included in the income of that person;

(b) if—

(i) the tax base amount attributed to all financial assets of a nature as described in subsection (2) held by that person as at the end of the realisation year of that person exceeds the financial reporting values of those financial assets as at the end of the realisation year of that person; or

(ii) the financial reporting values of all financial liabilities of a nature as described in subsection (2) held by that person as at the end of the realisation year of that person exceed the tax base amount attributed to those financial liabilities as at the end of the realisation year of that person,

one-third of the excess must be deducted from the income of that person.

(7) If a person ceases to be a covered person before the expiry of the post-realisation years of that person, the amounts determined in terms of subsection (6) which have not been included in or deducted from, as the case may be, the income of that person, must be included in or deducted from the income of that person in the year of assessment that it ceases to be a covered person.

(8) Where a person ceases to be a covered person, that person is deemed to have—

(a) disposed of its financial assets and redeemed its financial liabilities that were subject to tax in terms of subsection (2); and

(b) immediately reacquired those financial assets and incurred those financial liabilities,

at an amount equal to the market value of those financial assets on the last day of the year of assessment of that person before that person ceased to be a covered person.

(9) Where a financial asset held by or financial liability owed by a covered person at the end of the year of assessment immediately preceding the year of assessment commencing on or after 1 January 2018 would have ceased to be subject to tax or would have become subject to tax in terms of subsection (2), had IFRS 9 applied on the last day of that immediately preceding year of assessment, that covered person is deemed to have—

(a) disposed of that financial asset or redeemed that financial liability; and

(b) immediately reacquired that financial asset or incurred that financial liability,

for an amount equal to the market value of that financial asset or financial liability on that day.

24K. Incurral and accrual of amounts in respect of interest rate agreements

(1) For the purposes of this section "interest rate agreement" means any agreement in terms of which any person—

(a) acquires the right to receive—

(i) an amount calculated by applying any rate of interest to a notional principal amount specified or referred to in such agreement; or

(ii) an amount calculated with reference to the difference between any combination of rates of interest applied to a notional principal amount specified or referred to in such agreement; or

(iii) a fixed amount specified or referred to in such agreement as consideration in terms of such agreement whereunder the obligation is imposed to pay any other amount as contemplated in paragraph (b)(i) in terms of such agreement or an amount equal to the difference between such fixed amount and such other amount; or

(b) becomes liable to pay—

(i) an amount calculated by applying any rate of interest to a notional principal amount specified or referred to in such agreement; or

(ii) an amount calculated with reference to the difference between any combination of rates of interest applied to a notional principal amount specified or referred to in such agreement; or

(iii) a fixed amount specified or referred to in such agreement as consideration in terms of such agreement whereunder the right is acquired to receive any other amount as contemplated in paragraph (a)(i) in terms of such agreement or an amount equal to the difference between such fixed amount and such other amount.

(2) Any amount contemplated in the definition of "interest rate agreement" in subsection (1) shall for the purposes of this Act be deemed to have been incurred by or accrued to, as the case may be, a

person contemplated in such definition on a day to day basis during the period in respect of which it is calculated.

(3) Where any amount contemplated in subsection (2) is to be calculated with reference to a variable rate for the purposes of such subsection, such amount shall be calculated with reference to the variable rate applicable on the date such amount is to be calculated to determine all amounts payable or receivable after such date.

24L. Incurral and accrual of amounts in respect of option contracts

(1) For the purposes of this section—

"intrinsic value", in relation to an option contract, means an amount equal to the difference between the market price or value of an asset, index, currency, rate of interest or any other factor, as provided for in the option contract, on the date of acquisition of the option contract and the pre-arranged price or value provided for in the option contract; and

"option contract" means an agreement the effect of which is that any person acquires the option (excluding a foreign currency option contract as defined in section 24I(1))—

(a) to buy from or to sell to another person a certain quantity of corporeal or incorporeal things before or on a future date at a pre-arranged price; or

(b) that an amount of money will be paid to or received from another person before or on a future date depending on whether the value or price of an asset, index, currency, rate of interest or any other factor is higher or lower before or on that future date than a pre-arranged value or price.

(2) The amount of—

(a) any premium or like consideration paid or payable by a person in terms of an option contract; or

(b) any consideration paid or payable by a person in respect of the acquisition of an option contract by such person,

shall for purposes of this Act be deemed to have been incurred by such person on a day to day basis during the term of such option contract: Provided that—

(i) where such option contract is exercised, terminated or is disposed of, the portion of the amount attributable to the period from the date of exercise, termination or disposal until the end of the original term of the option contract shall be deemed to have been incurred by such person on the date of exercise, termination or disposal of the option contract;

(ii) the provisions of this section shall not be applied to an option contract held by a person as trading stock;

(iii) where such amount includes an amount representing the intrinsic value in relation to an option contract, so much of such amount so representing the intrinsic value shall for the purposes of this Act be deemed to have been incurred by such person on the date of exercise, termination or disposal of the option contract.

(3) The amount of any premium or like consideration received or receivable by a person in terms of an option contract, other than an amount of a capital nature, shall for purposes of this Act be deemed to have accrued to such person on a day to day basis during the term of such option contract: Provided that where such option contract is exercised, terminated or disposed of, the portion of the amount attributable to the period from the date of exercise, termination or disposal of such option contract until the end of the original term of the option contract shall be deemed to have accrued to such person on the date of exercise, termination or disposal of the option contract.

[words preceding the proviso substituted by section 45(1) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]

24M. Incurral and accrual of amounts in respect of assets acquired or disposed of for unquantified amount

(1) If a person during any year of assessment disposes of an asset for consideration which consists of or includes an amount which cannot be quantified in that year of assessment, so much of that consideration as—

(a) cannot be quantified in that year must for purposes of this Act be deemed not to have accrued to that person in that year; and

(b) becomes quantifiable during any subsequent year of assessment must for purposes of this Act be deemed to have been accrued to that person from that disposal in that subsequent year.

(2) If a person during any year of assessment acquires an asset for consideration which consists of or includes an amount which cannot be quantified in that year of assessment, so much of that consideration as—

(a) cannot be quantified in that year must for purposes of this Act be deemed not to have been incurred by that person in that year; and

(b) becomes quantifiable during any subsequent year of assessment must for purposes of this Act be deemed to have been incurred by that person in respect of the acquisition of that asset in that subsequent year.

(3) The amount of any recovery or recoupment by a person of any amount allowed as a deduction in respect of any asset contemplated in subsection (1) must, for purposes of section 8(4), be determined with reference to the amounts received by or accrued to that taxpayer in terms of this section.

(4) If an asset which was acquired by a person during any year of assessment as contemplated in subsection (2)—

(a) constitutes a depreciable asset; and

(b) any amount is in terms of subsection (2)(b) deemed to have been actually incurred by that person in any subsequent year of assessment which has not been taken into account in determining the amount of any allowance in respect of that depreciable asset in any previous year and would have been so taken into account had that amount been actually incurred by that person,

so much of the amount as would have been so allowed as an allowance in any previous year must be allowed in that subsequent year of assessment.

24N. Incurral and accrual of amounts in respect of disposal or acquisition of equity shares

(1) Where a person (hereinafter referred to as "the seller") during a year of assessment disposes of equity shares to any other person (hereinafter referred to as "the purchaser") in the circumstances contemplated in subsection (2), any quantified or quantifiable amount payable by the purchaser to the seller must—

(a) to the extent that it is not due and payable to the seller during that year, be deemed for purposes of this Act—

(i) not to have been accrued to the seller in that year; and

(ii) not to have been incurred by the purchaser during that year; and

(b) to the extent that it becomes due and payable to the seller in any subsequent year of assessment, be deemed for purposes of this Act—

(i) to have been accrued to the seller during that subsequent year; and

(ii) to have been incurred by the purchaser during that subsequent year.

(2) Subsection (1) applies in respect of the disposal by a seller to a purchaser of any equity shares in a company where—

(a) more than 25 per cent of the amount payable for those shares becomes due and payable by the purchaser after the end of the year of assessment of the seller and the amount payable is based on the future profits of that company;

(b) the value of the equity shares in that company which have in aggregate been disposed of during that year and in respect of which the provisions of this section apply, exceeds 25 per cent of the total value of equity shares in that company;

(c) the purchaser and seller are not connected persons in relation to each other after that disposal;

(d) the purchaser is obliged to return the equity shares to the seller in the event of failure by the purchaser to pay any amount when due; and

(e) the amount is not payable by the purchaser to the seller in terms of a financial instrument which is payable on demand and which is readily tradeable in the open market.

24O. Incurral of interest in respect of certain debts deemed to be in the production of income

(1) For the purposes of this section—

"acquisition transaction" means any transaction in terms of which a company acquires an equity share in another company from a person that does not form part of the same group of companies as that company, if—

(a) that other company is—

(i) an operating company on the date of acquisition of that share; and

(ii) as a result of which, at the end of the day of that transaction—

(aa) that company is a controlling group company in relation to that other company; and

(bb) that company and that other company form part of the same group of companies as defined in section 41(1); or

(b) that other company is—

(i) a controlling group company in relation to a company that is an operating company on the date of acquisition of that share and that forms part of the same group of companies, as defined in section 41(1), as that controlling group company; and

(ii) as a result of which, at the end of the day of that transaction—

(aa) that company is a controlling group company in relation to that other controlling group company; and

(bb) that company and that other controlling group company form part of the same group of companies as defined in section 41(1);

[definition of "acquisition transaction" substituted by section 31(1)(a) of Act 34 of 2019; effective date 1 January 2019, applicable in respect of years of assessment ending on or after that date]

"operating company" means a company of which—

(a) at least 80 per cent of the aggregate amount received by or that accrued to that company during a year of assessment constitutes income in the hands of that company; and

[paragraph (a) substituted by section 46(1)(a) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]

(b) the income contemplated in paragraph (a) is derived—

(i) from a business carried on continuously by that company; and

(ii) in the course or furtherance of which goods or services are provided or rendered by that company for consideration.

[subparagraph (ii) substituted by section 46(1)(b) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]

(2) Subject to subsection (3), where during any year of assessment any interest is incurred by a company in respect of a debt issued, assumed or used by that company—

(a) for the purpose of financing the acquisition by that company, in terms of an acquisition transaction, of an equity share; or

(b) in substitution for a debt issued, assumed or used as contemplated in paragraph (a),

the interest incurred by that company in respect of that debt must, to the extent to which the amount thereof relates to a period during which—

(i) that company held that equity share; and

(ii) that equity share constituted a qualifying interest in an operating company, as determined—

(aa) in the case of an equity share held by that company at the end of that year, at the date on which that year ends; or

(bb) if that equity share was disposed of by that company during that year, at the date of that disposal,

be deemed to have been so incurred in the production of the income of that company and laid out or expended by that company for the purposes of trade.

[subsection (2) substituted by section 46(1)(c) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]

(3) An equity share in a company constitutes a qualifying interest in an operating company if that equity share is an equity share on the date referred to in subsection (2) in—

(a) a company that qualified as an operating company in its latest year of assessment that ended prior to or on the date referred to in subsection (2); or

(b) any other company, to the extent that the value of that equity share is derived from an equity share or equity shares held by that company in a company or companies described in paragraph (a)—

(i) in relation to which that company is a controlling group company; and

(ii) that form part, with that company, of a group of companies, as defined in section 41(1):

Provided that if at least 90 per cent of the value of that equity share is so derived, that equity share must be treated as an equity share in an operating company.

[subsection (3) amended by section 46(1) of Act 23 of 2018; effective date 1 January 2019, and substituted by section 31(1)(b) of Act 34 of 2019; effective date 1 January 2019, applicable in respect of years of assessment ending on or after that date]

(4) *[subsection (4) deleted by section 46(1)(g) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]*

(5) Where a company that acquired equity shares in a controlling group company in relation to an operating company as contemplated in paragraph (b) of the definition of "acquisition transaction" acquires the equity shares held by that controlling group company in that operating company in terms of—

(a) an unbundling transaction as defined in section 46(1)(a) in respect of which section 46 was applied; or

(b) a liquidation distribution as defined in section 47(1)(a) in respect of which section 47 was applied,

those equity shares must for purposes of subsection (2) be treated—

(i) as having been acquired by that company in terms of paragraph (a) of the definition of "acquisition transaction"; and

(ii) as constituting a qualifying interest in an operating company to the extent to which the value of the equity shares in the controlling group company from which the equity shares in the operating company were acquired was derived from the value of the equity shares in the operating company so acquired.

[subsection (5) added by section 31(1)(c) of Act 34 of 2019; effective date 1 January 2019, applicable in respect of years of assessment ending on or after that date]

24P. Allowance in respect of future repairs to certain ships

(1) Notwithstanding section 23(e) there must be allowed to be deducted from the income of any person an amount of expenditure on repairs to any ship in respect of each year of assessment if—

(a) that person is a resident;

(b) that person carries on any business as owner or charterer of any ship; and

(c) within five years of that year of assessment, that person is likely to incur an amount of expenditure on repairs to any ship used by that person for the purposes of that person's trade.

(2) In determining the amount of the deduction under subsection (1) regard must be had to—

(a) the estimated cost of those repairs; and

(b) the date on which those costs are likely to be incurred.

(3) The amount of the deduction allowed to a person under subsection (1) in respect of any year of assessment must be included in the income of that person in the following year of assessment.

25. Taxation of deceased estates

(1) Any—

(a) income received by or accrued to or in favour of any person in his or her capacity as the executor of the estate of a deceased person; and

(b) amount received or accrued as contemplated in paragraph (a) which would have been income in the hands of that deceased person had that amount been received by or accrued to or in favour of that deceased person during his or her lifetime,

must be treated as income of the deceased estate of that deceased person.

(2) Where the deceased estate of a person acquires an asset from that person, that deceased estate must, if that asset is an asset—

(a) other than an asset contemplated in section 9HA(2), be treated as having acquired that asset for an amount of expenditure incurred equal to the amount contemplated in section 9HA(1); and

(b) contemplated in section 9HA(2), be treated as having acquired that asset for an amount of expenditure incurred equal to the amount contemplated in section 9HA(2)(b).

(3) Where the deceased estate of a person disposes of an asset to an heir or legatee of that person—

(a) that deceased estate must be treated as having disposed of that asset for an amount received or accrued equal to the amount of expenditure incurred by the deceased estate in respect of that asset;

(b) the heir or legatee must be treated as having acquired that asset for an amount of expenditure incurred equal to the expenditure incurred by the deceased estate in respect of that asset; and

(c) that deceased estate must be treated as having disposed of that asset on the earlier of the date on which that asset is disposed of or on which the liquidation and distribution account becomes final.

[paragraph (c) added by section 20(1) of Act 20 of 2021; effective date 1 March 2022, applicable in respect of liquidation and distribution accounts finalised on or after that date]

(4) (a) This subsection must be applied in respect of an asset acquired by a surviving spouse of a deceased person as contemplated in section 9HA(2) for purposes of determining the amount of any—

(i) allowance or deduction to which that spouse may be entitled or that is to be recovered or recouped by or included in the income of that spouse in respect of that asset; or

(ii) the amount of any capital gain or capital loss in respect of a disposal of that asset by that spouse.

(b) The surviving spouse contemplated in paragraph (a) must be treated as one and the same person as the deceased person and deceased estate with respect to—

(i) the date of acquisition of that asset by that deceased person;

(ii) any valuation of that asset effected by that deceased person as contemplated in paragraph 29(4) of the Eighth Schedule;

(iii) the amount of any expenditure and the date on which and the currency in which that expenditure was incurred in respect of that asset—

(aa) by that deceased person as contemplated in section 9HA(2)(b); and

(bb) by that deceased estate, other than the expenditure contemplated in section 9HA(2)(b);

(iv) the manner in which that asset had been used by the deceased person and the deceased estate; and

(v) any allowance or deduction allowable in respect of that asset to the deceased person and the deceased estate.

(5) A deceased estate must—

(a) other than for the purposes of section 6, section 6A and section 6B, be treated as if that estate were a natural person; and

(b) if the deceased person was a resident at the time of his or her death, be treated as if that estate were a resident.

[subsection (5) substituted by section 47 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(6) Where—

(a) the tax determined in terms of this Act, which relates to the taxable capital gain derived by a deceased person from assets disposed of by that person as contemplated in section 9HA, exceeds 50 per cent of the net value of the estate of that person, as determined in terms of section 4 of the Estate Duty Act for purposes of that Act, before taking into account the amount of that tax so determined; and

(b) the executor of the estate is required to dispose of any asset of the estate for purposes of paying the amount of the tax contemplated in paragraph (a),

any heir or legatee of the estate who would have been entitled to that asset contemplated in paragraph (b) had there been no liability for tax, may elect that that asset be distributed to that heir or legatee if the amount of tax which exceeds 50 per cent of that net value be paid by that heir or legatee within a period of three years after the date that the estate has become distributable in terms of section 35(12) of the Administration of Estates Act, 1965 (Act No. 66 of 1965).

(7) Any amount of tax payable by an heir or legatee as contemplated in subsection (6), becomes a debt due to the state and must be treated as an amount of tax chargeable in terms of this Act which is due by that person.

25A. Determination of taxable incomes of permanently separated spouses

Where during any period of assessment any taxpayer who is married in community of property has lived apart from his or her spouse in circumstances whichindicate that the separation is likely to be permanent, his or her taxable income for such period shall be determined atthe amount at which such taxpayer's taxable income would have been determined under the provisions of this Act if such taxpayer had not been married in community of property.

25B. Taxation of trusts and beneficiaries of trusts

[heading substituted by section 28(a) of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(1) Any amount (other than an amount of a capital nature which is not included in gross income or an amount contemplated in paragraph 3B of the Second Schedule) received by or accrued to or in favour of any person during any year of assessment in his or her capacity as the trustee of a trust, shall, subject to the provisions of section 7, to the extent to which that amount has been derived for the immediate or future benefit of any ascertained beneficiary who has a vested right to that amount during that year, be deemed to be an amount which has accrued to that beneficiary, and to

the extent to which that amount is not so derived, be deemed to be an amount which has accrued to that trust.

[subsection (1) substituted by section 28(b) of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(2) Where a beneficiary has acquired a vested right to any amount referred to in subsection (1) in consequence of the exercise by the trustee of a discretion vested in him or her in terms of the relevant deed of trust, agreement or will of a deceased person, that amount shall for the purposes of that subsection be deemed to have been derived for the benefit of that beneficiary.

(2A) Where during any year of assessment any resident acquires any vested right to any amount representing capital of any trust which is not a resident, that amount must be included in the income of that resident in that year, if—

(a) that capital consists of or is derived, directly or indirectly, from any receipts and accruals of such trust which would have constituted income if such trust had been a resident, in any previous year of assessment during which that resident had a contingent right to that amount; and

[paragraph (a) substituted by section 48(1)(a) of Act 23 of 2018; effective date 1 March 2019, applicable in respect of any year of assessment commencing on or after that date]

(b) that amount has not been subject to tax in the Republic in terms of this Act.

(2B) In determining, for purposes of subsection (2A), whether an amount received by or that accrued to a trust which is not a resident would have constituted income had that trust been a resident, the provisions of section 10B(2)(a) must be disregarded in respect of an amount received or accrued consisting of or derived, directly or indirectly, from a foreign dividend—

(i) paid or payable by a company if—

(aa) more than 50 per cent of the total participation rights, as defined in section 9D(1), or of the voting rights in that company are directly or indirectly held or are exercisable, as the case may be, by that trust whether alone or together with any one or more persons that are connected persons in relation to that trust; and

(bb) that resident or any person that is a connected person in relation to that resident is a connected person in relation to that trust; and

(ii) to the extent to which that foreign dividend is not derived from an amount that must be included in the income of or that must be attributed as a capital gain to—

(aa) the resident who acquired the vested right to the amount referred to in subsection (2A); or

(bb) a resident who is a connected person in relation to the resident referred to in item (aa).

[subsection (2B) inserted by section 48(1)(b) of Act 23 of 2018; effective date 1 March 2019, applicable in respect of any year of assessment commencing on or after that date]

(3) Any deduction or allowance which may be made under the provisions of this Act in the determination of the taxable income derived by way of any amount referred to in subsection (1), must, to the extent to which that amount is under that subsection deemed to be an amount which has accrued to—

(a) a beneficiary, be deemed to be a deduction or allowance which may be made in the determination of the taxable income derived by that beneficiary; and

(b) the trust, be deemed to be a deduction or allowance which may be made in the determination of the taxable income derived by that trust.

(4) The deduction or allowance contemplated in subsection (3) which is deemed to be made in the determination of the taxable income of a beneficiary of a trust during any year of assessment, shall be limited to so much of the amount deemed to have been received by or accrued to that beneficiary in terms of subsection (1), as is included in the income of that beneficiary during that year of assessment.

(5) The amount by which the sum of the deductions and allowances contemplated in subsection (4) exceeds the amount included in the income of the beneficiary during a year of assessment as contemplated in that subsection—

(a) is deemed to be a deduction or allowance which may be made in the determination of the taxable income of the trust during that year: Provided that the sum of those deductions and allowances shall be limited to the taxable income of that trust during that year of assessment as calculated before allowing any deduction or allowance under this subsection; or

(b) where the trust is not subject to tax in the Republic, must be carried forward and be deemed to be a deduction or allowance which may be made in the determination of the taxable income derived by that beneficiary by way of amounts referred to in subsection (1) during the immediately succeeding year of assessment.

(6) The amount by which the sum of the deductions and allowances contemplated in subsection (4) exceeds the sum of the amount included in the income of the beneficiary as contemplated in subsection (4) and the taxable income of the trust as contemplated in subsection (5)(a), must be deemed to be a deduction or allowance for purposes of subsection (3), which may be made in the determination of the taxable income derived by that beneficiary by way of any amount referred to in subsection (1) during the immediately succeeding year of assessment.

(7) Subsections (4), (5) and (6) do not apply in respect of any amount which is deemed to have accrued to any beneficiary in terms of subsection (1), where that beneficiary is not subject to tax in the Republic on that amount.

25BA. Amounts received by or accrued to certain portfolios of collective investment schemes and holders of participatory interests in portfolios

(1) Any amount, other than an amount of a capital nature, received by or accrued to any portfolio of a collective investment scheme, other than a portfolio of a collective investment scheme in property, must—

(a) to the extent that the amount is distributed by that portfolio—

(i) to any person who is entitled to the distribution by virtue of the person being a holder of a participatory interest in that portfolio; and

(ii) not later than 12 months after its accrual to or, in the case of interest, its receipt by that portfolio,

be deemed to have directly accrued to the person on the date of the distribution; and

(b) to the extent that the amount is not distributed as contemplated in paragraph (a) within 12 months after its accrual to, or in the case of interest, its receipt by that portfolio—

(i) be deemed to have accrued to that portfolio on the last day of the period of 12 months commencing on the date of its accrual to or receipt by that portfolio; and

(ii) to the extent that the amount is attributable to a dividend received by or accrued to that portfolio, be deemed to be income of that portfolio.

(2) Where a portfolio of a hedge fund collective investment scheme is constituted as a partnership any amount allocated by that portfolio to the partners in that partnership must for the purposes of subsection (1)(a) be treated as having been distributed by that portfolio to the partners in that partnership by virtue of those partners being holders of participatory interests in that portfolio.

25BB. Taxation of REITs

(1) For the purposes of this section—

"controlled company" means a company that is a subsidiary, as defined in IFRS, of a REIT;

"property company" means a company—

(a) in which 20 per cent or more of the equity shares or linked units are held by a REIT or a controlled company (whether alone or together with any other company forming part of the same group of companies as that REIT or that controlled company); and

(b) of which at the end of the previous year of assessment 80 per cent or more of the value of the assets, reflected in the annual financial statements prepared in accordance with the Companies Act or IFRS for the previous year of assessment, is directly or indirectly attributable to immovable property;

"qualifying distribution", in respect of a year of assessment of a company that is a REIT or a controlled company as at the end of a year of assessment, means any dividend (other than a dividend contemplated in paragraph (b) of the definition of "dividend") paid or payable in respect of an equity share, or interest incurred in respect of a debenture forming part of a linked unit in that company, if the amount thereof is determined with reference to the financial results of that company as reflected in the financial statements prepared for that year of assessment if—

[words preceding paragraph (a) substituted by section 29(1)(a) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of years of assessment commencing on or after that date]

(a) that year of assessment is the first year of assessment and at least 75 per cent of the gross income received by or accrued to a company during that first year of assessment that the company qualifies as a REIT or controlled company, consists of rental income; and

[paragraph (a) substituted by section 49(a) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(b) in any other case, at least 75 per cent of the gross income received by or accrued to a REIT or a controlled company in the preceding year of assessment consists of rental income:

Provided that any amount that must be included in the income of the REIT or controlled company in terms of section 9D(2) must not be included in the gross income of the REIT or controlled company in respect of that year of assessment for the purposes of this definition;

"rental income" means an amount calculated in accordance with the formula—

RI = PI + EG

in which formula—

(a) "RI" represents the amount to be determined;

(b) "PI" represents the aggregate of all amounts received or accrued—

(i) in respect of the use of immovable property, including a penalty or interest in respect of late payment of any such amount;

(ii) as a dividend (other than a dividend contemplated in paragraph (b) of the definition of "dividend") from a company that is a REIT at the time of the distribution of that dividend;

(iii) as a qualifying distribution from a company that is a controlled company at the time of that distribution;

(iv) as a dividend or foreign dividend from a company that is a property company at the time of that distribution; and

(v) any amount recovered or recouped in terms of section 8(4) in respect of an amount of an allowance previously deducted in terms of section 11(g), 13, 13bis, 13ter, 13quat, 13quin or 13sex; and

(c) "EG" represents the total of foreign exchange gains contemplated in the definition of "exchange difference" in section 24I(1), determined in terms of that section in respect of the amounts referred to in paragraph (b) that constitute exchange items or any exchange item serving as a hedge in respect of amounts referred to in that paragraph.

[definition of "rental income" substituted by section 32 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(2) (a) There must be deducted from the income for a year of assessment of—

(i) a REIT; or

(ii) a controlled company that is a resident,

the amount of any qualifying distribution made by that REIT or that controlled company in respect of that year of assessment if that company is a REIT or a controlled company on the last day of that year of assessment.

(b) The aggregate amount of the deductions contemplated in paragraph (a) may not exceed the taxable income for that year of assessment of that REIT or that controlled company, before taking into account—

(i) any deduction in terms of this subsection;

(ii) any assessed loss brought forward in terms of section 20; and

(iii) the amount of taxable capital gain included in taxable income in terms of section 26A.

(2A) For the purposes of calculating the taxable income in respect of a year of assessment of a REIT or a controlled company as contemplated in subsection (2)(b)—

(a) where—

(i) a REIT or a controlled company is a beneficiary of a vesting trust that is not a resident; and

(ii) the trust contemplated in subparagraph (i) is liable for or subject to tax on income in the country in which that trust is established or formed,

so much of any amount of tax on income proved to be payable by that trust to the government of a country other than the Republic as is attributable to the interest of that REIT or controlled company in that trust, without any right of recovery of that tax by any person, other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment, limited to the amount of taxable income that is attributable to those amounts, must be allowed to be deducted by that REIT or controlled company before taking into account any deduction in terms of subsection (2)(a);

[words following subparagraph (ii) substituted by section 49(b) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(b) there must be allowed as a deduction from the income of that REIT or that controlled company the sum of any taxes on income proved to be payable by that REIT or that controlled company in respect of any amount to any sphere of government of any country other than the Republic, without any right of recovery by any person other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment, limited to the amount of taxable income that is attributable to those amounts, before taking into account any deduction in terms of paragraph (c) and subsection (2)(a);

(c) where during any year of assessment a REIT or controlled company has made a *bona fide* donation to any organisation as contemplated in section 18A(1)(a) or (b) there must be allowed to be deducted an amount equal to the amount of that donation: Provided that the deduction so allowed may not exceed 10 per cent of the taxable income of that REIT or controlled company after taking into account any deduction in terms of paragraph (a) and (b) but before taking into account any deduction in terms of subsection (2)(a); and

(d) where a foreign dividend is received by or accrued to a REIT or controlled company, section 10B(2)(a) must not apply.

[paragraph (d) added by section 29(1)(b) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of years of assessment commencing on or after that date]

(4) A company that is a REIT or a controlled company on the last day of a year of assessment may not deduct by way of an allowance any amount in respect of immovable property in terms of section 11(g), 13, 13bis, 13ter, 13quat, 13quin or 13sex.

(5) In determining the aggregate capital gain or aggregate capital loss of a company that is a REIT or a controlled company on the last day of a year of assessment for purposes of the Eighth Schedule, any capital gain or capital loss determined in respect of the disposal of—

(a) immovable property of a company that is a REIT or controlled company at the time of the disposal;

(b) a share or a linked unit in a company that is a REIT at the time of that disposal; or

(c) a share or a linked unit in a company that is a property company at the time of that disposal,

must be disregarded.

(6) (a) Any amount of interest received by or accrued to a person during a year of assessment in respect of a debenture forming part of a linked unit held by that person in a company that is

(i) a REIT or a controlled company that is a resident must be deemed to be a dividend received by or accrued to that person; or

(ii) a controlled company that is a foreign company must be deemed to be a foreign dividend received by or accrued to that person,

during that year of assessment.

(b) Any amount of interest received by or accrued to a company that is a REIT or a controlled company that is a resident during a year of assessment in respect of a debenture forming part of a linked unit held by that company in a property company must if the property company is a resident be deemed to be a dividend, or if the property company is a foreign company be deemed to be a foreign dividend, received by or accrued to that company during that year of assessment if that company is a REIT or a controlled company that is a resident at the time of that receipt or accrual.

(c) Any amount of interest paid in respect of a linked unit in a REIT or a controlled company must be deemed—

(i) to be a dividend paid by that REIT or that controlled company that is a resident for the purposes of the dividends tax contemplated in Part VIII of this Chapter; and

(ii) not to be an amount of interest paid by that REIT or that controlled company for the purposes of the withholding tax on interest contemplated in Part IVB of this Chapter.

(7) If during any year of assessment a company that is a REIT ceases to be a REIT and that company does not qualify as a controlled company or a company that is a controlled company ceases to be a controlled company and that company does not qualify as a REIT—

(a) that year of assessment of that REIT or controlled company is deemed to end on the day preceding the date on which that company ceases to be either a REIT or a controlled company; and

(b) the following year of assessment of that company is deemed to commence on the day on which that company ceased to be either a REIT or a controlled company.

(8) If a REIT or a controlled company cancels the debenture part of a linked unit and capitalises the issue price of the debenture to stated capital for the purposes of financial reporting in accordance with IFRS—

(a) the cancellation of the debenture must be disregarded in determining the taxable income of the holder of the debenture and of the REIT or controlled company;

(b) expenditure incurred by the holder of a share in the REIT or controlled company in respect of the shares is deemed to be equal to the amount of the expenditure incurred in respect of the acquisition of that linked unit; and

(c) the issue price of the cancelled debenture must be added to the contributed tax capital of the class of shares that forms part of the linked unit.

25C. Income of insolvent estates

For the purposes of this Act, and subject to any such adjustments as may be necessary the estate of a person prior to sequestration and that person's insolvent estate shall be deemed to be one and the same person for purposes of determining—

(a) the amount of any allowance, deduction or set off to which that insolvent estate may be entitled;

(b) any amount which is recovered or recouped by or otherwise required to be included in the income of that insolvent estate; and

(c) any taxable capital gain or assessed capital loss of that insolvent estate.

25D. Determination of taxable income in foreign currency

(1) Subject to subsections (2), (3) and (4), any amount received by or accrued to, or expenditure or loss incurred by, a person during any year of assessment in any currency other than the currency of the Republic must be translated to the currency of the Republic by applying the spot rate on the date on which that amount was so received or accrued or expenditure or loss was so incurred.

(2) Any amounts received by or accrued to, or expenditure incurred by, a person in any currency other than the currency of the Republic which are attributable to a permanent establishment of that person outside the Republic must be determined in the functional currency of that permanent establishment (other than the currency of any country in the common monetary area) and be translated to the currency of the Republic by applying the average exchange rate for the relevant year of assessment.

(2A) Subsection (2) shall not apply to the extent that—

(a) the other currency contemplated in that subsection is not the functional currency of that permanent establishment; and

(b) the functional currency is the currency of a country which has an official rate of inflation of 100 per cent or more throughout the relevant year of assessment.

(3) Notwithstanding subsection (1), a natural person or a trust (other than a trust which carries on any trade) may elect that all amounts received by or accrued to, or expenditure or losses incurred by

that person or trust in any currency other than the currency of the Republic, be translated to the currency of the Republic by applying the average exchange rate for the relevant year of assessment.

(4) Where, during any year of assessment—

(a) any amount—

(i) is received by or accrued to; or

(ii) of expenditure is incurred by,

a headquarter company in any currency other than the functional currency of the headquarter company; and

(b) the functional currency of that headquarter company is a currency other than the currency of the Republic,

that amount must be determined in the functional currency of the headquarter company and must be translated to the currency of the Republic by applying the average exchange rate for that year of assessment.

(5) Where, during any year of assessment—

(a) any amount—

(i) is received by or accrues to; or

(ii) of expenditure is incurred by,

a domestic treasury management company in any currency other than the functional currency of the domestic treasury management company; and

(b) the functional currency of that domestic treasury management company is a currency other than the currency of the Republic,

that amount must be determined in the functional currency of the domestic treasury management company and must be translated to the currency of the Republic by applying the average exchange rate for that year of assessment.

(6) Where, during any year of assessment—

(a) any amount—

(i) is received by or accrues to; or

(ii) of expenditure is incurred by,

an international shipping company in any currency other than the functional currency of the international shipping company; and

(b) the functional currency of that international shipping company is a currency other than the currency of the Republic,

that amount must be determined in the functional currency of the international shipping company and must be translated to the currency of the Republic by applying the average exchange rate for that year of assessment.

(7) Any amounts received by or accrued to, or expenditure incurred by—

(a) a headquarter company contemplated in subsection (4); or

(b) a domestic treasury management company contemplated in subsection (5); or

(c) an international shipping company contemplated in subsection (6),

during any year of assessment in a functional currency that is a currency other than the currency of the Republic must be translated to the currency of the Republic by applying the average exchange rate for the relevant year of assessment.

26. Determination of taxable income derived from farming

(1) The taxable income of any person carrying on pastoral, agricultural or other farming operations shall, in so far as it is derived from such operations, be determined in accordance with the provisions of this Act but subject to the provisions of the First Schedule.

(2) In the case of any person who has discontinued carrying on pastoral, agricultural or other farming operations and is still in possession of any livestock or produce, or has entered into a "sheep lease" or similar agreement relating to livestock or produce, which has been taken into account and in respect of which expenditure under the provisions of this Act or any previous Income Tax Act has been allowed in the determination of the taxable income derived by such person when such operations were carried on, the provisions of this Act, but subject to the provisions of paragraphs 1, 2, 3, 4, 5, 6, 7, 9, or 11 of the First Schedule, shall continue to be applicable to that person in respect of such livestock or produce, as the case may be, until the year of assessment during which he disposes of the last of such livestock or produce, notwithstanding the fact that such operations have been discontinued.

26A. Inclusion of taxable capital gain in taxable income

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

26B. Taxation of oil and gas companies

(1) The taxable income of any oil and gas company, as defined in the Tenth Schedule, shall be determined in accordance with the provisions of this Act but subject to the provisions of that Schedule.

(2) The dividends tax levied in respect of the amount of any dividend, as defined in section 64D, that is paid as contemplated in section 64E(2) by an oil and gas company, as defined in the Tenth Schedule, out of amounts attributable to its oil and gas income, as defined in that Schedule, shall be determined in accordance with this Act but subject to that Schedule.

(3) Part IIA of Chapter III of this Act applies to the Tenth Schedule notwithstanding any provision to the contrary contained in subsections (1) and (2).

27. Determination of taxable income of co-operative societies and companies

(1) In the determination of the taxable income of any co-operative trading society, as defined in the Co-operative Societies Act, 1939 (Act No. 29 of 1939), derived by that society from its transactions, whether with persons who are members or with persons who are not members of the society, the amount of any bonus distributed in any year of assessment to its members by any such society which is a closed society as defined in section ninety-seven of that Act shall be allowed as a deduction from the income of that society in so far as such bonus does not exceed an amount equivalent to one-tenth of the aggregate value of the business of such society with its members during such year of assessment, but no such deduction shall be allowed in the case of any such co-operative trading society which is not such a closed society.

(2) In the determination of the taxable income of any agricultural co-operative, there shall be allowed as deductions from the income of such agricultural co-operative for the year of assessment in question—

(a) the amounts of any profits distributed by it during the specified period in relation to the year of assessment by way of bonuses (other than bonuses distributed out of the stabilization fund referred to in paragraph (h)) to persons entitled to participate in such distribution: Provided that the amounts allowed as deductions under this paragraph shall not in the aggregate exceed an amount which bears to the taxable income of such agricultural co-operative for the year of assessment (as calculated before allowing any deductions under this paragraph and before setting off any balance of assessed loss brought forward from a previous year of assessment) the same ratio as the aggregate value of the business conducted by such agricultural co-operative with its members during such year bears to the aggregate value of all business conducted by it during such year;

(b) subject to the provisions of subsections (3), (4) and (5), an allowance equal to two per cent of the cost (after the deduction of any amount referred to in subsection (4)) to such agricultural co-operative of—

(i) any building which was during the year of assessment wholly or mainly used by such co-operative as a storage building, if such building was erected by such co-operative or by any other co-operative agricultural society or company or farmers' special co-operative company as defined in the Co-operative Societies Act, 1939, and the erection of such building was commenced on or after 25 March 1959; or

(ii) any improvements (other than repairs) to any building referred to in subparagraph (i) which was during the year of assessment used as contemplated in that subparagraph; or

(iii) any improvements (other than repairs) to any other building which was during the year of assessment used as a storage building by such co-operative, if such improvements were commenced on or after 1 April 1971:

Provided that no allowance shall be granted under this paragraph in respect of the cost of any building or improvements if an allowance in respect of such cost has been granted in respect of the year of assessment under the provisions of section 13(1): Provided further that no allowance shall be made under this paragraph in respect of such portion of the cost of any building or of any improvements as has been taken into account in the calculation of any storage building initial allowance or any allowance to such co-operative under section 11(g), whether in the current or any previous year of assessment: Provided further that in the case of any such building the erection of which commences on or after 1 January 1989 and any such improvements which commence on or after that date the allowance under this paragraph shall be increased to 5 per cent of the cost (after the deduction of any amount as provided in subsection (4)) to the taxpayer of such building or improvements;

(g) an allowance in respect of the year of assessment in respect of losses suffered by such agricultural co-operative in consequence of physical damage to or deterioration of pastoral, agricultural and other farm products held by such agricultural co-operative on behalf of any control board established under the provisions of the Marketing Act, 1968 (Act No. 59 of 1968): Provided that such allowance shall be included in the income of such agricultural co-operative in the following year of assessment; and

(h) in the case of the vereniging defined in section 1 of the Wine and Spirit Control Act, 1970 (Act No. 47 of 1970), an allowance equal to so much of any amount which the said vereniging has, within the specified period in relation to the year of assessment, transferred from its profits for such year to a price stabilization fund for distribution to its members or winegrowers within a period not exceeding five years reckoned from the end of such year of assessment, as does not exceed an amount equal to that portion of the profits derived by

such vereniging for that year of assessment in the exercise of its functions relating to the control of, and the stabilization of prices in, the wine industry;

(3) The aggregate of the allowances under subsection (2)(b) and section 13(1) in respect of any building or improvements shall not exceed the cost (after the deduction of any amount referred to in subsection (4)) of such building or improvements, as the case may be, less the aggregate of any storage building initial allowance and any allowances made to the agricultural co-operative concerned in respect of such building or improvements, as the case may be, under section 11(g).

(4) If in any year of assessment there falls to be included in an agricultural co-operative's income in terms of paragraph (a) of section 8(4) an amount, which has been recovered or recouped, in respect of any allowance made under subsection (2)(b) in respect of any building or improvements, such portion of the amount so recovered or recouped as is set off against the cost of a further building as hereinafter provided shall, notwithstanding the provisions of the said paragraph, at the option of that co-operative and provided it erects within twelve months or such further period as the Commissioner may allow from the date on which the event giving rise to the recovery or recoupment occurred, any other building to which the provisions of subsection (2)(b) apply, not be included in its income for that year of assessment, but shall be set off against so much of the cost to it of that further building erected by it as remains after the deduction of any portion of that cost in respect of which an allowance has been granted to that co-operative under section 11(g), whether in the current or any previous year of assessment.

(5) Where any agricultural co-operative (hereinafter referred to as the new co-operative) has before 1 April 1977 been constituted by an amalgamation under section 94 of the Co-operative Societies Act, 1939, of two or more other agricultural co-operatives and by reason of such amalgamation the ownership of any building used as a storage building by one of such other co-operatives (hereinafter referred to as the other co-operative) has passed from the other co-operative to the new co-operative—

(a) an allowance may in the appropriate circumstances be granted under subsection (2)(b) to the new co-operative in respect of such building or any improvements (other than repairs) thereto if such allowance would have been granted to the other co-operative if the amalgamation had not been effected;

(c) where an allowance or deduction may be granted or allowed as contemplated in paragraph (a) or (b), the provisions of subsections (2)(b), (3) and (4) shall be applied as though the other co-operative and the new co-operative had at all relevant times been one co-operative.

(5A) Where any agricultural co-operative has on or after 1 April 1977 and before the date of commencement of the Co-operatives Act, 1981, been constituted by an amalgamation under section 94 of the Co-operative Societies Act, 1939, of two or more other agricultural co-operatives, the said co-operative and such other co-operatives shall, for the purposes of assessments under this Act, be deemed to be and to have been one and the same agricultural co-operative.

(5B) Where any co-operative has on or after the date of commencement of the Co-operatives Act, 1981, come into being in pursuance of a conversion or amalgamation in terms of Chapter VIII of that Act, such co-operative and any company, co-operative or co-operatives out of which it so came into being shall, for the purposes of assessments under this Act for the year of assessment during which such co-operative came into being and subsequent years of assessment but subject to such conditions as the Commissioner may impose, be deemed to be and to have been one and the same co-operative.

(8) (a) The full amount of any bonus distributed by any agricultural co-operative shall, to the extent that such amount qualifies for deduction from the income of such co-operative under subsection (2)(a) or, if it is distributed out of the stabilization fund referred to in subsection (2)(h), be included in the gross income of the person who has become entitled thereto and shall be deemed to have accrued to such person on the date of the distribution of the bonus by such co-operative.

(b) For the purposes of this section the amount of any bonus distributed by way of capitalization shares or bonus debentures or securities shall be deemed to be the nominal value of such shares, debentures or securities, as the case may be.

(9) In this section—

"agricultural co-operative" means any co-operative agricultural society or company or any farmers' special co-operative company, as defined in the Co-operative Societies Act, 1939;

"bonus" means any amount distributed by any co-operative society or company referred to in this section out of its profits or surplus for any year of assessment or, in the case of the vereniging referred to in paragraph (h) of subsection (2), out of the stabilization fund referred to in that paragraph, whether such amount is distributed in cash or by way of a credit or an award of capitalization shares or bonus debentures or securities, if such amount—

(a) is divided among the persons entitled thereto in such manner that the amount accruing to each such person is determined in accordance with the value of the business transactions between such society or company and such person; and

(b) is distributed during the specified period in relation to such year of assessment or is distributed out of the stabilization fund referred to in subsection (2)(h);

"improvements", in relation to any storage building, means any extension, addition or improvements (other than repairs) to a storage building which is or are effected for the purpose of increasing the capacity of the building for storing or packing pastoral, agricultural or other farm products or for carrying on therein any primary process in respect of any such products;

"primary process", in relation to any product produced in the course of pastoral, agricultural or other farming operations, means the first process to which such product is subjected by an agricultural co-operative in order to render such product marketable or to convert such product into a marketable commodity, and includes any further process carried on by such co-operative which is so connected with the said first process that such first process and such further process or processes may be regarded as one process and to be necessary to convert such product into a marketable commodity;

"storage building", in relation to any agricultural co-operative, means—

(a) a building which is at any relevant time or during any relevant period wholly or mainly used by such co-operative for storing or packing pastoral, agricultural or other products produced by such co-operative's members or for carrying on therein any primary process in respect of such products; or

(b) a structure of a permanent nature which is at any relevant time or during any relevant period wholly or mainly used by such co-operative in connection with the fattening of livestock on behalf of the members of such co-operative:

Provided that for the purposes of this definition the members of a central co-operative agricultural company or central farmers' special co-operative company or federal co-operative agricultural company or federal farmers' special co-operative company, as defined in the Co-operative Societies Act, 1939, shall be deemed to include the members of any agricultural co-operative which itself is a member of such company.

28. Taxation of short-term insurance business

(1) For the purposes of this section—

"branch policy" means a policy contemplated in paragraph (c) of the definition of "short-term policy" that is also a long-term policy as defined in section 1 of the Long-term Insurance Act;

[definition of "branch policy" inserted by section 33(1)(a) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

"premium" means a premium as defined in the Short-term Insurance Act;

"short-term insurance business" means—

(a) short-term insurance business as defined in the Short-term Insurance Act;

(b) micro-insurance business as defined in section 1 of the Insurance Act; or

(c) business conducted by a foreign reinsurer as contemplated in paragraph (c) of the definition of "short-term insurer";

[definition of "short-term insurance business" substituted by section 52(1)(a) of Act 25 of 2015 (retroactively deleted by section 107(1)(a) of Act 23 of 2018), and by section 50(1)(a) of Act 23 of 2018; effective date 1 July 2018, applicable in respect of years of assessment ending on or after that date]

"short-term insurer" means—

(a) a company that is licensed under the Insurance Act and is conducting non-life insurance business as defined in that Act;

[paragraph (a) substituted by section 21(1)(a) of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(b) a micro-insurer as defined in section 1 of the Insurance Act; or

(c) a foreign reinsurer conducting insurance business through a branch in the Republic in terms of section 6 of the Insurance Act;

[definition of "short-term insurer" substituted by section 52(1)(b) of Act 25 of 2015 (retroactively deleted by section 107(1)(a) of Act 23 of 2018), and by section 50(1)(b) of Act 23 of 2018; effective date 1 July 2018, applicable in respect of years of assessment ending on or after that date]

"short-term policy" means—

(a) a short-term policy as defined in the Short-term Insurance Act;

(b) a policy issued by a micro-insurer as defined in section 1 of the Insurance Act; or

(c) a policy issued by a foreign reinsurer as contemplated in paragraph (c) in the definition of "short-term insurer";

[definition of "short-term policy" substituted by section 52(1)(c) of Act 25 of 2015 (retroactively deleted by section 107(1)(a) of Act 23 of 2018), and by section 50(1)(c) of Act 23 of 2018; effective date 1 July 2018, applicable in respect of years of assessment ending on or after that date]

(2) For the purpose of determining the taxable income derived during a year of assessment by any short-term insurer from carrying on short-term insurance business—

[words preceding paragraph (a) substituted by section 50(1)(d) of Act 23 of 2018; effective date 1 July 2018, applicable in respect of years of assessment ending on or after that date]

(a) a premium received by or accrued to that person in respect of a short-term policy issued by that short-term insurer prior to the date of commencement of the risk cover under that

policy shall be deemed to have been received by or accrued to that short-term insurer on the date of commencement of the risk cover under that policy;

(b) an amount of expenditure actually incurred by that short-term insurer in respect of a refund of a premium in respect of a short-term policy issued by that short-term insurer may only be deducted in terms of section 11(a) to the extent that the amount of the premium was included in the gross income of that short-term insurer;

(c) an amount of expenditure payable by that short-term insurer in respect of any claim in terms of a short-term policy—

(i) may be deducted in terms of section 11(a) to the extent that the amount has been paid by that short-term insurer; and

(ii) to the extent that the amount has been paid by the short-term insurer, sections 23(c) and 23H shall not apply to that expenditure;

(d) section 23H shall not apply to expenditure (other than expenditure contemplated in paragraph (c)) incurred in respect of—

(i) a short-term policy issued by that short-term insurer; or

(ii) a policy of reinsurance if that short-term insurer is the holder of that policy; and

(e) an amount recoverable by that short-term insurer in respect of a claim incurred under a short-term policy issued by that short-term insurer shall only be included in the income of that short-term insurer when the amount is received by that short-term insurer.

(3) Subject to subsection (3A) and notwithstanding section 23(e), for the purpose of determining the taxable income derived during any year of assessment by any short-term insurer from carrying on short-term insurance business, there shall be allowed as a deduction from the income of that short-term insurer an amount equal to the sum of liabilities on investment contracts relating to short-term insurance business in accordance with IFRS as reported by that short-term insurer in its audited annual financial statements, and amounts recognised as insurance liabilities, in accordance with IFRS by that short-term insurer in its audited annual financial statements, relating to—

(a) premiums; and

(b) claims,

reduced by—

(i) the amounts recognised as recoverable under policies of reinsurance in accordance with IFRS as reported by the insurer to shareholders in the audited annual financial statements, other than any amount that is receivable from an owner as contemplated in the definition of "cell structure" in section 1 of the Insurance Act, in respect of a third party risk as defined in that section of that Act; and

(ii) the amounts recognised as deferred acquisition costs in accordance with IFRS as reported by the insurer to shareholders in the audited annual financial statements,

and increased by the amount of deferred revenue determined in accordance with IFRS as reported by the insurer to shareholders in the audited annual financial statements.

[subsection (3) substituted by section 52(1)(d) of Act 25 of 2015; effective date retroactively amended by section 107(1)(b) of Act 23 of 2018 to 1 July 2018, amended by section 49(1) of Act 15 of 2016; effective date retroactively amended by section 112(1) of Act 23 of 2018 to 1 July 2018, and by section 50(1)(e) of Act 23 of 2018; effective date 1 July 2018, and substituted by section 33(1)(b) of Act 34 of 2019; effective date 1 July 2018, applicable in respect of years of assessment ending on or after that date]

(3A) Notwithstanding section 23(e), for the purpose of determining the taxable income derived during any year of assessment by any foreign reinsurer conducting insurance business through a branch in the Republic in terms of section 6 of the Insurance Act in respect of a branch policy, there shall be

allowed as a deduction from the income of that foreign reinsurer an amount in respect of liabilities determined in accordance with the formula—

I = (L + DL) - DC + DR

in which formula—

(a) "I" represents the amount to be determined;

(b) "L" represents the amount of the liabilities in respect of branch policies of the insurer, net of amounts recognised as—

(i) recoverable under policies of reinsurance; and

(ii) negative liabilities,

the amounts of which are determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements in respect of branch policies;

(c) "DL" represents the amount of deferred tax liabilities, determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements, in respect of branch policies;

(d) "DC" represents the amount of deferred acquisition costs determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements in respect of branch policies; and

(e) "DR" represents the amount of deferred revenue determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements in respect of branch policies.

[subsection (3A) inserted by section 33(1)(c) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(3B) (a) Where a person transfers short-term insurance policies aspart of any short-term insurance business to another short-term insurer carrying on or to be carrying on short-term insurance business, that person may for purposes of section 11(a) deduct an amount equal to liabilities on investment contracts relating to short-term insurance business and amounts of insurance liabilities relating to premiums and claims transferred to the other short-term insurer.

(b) An amount contemplated in paragraph (a) must be included in the income of the short-term insurer to which the liabilities were transferred as described in paragraph (a).

[subsection (3B) inserted by section 21(1)(b) of Act 20 of 2021; effective date 1 January 2022, applicable in respect of years of assessment ending on or after that date]

(4) The total of all amounts deducted from the income of a short-term insurer in respect of a year of assessment in terms of subsections (3) and (3A) shall be included in the income of that short-term insurer in the following year of assessment.

[subsection (4) substituted by section 21(1)(c) of Act 20 of 2021; effective date 1 January 2022, applicable in respect of years of assessment ending on or after that date]

(5) The sum of all amounts contemplated in section 32(1)(a) and (b) of the Short-term Insurance Act and deducted from the sum of all premiums and other amounts received by or accrued to a short-term insurer in respect of any year of assessmentshall be included in the income of that short-term insurer in the following year of assessment.

[subsections (7), (8), (9), (10) and (11) deleted by section 52(1)(e) of Act 25 of 2015; effective date, retroactively amended by section 107(1)(b) of Act 23 of 2018 to 1 July 2018, applicable to years of assessment ending on or after that date]

29A. Taxation of long-term insurers

(1) For the purposes of this section—

"**adjusted IFRS value**", in respect of a policyholder fund or the risk policy fund, means an amount, which may not be less than zero, and which must be calculated in accordance with the formula—

I = (L + DL + PF) – PT– DC + DR

in which formula—

(a) "I" represents the amount to be determined;

(b) "L" represents the amount of the liabilities in respect of policies of the insurer, net of amounts recognised as—

(i) recoverable under policies of reinsurance; and

(ii) negative liabilities,

the amounts of which are determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements in respect of policies allocated to that fund;

(c) "DL" represents for a policyholder fund the amount of deferred tax liabilities, determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements, in respect of assets allocated to that policyholder fund;

(d) "PF" represents the amount calculated in terms of subsection (14) if a phasing-in amount is determined in terms of subsection (15)(a);

(e) "PT" represents the amount calculated in terms of subsection (14) if a phasing-in amount is determined in terms of subsection (15)(b);

(f) "DC" represents for a policyholder fund the amount of deferred acquisition costs determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements; and

(g) "DR" represents for a policyholder fund the amount of deferred revenue determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements;

[definition of "adjusted IFRS value" substituted by section 50(1)(a) of Act 15 of 2016; effective date retroactively amended by section 113(1)(b) of Act 23 of 2018 to 1 July 2018, and by section 46(1)(a) of Act 17 of 2017; effective date, retroactively amended by section 114(1)(a) of Act 23 of 2018 to 1 July 2018, applicable in respect of years of assessment ending on or after that date]

"**business**" means any long-term insurance business as defined in section 1 of the Long-term Insurance Act;

"**insurer**" means a company that is licensed under the Insurance Act and is conducting life insurance business as defined in that Act, other than a foreign reinsurer conducting insurance business through a branch in the Republic in terms of section 6 of that Act;

[definition of "insurer" substituted by section 34(a) of Act 34 of 2019; effective date 15 January 2020, and by section 22(a) of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

"**market value**", in relation to any asset, means—

(a) the amount which a person having the right freely to dispose of such asset might reasonably expect to obtain from a sale of such asset in the open market; or

(b) where an asset cannot be sold in the open market, an amount equal to the value at which that asset is recognised in the audited annual financial statements of the insurer;

[definition of "market value" substituted by section 30 of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

"**negative liability**", in respect of a long-term policy, means the amount by which the expected present value of future premiums exceeds the expected present value of future benefits to policyholders and expenses;

[definition of "negative liability" inserted by section 53(1)(a) of Act 25 of 2015; effective date retroactively amended by section 108(1) of Act 23 of 2018 to 1 July 2018, and substituted by section 46(1)(b) of Act 17 of 2017; effective date, retroactively amended by section 114(1)(a) of Act 23 of 2018 to 1 July 2018, applicable in respect of years of assessment ending on or after that date]

"**owner**", in relation to a policy, means the person who is entitled to enforce any benefit provided for in the policy: Provided that where a policy has been—

(a) ceded or pledged solely for the purpose of providing security for the performance of any obligation, the owner shall be the person who retains the beneficial interest in such policy; or

(b) reinsured by one insurer with another insurer, the reinsurance policy shall be deemed to be owned by the owner of the insurance policy so insured;

"**policy**" means a long-term policy as defined in section 1 of the Long-term Insurance Act, other than a policy issued by a foreign reinsurer conducting insurance business through a branch in the Republic in terms of section 6 of the Insurance Act;

[definition of "policy" substituted by section 34(b) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

"**policyholder fund**" means any fund contemplated in subsection (4)(a), (b) or (c);

"**risk policy**" means—

(a) any policy issued by the insurer during any year of assessment of that insurer commencing on or after 1 January 2016 under which the benefits payable—

(i) cannot exceed the amount of premiums receivable, except where all or substantially the whole of the policy benefits arepayable due to death, disablement, illness or unemployment and excludes a contract of insurance in terms of which annuities are being paid; or

(ii) other than benefits payable due to death, disablement, illness or unemployment, cannot exceed the amount of premiums receivable and excludes a contract of insurance in terms of which annuities are being paid; or

(b) any policy in respect of which an election has been made as contemplated in subsection (13B);

"**risk policy fund**" means the fund contemplated in subsection 4(e);

"**value of liabilities**" means, in respect of a policyholder fund or a risk policy fund, an amount equal to the value of the liabilities of the insurer in respect of the business conducted by it in the fund concerned calculated on the basis as shall be determined by the chief actuary of the Financial Services Board, appointed in terms of section 13 of the Financial Services Board Act, in consultation with the Commissioner;

[definition of "value of liabilities" inserted by section 53(1)(c) of Act 25 of 2015; effective date, retroactively amended by section 108(1) of Act 23 of 2018 to 1 July 2018, applicable in respect of years of assessment ending on or after that date]

(2) The taxable income derived by any insurer in respect of any year of assessment commencing on or after 1 January 2000, shall be determined in accordance with the provisions of this Act, but subject to the provisions of this section and section 29B.

(3) Every insurer shall establish five separate funds as contemplated in subsection (4), and shall thereafter maintain such funds in accordance with the provisions of this section and section 29B.

(4) The funds referred to in subsection (3) shall be—

(a) a fund, to be known as the untaxed policyholder fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to—

(i) (aa) business other than business relating to a risk policy carried on by the insurer with; and

(bb) any policy other than a risk policy, of which the owner is,

any pension fund, pension preservation fund, provident fund, provident preservation fund, retirement annuity fund or benefit fund;

(ii) any policy, other than a risk policy, of which the owner is a person where any amount constituting gross income of whatever nature would be exempt from tax in terms of section 10 were it to be received by or accrue to that person: Provided that an insurer shall not deal with a policy in terms of the provisions of this subparagraph unless it has satisfied itself beyond all reasonable doubt that the owner of such policy is such a person or body;

(iii) any annuity contracts entered into by it in respect of which annuities are being paid;

(iv) any policy that is a tax free investment as contemplated in section 12T.

(b) a fund, to be known as the individual policyholder fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to any policy (other than a policy contemplated in paragraphs (a) or (e)) of which the owner is any person other than a company;

(c) a fund, to be known as the company policyholder fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to any policy (other than a policy contemplated in paragraphs (a) or (e)) of which the owner is a company;

(d) a fund, to be known as the corporate fund, in which shall be placed all the assets held by the insurer, and all liabilities owed by it, other than assets and liabilities contemplated in paragraphs (a), (b), (c) and (e); and

(e) a fund, to be known as a risk policy fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to any risk policy.

(5) For the purposes of subsection (4), where the owner of a policy is the trustee of any trust or where two or more owners jointly own a policy—

(a) if all the beneficiaries in such trust or all such joint owners are funds, persons or bodies contemplated in subsection (4)(a), the owner of such policy shall be deemed to be such a fund, person or body, as the case may be; or

(b) where paragraph (a) is not applicable and all the beneficiaries in such trust or all such joint owners are persons other than a company, the owner of such policy shall be deemed to be a person other than a company; or

(c) where paragraphs (a) and (b) are not applicable, the owner of such policy shall be deemed to be a company.

(6) An insurer who becomes aware that, in consequence of—

(a) a change of ownership of any policy issued by it;

(b) any change affecting the status of the owner of any policy; or

(c) an annuity becoming payable in terms of a policy,

the assets held by it in relation to such policy should in terms of the provisions of subsection (4) be held in a fund other than the fund in which such assets are actually held, shall forthwith transfer from such last-mentioned fund to such first-mentioned fund assets having a market value equal to the value of liabilities determined on the date of such transfer in relation to the said policy.

(7) Every insurer shall within a period ofthree months after the end of every year of assessment redetermine the value of liabilities in relation to each of its policyholder funds and its risk policy fund as at the last day of that year of assessment, and—

(a) where the market value of the assets actually held by it in any such fund exceeds the value of liabilities in relation to such fund on such last day, it shall withinthat period transfer from such fund to its corporate fund assets having a market value equal to such excess; or

(b) where the market value of the assets actually held by it in any such fund is less than the value of liabilities in relation to such fund on such last day, it shall withinthat period transfer from its corporate fund to such fund assets having a market value equal to the shortfall,

and such transfer shall be made with effect from that day and for the purposes of this sectionbe deemed to have been made on such last day.

(8) Any transfer of an asset effected by an insurer between one fund and another fund shall be effected by way of a disposal of such asset at the market value thereof and shall for the purposes of this Act be treated as an acquisition or disposal of such asset, as the case may be, in each such fund.

(9) Subject to the provisions of subsection (11)(d), there shall be exempt from tax any income received by or accrued to an insurer from assets held by it in, and business conducted by it in relation to, its untaxed policyholder fund.

(10) The taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund, its corporate fund and its risk policy fund shall be determined separately in accordance with the provisions of this Act as if each such fund had been a separate taxpayer and the individual policyholder fund, company policyholder fund, untaxed policyholder fund, corporate fund and its risk policy fund shall be deemed to be separate companies which are connected persons in relation to each other for the purposes of subsections (6), (7) and (8) and sections, 20, 24I, 24J, 24K, 24L, 26A and 29B and the Eighth Schedule to this Act.

(11) In the determination of the taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund, its corporate fund and its risk policy fund in respect of any year of assessment—

(a) the amount of any expenses, allowances and transfers to be allowed as a deduction in the policyholder funds in terms of this Act shall be limited to the total of—

(i) the amount of expenses and allowances directly attributable to the income of such fund;

(ii) such percentage of the amount of—

(aa) all expenses allocated to such fund which are directly incurred during such year of assessment in respect of the selling and administration of policies; and

(bb) all expenses and allowances allocated to such fund which are not included in subparagraph (i), but excluding any expenses directly attributable to any amounts received or accrued which do not constitute income as defined in section 1,

which percentage shall be determined in accordance with the formula

$$Y = \frac{X + U}{Z}$$

in which formula—

(A) "Y" represents the percentage to be applied to such amount;

(B) "X" represents an amount which would have been equal to the taxable income calculated in respect of such fund in respect of such year of assessment before taking into account any deduction during such year of—

(AA) any amount incurred in respect of the selling and administration of policies;

(BB) any indirect expenses allocated to such fund;

(CC) the balance of assessed losses as contemplated in section 20(1)(a); and

(DD) any amount determined in terms of subparagraph (iii);

(C) "U" represents the amount determined under subitem (DD) of item (D) multiplied by 0.4 in the case of the individual policyholder fund and 0.8 in the case of the company policyholder fund; and

(D) "Z" represents an amount equal to the amount represented by X in the formula, plus—

(AA) the aggregate amount of all dividends that are exempt from normal tax and that are received in respect of such fund during such year;

(BB) the aggregate amount of all foreign dividends received in respect of such fund during such year, less any amount of that aggregate amount that is included in taxable income;

(CC) any portion of the aggregate capital gain in respect of such fund and in respect of such year that is not, by virtue of paragraph 10 of the Eighth Schedule, included in the taxable income in respect of such fund and in respect of such year; and

(DD) the aggregate amount of the differences between the market value as defined in section 29B and the expenditure incurred in respect of all assets allocated to the fund at the end of the year of assessment, reduced by the amount determined in terms of this subitem for the immediately preceding year of assessment: Provided that if the resultant aggregate amount is negative the amount shall be deemed to be nil; and

[subitem (DD) substituted by section 22(b) of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(iii) such percentage, determined in accordance with the formula contemplated in subparagraph (ii), of 30 per cent of the amount transferred from the policyholder fund in terms of subsection (7)(a), to the extent that the amount of such transfer is required to be included in the income of the corporate fund during such year of assessment in terms of paragraph (d)(i) of this subsection: Provided that the amount of the deduction in terms of this subparagraph shall not exceed the taxable income of the policyholder fund before deducting an amount in terms of this subparagraph;

(bA) a deduction is allowed in determining the taxable income of the risk policy fund of an amount equal to the taxable income before allowing a deduction under this paragraph:

Provided that the risk policy fund is deemed not to have incurred any assessed loss during the year of assessment;

[paragraph (bA) substituted by section 46(1)(c) of Act 17 of 2017; effective date, retroactively amended by section 114(1)(b) of Act 23 of 2018 to 1 January 2016, applicable in respect of years of assessment commencing on or after that date]

(d) any amount required to be transferred—

(i) to the corporate fund in terms of the provisions of subsection (7)(a) shall be included in the income of the corporate fund; and

(ii) from the corporate fund in terms of the provisions of subsection (7)(b) shall not be deducted from the income of the corporate fund,

for purposes of determining the taxable income of such fund for the year of assessment in respect of which the value of liabilities in relation to its policyholder funds or risk policy fund was redetermined in terms of that subsection: Provided that where any amount is transferred from the corporate fund to any policyholder fund or risk policy fund as contemplated in subparagraph (ii), any subsequent transfers from the policyholder fund to the corporate fund of any amounts which in the aggregate do not exceed the total amount of such transfer, shall not be included in the income of the corporate fund in terms of the provisions of subparagraph (i) of this paragraph;

(e) subject to the provisions of paragraphs (a)(iii) and (bA), no amount transferred to or from the corporate fund in terms of the provisions of subsection (7), shall be deducted from or included in the income of the policyholder fund or risk policy fund from or to which such amount was transferred, as the case may be;

(f) the amount of any transfer contemplated in subsection (6) or (8) shall not be deducted from the income of the fund from which it is transferred and shall not be included in the income of the fund to which it is transferred;

(g) (i) premiums and claims in respect of a policy entered into between that insurer and a person other than a resident other than premiums and claims in respect of a risk policy;

(ii) premiums and reinsurance claims received and claims and reinsurance premiums paid in respect of policies, other than policies contemplated in subparagraph (i) or risk policies;

shall be disregarded: Provided that where an amount in respect of a claim is received by or accrues to an insurer in respect of a policy (other than a policy that would have constituted a risk policy had that policy been concluded on 1 January 2016) entered into between that insurer and a person other than a resident, there must be included in the gross income of the policyholder fund associated with that policy an amount equal to that claim less the aggregate amount of premiums incurred or paid in terms of that policy which relates to that claim;

(h) no amount may be deducted, other than in the corporate fund or risk policy fund, by way of an allowance in respect of an asset as defined in the Eighth Schedule other than a financial instrument.

(12) In the allocation of any receipt, accrual, asset, expenditure, liability or payment to any fund contemplated in subsection (4), an insurer shall, when establishing such fund and at all times thereafter—

(a) to the extent to which such receipt, accrual, asset, expenditure, liability or payment relates exclusively to business conducted by it in any one fund, allocate such receipt, accrual, asset, expenditure, liability or payment to that fund; and

(b) to the extent to which such receipt, accrual, asset, expenditure, liability or payment does not relate exclusively to business conducted by it in any one fund, allocate such receipt, accrual, asset, expenditure, liability or payment in a manner which is consistent with and appropriate to the manner in which its business is conducted.

(13A) (a) Notwithstanding section 23(e), in the determination of the taxable income derived by an insurer in respect of its risk policy fund in respect of any year of assessment, there shall be allowed as a deduction from the income of the risk policy fund an amount equal to the value of liabilities for the year of assessment in respect of risk policies.

(b) Any amount deducted in terms of paragraph (a) during any year of assessment shall be included in the income of the risk policy fund in the following year of assessment.

(13B) (a) An insurer may elect that all policies or one or more classes of policies that share substantially similar contractual rights and obligations that would have constituted risk policies under paragraph (a) of the definition of "risk policy" in subsection (1) had those policies been issued during any year of assessment commencing on or after 1 January 2016 be allocated to the risk policy fund with effect from the first day of the year of assessment commencing on or after 1 January 2016, which election—

(i) is binding for the duration of the policies in respect of which the election is made; and

(ii) must be in a manner and form as the Commissioner may prescribe.

(b) Assets with a value equal to the value of liabilities, as determined at the end of the previous year of assessment in respect of policies allocated to the risk policy fund in terms of paragraph (a), must be allocated to the risk policy fund with effect from the first day of the year of assessment commencing on or after 1 January 2016.

(c) The amount of assets as contemplated in paragraph (b) shall not be deducted from the income of the policyholder fund from which it is transferred and shall not be included in the income of the risk policy fund to which it is transferred.

(d) Where as a result of the election as contemplated in paragraph (a) an asset as defined in paragraph 1 of the Eighth Schedule, other than an asset that is trading stock, is disposed of by the policyholder fund to a risk policy fund—

(i) the policyholder fund that disposes of that asset must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of that disposal; and

(ii) the policyholder fund that disposes of that asset and the risk policy fund that acquires that asset must, for purposes of determining any capital gain or capital loss by the risk policy fund that acquires that asset in respect of a disposal of that asset, be deemed to be one and the same person with respect to—

(aa) the date of acquisition of that asset by the policyholder fund that disposes of that asset and the amount and date of incurral of any expenditure by the policyholder fund that disposes of that asset in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and

(bb) any valuation of that asset effected by the policyholder fund of that asset as contemplated in paragraph 29(4) of the Eighth Schedule.

(e) Where as a result of the election as contemplated in paragraph (a) a policyholder fund disposes of an asset that is held as trading stock to a risk policy fund that acquires that asset as trading stock—

(i) that asset must be deemed to have been disposed of in an amount equal to the amount taken into account in terms of section 11(a) or 22(1) or (2) in respect of that asset by the policyholder fund; and

(ii) the policyholder fund and the risk policy fund must, for purposes of determining any taxable income derived by the risk policy fund, be deemed to be one and the same person with respect to the date of acquisition of that asset and the amount and date of incurral of any cost or expenditure incurred in respect of that asset as contemplated in section 11(a) or 22 (1) or (2).

(14) The amount referred to in the definition of adjusted IFRS value in respect of the phasing-in amount is in respect of—

(a) the first year of assessment ending on or after 1 July 2018, 83.3 per cent of the phasing-in amount;

(b) the second year of assessment ending on or after 1 July 2018, 66.7 per cent of the phasing-in amount;

(c) the third year of assessment ending on or after 1 July 2018, 50 per cent of the phasing-in amount;

(d) the fourth year of assessment ending on or after 1 July 2018, 33.3 per cent of the phasing-in amount; and

(e) the fifth year of assessment ending on or after 1 July 2018, 16.7 per cent of the phasing-in amount:

Provided where an insurer ceases to conduct business during any year of assessment contemplated in paragraphs (a) to (e), the amount referred to in the definition of "adjusted IFRS value" in respect of the phasing-in amount in respect of that year of assessment must be nil.

[proviso added by section 34(c) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

[subsection (14) added by section 50(1)(h) of Act 15 of 2016, as retroactively substituted by section 113(1)(a) of Act 23 of 2018; effective date, retroactively amended by section 113(1)(b) of Act 23 of 2018 to 1 July 2018, applicable in respect of years of assessment ending on or after that date]

(15) For the purposes of subsection (14) "phasing-in amount" in relation to a policyholder fund or the risk policy fund, means—

(a) if the amount of negative liabilities that has been recognised in accordance with IFRS as reported by the insurer to shareholders in the audited annual financial statements relating to policies allocated to that fund, reduced by negative liabilities recognised as an asset (adjusted to the manner in which negative liabilities were taken into account for purposes of determining assets and liabilities as recognised in the audited annual financial statements for 2015), exceeds the amount of negative liabilities that has been recognised in determining the value of liabilities (adjusted to the manner of recognition of policy liabilities for tax purposes for 2015 years of assessment) relating to policies allocated to that fund in respect of the year of assessment of the insurer ending during 2017, the amount of that excess; or

(b) if the amount of negative liabilities that has been recognised in determining the value of liabilities (adjusted to the manner in which negative liabilities were taken into account for purposes of determining assets and liabilities as recognised for tax purposes for 2015 years of assessment) relating to policies allocated to that fund exceeds the amount of negative liabilities that has been recognised in accordance with IFRS as reported by the insurer to shareholders in the audited annual financial statements relating to policies allocated to that fund in respect of the year of assessment of the insurer ending during 2017, reduced by negative liabilities recognised as an asset (adjusted to the manner of recognition of policy

liabilities and assets in the audited annual financial statements for 2015), the amount of that excess:

Provided that the reduction of negative liabilities recognised as an asset must apply only where the positive liabilities reduced by the negative liabilities result in a net asset for that fund which is recognised for financial reporting purposes.

[proviso substituted by section 51 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

[subsection (15) added by section 50(1)(h) of Act 15 of 2016, as retroactively substituted by section 113(1)(a) of Act 23 of 2018; effective date retroactively amended by section 113(1)(b) of Act 23 of 2018 to 1 July 2018, and substituted by section 46(1)(e) of Act 17 of 2017; effective date, retroactively amended by section 114(1)(a) of Act 23 of 2018 to 1 July 2018, applicable in respect of years of assessment ending on or after that date]

(16) For purposes of this section, other than for the purposes of subsection (15), "asset" excludes—

(a) negative liabilities;

(b) policies of reinsurance;

(c) a deferred tax asset;

(d) goodwill; or

(e) any amount of deferred acquisition costs determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements,

[paragraph (e) added by section 46(1)(f) of Act 17 of 2017; effective date, retroactively amended by section 114(1)(a) of Act 23 of 2018 to 1 July 2018, applicable in respect of years of assessment ending on or after that date]

recognised as an asset in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements.

[subsection (16) added by section 50(1)(h) of Act 15 of 2016, as retroactively substituted by section 113(1)(a) of Act 23 of 2018; effective date, retroactively amended by section 113(1)(b) of Act 23 of 2018 to 1 July 2018, applicable in respect of years of assessment ending on or after that date]

29B. Mark-to-market taxation in respect of long-term insurers

(1) For the purposes of this section, unless the context otherwise indicates, any word or expression that has been defined in section 29A must bear the same meaning as defined in that section, and—

"Category III Financial Services Provider" means a financial services provider as defined in section 1 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), that has been issued with a Category III licence in terms of that Act;

"market value", in relation to any asset placed in any policyholder fund as contemplated in section 29A(4), means—

(a) where that asset constitutes a financial instrument that is listed on—

(i) an exchange as defined in section 1 of the Financial Markets Act and licensed under section 9 of that Act; or

(ii) an exchange in a country other than the Republic which has been recognised by the Minister as contemplated in paragraph (c) of the definition of "recognised exchange" in paragraph 1 of the Eighth Schedule,

the sum which a person having the right to freely dispose of that asset might reasonably expect to obtain from a sale of that asset in the open market; or

(b) where that asset is an asset other than an asset contemplated in paragraph (a), the value of that asset as taken into account in determining the investment value of policies as reported to the owners of the policies in respect of the policyholder fund in which the asset is so placed; and

"realisation year", in relation to an insurer, means the first year of assessment of that insurer that ends on or after 29 February 2016.

(2) An insurer must be deemed to have disposed of each asset held by that insurer on 29 February 2016, at the close of the day, in respect of all its policyholder funds, other than an asset that constitutes—

(a) an instrument as defined in section 24J(1);

(b) an interest rate agreement as defined in section 24K(1);

(c) a contractual right or obligation the value of which is determined directly or indirectly with reference to—

(i) an instrument contemplated in paragraph (a);

(ii) an interest rate agreement contemplated in paragraph (b); or

(iii) any specified rate of interest;

(d) trading stock; or

(e) a policy of reinsurance.

(3) Where an asset is deemed to have been disposed of by an insurer as contemplated in subsection (2) on the date contemplated in that subsection—

(a) that asset must be deemed to have been so disposed of on that date for an amount received or accrued equal to the market value of the asset on that date; and

(b) that insurer must be deemed to have immediately reacquired that asset at an expenditure equal to the market value contemplated in paragraph (a), which expenditure must be deemed to be an amount of expenditure actually incurred for the purposes of paragraph 20(1)(a) of the Eighth Schedule.

(4) Where an asset is deemed to have been disposed of by an insurer as contemplated in subsection (2) and that asset, in the hands of that insurer, constitutes an asset as defined in paragraph 1 of the Eighth Schedule, that disposal must not be taken into account for the purposes of determining the amount of any allowance or deduction—

(a) to which that insurer may be entitled in respect of that asset; or

(b) that is to be recovered or recouped by or included in the income of that insurer in respect of that asset.

(5) (a) In addition to any inclusion in any aggregate capital gain or aggregate capital loss of the policyholder funds of an insurer, that insurer must, in respect of each of those policyholder funds, include in the aggregate capital gain or aggregate capital loss of each of those funds for the realisation year and each of the two years of assessment following that realisation year an amount equal to 27.75 per cent of an amount determined in terms of paragraph (b).

(b) The amount to be determined for the purposes of paragraph (a) is an amount equal to the aggregate of all capital gains and capital losses determined in respect of the disposal of any asset as contemplated in subsection (2).

(c) Where a person ceases to conduct the business of an insurer prior to the expiration of the two years of assessment contemplated in paragraph (a), any amount determined in terms of paragraph (b) must, to the extent that the amount has not been included as contemplated in paragraph (a), be so included in the year of assessment during which the person ceases to conduct the business of an insurer.

(6) This section does not apply to any asset held by an insurer if the asset is administered by a Category III Financial Services Provider and that asset is held by that insurer solely for the purpose of providing a linked policy as defined in the Long-term Insurance Act.

30. Public benefit organisations

(1) For the purposes of this Act—

"**public benefit activity**" means—

(a) any activity listed in Part I of the Ninth Schedule; and

(b) any other activity determined by the Minister from time to time by notice in the *Gazette* to be of a benevolent nature, having regard to the needs, interests and well-being of the general public;

"**public benefit organisation**" means any organisation—

(a) which is—

(i) a non-profit company as defined in section 1 of the Companies Act or a trust or an association of persons that has been incorporated, formed or established in the Republic; or

(ii) any branch within the Republic of any company, association or trust incorporated, formed or established in any country other than the Republic that is exempt from tax on income in that other country;

(b) of which the sole or principal object is carrying on one or more public benefit activities, where—

(i) all such activities are carried on in a non-profit manner and with an altruistic or philanthropic intent;

(ii) no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee; and

(c) where—

(i) each such activity carried on by that organisation is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups);

(2) Any activity determined by the Minister in terms of paragraph (b) of the definition of "public benefit activity" in subsection (1) or any conditions prescribed by the Minister in terms of subsection (3)(a) must be tabled in Parliament within a period of 12 months after the date of publication by the Minister of that activity or those conditions in the *Gazette*, for incorporation into this Act.

(3) The Commissioner shall, for the purposes of this Act, approve a public benefit organisation which—

(a) complies with such conditions as the Minister may prescribe by way of regulation to ensure that the activities and resources of such organisation are directed in the furtherance of its object;

(b) has submitted to the Commissioner a copy of the constitution, will or other written instrument under which it has been established and in terms of which it is—

(i) required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of such organisation and no single person directly or indirectly controls the decision making powers relating to that

organisation: Provided that the provisions of this subparagraph shall not apply in respect of any trust established in terms of a will of any person;

(ii) prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established;

(iii) in the case of a public benefit organisation contemplated in paragraph (a)(i) of the definition of "public benefit organisation" in subsection (1), required on dissolution to transfer its assets to—

(aa) any public benefit organisation which has been approved in terms of this section;

(bb) any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity;

(cc) the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a); or

(dd) the National Finance Housing Corporation contemplated in section 10(1)(t)(xvii),

which is required to use those assets solely for purposes of carrying on one or more public benefit activities;

(iiiA) in the case of a branch of a public benefit organisation contemplated in paragraph (a)(ii) of the definition of "public benefit organisation" in subsection (1), is required on termination of its activities in the Republic to transfer the assets of such branch to any public benefit organisation, institution, board, body, department or administration contemplated in subparagraph (iii), if more than 15 per cent of the receipts and accruals attributable to that branch during the period of three years preceding that termination are derived from a source within the Republic;

(v) prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A: Provided that a donor (other than a donor which is an approved public benefit organisation or an institution board or body which is exempt from tax in terms of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation;

(vi) required to submit to the Commissioner a copy of any amendment to the constitution, will or other written instrument under which it was established;

(c) the Commissioner is satisfied is or was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under this Act or any other Act administered by the Commissioner;

(d) has not and will not pay any remuneration, as defined in the Fourth Schedule, to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and has not and will not economically benefit any person in a manner which is not consistent with its objects;

(e) complies with such reporting requirements as may be determined by the Commissioner;

(f) the Commissioner is satisfied that, in the case of any public benefit organisation which provides funds to any association of persons contemplated in paragraph 10(iii) of Part 1 of the Ninth Schedule, has taken reasonable steps to ensure that the funds are utilised for the purpose for which those funds have been provided; and

(h) has not and will not use its resources directly or indirectly to support, advance or oppose any political party.

(3A) The Commissioner may, for the purposes of subsection (3), grant approval in respect of any group of organisations sharing a common purpose, which carry on any public benefit activity under the direction or supervision of a regulating or co-ordinating body, where that body takes such steps, as prescribed by the Commissioner, to exercise control over those organisations in order to ensure that they comply with the provisions of this section.

(3B) (a) Subject to paragraph (b), where an organisation applies for approval, the Commissioner may approve that organisation for the purposes of this section with retrospective effect, if the Commissioner is satisfied that that organisation during the relevant period prior to its application complied with the requirements of a public benefit organisation as defined in subsection (1).

(b) For the purposes of paragraph (a), where the organisation—

(i) has complied with all its obligations under chapters 4, 10 and 11 of the Tax Administration Act, the Commissioner may not extend approval to the years of assessment in respect of which an assessment may in terms of section 99(1) of that Act not be made; or

(ii) has not complied with all its obligations under chapters 4, 10 and 11 of the Tax Administration Act, the Commissioner may not extend approval to the years of assessment in respect of which an assessment could in terms of section 99(1) of that Act, not have been made had the income tax returns relating to those years of assessment been submitted in accordance with section 25(1) of that Act.

[subsection (3B) substituted by section 35 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(3C) Notwithstanding any other provision of this section, the Director of Nonprofit Organisations designated in terms of section 8 of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), may, in respect of any organisation that has been convicted of an offence under that Act, request the Commissioner to withdraw the approval of that organisation in terms of subsection (5) and the Commissioner may pursuant to that request withdraw such approval.

(4) Where the constitution, will or other written instrument does not comply with the provisions of subsection (3)(b), it shall be deemed to so comply if thepersons contemplated in subsection (3)(b)(i) responsible in a fiduciary capacity for the funds and assets of a branch contemplated in paragraph (a)(ii) of the definition of "public benefit organisation" in subsection (1) or any trust established in terms of a will of any person furnishes the Commissioner with a written undertaking that such organisation will be administered in compliance with the provisions of this section.

(5) Where the Commissioner is—

(a) satisfied that any public benefit organisation approved under subsection (3) has during any year of assessment in any material respect; or

(b) during any year of assessment satisfied that any such public benefit organisation has on a continuous or repetitive basis,

failed to comply with the provisions of this section, or the constitution, will or other written instrument under which it is established to the extent that it relates to the provisions of this section, the Commissioner shall after due notice withdraw approval of the organisation with effect

from the commencement of that year of assessment, where corrective steps are not taken by that organisation within a period stated by the Commissioner in that notice.

(5A) Where any regulating or co-ordinating body contemplated in subsection (3A)—

(a) with intent or negligently fails to take any steps contemplated in that subsection to exercise control over any public benefit organisation; or

(b) fails to notify the Commissioner where it becomes aware of any material failure by any public benefit organisation over which it exercises control to comply with any provision of this section,

the Commissioner shall after due notice withdraw the approval of the group of public benefit organisations with effect from the commencement of that year of assessment, where corrective steps are not taken by that regulating or co-ordinating body within a period stated by the Commissioner in that notice.

(6) Where the Commissioner has so withdrawn his approval of such organisation, such organisation shall, within six months or such longer period as the Commissioner may allow after the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any public benefit organisation, institution, board or body or the government as contemplated in subsection (3)(b)(iii).

(6A) As part of—

(a) the dissolution of an organisation contemplated in paragraph (a)(i) of the definition of "public benefit organization" in subsection (1); or

(b) the termination of the activities of a branch contemplated in paragraph (a)(ii) of that definition, if more than 15 per cent of the receipts and accruals attributable to that branch during the period of three years preceding that termination are derived from a source within the Republic,

the organisation or branch must transfer its assets to any public benefit organisation, institution, board or body or the government contemplated in subsection (3)(b)(iii).

(7) If the organisation fails to transfer, or to take reasonable steps to transfer, its assets, as contemplated in subsection (6) or (6A), an amount equal to the market value of those assets which have not been transferred, less an amount equal to the *bona fide* liabilities of the organisation, must for purposes of this Act be deemed to be an amount of taxable income which accrued to such organisation during the year of assessment in which approval was withdrawn or the dissolution of the organisation or termination of activities took place.

(8) The provisions of this section shall not, if the Commissioner is satisfied that the non-compliance giving rise to the withdrawal contemplated in subsection (5) has been rectified, preclude any such organisation from applying for approval in terms of this section in the year of assessment following the year of assessment during which the approval was so withdrawn by the Commissioner.

(10) In the application of the provisions of this Act, the Commissioner may by notice in writing require any person whom the Commissioner may deem able to furnish information in regard to any approved public benefit organisation—

(a) to answer any questions relating to such organisation; or

(b) to make available for inspection by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation; or

(c) to attend at the time and place appointed by the Commissioner for the purposes of producing for examination by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation.

(11) Any person who is in a fiduciary capacity responsible for the management or control of the income and assets of any approved public benefit organisation and who intentionally fails to comply with any provision of this section or of the constitution, will or other written instrument under which

such organisation is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

30A. Recreational clubs

(1) For purposes of this Act, "recreational club" means any non-profit company as defined in section 1 of the Companies Act, society or other association of which the sole or principal object is to provide social and recreational amenities or facilities for the members of that company, society or other association.

(2) The Commissioner must approve a recreational club for the purposes of section 10(1)(cO), if—

(a) that club has submitted to the Commissioner a copy of the constitution or other written instrument in terms of which it is established and which provides that—

(i) it is required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of that club and no single person directly or indirectly controls the decision making powers relating to that club;

(iA) its activities must be carried on in a non-profit manner;

(ii) it is prohibited from directly or indirectly distributing any surplus funds to any person, other than in terms of subparagraph (iii);

(iii) it is required on dissolution to transfer its assets and funds to—

(aa) any other recreational club which is approved by the Commissioner in terms of this section;

(bb) a public benefit organisation contemplated in paragraph (a)(i) of the definition of a "public benefit organisation" in section 30(1) which has been approved in terms of section 30(3);

(cc) any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity; or

(dd) the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a);

(iv) it may not pay any remuneration to any person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered, nor may any remuneration be determined as a percentage of any amounts received or accrued to that club;

(v) all members must be entitled to annual or seasonal membership; and

(vi) members are not allowed to sell their membership rights or any entitlement in terms thereof;

(b) the club undertakes to submit to the Commissioner a copy of any amendment to the constitution or other written instrument under which it is established; and

(c) the Commissioner is satisfied that the club is or was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under this Act or any other Act administered by the Commissioner.

(3) Where the constitution or other written instrument under which the club is established does not comply with the provisions of paragraph (a) of subsection (2), it shall be deemed to so comply if

a person responsible in a fiduciary position for the funds and assets of such club furnishes the Commissioner with a written undertaking by such club that such club will be administered in compliance with the provisions of this section.

(4) (a) Subject to paragraph (b), where a club applies for approval, the Commissioner may approve that club for purposes of this section with retrospective effect, if the Commissioner is satisfied that that club during the period prior to its application complied with the requirements of a "recreational club" as defined in subsection (1).

(b) For the purposes of paragraph (a), where the club—

(i) has complied with all its obligations under chapters 4, 10 and 11 of the Tax Administration Act, the Commissioner may not extend approval to the years of assessment in respect of which an assessment may in terms of section 99(1) of that Act not be made; or

(ii) has not complied with all its obligations under chapters 4, 10 and 11 of the Tax Administration Act, the Commissioner may not extend approval to the years of assessment in respect of which an assessment could in terms of section 99(1) of that Act, not have been made had the income tax returns relating to those years of assessment been submitted in accordance with section 25(1) of that Act.

[subsection (4) substituted by section 36 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(5) Where the Commissioner is—

(a) satisfied that any recreational club approved under subsection (2) has during any year of assessment in any material respect; or

(b) during any year of assessment satisfied that any such recreational club has on a continuous or repetitive basis,

failed to comply with the provisions of this section, or the constitution or other written instrument under which it was established to the extent that it relates to the provisions of this section, the Commissioner shall notify the recreational club that he or she intends to withdraw the approval of that recreational club if no corrective steps are taken by that club within a period stated in that notice.

(6) If no corrective steps are taken by a recreational club as contemplated in subsection (5), the Commissioner must withdraw approval of that club with effect from the commencement of the year of assessment contemplated in subsection (5).

(7) If the Commissioner has withdrawn the approval of a recreational club, that club must within six months after the date of that withdrawal (or such longer period as the Commissioner may allow) transfer or take reasonable steps to transfer its remaining assets to any recreational club, public benefit organisation, institution, board or body or the government, as contemplated in subsection (2)(a)(iii).

(7A) As part of its dissolution the club must transfer its assets to a recreational club, public benefit organisation, institution, board or body or the government, as contemplated in subsection (2)(a)(iii).

(8) If the recreational club fails to transfer, or to take reasonable steps to transfer, its assets as contemplated in subsection (7) or (7A), an amount equal to the market value of those assets which have not been transferred less an amount equal to the *bona fide* liabilities of that recreational club must for purposes of this Act be deemed to be an amount of taxable income which accrued to that recreational club during the year of assessment in which approval was withdrawn or the dissolution took place.

(9) Any person who is in a fiduciary capacity responsible for the management or control of the income and assets of any approved recreational club and who intentionally fails to comply with any

provision of this section or of the constitution, or other written instrument under which such recreational club is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

30B. Associations

(1) For the purposes of this section—

"entity" means—

(a) any mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industry (or an association of such chambers) or local publicity association; or

(b) any—

(i) non-profit company as defined in section 1 of the Companies Act;

(ii) society; or

(iii) other association of persons, established to promote the common interests of persons (being members of the company, society or association of persons) carrying on any particular kind of business, profession or occupation, approved by the Commissioner in accordance with subsection (2);

"member" in the case of a fidelity or indemnity fund includes a contributor to that fund;

"mutual loan association" means an association of which the sole or principal object is to function as a voluntary savings association where participants make regular contributions into a common pool managed by the members for the mutual financial benefit of those members.

(2) Subject to subsections (3) and (4), the Commissioner must approve an entity for the purposes of section 10(1)(d)(iii) or (iv) if—

(a) that entity has submitted to the Commissioner a copy of the constitution or written instrument under which it has been established;

(b) the constitution or written instrument contemplated in paragraph (a) provides that—

(i) the entity must have a committee, board of management or similar governing body consisting of at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of that entity;

(ii) no single person may directly or indirectly control the decision-making powers relating to that entity;

(iii) the entity may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives;

(iv) the entity is required to utilise substantially the whole of its funds for the sole or principal object for which it has been established;

(v) no member may directly or indirectly have any personal or private interest in that entity;

(vi) substantially the whole of the activities of the entity must be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group;

(vii) the entity may not have a share or other interest in any business, profession or occupation which is carried on by its members;

(viii) the entity must not pay to any employee, office bearer, member or other person any remuneration, as defined in the Fourth Schedule, which is excessive, having regard

to what is generally considered reasonable in the sector and in relation to the service rendered;

(ix) substantially the whole of the entity's funding must be derived from its annual or other long-term members or from an appropriation by the government of the Republic in the national, provincial or local sphere;

(x) the entity must as part of its dissolution transfer its assets to—

(aa) another entity approved by the Commissioner in terms of this section;

(bb) a public benefit organisation approved in terms of section 30;

(cc) an institution, board or body which is exempt from tax under section 10(1)(cA)(i); or

(dd) the government of the Republic in the national, provincial or local sphere;

(xi) the persons contemplated in paragraph (b)(i) will submit any amendment of the constitution or written instrument of the entity to the Commissioner within 30 days of its amendment;

(xii) the entity will comply with such reporting requirements as may be determined by the Commissioner from time to time; and

(xiii) the entity is not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103(5).

(3) The requirements contained in subsection (2)(b)(iii) and (v) do not apply in respect of a mutual loan association.

(4) Where the constitution or written instrument of an entity does not comply with subsection (2)(b), the Commissioner may deem it to so comply if the person who has accepted fiduciary responsibility for the funds and assets of that entity furnishes the Commissioner with a written undertaking that the entity will be administered in compliance with that subsection.

(5) Where the Commissioner is—

(a) satisfied that any entity approved in terms of subsection (2) has during any year of assessment in any material respect; or

(b) during any year of assessment satisfied that any such entity has on a continuous or repetitive basis,

failed to comply with this section, or the constitution or written instrument under which it was established to the extent that it relates to this section, the Commissioner must notify the entity that he or she intends to withdraw approval of the entity if corrective steps are not taken by the entity within the period stated in the notice.

(6) If no corrective steps are taken by the entity contemplated in subsection (5), the Commissioner must withdraw approval of that entity with effect from the commencement of the year of assessment contemplated in subsection (5).

(7) If the Commissioner has withdrawn the approval of an entity as contemplated in subsection (6) the entity must within six months after the date of the withdrawal of approval (or such longer period as the Commissioner may allow) transfer, or take reasonable steps to transfer, its remaining assets to any entity, public benefit organisation, institution, board or body or the government of the Republic, contemplated in subsection (2)(b)(x).

(8) If an entity is wound up or liquidated, the entity must, as part of the winding-up or liquidation, transfer its assets remaining after the satisfaction of its liabilities to any entity, public benefit

organisation, institution, board or body or the government of the Republic, contemplated in subsection (2)(b)(x).

(9) If an entity fails to transfer, or to take reasonable steps to transfer, its assets as contemplated in subsection (7) or (8), an amount equal to the market value of those assets which have not been transferred less an amount equal to the *bona fide* liabilities of that entity must for the purposes of this Act be deemed to be an amount of taxable income which accrued to that entity during the year of assessment in which the withdrawal of approval in terms of subsection (6) or the winding-up or liquidation contemplated in subsection (8) took place.

(10) Any person who is in a fiduciary capacity responsible for the management or control of the income and assets of any approved association and who intentionally fails to comply with any provision of this section or of the constitution, or other written instrument under which such association is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

30C. Small business funding entities

(1) The Commissioner must approve a small business funding entity for the purposes of section 10(1)(cQ) if—

(a) that entity is a trust, an association of persons or a non-profit company as defined in section 1 of the Companies Act that has been incorporated, formed or established in the Republic;

(b) (i) the sole or principal object of that entity is the provision of funding for small, medium and micro-sized enterprises; and

(ii) the funding contemplated in subparagraph (i) is—

(aa) provided by that small business funding entity for the benefit of, or is widely accessible to small, medium and micro-sized enterprises;

(bb) provided on a non-profit basis and with an altruistic or philanthropic intent; and

(cc) not intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of that entity, otherwise than by way of reasonable remuneration payable to that fiduciary or employee;

(c) that small business funding entity has submitted to the Commissioner a copy of the constitution or written instrument under which that small business funding entity has been established;

(d) the constitution or written instrument contemplated in paragraph (c) provides that—

(i) (aa) the small business funding entity must have a committee, a board of management or similar governing body consisting of at least three natural persons who are not connected persons in relation to each other to accept the fiduciary responsibility of that small business funding entity;

(bb) not more than fifty per cent of the members of the committee or a board of management contemplated in item (aa) may be employees or directors of any entity providing funding to that small business funding entity or persons who are connected persons in relation to any such employee or director;

(ii) any single person may not directly or indirectly control the decision-making powers relating to that small business funding entity;

(iii) the small business funding entity may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its sole or principal object;

(iv) the small business funding entity may not directly or indirectly distribute any of its funds or assets to any employee in relation to that entity or a person that is a connected person in relation to any such employee or to a person contemplated in subparagraph (i);

(v) the small business funding entity is required to utilise substantially the whole of its funds for its sole or principal object for which it has been established;

(vi) the small business funding entity must within 12 months after the end of the relevant year of assessment distribute or incur the obligation to distribute at least 25 per cent of all amounts received or accrued in respect of assets held, other than any amount received or accrued in respect of the disposal of any of those assets, during that year of assessment;

[subparagraph (vi) substituted by section 52(1) of Act 23 of 2018; effective date 1 January 2019]

(vii) a member of a committee, a board of management or similar governing body of the small business funding entity may not directly or indirectly have any personal or private interest in that small business funding entity;

(viii) substantially the whole of the activities of the small business funding entity must be directed to the furtherance of the sole or principal object of that small business funding entity;

(ix) the small business funding entity may not pay to any employee, office bearer, member or other person any remuneration, as defined in the Fourth Schedule, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered;

(x) the small business funding entity must as part of its dissolution transfer its assets to—

(aa) another small business funding entity approved by the Commissioner in terms of this section;

(bb) a public benefit organisation contemplated in paragraph (a)(i) of the definition of public benefit organisation in section 30(1) that is approved by the Commissioner as a public benefit organisation in terms of that section;

(cc) an institution, board or body which is exempt from tax under section 10(1)(cA)(i); or

(dd) the government of the Republic in the national, provincial or local sphere;

(xi) the persons contemplated in paragraph (d)(i) will submit any amendment of the constitution or written instrument of the small business funding entity to the Commissioner within 30 days of its amendment;

(xii) the small business funding entity will comply with such reporting requirements as may be determined by the Commissioner from time to time; and

(xiii) the small business funding entity is not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103(5).

(2) Where the Commissioner is—

(a) satisfied that any small business funding entity approved in terms of subsection (1) has during any year of assessment in any material respect; or

(b) during any year of assessment satisfied that any small business funding entity approved in terms of subsection (1) has on a continuous or repetitive basis,

failed to comply with this section, or the constitution or written instrument under which that small business funding entity was established to the extent that it relates to this section, the Commissioner must notify the small business funding entity that the Commissioner intends to withdraw approval of the small business funding entity if corrective steps are not taken by the small business funding entity within the period stated in the notice.

(3) If no corrective steps are taken by the small business funding entity as contemplated in subsection (2), the Commissioner must withdraw approval of that small business funding entity with effect from the commencement of the year of assessment contemplated in subsection (2).

(4) If the Commissioner has withdrawn the approval of a small business funding entity as contemplated in subsection (3) the small business funding entity must within six months after the date of the withdrawal of approval (or such longer period as the Commissioner may allow) transfer, or take reasonable steps to transfer, its remaining assets to any small business funding entity, public benefit organisation, institution, board or body or the government of the Republic, as contemplated in subsection (1)(d)(x).

(5) If a small business funding entity is wound up or liquidated, the small business funding entity must, as part of the winding-up or liquidation, transfer its assets remaining after the satisfaction of its liabilities to any small business funding entity, public benefit organisation, institution, board or body or the government of the Republic, as contemplated in subsection (1)(d)(x).

(6) If a small business funding entity fails to transfer, or to take reasonable steps to transfer, its assets as contemplated in subsection (4) or (5), an amount equal to the market value of those assets which have not been transferred less an amount equal to the *bona fide* liabilities of that small business funding entity must for the purposes of this Act be deemed to be an amount of taxable income which accrued to that small business funding entity during the year of assessment in which the withdrawal of approval in terms of subsection (4) or the winding-up or liquidation contemplated in subsection (5) took place.

(7) Any person who is in a fiduciary capacity responsible for the management of any small business funding entity and who intentionally fails to comply with any provision of this section or of the constitution, or other written instrument under which that small business funding entity is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

31. Taxable income in respect of international transactions to be based on arm's length principle

(1) For the purposes of this section—

"**affected transaction**" means any transaction, operation, scheme, agreement or understanding where—

(a) that transaction, operation, scheme, agreement or understanding has been directly or indirectly entered into or effected between or for the benefit of either or both—

(i) (aa) a person that is a resident; and

(bb) any other person that is not a resident;

(ii) (aa) a person that is not a resident; and

(bb) any other person that is not a resident that has a permanent establishment in the Republic to which the transaction, operation, scheme, agreement or understanding relates;

(iii) (aa) a person that is a resident; and

(bb) any other person that is a resident that has a permanent establishment outside the Republic to which the transaction, operation, scheme, agreement or understanding relates; or

(iv) (aa) a person that is not a resident; and

(bb) any other person that is a controlled foreign company in relation to any resident,

and those persons are connected persons in relation to one another; and

(b) any term or condition of that transaction, operation, scheme, agreement or understanding is different from any term or condition that would have existed had those persons been independent persons dealing at arm's length;

"**financial assistance**" includes any—

(a) debt; or

(b) security or guarantee.

(2) Where—

(a) any transaction, operation, scheme, agreement or understanding constitutes an affected transaction; and

(b) any term or condition of that transaction, operation, scheme, agreement or understanding—

(i) is a term or condition contemplated in paragraph (b) of the definition of "affected transaction"; and

(ii) results or will result in any tax benefit being derived by a person that is a party to that transaction, operation, scheme, agreement or understanding or by any resident in relation to a controlled foreign company contemplated in subparagraph (iv) of the definition of "affected transaction",

[subparagraph (ii) substituted by section 31(1) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of years of assessment commencing on or after that date]

the taxable income or tax payable by any person contemplated in paragraph (b)(ii) that derives a tax benefit contemplated in that paragraph must be calculated as if that transaction, operation, scheme, agreement or understanding had been entered into on the terms and conditions that would have existed had those persons been independent persons dealing at arm's length.

(3) To the extent that there is a difference between—

(a) any amount that is, after taking subsection (2) into account, applied in the calculation of the taxable income of any resident that is a party to an affected transaction; and

(b) any amount that would, but for subsection (2), have been applied in the calculation of the taxable income of the resident contemplated in paragraph (a),

the amount of that difference must, if that person is a resident and the other person to the affected transaction is a person as contemplated in paragraph (a)(i)(bb) or (a)(iii)(bb) of the definition of "affected transaction"—

(i) if that resident is a company, be deemed to be a dividend consisting of a distribution of an asset *in specie* declared and paid by that resident to that other person; or

(ii) if that resident is a person other than a company, be deemed, for purposes of Part V, to be a donation made by that resident to that other person,

on the last day of the period of six months following the end of the year of assessment in respect of which that adjustment is made:

Provided that where the amount of that difference was prior to 1 January 2015 deemed to be a loan that constitutes an affected transaction, so much of that loan as has not been repaid before 1 January 2015 must—

(a) if that resident is a company, be deemed to be a dividend consisting of a distribution of an asset *in specie* that was declared and paid by that resident to that other person; or

(b) if that resident is a person other than a company, be deemed, for purposes of Part V, to be a donation made by that resident to that other person,

on 1 January 2015.

(4) For the purposes of subsection (2), where any transaction, operation, scheme, agreement or understanding has been directly or indirectly entered into or effected as contemplated in that subsection in respect of—

(a) the granting of any financial assistance; or

(b) intellectual property as contemplated in the definition of "intellectual property" in section 23I(1) or knowledge,

"connected person" means a connected person as defined in section 1:

Provided that the expression "and no holder of shares holds the majority voting rights in the company" in paragraph (d)(v) of that definition must be disregarded.

(5) Where any transaction, operation, scheme, agreement or understanding has been entered into between a headquarter company and—

(a) any other person that is not a resident and that transaction, operation, scheme, agreement or understanding is in respect of the granting of financial assistance by that other person to that headquarter company, this section does not apply to so much of that financial assistance that is directly applied as financial assistance to any foreign company in which the headquarter company directly or indirectly (whether alone or together with any other company forming part of the same group of companies as that headquarter company) holds at least 10 per cent of the equity shares and voting rights;

(b) any foreign company in which the headquarter company directly or indirectly (whether alone or together with any other company forming part of the same group of companies as that headquarter company) holds at least 10 per cent of the equity shares and voting rights and that transaction, operation, scheme, agreement or understanding comprises the granting of financial assistance by that headquarter company to that foreign company, this section does not apply to that financial assistance;

(c) any other person that is not a resident and that transaction, operation, scheme, agreement or understanding is in respect of the granting of the use, right of use or permission to use any intellectual property as defined in section 23I(1) by that other person to that headquarter company, this section does not apply to the extent that the headquarter company—

(i) grants that use, right of use or permission to use that intellectual property to any foreign company in which the headquarter company directly or indirectly (whether alone or together with any other company forming part of the same group of companies as that headquarter company) holds at least 10 per cent of the equity shares and voting rights; and

(ii) does not make use of that intellectual property otherwise than as contemplated in subparagraph (i); or

(d) any foreign company in which the headquarter company directly or indirectly (whether alone or together with any other company forming part of the same group of companies as that headquarter company) holds at least 10 per cent of the equity shares and voting rights and that transaction, operation, scheme, agreement or understanding comprises the granting

of the use, right of use or permission to use any intellectual property as defined in section 23I(1) by that headquarter company to that foreign company, this section does not apply to that granting to that foreign company.

(6) Where any transaction, operation, scheme, agreement or understanding that comprises the granting of—

(a) financial assistance; or

(b) the use, right of use or permission to use any intellectual property as defined in section 23I,

by a person that is a resident (other than a headquarter company) to a controlled foreign company in relation to that resident or in relation to a company that forms part of the same group of companies as that resident, this section must not be applied in calculating the taxable income or tax payable by that resident in respect of any amount received by or accrued to that resident in terms of that transaction, operation, scheme, agreement or understanding if—

(ii) that controlled foreign company has a foreign business establishment as defined in section 9D(1); and

(iii) the aggregate amount of tax payable to all spheres of government of any country other than the Republic by that controlled foreign company in respect of any foreign tax year of that controlled foreign company during which that transaction, operation, scheme, agreement or understanding exists is at least 67,5 per cent of the amount of normal tax that would have been payable in respect of any taxable income of that controlled foreign company had that controlled foreign company been a resident for that foreign tax year: Provided that the aggregate amount of tax so payable must be determined—

[words preceding the proviso substituted by section 37(1)(c) of Act 34 of 2019; effective date 1 January 2020, applicable in respect of years of assessment ending on or after that date]

(aa) after taking into account any applicable agreement for the prevention of double taxation and any credit, rebate or other right of recovery of tax from any sphere of government of any country other than the Republic; and

(bb) after disregarding any loss in respect of a year other than that foreign tax year or from a company other than that controlled foreign company.

(7) Where—

(a) any transaction, operation, scheme, agreement or understanding has been entered into between a company that is a resident (for purposes of this subsection referred to as "resident company") or any company that forms part of the same group of companies as that resident company and any foreign company in which that resident company (whether alone or together with any other company that forms part of the same group of companies as that resident company) directly or indirectly holds in aggregate at least 10 per cent of the equity shares and voting rights and that transaction, operation, scheme, agreement or understanding comprises the granting of financial assistance that constitutes a debt owed by that foreign company to that resident company or any company that forms part of the same group of companies as that resident company;

(b) that foreign company is not obliged to redeem that debt in full within 30 years from the date the debt is incurred;

(c) the redemption of the debt in full by the foreign company is conditional upon the market value of the assets of the foreign company not being less than the market value of the liabilities of the foreign company; and

(d) no interest accrued in respect of the debt during the year of assessment,

this section must not apply to that debt.

33. Assessment of owners or charterers of ships or aircraft who are not residents of the Republic

(1) Any person other than a resident who embarks passengers or loads livestock, mails or goods in the Republic, as an owner or charterer of any ship or aircraft, shall be deemed to have derived therefrom (apart from any taxable income derived by him from other sources) a taxable income of 10 per cent of the amount payable to him or to any agent on his behalf, whether the amount be payable in or outside the Republic, in respect of passengers, livestock, mails and goods so embarked or loaded, but the provisions of this section shall not apply to any such person who renders accounts which satisfactorily disclose the taxable income derived by him from the embarking of passengers or the loading of livestock, mails and goods as aforesaid.

(2) Where the person so embarking passengers or loading livestock, mails or goods has no recognized agent in the Republic other than the master of the ship or the pilot of the aircraft in connection with which any such amounts are payable, or where the agent fails to make returns of any such amounts payable in respect of any ship or aircraft—

(a) the Commissioner may make the assessment from such information as may be available to him;

(b) the tax thereon shall be payable to the Commissioner prior to the clearance of the ship or aircraft;

(c) the principal officer of customs at the port or airport where such ship or aircraft is being cleared shall have power to detain the clearance until such payment is made; and

(d) upon such payment the master, pilot or agent (as the case may be) shall be entitled to a certificate from such officer of customs that the amount so paid has been paid under the provisions of this Act, and such certificate shall be sufficient warrant to such master, pilot or agent of the amount so paid.

35A. Withholding of amounts from payments to non-resident sellers of immovable property

(1) Any person (hereinafter referred to as "the purchaser") who must pay any amount to any other person who is not a resident (hereinafter referred to as "the seller"), or to any other person for or on behalf of that seller, in respect of the disposal by that seller of any immovable property in the Republic must, subject to subsection (2), withhold from the amount which that person must so pay, an amount equal to—

(a) 7,5 per cent of the amount so payable, in the case where the seller is a natural person;

(b) 10 per cent of the amount so payable, in the case where the seller is a company;

(c) 15 per cent of the amount so payable, in the case where the seller is a trust; and

(d) a percentage of the amount so payable as the Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, with effect from a date mentioned in that Announcement.

(1A) If the Minister makes an announcement contemplated in subsection (1)(d), that rate comes into effect on the date determined by the Minister in that announcement and continues to apply for a period of 12 months from that date subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.

(2) The seller may apply to the Commissioner, in the form and at the place as the Commissioner may determine, for a directive that no amount or a reduced amount be withheld by the purchaser in terms of subsection (1) solely having regard to—

(a) any security furnished for the payment of any tax due on the disposal of the immovable property by the seller;

(b) the extent of the assets of the seller in the Republic;

(c) whether that seller is subject to tax in respect of the disposal of the immovable property; and

(d) whether the actual liability of that seller for tax in respect of the disposal of the immovable property is less than the amount contemplated in subsection (1).

(3) (a) The amount withheld from any payment to the seller in terms of subsection (1) is an advance in respect of that seller's liability for normal tax for the year of assessment during which that property is disposed of by that seller.

(b) If the seller does not submit a return in respect of that year of assessment within 12 months after the end of that year of assessment, the payment of the amount in terms of subsection (4) is a sufficient basis for an assessment in terms of section 95 of the Tax Administration Act.

(4) The amount withheld by a purchaser in terms of subsection (1), must be paid to the Commissioner —

(a) where that purchaser is a resident, within 14 days after the date on which that amount was so withheld; or

(b) where that purchaser is not a resident, within 28 days after the date on which that amount was so withheld.

(5) If an amount has been withheld in terms of subsection (1) from any amount payable in a foreign currency, that amount so withheld must be translated to the currency of the Republic at the spot rate on the date that the amount is paid to the Commissioner.

(6) The purchaser must, together with the payment contemplated in subsection (4), submit to the Commissioner a return.

(7) A purchaser is personally liable under the circumstances contemplated in section 157 of the Tax Administration Act, for the amount that must be withheld under subsection (1) only if the purchaser knows or should reasonably have known that the seller is not a resident and must pay that amount to the Commissioner not later than the date on which payment should have been made if the amount had in fact been withheld.

(8) Subsection (7) does not apply if an estate agent or conveyancer assists in the disposal of the immovable property and that estate agent or conveyancer fails to notify the purchaser as contemplated in subsection (11).

(9) If a purchaser fails to pay any amount contemplated in subsection (1) to the Commissioner within the period allowed for payment in terms of subsection (4), that purchaser must pay a penalty equal to ten per cent of the amount, in addition to any other penalty or charge for which he or she may be liable under this Act.

(11) Any estate agent and any conveyancer who is entitled to any remuneration or other payment in respect of services rendered in connection with the disposal of the immovable property by the seller or the registration of transfer, as the case may be, must before any payment is made to the seller each notify the purchaser in writing of the fact that the seller is not a resident and that the provisions of this section may apply.

(12) If an estate agent or conveyancer knows or should reasonably have known that the seller is not a resident and fails to comply with subsection (11), that failing estate agent or conveyancer is jointly

and severally liable for the payment of the amount which the purchaser is required to withhold and pay to the Commissioner in terms of this section, but limited to the amount of remuneration or other payment in respect of the services rendered in connection with the disposal of the immovable property by the seller or the registration of transfer, as the case may be.

(13) The estate agent or conveyancer who paid an amount in terms of subsection (12) is deemed to be a withholding agent for purposes of the Tax Administration Act.

(14) This section does not apply—

(a) if the amounts payable by the purchaser to the seller and to any other person for or on behalf of the seller, in respect of the acquisition by that purchaser of the immovable property, in aggregate do not exceed R2 million; or

(b) in respect of any deposit paid by a purchaser for purposes of securing the disposal of the immovable property by the seller to that purchaser, until the agreement for that disposal has become unconditional, in which case any amount which would have been required to be withheld from the amount of that deposit, must be withheld from the first following payments made by that purchaser in respect of that disposal.

(15) For purposes of this section—

"**conveyancer**" means a "conveyancer" as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

"**estate agent**" means an "estate agent" as defined in section 1 of the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976);

"**foreign currency**" means any currency other than the currency of the Republic;

"**immovable property**" means immovable property contemplated in paragraph 2(1)(b)(i) and (2) of the Eighth Schedule.

36. Calculation of redemption allowance and unredeemed balance of capital expenditure in connection with mining operations

(7C) Subject to the provisions of subsections (7E), (7F) and (7G), the amounts to be deducted under section 15(a) from income derived from the working of any producing mine shall be the amount of capital expenditure incurred.

(7E) The aggregate of the amounts of capital expenditure determined under subsection (7C) in respect of any year of assessment in relation to any mine or mines shall not exceed the taxable income (as determined before the deduction of any amount allowable under section 15(a), but after the set-off of any balance of assessed loss incurred by the taxpayer in relation to such mine or mines in any previous year which has been carried forward from the preceding year of assessment) derived by the taxpayer from mining, and any amount by which the said aggregate would, but for the provisions of this subsection, have exceeded such taxable income as so determined, shall be carried forward and be deemed to be an amount of capital expenditure incurred during the next succeeding year of assessment in respect of the mine or mines to which such capital expenditure relates.

(7EA) Subject to paragraph 12A(6)(a) to (d) and (f) of the Eighth Schedule, where a debt benefit, as defined in section 19, arises in respect of a debt that is owed by a person and that debt was used directly or indirectly to fund any amount of capital expenditure incurred, the debt benefit in respect of that debt must be applied to reduce any amount of capital expenditure incurred in the year of assessment that the debt benefit arises: Provided that any amount of the debt benefit that exceeds the capital expenditure incurred in the year of assessment that the debt benefit arises, must be treated as an amount received by or accrued to that person carrying on mining operations during that year of assessment in respect of a disposal of assets the cost of which has been included in capital expenditure incurred in respect of the mine to which that capital expenditure relates.

(7F) The aggregate of the amounts of capital expenditure determined under subsection (7C) in respect of any year of assessment in relation to any one mine shall, unless the Minister, after consultation with the Cabinet member responsible for mineral resources and having regard to any relevant fiscal, financial or technical implications, otherwise directs, not exceed the taxable income (as determined before the deduction of any amount allowable under section 15(a), but after the set-off of any balance of assessed loss incurred by the taxpayer in relation to that mine in any previous year which has been carried forward from the preceding year of assessment) derived by the taxpayer from mining on that mine, and any amount by which the said aggregate would, but for the provisions of this subsection, have exceeded such taxable income as so determined, shall be carried forward and be deemed to be an amount of capital expenditure incurred during the next succeeding year of assessment in respect of that mine: Provided that where the taxpayer was on 5 December 1984 carrying on mining operations on two or more mines, the said mines shall for the purposes of this subsection be deemed to be one mine.

(7G) (a) Where in the case of any mine in respect of which mining operations or any related operations were or are commenced by the taxpayer after 14 March 1990 (in this subsection referred to as a new mine) an amount of capital expenditure falls to be disallowed under the provisions of subsection (7F), there shall, notwithstanding the provisions of that subsection, be deducted from the total taxable income derived by the taxpayer from mining (as determined after the deduction of any capital expenditure which does not fall to be disallowed under the said provisions and after the set-off of any assessed loss incurred by him from mining operations in a previous year of assessment which has been carried forward) so much of the total amount of capital expenditure which has been so disallowed in relation to all producing new mines owned by the taxpayer as does not exceed 25 per cent of such taxable income.

(b) The provisions of paragraph (a) shall not apply to capital expenditure incurred in respect of any new mine—

(i) which has been disposed of by the taxpayer in the current or any previous year of assessment; or

(ii) if the taxpayer is a company and its acquisition of the right to mine or the mineral rights in respect of such mine was financed wholly or partly by the issue of any share in respect of which any dividend or foreign dividend is to be calculated by reference to that portion of the company's profits which is attributable to the operation of such mine.

(10) Where separate and distinct mining operations are carried on in mines that are not contiguous, the allowance for redemption of capital expenditure shall be computed separately.

(11) For the purposes of this section—

"capital expenditure" means—

(a) expenditure (other than interest or finance charges) on shaft sinking and mine equipment (other than expenditure referred to in paragraph (d)); and

(b) expenditure on development, general administration and management (including any interest and other charges payable after the thirty-first day of December, 1950, on loans utilized for mining purposes) prior to the commencement of production or during any period of non-production; and

(c) in the case of any post-1973 gold mine or any post-1990 gold mine, an allowance calculated at the rate of 10 per cent per annum in the case of a post-1973 gold mine or 12 per cent per annum in the case of any post-1990 gold mine on the amount of the aggregate of—

(i) the expenditure referred to in paragraphs (a) and (b), excluding any interest and other charges on loans referred to in paragraph (b), if the mine is a post-1973 gold mine or a post-1990 gold mine; and

(ii) the amount (if any) allowed to rank as capital expenditure in terms of section 37;

(iii) any expenditure incurred during any period of production on development on any reef on which at the date of such development stoping has not yet commenced;

(iv) the instalments of expenditure referred to in paragraph (d); and

(v) the unredeemed balance of the aggregate determined in terms of this paragraph up to the end of the year of assessment immediately preceding the year of assessment under charge and which shall include the capital allowance determined in terms of this paragraph for such preceding year of assessment,

if the mine is a post-1973 gold mine, a post-1990 gold mine, for the period from the end of the month in which the expenditure is actually incurred up to the end of the year of assessment immediately preceding the first year of assessment in respect of which the determination of the taxable income derived from the working of such mine does not result in an assessed loss or nil: Provided that—

(aa) the amount under this paragraph shall not be calculated for any period during which mining operations are not carried on in accordance with the terms of the relevant—

(A) mining authorization issued under the Minerals Act, 1991 (Act No. 50 of 1991); or

(B) mining right or mining permit issued in terms of the Mineral and Petroleum Resources Development Act;

(bb) notwithstanding anything to the contrary in any law contained, the amount under this paragraph shall not be taken into account for the purpose of—

(A) calculating the allowance provided for in section 25(2) of the Mining Rights Act, 1967;

(B) determining the profits of which a share is payable to the State in terms of any mining authorization issued under the Minerals Act, 1991 (Act No. 50 of 1991); or

(C) determining the amounts payable to the State in terms of the transitional mineral and petroleum provisions contemplated in Schedule 3 of the Taxation Laws Amendment Act, 2004 (Act No. 16 of 2004);

(cc) the unredeemed balance of the aggregate of the amounts referred to in subparagraphs (i) to (v), inclusive, of this paragraph, shall be determined by the deduction from such aggregate at the end of every year of assessment—

(i) of the taxable income derived from the working of such mine for such year of assessment, as determined before the deduction of any amount allowable under section 15(a) in relation to such mine and before the set-off in terms of section 20(1)(a) of any balance of assessed loss which is attributable to any deduction made under section 15(a) in relation to such mine; and

(ii) where the mine concerned is a mine to which subsection (7G) applies, an amount equal to that portion of the capital expenditure of such mine which has been set off against the taxable income of another mine or mines during such year of assessment;

(dd) the sum of the expenditure contemplated in this paragraph shall be reduced by the sum of the amounts received or accrued during the said relevant period from disposals of assets contemplated in the definition of "capital expenditure incurred";

(gg) notwithstanding anything to the contrary in this paragraph, the instalment of expenditure which is in terms of paragraph (d) deemed to be payable during a year

of assessment shall qualify for the calculation of the amount under this paragraph as from the first day of the year of assessment following the said year of assessment;

(hh) where a sale, transfer, lease or cession of any mining property, as contemplated in section 37, occurs which results in the disposal of an asset in respect of which the provisions of paragraph (d) are applicable, so much of the effective value as relates to the asset so disposed of shall qualify for the calculation of the amount under this paragraph as from the first day of the year of assessment following the year of assessment during which the agreement of sale, transfer, lease or cession of that mining property takes effect; and

(d) expenditure (excluding the cost of land, surface rights and servitudes) the payment of which has become due on or after 1 July 1989 in respect of the acquisition, erection, construction, improvement or laying out of—

(i) housing for residential occupation by the taxpayer's employees (other than housing intended for sale) and furniture for such housing;

(ii) infrastructure in respect of residential areas developed for sale to the taxpayer's employees;

(iii) any hospital, school, shop or similar amenity (including furniture and equipment) owned and operated by the taxpayer mainly for the use of his employees or any garage or carport for any motor vehicle referred to in subparagraph (vi);

(iv) recreational buildings and facilities owned and operated by the taxpayer mainly for the use of his employees;

(v) any railway line or system having a similar function for the transport of minerals from the mine to the nearest public transport system or outlet;

(vi) motor vehicles intended for the private or partly private use of the taxpayer's employees:

Provided that—

(aa) such expenditure shall for the purposes of this definition be deemed to be payable in ten successive equal annual instalments or, where subparagraph (vi) is applicable, five successive equal annual instalments, the first of which shall be deemed to be payable on the date on which payment of the relevant expenditure became due and the succeeding instalments on the appropriate anniversaries of that date, but if any such anniversary falls on a date after the asset to which such expenditure relates has been sold, disposed of or scrapped by the taxpayer, the instalment of such expenditure so deemed to be payable on such anniversary shall be disregarded;

(bb) where it is shown to the satisfaction of the Commissioner that the life of the relevant mine will extend over a period which is shorter than the period during which the said instalments are so deemed to be payable, the Commissioner may reduce the number of instalments relating to the expenditure not yet redeemed and the amount of each instalment shall be determined by dividing the amount of the expenditure remaining to be redeemed by the number of years in the remainder of the life of the mine;

(cc) where any asset the expenditure in respect of which has qualified as capital expenditure under this paragraph is sold, disposed of or scrapped by the taxpayer during any year of assessment, an allowance shall be made in respect of that asset, equal to the amount by which the full amount of the expenditure incurred by the taxpayer in respect of that asset, as contemplated in this paragraph, exceeds the total amount of all the instalments of such expenditure which are deemed by paragraph (aa) of this proviso to be payable before the asset was sold, disposed of or scrapped, and in such case the amount of the said allowance shall be deemed to be the final instalment of the said expenditure made on the date on which the asset was sold, disposed of or scrapped;

(dd) where a taxpayer completes an improvement as contemplated in section 12N in respect of the items contemplated in subparagraph (i), (ii), (iii), (iv) or (v), the expenditure incurred by the taxpayer to complete the improvement shall be deemed to be expenditure for the purposes of this section;

(e) where that trade constitutes mining, any expenditure incurred in terms of a mining right pursuant to the Mineral and Petroleum Resources Development Act other than in respect of infrastructure or environmental rehabilitation;

(eA) expenditure (excluding the cost of land, surface rights and servitudes) actually incurred and paid during a year of assessment in respect of a social and labour plan for the purposes of the contributions by holders of mining rights towards the socioeconomic development of the areas in which those holders are operating and that expenditure is in respect of the acquisition, erection, construction, improvement or laying out of—

(i) housing for residential occupation (other than housing intended for sale) and furniture for such housing;

(ii) infrastructure in respect of residential areas developed;

(iii) any hospital, school, shop or similar amenity (including furniture and equipment); or

(iv) recreational buildings and facilities:

Provided that—

(aa) such expenditure shall for the purposes of this definition be deemed to be paid in ten successive equal annual instalments, the first of which shall be deemed to be paid on the date on which payment of the relevant expenditure was made and the succeeding instalments on the appropriate anniversaries of that date, but if any such anniversary falls on a date after the asset to which such expenditure relates has been sold, disposed of or scrapped by the taxpayer, the instalment of such expenditure so deemed to be paid on such anniversary shall be disregarded;

(bb) where it is shown to the satisfaction of the Commissioner that the life of the relevant mine will extend over a period which is shorter than the period during which the said instalments are so deemed to be paid, the Commissioner may reduce the number of instalments relating to the expenditure not yet redeemed and the amount of each instalment shall be determined by dividing the amount of the expenditure remaining to be redeemed by the number of years in the remainder of the life of the mine; and

(cc) where any asset the expenditure in respect of which has qualified as capital expenditure under this paragraph is sold, disposed of or scrapped by the taxpayer during any year of assessment, an allowance shall be made in respect of that asset, equal to the amount by which the full amount of the expenditure paid by the taxpayer in respect of that asset, as contemplated in this paragraph, exceeds the total amount of all the instalments of such expenditure which are deemed by paragraph (aa) of this proviso to be paid before the asset was sold, disposed of or scrapped, and in such case the amount of the said allowance shall be deemed to be the final installment of the said expenditure made on the date on which the asset was sold, disposed of or scrapped;

(f) in respect of the disposal of any low-cost residential unit of the taxpayer, an amount equal to 10 per cent of any amount owing to the taxpayer or an "associated institution", as defined in the Seventh Schedule, in relation to the taxpayer by the employee in respect of the unit at the end of the taxpayer's year of assessment: Provided that no amount shall be taken into

account in terms of this paragraph in the eleventh and subsequent years of assessment, and that this paragraph shall not apply in respect of any disposal by the taxpayer if—

(i) the disposal is subject to any condition other than a condition in terms of which the employee is required—

(aa) on termination of employment; or

(bb) in the case of consistent failure for a period of three months on the part of the employee to pay an amount owing to the taxpayer or an "associated institution", as defined in the Seventh Schedule, in relation to the taxpayer in respect of a low-cost residential unit,

to dispose of the low-cost residential unit to the taxpayer (or any associated institution, as defined in the Seventh Schedule, in relation to the taxpayer) for an amount equal to the actual cost (other than borrowing or finance costs) to the employee of the unit and the land on which the unit is erected;

(ii) the employee must pay interest to the taxpayer in respect of the amount owing to the taxpayer by the employee in respect of the unit; or

(iii) the disposal is for an amount that exceeds the actual cost (other than borrowing or finance costs) to the taxpayer of the unit and the land on which the unit is erected:

Provided further that if the amount owing or any part thereof is paid to the taxpayer, the taxpayer is deemed to have recovered or recouped an amount equal to the lesser of—

(i) the amount so paid; or

(ii) the amount of the expenditure in terms of this section in the current and any previous year of assessment;

"capital expenditure incurred", for the purpose of determining the amount of capital expenditure incurred during any period in respect of any mine, means the amount (if any) by which the expenditure that is incurred during such period in respect of such mine and is capital expenditure, exceeds the sum of the amounts received or accrued during the said period from disposals of assets the cost of which has in whole or in part been included in capital expenditure taken into account (whether under this Act or any previous Income Tax Act) for the purposes of any deduction in respect of such mine under section 15(a) of this Act or the corresponding provisions of any previous Income Tax Act;

"expenditure on shaft sinking" includes the expenditure on sumps, pump-chambers, stations and ore bins accessory to a shaft;

"expenditure" means net expenditure after taking into account any rebates or returns from expenditure, regardless of when such last-mentioned expenditure was incurred;

"social and labour plan" means social and labour plan as contemplated in Part II of the Mineral and Petroleum Resources Development Regulations, 2004 (Government Notice R. 527 published in *Government Gazette* No. 26275 of 23 April 2004), made by the Minister of Minerals and Energy in terms of section 107(1) of the Mineral and Petroleum Resources Development Act.

(12) The balance of capital expenditure unredeemed at the commencement of the first year of assessment chargeable under this Act shall be the balance shown to be unredeemed at the end of the last year of assessment chargeable under the Income Tax Act, 1941.

37. Calculation of capital expenditure on sale, transfer, lease or cession of mining property

(1) For the purposes of this Act, but subject to subsection (1A), whenever a taxpayer—

(a) sells, transfers, leases or cedes any mining property; and

(b) disposes of any assets contemplated in section 36(11) (hereinafter referred to as "the capital assets") in consequence of the sale, transfer, lease or cession contemplated in paragraph (a),

the person acquiring those capital assets shall be deemed to have acquired such capital assets at a cost equal to the effective value of those capital assets to that person on the effective date of that agreement of sale, transfer, lease or cession of the mining property, and the said cost shall be deemed to be expenditure that is incurred by that person during the period of assessment during which that agreement takes effect and to be capital expenditure which is in respect of such period required to be taken into account for the purposes of the definition of "capital expenditure incurred" in section 36(11).

(1A) Where any consideration is given by the person acquiring the assets disposed of by the taxpayer, as contemplated in subsection (1), and the effective value of all those assets (including any mining property) so acquired, exceeds that consideration, the amount of the cost and expenditure in respect of the capital assets shall, for the purposes of subsection (1), be deemed to be an amount which bears to the total amount of such consideration the same ratio as such effective value of those capital assets bears to the effective value to that person of all the assets (including any mining property) so disposed of to that person.

(2) For the purposes of paragraph (j) of the definition of "gross income" in section 1 and section 36, the taxpayer who disposes of any capital assets contemplated in subsection (1), shall be deemed to have disposed of such capital assets for a consideration equal in value to the cost of those capital assets to the person acquiring such capital assets as determined under subsection (1) and (1A), and such consideration shall be deemed to have been received by or to have accrued to the said taxpayer on the effective date of the agreement of sale, transfer, lease or cession.

(3) If the value of the consideration given or the value of the property disposed of is in dispute, the value may be fixed by the Commissioner and shall be determined—

(a) in the case of any mining property, in the same manner as if transfer duty were payable; or

(b) in the case of any capital asset, at the market value of such capital asset.

(4) The effective value on the effective date of the agreement of sale, transfer, lease or cession, of all the assets disposed of, shall be determined by the Director General for Minerals and Energy who shall, notwithstanding the repeal of the Second Schedule to the Transvaal Mining Leases and Mineral Law Amendment Act, 1918 (Act No. 30 of 1918), for the purposes of such determination have all the powers which were conferred upon him by the provisions of that Schedule.

(5) For the purpose of this section, "mining property" means—

(a) any land on which mining is carried on; or

(b) any right to minerals (including any right to mine for minerals) and a lease or sub-lease of such a right.

37A. Closure rehabilitation company or trust

(1) For purposes of determining the taxable income derived by a person from carrying on any trade, any cash paid during any year of assessment commencing on or after 2 November 2006 by that person to a company or trust shall be deducted from that person's income if—

(a) the sole object of that company or trust is to apply its property solely for rehabilitation upon premature closure, decommissioning and final closure, and post closure coverage of any latent and residual environmental impacts on the area covered in terms of any permit, right, reservation or permission contemplated in paragraph (d)(i)(aa) to restore one or more areas to their natural or predetermined state, or to a land use which conforms to the generally accepted principle of sustainable development;

(b) that company or trust holds assets solely for purposes contemplated in paragraph (a);

(c) that company or trust makes distributions solely for purposes contemplated in paragraph (a), or subsection (3) or (4); and

(d) that person—

(i) (aa) holds a permit or right in respect of prospecting, exploration, mining or production, an old order right or OP26 right as defined in item 1 of Schedule II or any reservation or permission for or right to the use of the surface of land as contemplated in item 9 of Schedule II to the Mineral and Petroleum Resources Development Act; or

(bb) is engaged in prospecting, exploration, mining or production in terms of any permit, right, reservation or permission as contemplated in item (aa); or

(ii) after approval by the Commissioner, paid any cash to that company or trust and that payment was not part of any transaction, operation or scheme designed solely or mainly for purposes of shifting the deduction contemplated in this subsection from another person to that person.

(2) The company or trust contemplated in subsection (1) may only hold—

(a) financial instruments issued by any—

(i) collective investment scheme as regulated in terms of the Collective Investment Schemes Control Act;

(ii) long-term insurer as regulated in terms of the Long-term Insurance Act;

(iii) bank as regulated in terms of the Banks Act; or

(iv) mutual bank as regulated in terms of the Mutual Banks Act, 1993 (Act No. 124 of 1993);

(b) financial instruments of a listed company unless—

(i) those financial instruments are issued by a person contemplated in subsection (1)(d); or

(ii) those financial instruments are issued by a person that is a connected person in relation to a person contemplated in subsection (1)(d);

(c) financial instruments issued by any sphere of government in the Republic; or

(d) any other investments which were held by that company or trust before 18 November 2003.

(3) To the extent that the Cabinet member responsible for mineral resources is satisfied that all of the areas in terms of any permit, right, reservation or permission contemplated in subsection (1)(d)(i)(aa) that have been rehabilitated as contemplated in subsection (1)(a), the company or trust in respect of those areas must be wound-up or liquidated and its assets remaining after the satisfaction of its liabilities must be transferred to—

(a) another company or trust as contemplated in this section as approved by the Commissioner; or

(b) if no such company or trust has been established, to an account or trust prescribed by the Cabinet member responsible for mineral resources as approved of by the Commissioner if the Commissioner is satisfied that such company or trust satisfies the objects of subsection (1)(a).

(4) If the Cabinet member responsible for mineral resources is satisfied that a company or trust as contemplated in subsection (1)(a)—

(a) will be able to satisfy all of the liabilities of that company or trust; and

(b) such company or trust has sufficient assets to rehabilitate and restore, as contemplated in subsection (1)(a), all areas to which any permit, right, reservation or permission contemplated in subsection (1)(d)(i)(aa) relates, as the case may be,

that company or trust may transfer assets not required for purposes of paragraphs (a) and (b) to another company or trust established in terms of this section as approved by the Commissioner.

(5) (a) The constitution of a company or the instrument establishing a trust contemplated in this section must incorporate the provisions of this section and any amendments thereto.

(b) Where the constitution of a company or the instrument establishing a trust contemplated in this section does not comply with this section, it shall be deemed to comply for a period not exceeding two years, if the person responsible in a fiduciary capacity for the funds and the assets of that company or trust, furnishes the Commissioner with a written undertaking that that company or trust will be administered in compliance with this section.

(6) If a company or trust holds a financial instrument or investment during any year of assessment—

(a) other than a financial instrument contemplated in subsection (2); or

(b) other than an investment contemplated in subsection (2)(d),

an amount equal to 50 per cent of the highest market value of that other financial instrument or other investment during that year of assessment must be deemed to be an amount of normal tax payable by the person contemplated in subsection (1)(d), subject to subsection (8), to the extent that the financial instrument or investment is directly or indirectly derived from any amount in cash paid by that person to that company or that trust.

(7) If a company or trust contemplated in subsection (1) during any year of assessment—

(a) distributes property from that company or trust for a purpose other than—

(i) rehabilitation upon premature closure;

(ii) decommissioning and final closure;

(iii) post closure coverage of any latent or residual environmental impacts; or

(iv) transfer to another company, trust, or account established for the purposes contemplated in subsection (1)(a); or

(b) uses property from that company or trust as security for any debt for a purpose other than a purpose contemplated in paragraph (a)(i) or (ii),

an amount equal to 50 per cent of the highest market value during that year of assessment of the property so distributed or used as security must be deemed to be an amount of normal tax payable by the person contemplated in subsection (1)(d), subject to subsection (8), in respect of that year of assessment.

(8) Any amount deemed to be an amount of normal tax payable by the person contemplated in subsection (1)(d) in terms of subsection (6) or (7) must, to the extent that the amount cannot be recovered from that person, be recovered from the trust or company contemplated in this section.

(9) Subsection (7) does not apply in respect of any amount deemed to be an amount of normal tax that is paid to the Commissioner by a company or trust contemplated in this section.

(10) A company or trust contemplated in this section must—

(a) within three months after the end of any year of assessment submit a report to the Director-General of the National Treasury in respect of that year of assessment providing the Director-General of the National Treasury with information comprising—

(i) the total amount of contributions to the company or the trust;

(ii) the total amount of withdrawals from the company or the trust; and

(iii) the purposes for which any amount of those withdrawals were applied; and

(b) within seven days after receiving a request from the Director-General of the National Treasury provide such information as the Director-General may require.

37B. Deductions in respect of environmental expenditure

(1) For purposes of this section—

"environmental treatment and recycling asset" means any air, water, and solid waste treatment and recycling plant or pollution control and monitoring equipment (and any improvement to the plant or equipment) if the plant or equipment is—

(a) utilised in the course of a taxpayer's trade in a process that is ancillary to any process of manufacture or any other process which, in the opinion of the Commissioner, is of a similar nature; and

(b) required by any law of the Republic for purposes of complying with measures that protect the environment; and

"environmental waste disposal asset" means any air, water, and solid waste disposal site, dam, dump, reservoir, or other structure of a similar nature, or any improvement thereto, if the structure is—

(a) of a permanent nature;

(b) utilised in the course of a taxpayer's trade in a process that is ancillary to any process of manufacture or any other process which, in the opinion of the Commissioner, is of a similar nature; and

(c) required by any law of the Republic for purposes of complying with measures that protect the environment.

(2) There shall be allowed to be deducted from the income of the taxpayer, in respect of any year of assessment, an allowance equal to—

(a) in the case of a new and unused environmental treatment and recycling asset owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of an "instalment credit agreement" in section 1 of the Value-Added Tax Act, 40 per cent of the cost to the taxpayer to acquire the asset in the year of assessment that it is brought into use for the first time by that taxpayer, and 20 per cent in each succeeding year of assessment; and

(b) in the case of a new and unused environmental waste disposal asset owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of an "instalment credit agreement" in section 1 of the Value-Added Tax Act, five per cent of the cost to the taxpayer to acquire the asset in the year of assessment that it is brought into use for the first time by that taxpayer, and five per cent in each succeeding year of assessment.

(3) For the purposes of this section, the cost to a taxpayer of any asset shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if that person had acquired such asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition was in fact concluded, have incurred in respect of the direct cost of the acquisition.

(4) Where any asset in respect of which any deduction is claimed in terms of this section was during any previous year of assessment used by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such year or any subsequent year in which such asset was used by the taxpayer shall for the purposes of

this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

(5) No deduction shall be allowed under this section in respect of any asset that has been disposed of by the taxpayer during any previous year of assessment.

(6) For purposes of determining the taxable income derived during any year of assessment by a taxpayer, there shall be allowed as a deduction any expenditure or loss in respect of decommissioning, remediation or restoration arising from any trade previously carried on by that taxpayer to the extent that such expenditure or loss—

(a) is incurred for purposes of complying with any law of the Republic that provides for the protection of the environment upon the cessation of trade;

(b) would otherwise have been allowed as a deduction in terms of section 11 had that taxpayer still been carrying on that trade; and

(c) is not otherwise allowed as a deduction.

(7) Any assessed loss of a taxpayer as defined in section 20(2) that is attributable to any expenditure or loss contemplated in subsection (6) may be set off against income derived by that taxpayer during a year of assessment notwithstanding the fact that the taxpayer is not carrying on any trade during that year.

(8) No deduction shall be allowed under section 11, 12C or 13 in respect of the cost of an environmental treatment and recycling asset or an environmental waste disposal asset.

(9) The deductions which may be allowed in terms of this section in respect of any asset shall not in the aggregate exceed the cost to the taxpayer of such asset.

37C. Deductions in respect of environmental conservation and maintenance

(1) Expenditure actually incurred by a taxpayer to conserve or maintain land is deemed to be expenditure incurred in the production of income and for purposes of a trade carried on by that taxpayer, if—

(a) the conservation or maintenance is carried out in terms of a biodiversity management agreement that has a duration of at least five years entered into by the taxpayer in terms of section 44 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004); and

(b) land utilised by the taxpayer for the production of income and for purposes of a trade consists of, includes or is in the immediate proximity of the land that is the subject of the agreement contemplated in paragraph (a).

(2) (a) Any deduction of expenditure contemplated in subsection (1) must not be allowed to the extent that the expenditure exceeds the income of the taxpayer derived from trade carried on by the taxpayer on land utilised as contemplated in subsection (1)(b) in any year of assessment.

(b) The amount by which the deduction exceeds the income of the taxpayer so derived must be deemed to be expenditure incurred by the taxpayer in the following year of assessment.

(3) An amount equal to the expenditure actually incurred by a taxpayer to conserve or maintain land owned by the taxpayer is for purposes of section 18A deemed to be a donation by the taxpayer actually paid or transferred during the year to the Government for which a receipt has been issued in terms of section 18A(2), if the conservation or maintenance is carried out in terms of a declaration that has a duration of at least 30 years in terms of section 20, 23 or 28 of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003).

(4) If during the current or any previous year of assessment a deduction is or was allowed to the taxpayer in terms of subsection (1) or (3) in respect of expenditure incurred to conserve or maintain

land in terms of an agreement or declaration contemplated in those subsections, and the taxpayer subsequently is in breach of that agreement or violates that declaration, an amount equal to the deductions allowed in respect of expenditure incurred within the period of five years preceding the breach or violation must be included in the income of the taxpayer for the current year of assessment.

37D. Allowance in respect of land conservation in respect of nature reserves or national parks

(1) For the purposes of this section, "declared land" means—

(a) land owned by a person and that is declared a national park or nature reserve in terms of an agreement entered into with that person under section 20 or 23 of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003); and

(b) land in respect of which an endorsement is effected to the title deed of that land that reflects the declaration contemplated in paragraph (a) and has a duration of at least 99 years.

[paragraph (b) substituted by section 53(a) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(2) There must be allowed to be deducted from the income of any person in respect of declared land, in the year of assessment during which that land becomes declared land and in each subsequent year of assessment, an amount equal to four per cent of—

(a) the expenditure incurred in respect of—

(i) the acquisition of the declared land; and

(ii) improvements effected to the declared land (other than borrowing or finance costs),

if that expenditure is not less than the lower of market value or municipal value of that declared land; or

[words following paragraph (a) substituted by section 53(b) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(b) an amount determined in accordance with the formula:

$A = B + (C \times D)$

in which formula—

(i) "A" represents the amount to be determined;

(ii) "B" represents the cost of acquisition of the declared land and of any improvements to that land;

(iii) "C" represents the amount of a capital gain (if any), that would have been determined in terms of the Eighth Schedule had the declared land been disposed of for an amount equal to the lower of the market value or municipal value of that land on the date of the agreement; and

(iv) "D" represents 60 per cent in the case of a natural person or special trust or 20 per cent in any other case,

if the lower of market value of the declared land or municipal value of that declared land exceeds the expenditure contemplated in paragraph (a).

[words following paragraph (b) substituted by section 53(c) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(3) If a person retains a right of use of the declared land, the deduction to be allowed in terms of this section must be limited to an amount that bears to the amount determined as contemplated in

subsection (2) the same ratio as the market value of the declared land subject to the right of use bears to the market value of the declared land had that declared land not been subject to that right of use.

[subsection (3) substituted by section 53(d) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(4) The deductions which may be allowed in terms of this section in respect of declared land must not in aggregate exceed the expenditure incurred as referred to in subsection (2)(a) or the amount referred to in symbol "A" under subsection (2)(b), as the case may be.

(5) If the agreement in respect of which the land that becomes declared land is terminated by the person with which the agreement is entered into, an amount equal to the aggregate of the deductions allowed in terms of this section in the five years of assessment preceding the termination must be included in the income of that person in the year of assessment that the agreement is terminated.

37F. Determination of taxable income derived by persons previously assessable under certain other laws

Where it is necessary for any rule provided in this Act as to the inclusion in the income of any taxpayer for any year or as to the deduction or set-off of any amount from or against his income for such year, that regard shall be had to anything that has been done or has occurred in or in relation to a previous year of assessment, anything that has in fact been done or has in fact occurred in or in relation to a year of assessment during which the taxpayer was assessable for taxation purposes in terms of any law of a former self-governing territory declared under section 26 of the repealed Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), to be a self-governing territory or of the former Republic of Transkei, Bophuthatswana, Venda or Ciskei for any year of assessment, shall, subject to such adjustments as may in the circumstances be appropriate, for the purposes of applying such rule be taken into account.

37G. Determination of taxable income derived from small business undertakings

The Minister of Finance may make regulations to facilitate compliance with the provisions of this Act by natural persons who carry on business through small business undertakings, whether as sole proprietors or in partnership with other natural persons.

(2) A regulation made under subsection (1) may—

(a) prescribe what shall constitute a small business undertaking, having regard to—

(i) the nature of the undertaking;

(ii) the turnover, taxable income or profit of the undertaking;

(iii) the number of persons employed in the undertaking;

(iv) the nature and extent of other income derived by the proprietor orpartners; and

(v) any other feature which, in the opinion of the said Minister, indicates that an undertaking should be regarded as a small business undertaking;

(b) provide for the variation of any provision of this Act relating to the determination of the taxable income derived from a small business undertaking, including—

(i) the determination of taxable income having regard only to amounts actually received or expended;

(ii) any variation in the manner in which the values of trading stock are taken into account;

(iii) the manner in which expenditure of a capital nature incurred is to be treated; and

(iv) any other provision which, save in so far as the timing of the receipt or accrual of income or the incurral of expenditure is concerned, will not result in a material variation in the determination of the taxable income derived by the undertaking over a period of time;

(c) provide for the exemption from, or extension of time limits in, any provision of this Act relating to the preparation and submission of documents, accounts, returns or payments;

(d) make such other provision as in the opinion of the said Minister will facilitate the carrying on of small business undertakings.

Part II – Special provisions relating to companies

38. Classification of companies

(1) For the purposes of this Act a company shall in respect of each year of assessment be recognized as either a public or a private company, and the Commissioner shall upon the request of any company inform that company whether it is recognized as a public company or as a private company.

(2) The following companies shall, subject to the provisions of section thirty-nine, be recognized as public companies, namely—

(a) any company all classes of whose equity shares are publicly quoted on the specified date by a stock exchange in the list issued under its authority, provided—

(i) that the stock exchange is a recognized and *bona fide* stock exchange under adequate control;

(ii) that the rules and regulations of the stock exchange for granting and continuing a quotation for the purchase and sale of shares provide for full protection of the interests of the public in regard to dealings in the shares of the company;

(iii) that the memorandum of incorporation prohibits such restrictions on the right to acquire or transfer any of its shares as are likely to preclude members of the general public from becoming shareholders in any class of the company's shares; and

(iv) that the general public was throughout the year of assessment in question interested either directly as shareholders in the company or indirectly as shareholders in any other company, in more than forty per cent. of every class of equity shares issued by the company;

(b) any other company, not being a private company as defined in section 1 of the Companies Act, nor a close corporation, if—

(i) the general public was throughout the year of assessment in question interested either directly as shareholders in the company or indirectly as shareholders in any other company, in more than fifty per cent of every class of equity shares issued by the company; and

(ii) the business of the company is conducted and its profits are distributed in such a manner that no person enjoys or receives or is entitled to enjoy or receive, by reason of shareholding, participation in the management or otherwise, any advantage which would not be enjoyed or received by him if the company had been under the control of a board of directors acting in the best interests of all its shareholders and had been one which could have been recognized as a public company under paragraph (a);

(c) any company which has been approved as a public benefit organisation in terms of the provisions of section 30(3);

(d) any co-operative;

(e) any insurance society or company subject to assessment in terms of section 28, 29 or 29A;

(f) any public utility company, established by or under a special Act of Parliament;

(g) any company the sole or principal business of which in the Republic is mining for gold or diamonds;

(h) any company to which the provisions of section thirty-three apply.

(3) A company which is not recognized as a public company shall be recognized as a private company.

(4) For the purposes of this section—

(a) the general public in relation to any company (in this paragraph referred to as the company) shall be deemed not to include—

(i) any director of the company; or

(ii) any relative of any director of the company, unless such relative, if he is not the spouse or minor child of such director, has at all relevant times exercised his rights as a shareholder in the company or in any other company through which such relative is interested in the shares of the company, independently of such director; or

(iii) the executor of the deceased estate or the trustee of the insolvent estate of any person referred to in sub-paragraph (i) or (ii); or

(iv) any person to the extent that he acts in a fiduciary capacity, or as a nominee, for the benefit of any person who is not in fact or in terms of any other provision of this subsection a member of the general public in relation to the company; or

(v) any man or his wife or any minor child of any man or his wife, if one or more of such persons are directly or indirectly interested (otherwise than by virtue of any shareholding in any public company or any private company which is interested in the shares of the company through a direct or indirect interest in the equity shares in a public company) in altogether more than 15 per cent of any class of equity shares issued by the company;

(b) the general public in relation to any company (in this paragraph referred to as the company) shall be deemed to include—

(i) any benefit fund, pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund or any trust or institution which is of a public character; and

(ii) any person to the extent that he acts in a fiduciary capacity, or as a nominee, for the benefit of any person who is in fact or in terms of any other provision of this subsection a member of the general public in relation to the company;

(c) where any person—

(i) being a public company, is indirectly interested in any shares of any other company; or

(ii) being a member of the general public in relation to any company, is indirectly interested in any shares of that company,

by virtue of the said person being a shareholder in any private company and such interest is not attributable to a direct or indirect interest of such private company in the equity shares in a public company, the said person shall be deemed to be interested in only that portion of such shares as such person would be entitled to receive if every company through which that person is interested in those shares were to be wound up or liquidated and the assets of each such company were, without regard to its liabilities, to be distributed among its shareholders;

(d) where persons are jointly interested, whether directly or indirectly, but otherwise than through a direct or indirect interest in the equity shares of a public company, in the shares of any company, each such person shall be deemed to be interested in only such proportion of those shares as he would be entitled to receive if the joint interest of all such persons in such shares were to be divided between such persons.

39. Redetermination of company's status

If owing to changes in the constitution or shareholding of any company which has been recognized as a public company under paragraph (a), (b) or (c) of subsection (2) of section thirty-eight, or for any other reason, the Commissioner is no longer satisfied of the matters of which he is in terms of the applicable paragraph required to be satisfied, or the company ceases to comply with the requirements of that paragraph, the Commissioner may notify the public officer of the company that it will as from the next succeeding specified date be recognized as a private company.

40A. Close corporations

(1) Where any close corporation has been converted into a company, such company and such close corporation shall for the purposes of this Act be deemed to be and to have been one and the same company.

40B. Conversion of co-operative to company

Where any co-operative is incorporated as a company in accordance with the provisions of section 161A or 161C of the Co-operatives Act, 1981 (Act No. 91 of 1981) or section 62 of the Co-operatives Act, 2005 (Act No. 14 of 2005), such co-operative and such company shall for purposes of this Act be deemed to be and to have been one and the same company.

40C. Issue of shares or granting of options or rights for no consideration

Where a company issues a share or grants an option or other right in respect of the issue of a share to a person for no consideration, the expenditure actually incurred by the person to acquire that share, option or right must be deemed to be nil.

40CA. Acquisitions of assets in exchange for shares

Where a company acquires any asset, as defined in paragraph 1 of the Eighth Schedule—

(a) from any person in exchange for shares issued by that company, that company must be deemed to have actually incurred an amount of expenditure in respect of the acquisition of that asset which is equal to the sum of—

(i) the market value of the shares immediately after the acquisition; and

(ii) any deemed capital gain determined in terms of section 24BA(3)(a) in respect of the acquisition of that asset; or

(b) in terms of an asset-for-share transaction as contemplated in section 42, a substitutive share-for-share transaction as contemplated in section 43 or an amalgamation transaction as contemplated in section 44 in respect of which a deemed capital gain is determined in terms of section 24BA(3)(a) in respect of the acquisition of that asset—

(i) by that company; or

(ii) by any person that acquired that asset from that company in terms of any transaction contemplated in Part III of Chapter II,

that company or that other person must be deemed, in addition to the amount of expenditure for which the asset is deemed to have been acquired by that company or that other person as a result of the

application of sections 42(2)(b), 43(2)(b) or 44(2)(a)(ii)(aa), to have incurred an amount of expenditure equal to that deemed capital gain on the date of that asset-for-share transaction, substitutive share-for-share transaction or amalgamation transaction.

[section 40CA amended by section 38(1) of Act 34 of 2019, and substituted by section 32(1) of Act 23 of 2020, and by section 23(1) of Act 20 of 2021; effective date 1 January 2022, applicable in respect of any acquisition of an asset on or after that date]

40D. Communications licence conversions

(1) Where existing licences referred to in Chapter 15 of the Electronic Communications Act, 2005 (Act No. 36 of 2005), are converted to new licences in terms of section 93 of that Act, a licensee of an existing licence or licences must not recover, recoup or include in the licensee's income for the year of assessment in which that conversion takes place any allowance allowed to the licensee in respect of the existing licence or licences.

(2) The licensee of a new licence contemplated in subsection (1) is deemed to have acquired the new licence—

(a) in the case where an existing licence is converted to a new licence, at a cost equal to the amount taken into account by the licensee in respect of the existing licence;

(b) in the case where two or more existing licences are converted to a new licence, at a cost equal to the aggregate of the amounts taken into account by the licensee in respect of each of the existing licences; and

(c) in the case where an existing licence is converted to two or more new licences, at a cost equal to an amount that bears to the amount taken into account by the licensee in respect of the existing licence the same ratio as the value of that new licence bears to the aggregate value of the new licences,

which cost must be treated as expenditure actually incurred by the licensee in respect of the new licence or licences for the purposes of sections 11 and 22(1) and (2).

(3) For the purposes of subsection (2) the new licence or licences must be deemed to have been acquired by the licensee on the day immediately after the conversion.

40E. Ceasing to be controlled foreign company

Where a controlled foreign company ceases to be a controlled foreign company during any foreign tax year of that controlled foreign company prior to 5 June 2015 solely by reason of the coming into operation of the Taxation Laws Amendment Act, 2015, section 9H (3)(b) must not apply.

Part III – Special rules relating to asset-for-share transactions, substitutive share-for-share transactions, amalgamation transactions, intra-group transactions, unbundling transactions and liquidation distributions

41. General

(1) For the purposes of this Part, unless the context otherwise indicates, any word or expression that has been defined in section 1, shall bear the same meaning so defined, and—

"allowance asset" means—

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

(b) any debt contemplated in section 11(i) or (j);

"asset" means an asset as defined in paragraph 1 of the Eighth Schedule;

"base cost" means the base cost as defined in paragraph 1 of the Eighth Schedule: Provided that where the base cost of an asset as at a specific date is to be determined as contemplated in paragraph 26 or 27 of the Eighth Schedule, the amount thereof must, for purposes of section 42 or 44, be determined as if that asset had been disposed of on that date for an amount received or accrued equal to the market value of that asset as at that date;

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

"company" does not include a headquarter company and, for the purposes of sections 42 and 44, includes any portfolio of a collective investment scheme in securities or any portfolio of a hedge fund collective investment scheme;

"date of acquisition" means the date of acquisition as determined in accordance with paragraph 13 of the Eighth Schedule or, where a person acquires an asset in terms of a transaction subject to the provisions of this Part, the deemed date of acquisition of that asset by that person as contemplated in this Part;

"debt" includes any contingent liability;

"disposal" means a disposal as defined in paragraph 1 of the Eighth Schedule and any deemed disposal in terms of this Part;

"equity share", for the purposes of sections 42 and 44, includes a participatory interest in a portfolio of a collective investment scheme in securities or in a portfolio of a hedge fund collective investment scheme;

"group of companies" means a group of companies as defined in section 1: Provided that for the purposes of this definition—

(i) any company that would, but for the provisions of this definition, form part of a group of companies shall not form part of that group of companies if—

(aa) that company is a company contemplated in paragraph (c), (d) or (e) of the definition of "company";

(bb) that company is a non-profit company as defined in section 1 of the Companies Act;

(cc) any amount constituting gross income of whatever nature would be exempt from tax in terms of section 10 were it to be received by or to accrue to that company;

(dd) that company is a public benefit organisation or recreational club that has been approved by the Commissioner in terms of section 30 or 30A;

(ee) that company is a company contemplated in paragraph (b) of the definition of "company", unless that company has its place of effective management in the Republic; or

(ff) that company has its place of effective management outside the Republic; and

(ii) any share that would, but for the provisions of this definition, be an equity share shall be deemed not to be an equity share if—

(aa) that share is held as trading stock; or

(bb) any person is under a contractual obligation to sell or purchase that share, or has an option to sell or purchase that share unless that obligation or option provides for the sale or purchase of that share at its market value at the time of that sale or purchase;

"listed company" means a company as contemplated in paragraph (a) of the definition of "listed company" in section 1;

"market value" in relation to an asset means the price which could be obtained upon a sale of that asset between a willing buyer and a willing seller dealing at arm's length in an open market; and

"trading stock" for purposes of sections 42, 44, 45 and 47, includes any livestock or produce contemplated in the First Schedule and any reference to an amount taken into account in respect of an asset in terms of section 11(a) or 22(1) or (2) shall, in the case of such livestock or produce, be construed as a reference to the amount taken into account in respect thereof in terms of paragraph 5(1) or 9 of the First Schedule, as the case may be;

"unlisted company" means any company which is not a listed company as defined in this subsection.

(2) The provisions of this Part must, subject to subsection (3), apply in respect of an asset-for-share transaction, a substitutive share-for-share transaction, an amalgamation transaction, an intra-group transaction, an unbundling transaction and a liquidation distribution as contemplated in sections 42, 43, 44, 45, 46 and 47, respectively, notwithstanding any provision to the contrary contained in the Act, other than sections 24BA, 24I, 25BB(5), 40CA(b) and 103, Part IIA of Chapter III and paragraph 11(1)(g) of the Eighth Schedule and any adjusted gain on transfer or redemption of an instrument, as defined in section 24J (1) and any adjusted loss on transfer or redemption of an instrument as defined in section 24J(1).

[subsection (2) substituted by section 54(1)(a) of Act 23 of 2018; effective date 18 December 2017, by section 54(1)(b) of Act 23 of 2018; effective date 1 January 2019, by section 39(a) of Act 34 of 2019; effective date 15 January 2020, and by section 24 of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(3) The provisions of this Part shall not apply in respect of any transaction in terms of which any asset is disposed of to an insurer as defined in section 29A if the asset is to be held in the insurer's untaxed policyholder fund as contemplated in subsection (4)(a) of that section.

(4) A company must for the purposes of this Part, be deemed to have taken steps to liquidate, wind up or deregister, where—

(a) in the case of a liquidation or winding-up—

(i) that company has lodged a resolution authorising the voluntary winding-up of that company in terms of—

(aa) section 80(2) of the Companies Act in the case of a company to which that section applies;

(bb) Regulation 21 of the Regulations under the Co-operatives Act, 2005 (Act No. 14 of 2005), published under section 95 of that Act in Government Notice R. 366 of 30 April 2007, in the case of a co-operative; or

(cc) a similar provision contained in any foreign law relating to the liquidation of companies, in the case where that company is incorporated in a country other than the Republic, if such foreign law so requires; and

(ii) that company has disposed of all assets and has settled all liabilities (other than assets required to satisfy any reasonably anticipated liabilities to any sphere of government of any country and costs of administration relating to the liquidation or winding-up); and

(iii) the manager, trustee or custodian of the portfolio of the collective investment scheme in property has in terms of section 102(1) or (2) of the Collective Investment Schemes Control Act applied for the winding up of that portfolio;

(b) in the case of a deregistration of a company—

(i) (aa) a request for the deregistration of that company has in terms of section 82(3)(b)(ii) of the Companies Act been lodged; or

(bb) a notice of amalgamation or merger has in terms of section 116 of the Companies Act been filed in respect of that company,

in the prescribed form and manner with the Companies and Intellectual Property Commission; or

(ii) in the case where that company is incorporated in a country other than the Republic, a request or notice in respect of that company has been lodged with a person who, in terms of any similar provision contained in any foreign law, exercises the powers and performs the duties assigned to the Commission contemplated in subparagraph (i), if such foreign law so requires;

[paragraph (b) substituted by section 39(b) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(c) that company has submitted a copy of the resolution contemplated in paragraph (a)(i) or the request or notice contemplated in paragraph (b) to the Commissioner; and

[paragraph (c) substituted by section 39(b) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(d) all the returns or information required to be submitted or furnished to the Commissioner in terms of any Act administered by the Commissioner by the end of the relevant period within which the steps contemplated in this subsection must be taken, have been submitted or furnished or arrangements have been made with the Commissioner for the submission of any outstanding returns or furnishing of information.

(5) The Commissioner may prescribe the circumstances under which a person entering into any asset-for-share transaction, amalgamation transaction, intra-group transaction, unbundling transaction or liquidation distribution contemplated in sections 42, 44, 45, 46 and 47, respectively, must furnish a return to the Commissioner of that transaction or distribution.

(7) An amount contemplated in paragraph (j) of the definition of "gross income" in section 1 and an amount to be included in gross income in terms of paragraph 14 of the First Schedule must for purposes of this Part be deemed to be an allowance that must be recovered or recouped.

(9) Where a person has made an election in respect of an asset under paragraph 65 or 66 of the Eighth Schedule and disposes of or distributes any replacement asset in relation to that asset in terms of section 42, 44, 45 or 47—

(a) the person so disposing of or distributing that replacement asset must disregard any capital gain or amount recovered or recouped which was apportioned to that asset under paragraph 65 or 66 of the Eighth Schedule or section 8(4)(e) and (eA), as the case may be, and which otherwise would have had to be brought to account at the time of that disposal or distribution; and

(b) the company acquiring that replacement asset and the person referred to in paragraph (a) must be treated as one and the same person for the purposes of section 8(4)(eB), (eC) or (eD) and paragraphs 65 and 66 of the Eighth Schedule.

(10) For the purposes of this Part, a contingent liability is deemed to be a debt actually incurred.

42. Asset-for-share transactions

(1) For the purposes of this section—

"**asset-for-share transaction**" means any transaction—

(a) (i) in terms of which a person disposes of an asset (other than an asset which constitutes a restraint of trade or personal goodwill), the market value of which is equal to or exceeds—

(aa) in the case of an asset held as a capital asset, the base cost of that asset on the date of that disposal; or

(bb) in the case of an asset held as trading stock, the amount taken into account in respect of that asset in terms of section 11(a) or 22(1) or (2),

to a company which is a resident, in exchange for the issue of an equity sharein that company and that person—

(A) at the close of the day on which that asset is disposed of, holds a qualifying interest in that company; or

(B) is a natural person who will be engaged on a full-time basis in the business of that company, or a controlled group company in relation to that company, of rendering a service; and

(ii) as a result of which that company acquires that asset from that person—

(aa) as trading stock, where that person holds it as trading stock;

(bb) as a capital asset, where that person holds it as a capital asset; or

(cc) as trading stock, where that person holds it as a capital asset and that company and that person do not form part of the same group of companies:

Provided that this subparagraph does not apply in respect of any transaction which meets the requirements of subparagraph (i) in terms of which a person disposes of—

(i) an equity share in a listed company or in a portfolio of a collective investment scheme in securities or in a portfolio of a hedge fund collective investment scheme to any other company and after that disposal, together with any other transaction that is concluded—

(aa) on the same terms as that transaction; and

(bb) within a period of 90 days after that disposal,

that other company holds—

(A) at least 35 per cent of the equity shares of that listed company or portfolio; or

(B) at least 25 per cent of the equity shares of that listed company or portfolio if no person other than that other company holds an equal or greater number of equity shares in the listed company or portfolio; or

[subparagraph (B) substituted by section 25(1)(a) of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(ii) an asset to a portfolio of a hedge fund collective investment scheme; or

(b) in terms of which a person that is a company disposes of an asset that constitutes an equity share held by that person in a foreign company as a capital asset, the market value of which is equal to or exceeds the base cost of that equity share on the date of that disposal, to

another foreign companyin exchange for the issue of an equity share in that other foreign company and—

(i) immediately before the asset is disposed of in terms of that transaction—

(aa) that person and the other foreign company form part of the same group of companies (as defined in section 1); and

(bb) the other foreign company is a controlled foreign company in relation to any company that is a resident and that forms part of that group of companies; and

(ii) at the close of the day on which the asset is disposed of in terms of that transaction—

(aa) more than 50 per cent of the equity shares in the foreign company are directly or indirectly held by a resident (whether alone or together with any company forming part of the same group of companies as that resident); or

(bb) at least 70 per cent of the equity shares in that other foreign company are directly or indirectly held by a resident (whether alone or together with any other company forming part of the same group of companies as that resident);

"**qualifying interest**" of a person means—

(a) an equity share held by that person in a company which is a listed company or will become a listed company within 12 months after the transaction as a result of which that person holds that share;

(b) an equity share held by that person in a portfolio of a collective investment scheme in securities;

(c) equity shares held by that person in a company that constitute at least 10 per cent of the equity shares and that confer at least 10 per cent of the voting rights in that company; or

(d) an equity share held by that person in a company which forms part of the same group of companies as that person.

(e) any equity share held in a portfolio of a hedge fund collective investment scheme.

(2) Subject to subsections (4) and (8), where a person disposes of an asset to a company in terms of an asset-for-share transaction—

(a) that person must be deemed to have—

(i) disposed of that asset—

(aa) in the case of an asset-for-share transaction contemplated in paragraph (a) of the definition of "asset-for-share transaction", for an amount equal to the amount contemplated initem (aa) or (bb) of subparagraph (i) of that paragraph, as the case may be; or

(bb) in the case of an asset-for-share transaction contemplated in paragraph (b) of the definition of "asset-for-share transaction", for an amount equal to the base cost of that asset on the date of that disposal; and

(ii) acquired the equity shares in that company on the date that such person acquired that asset (other than for purposes of determining whether that asset had been held for at least three years for purposes of section 9C(2) where that asset is not an equity share) and for a cost equal to—

(aa) where that asset is so disposed of as a capital asset, any expenditure in respect of that asset incurred by that person that is allowable in terms of paragraph 20 of the Eighth Schedule and to have incurred such cost at the date of incurral by that person of such expenditure; or

(bb) where that asset is so disposed of as trading stock, the amount taken into account in respect of that asset in terms of section 11(a) or 22(1) or (2),

which cost must, where those equity shares are acquired as—

(A) capital assets, be treated as an expenditure actually incurred and paid by that person in respect of those equity shares for the purposes of paragraph 20 of the Eighth Schedule; and

(B) trading stock, be treated as the amount to be taken into account by that person in respect of those equity shares for the purposes of section 11(a) or 22(1) or (2);

(b) that person and that company must, for purposes of determining—

(i) any taxable income derived by that company from a trade carried on by it; or

(ii) any capital gain or capital loss in respect of a disposal of that asset by that company,

be deemed to be one and the same person with respect to—

(aa) where that asset is acquired by that company as a capital asset from that person who disposes of it as a capital asset—

(A) the date of acquisition of that asset by that person and the amount and date of incurral by that person of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and

(B) any valuation of that asset effected by that person within the period contemplated in paragraph 29(4) of the Eighth Schedule;

(bb) where that asset is acquired by that company as trading stock from that person who disposes of it as trading stock, the date of acquisition of that asset by that person and the amount and date of incurral by that person of any cost or expenditure incurred in respect of that asset as contemplated in section 11(a) or 22(1) or (2); or

(cc) where that asset is acquired by that company as trading stock from that person who disposes of it as a capital asset—

(A) the date of acquisition of that asset by that person and the amount and date of incurral by that person of any expenditure allowable in terms of paragraph 20 of the Eighth Schedule; or

(B) where that person has valued that asset as contemplated in paragraph 29(4) of the Eighth Schedule, the amount of the market value so determined,

which amount must, notwithstanding paragraph 25 of the Eighth Schedule, be treated as the amount to be taken into account by that company in respect of that asset for purposes of section 11(a) or 22(1) or (2):

Provided that this paragraph does not apply in respect of any asset-for-share transaction in terms of which a person disposes of an equity share in a listed company or in a portfolio of a collective investment scheme in securities to any other company and after that disposal, together with any other asset-for-share transaction that is concluded—

(i) on the same terms as that asset-for-share transaction; and

(ii) within a period of 90 days after that disposal,

that other company holds—

(aa) at least 35 per cent of the equity shares of that listed company or portfolio; or

(bb) at least 25 per cent of the equity shares of that listed company or portfolio if no person other than that other company holds an equal or greater number of equity shares in the listed company or portfolio;

[paragraph (bb) substituted by section 25(1)(b) of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(c) any valuation of that asset effected by that person within the period contemplated in paragraph 29(4) of the Eighth Schedule must be deemed to have been effected in respect of the equity shares in that company acquired in terms of that asset-for-share transaction.

(3) Subject to subsection (4) or (8), where a person disposes of—

(a) an asset that constitutes an allowance asset in that person's hands to a company as part of an asset-for-share transaction and that company acquires that asset as an allowance asset or that company is a REIT or a controlled company, as defined in section 25BB(1), that acquires that asset as a capital asset or an allowance asset—

[words preceding subparagraph (i) substituted by section 55(1)(a) of Act 23 of 2018; effective date 18 December 2017]

(i) no allowance allowed to that person in respect of that asset must be recovered or recouped by that person or included in that person's income for the year of that transfer; and

(ii) that person and that company must be deemed to be one and the same person for purposes of determining the amount of any allowance or deduction—

(aa) to which that company may be entitled in respect of that asset; or

(bb) that is to be recovered or recouped by or included in the income of that company in respect of that asset;

[item (bb) substituted by section 55(1)(b) of Act 23 of 2018; effective date 18 December 2017]

(b) an asset that constitutes an allowance asset in that person's hands to a company as part of an asset-for-share transaction and that company acquires that asset as trading stock, no allowance allowed to that person in respect of that asset must be recovered or recouped by that person or included in that person's income for the year of that transfer; or

(c) a contract to a company as part of a disposal of a business as a going concern in terms of an asset-for-share transaction andan allowance in terms of section 24, 24C or 24P was allowable to that person in respect of that contract for the year preceding that in which that contract is transferred or would have been allowable to that person for the year of that transfer had that contract not been so transferred—

(i) no allowance allowed to that personunder those sections must be included in that person's income for the year of that transfer; and

(ii) that person and that company must be deemed to be one and the same person for purposes of determining the amount of any allowance—

(aa) to which that company may be entitled under those sections; or

(bb) that is to be included in the income of that company under those sections.

(3A) For the purposes of the definition of "contributed tax capital", if an asset is disposed of by a person to a company in terms of an asset-for-share transaction contemplated in paragraph (a) of the definition of "asset-for-share transaction" and that person at the close of the day on which that asset is disposed of holds a qualifying interest in that company as contemplated in paragraph (c) of the definition of "qualifying interest", or is a natural person who will be engaged on a full-time basis in the business of that company or a controlled group company in relation to that company of

rendering a service, the amount received by or accrued to the company for the issue of the shares is deemed to be equal to—

[words preceding paragraph (a) substituted by section 55(1)(c) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(a) if the asset is trading stock, the amount taken into account by that person in respect of the asset in terms of section 11(a) or 22(1) or (2); or

(b) if the asset is an asset other than trading stock, the base cost of that asset determined at the time of that disposal in relation to the person disposing of that asset:

Provided that this subsection does not apply in respect of any asset-for-share transaction in terms of which a person disposes of—

(i) an equity share in a listed company or in a portfolio of a collective investment scheme in securities to any other company and after that disposal, together with any other asset-for-share transaction that is concluded—

(aa) on the same terms as that asset-for-share transaction; and

(bb) within a period of 90 days after that disposal,

that other company holds—

(A) at least 35 per cent of the equity shares of that listed company or portfolio; or

(B) at least 25 per cent of the equity shares of that listed company or portfolio if no person other than that other company holds an equal or greater number of equity shares in the listed company or portfolio; or

[subparagraph (B) substituted by section 25(1)(c) of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(ii) an asset to a portfolio of a hedge fund collective investment scheme.

(4) Where—

(a) a person disposes of an asset to a company in terms of an asset-for-share transaction; and

(b) that person becomes entitled, in exchange for that asset, to any consideration in addition to any equity shares issued by the company to that person, other than any debt assumed by that company as contemplated in subsection (8),

the disposal of that asset to that company contemplated in paragraph (a) must, to the extent that any equity shares are issued by the company to that person, be deemed to be a disposal in terms of an asset-for-share transaction for purposes of this section, and to the extent that such person becomes entitled to any other consideration, as contemplated in paragraph (b), be deemed to be a disposal of part of that asset other than in terms of an asset-for-share transaction, in which case the amount to be determined in respect of—

(i) in the case of a disposal of a capital asset, the base cost of that asset at the time of that disposal;

(ii) in the case of a disposal of an allowance asset, the amount of the allowances allowed to that person in respect of that asset; or

(iii) in the case of the disposal of an asset that constitutes trading stock, the amount taken into account in respect of that asset in terms of section 11(a) or 22(1) or (2),

that must be attributed to the part of the asset deemed to have been disposed of other than in terms of an asset-for-share transaction, must bear the same ratio to the respective amounts referred to in subparagraphs (i) to (iii) as the market value of the consideration not consisting of equity shares issued by that company bears to the market value of the total consideration in respect of that asset.

(5) Where a person—

(a) acquired any equity share in a company in terms of an asset-for-share transaction; and

(b) disposes of any such equity share (other than by way of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46 or a liquidation distribution contemplated in section 47, an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or the death of that person) within a period of 18 months after the date of acquisition contemplated in paragraph (a) and immediately prior to that disposal more than 50 per cent of the market value of all the assets disposed of by that person to that company in terms of any transaction in respect of which the provisions of this Part apply, is attributable to allowance assets or trading stock or both,

that person must, to the extent that any amount received by or accrued to that person in respect of the disposal of that share is less than or equal to the market value of that share at the beginning of such period of 18 months, include that amount in that person's income.

(6) Where a person—

(a) disposed of an asset to a company in terms of an asset-for-share transaction contemplated in paragraph (a) of the definition of "asset-for-share transaction" and, within a period of 18 months after the date of that disposal, that person ceases—

(i) to hold a qualifying interest in that company, as contemplated in paragraphs (c) and (d) of the definition of "qualifying interest" (whether or not as a result of the disposal of shares in that company); or

(ii) to be engaged on a full-time basis in the business of the company, or controlled group company in relation to that company, of rendering the service contemplated in paragraph (a)(i)(B) of the definition of "asset-for-share transaction",

that person is for purposes of subsection (5), section 22 or the Eighth Schedule deemed to have—

(aa) disposed of all the equity shares acquired in terms of that asset-for-share transaction that are still held immediately after that person ceased—

(A) to hold the qualifying interest contemplated in subparagraph (i); or

(B) to be engaged as contemplated in subparagraph (ii),

for an amount equal to the market value of those equity shares as at the date of the disposal in terms of the asset-for-share transaction; and

(bb) immediately reacquired all the equity shares contemplated in item (aa) at a cost equal to the amount contemplated in that item:

Provided that this paragraph does not apply where the person ceases to hold a qualifying interest in that company as a result of—

(a) an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46 or a liquidation distribution contemplated in section 47;

(b) an involuntary disposal contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal contemplated in that paragraph had that asset not been a financial instrument; or

(c) the death of that person; or

(b) disposed of an equity share in a foreign company to another foreign company in terms of an asset-for-share transaction contemplated in paragraph (b) of the definition of "asset-

for-share transaction" and, at any time within a period of 18 months after the date of that disposal and whether or not as a result of the disposal of shares in that foreign company—

(i) where that asset-for-share transaction was constituted as a result of compliance with the requirement prescribed by paragraph (b)(ii)(aa) of that definition, that requirement is no longer met; or

(ii) where that asset-for-share transaction was constituted as a result of compliance with the requirement prescribed by paragraph (b)(ii)(bb) of that definition, that requirement is no longer met,

that person is for purposes of subsection (5), section 22 or the Eighth Schedule deemed to have—

(aa) disposed of all the equity shares acquired in terms of that asset-for-share transaction that are still held immediately after the applicable requirement is no longer met, for an amount equal to the market value of those equity shares as at the date of the disposal in terms of the asset-for-share transaction; and

(bb) immediately reacquired all the equity shares contemplated in item (aa) at a cost equal to the amount contemplated in that item:

Provided that this paragraph does not apply where any requirement prescribed by paragraph (b)(ii)(aa) or (bb) of the definition of "asset-for-share transaction" is no longer met as a result of—

(a) an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46 or a liquidation distribution contemplated in section 47; or

(b) an involuntary disposal contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal contemplated in that paragraph had that asset not been a financial instrument.

(7) Where a company disposes of an asset, other than an asset contemplated in section 25BB(5), within a period of 18 months after acquiring that asset in terms of an asset-for-share transaction, and—

[words preceding paragraph (a) substituted by section 40 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(a) that asset constitutes a capital asset, so much of any capital gain determined in respect of the disposal of that asset as does not exceed the amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date, may not be taken into account in determining any net capital gain or assessed capital loss of that company but is subject to paragraph 10 of the Eighth Schedule for purpose of determining an amount of taxable capital gain derived from that gain, which taxable capital gain may not be set off against any assessed loss or balance of assessed loss of that company; or

(b) that asset constitutes—

(i) trading stock in the hands of that company, other than an asset that constitutes trading stock that is regularly and continuously disposed of by that company, so much of the amount received or accrued in respect of the disposal of that trading stock as does not exceed the market value of that trading stock as at the beginning of that period of 18 months and so much of the amount taken into account in respect of that trading stock in terms of section 11(a) or 22(1) or (2) as is equal to the amount so taken into account in terms of subsection (2)(b); or

(ii) an allowance asset in the hands of that company, other than a company that is a REIT or a controlled company, as defined in section 25BB(1), so much of any allowance in respect of that asset that is recovered or recouped by or included in the income of that

company as a result of that disposal as does not exceed the amount that would have been recovered had that asset been disposed of at the beginning of that period of 18 months for an amount equal to the market valve of that asset as at that date,

must be deemed to be attributable to a separate trade carried on by that company, the taxable income from which trade may not be set off against any assessed loss or balance of assessed loss of that company.

(8) Where a person disposes of—

(a) any asset which secures any debt to a company in terms of an asset-for-share transaction and that debt was incurred by that person—

(i) more than 18 months before that disposal; or

(ii) within a period of 18 months before that disposal—

(aa) and that debt was incurred at the same time as that asset was acquired by that person; or

(bb) to the extent that debt constitutes the refinancing of any debt in respect of that asset incurred as contemplated in subparagraph (i) or item (aa) of subparagraph (ii),

and that company assumes that debt or an equivalent amount of debt that is secured by that asset; or

(b) any business undertaking as a going concern to a company in terms of an asset-for-share transaction and that disposal includes any amount of debt that is attributable to, and arose in the normal course of that business undertaking,

that person must, upon the disposal of any equity share acquired in terms of that asset-for-share transaction and notwithstanding the fact that that person may be liable as surety for the payment of the debt referred to in subparagraph (a) or (b), treat so much of the face value of that debt as relates to that equity share—

(A) where that equity share is held as a capital asset, as a return of capital in respect of that equity share that accrues to that person immediately before the disposal by that person of that equity share; or

[paragraph (A) substituted by section 25(1)(d) of Act 20 of 2021; effective date 1 January 2022, applicable in respect of disposals of shares on or after that date]

(B) where that equity share is held as trading stock, as an amount to be included in that person's income immediately before that equity share is disposed of by that person.

[paragraph (B) substituted by section 55(1)(d) of Act 23 of 2018; effective date 17 January 2019, and by section 25(1)(d) of Act 20 of 2021; effective date 1 January 2022, applicable in respect of disposals of shares on or after that date]

(8A) This section does not apply to the disposal of an asset by a person to a company if—

(a) the person and the company agree in writing that this section does not apply;

(b) the disposal would not be taken into account for purposes of determining—

(i) any taxable income or assessed loss of that person; or

(ii) any proportional amount of the net income of a controlled foreign company which is included in the income ofany resident in terms of section 9D; or

(c) that asset constitutes a debt owing by or a share in that company.

43. Substitutive share-for-share transactions

(1) For the purposes of this section—

"equity share" includes a linked unit;

"substitutive share-for-share transaction" means a transaction between a person and a company in terms of which that person disposes of an equity share in the form of a linked unit in that company and acquires an equity share other than a linked unit in that company.

(1A) Where a person disposes of an equity share in a company that constitutes a pre-valuation date asset and acquires another equity share in that company in terms of a substitutive share-for-share transaction, for the purposes of determining the date of acquisition of that equity share and the expenditure in respect of the cost of acquisition of that equity share, that person must be treated as having—

(a) disposed of that equity share at the time immediately before that substitutive share-for-share transaction, for an amount equal to the market value of that equity share at that time; and

(b) immediately reacquired that equity share at that time at an expenditure equal to that market value—

(i) less any capital gain, and

(ii) increased by any capital loss,

that would have been determined had that equity share been disposed of at market value at that time,

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

(2) Subject to subsection (4), where a person disposes of an equity share in a company and acquires another equity share in that company in terms of a substitutive share-for-share transaction, that person must be deemed to have—

(a) disposed of that equity share so disposed of for an amount equal to the expenditure incurred by that person in respect of that equity share so disposed of which is or was allowable in terms of paragraph 20 of the Eighth Schedule or taken into account in terms of section 11(a) or 22(1) or (2), as the case may be;

(b) acquired that other equity share so acquired on the latest date on which that person acquired any share comprising the equity share so disposed of for a cost equal to the expenditure incurred by that person as contemplated in paragraph (a); and

(c) incurred the cost contemplated in paragraph (b) on the date contemplated in that paragraph, which cost must—

(i) if the equity share so acquired is acquired as a capital asset, be treated for the purposes of paragraph 20 of the Eighth Schedule as an expenditure actually incurred by that person in respect of the equity shareso acquired; or

(ii) if the equity share so acquired is acquired as trading stock, be treated for the purposes of section 11(a) or 22(1) or (2) as the amount to be taken into account by that person in respect of the equity share so acquired.

(4) (a) This subsection applies where—

(i) a person disposes of an equity share in a company in terms of a substitutive share-for-share transaction; and

(ii) that person becomes entitled, in exchange for that equity share, to any consideration other than a dividend, foreign dividend or another equity share that is acquired by that person in terms of that substitutive share-for-share transaction.

(b) Where a person disposes of an equity share in terms of a substitutive share-for-share transaction and becomes entitled to consideration other than another equity share as contemplated in paragraph (a)(ii)—

(i) subsection (2) must not apply to the part of the equity share so disposed of that relates to that consideration; and

(ii) either—

(aa) where that equity share is so disposed of as a capital asset, the base cost at the time of that disposal of the part of the equity share contemplated in subparagraph (i) must be deemed to be equal to an amount which bears to the base cost of the equity share so disposed of the same ratio as the market value of that consideration bears to the sum of the market value of that consideration and the market value of the equity share acquired by that person in terms of that substitutive share-for-share transaction; or

(bb) where that interest is so disposed of as trading stock, the amount to be taken into account in terms of section 11(a) or 22(1) or (2) in respect of the part of the equity share contemplated in subparagraph (i) must be deemed to be equal to an amount which bears to the total amount taken into account in terms of section 11(a) or 22(1) or (2) in respect of the equity share so disposed of the same ratio as the market value of that consideration bears to the sum of the market value of that consideration and the market value of the equity share acquired by that person in terms of that substitutive share-for-share transaction.

(4A) If an equity share is issued in terms of a substitutive share-for-share transaction, the issue price of the linked unit disposed of in terms of that transaction is deemed to be contributed tax capital in respect of the class to which the equity share so acquired relates.

44. Amalgamation transactions

(1) For the purposes of this section "amalgamation transaction" means any transaction—

(a) (i) in terms of which any company (hereinafter referred to as the "amalgamated company") which is a resident disposes of all of its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade and other than assets required to satisfy any reasonably anticipated liabilities to any sphere of government of any country and costs of administration relating to the liquidation or winding-up) to another company (hereinafter referred to as the "resultant company") which is a resident, by means of an amalgamation, conversion or merger; and

(ii) as a result of which the existence of that amalgamated company will be terminated;

(b) (i) in terms of which an amalgamated company which is a foreign company disposes of all of its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade and other than assets required to satisfy any reasonably anticipated liabilities to any sphere of government of any country and costs of administration relating to the liquidation or windingup) to a resultant company which is a resident, by means of an amalgamation, conversion or merger;

(ii) if, immediately before that transaction, any shares in that amalgamated company are held as capital assets; and

(iii) as a result of whichthe existence of that amalgamated company will be terminated; or

(c) (i) in terms of which an amalgamated company which is a foreign company disposes of all of its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its tradeand other than assets required to satisfy any reasonably anticipated liabilities to any sphere of government of any country and costs of administration relating to its liquidation or winding-up) to a resultant company which is a foreign company, by means of an amalgamation, conversion or merger;

(ii) if—

(aa) immediately before that transaction—

(A) that amalgamated company and that resultant company form part of the same group of companies (as defined in section 1);

(B) that resultant company is a controlled foreign company in relation to any resident that is part of the group of companies contemplated in subitem (A); and

(C) any shares in that amalgamated company that are directly or indirectly held by that resultant company are held as capital assets; and

(bb) immediately after that transaction, more than 50 per cent of the equity shares in that resultant company are directly or indirectly held by a resident (whether alone or together with any other person that is a resident and that forms part of the same group of companies as that resident); and

(iii) as a result of which the existence of that amalgamated company will be terminated.

(2) Where an amalgamated company disposes of—

(a) a capital asset in terms of an amalgamation transaction to a resultant company which acquires it as a capital asset—

(i) the amalgamated company must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of that disposal; and

(ii) that resultant company and that amalgamated company must, for purposes of determining any capital gain or capital loss in respect of a disposal of that asset by that resultant company, be deemed to be one and the same person with respect to—

(aa) the date of acquisition of that asset by that amalgamated company and the amount and date of incurral by that amalgamated company of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and

(bb) any valuation of that asset effected by that amalgamated company as contemplated in paragraph 29(4) of the Eighth Schedule:

Provided that this paragraph does not apply to any asset disposed of in terms of an amalgamation transaction contemplated in paragraph (b) of the definition of "amalgamation transaction" if, on the date of that disposal, the market value of that asset is less than the base cost of that asset;

(b) an asset held by it as trading stock in terms of an amalgamation transaction to a resultant company which acquires it as trading stock—

(i) that amalgamated company must be deemed to have disposed of that asset for an amount equal to the amount taken into account by that amalgamated company in respect of that asset in terms of section 11(a) or 22(1) or (2); and

(ii) that amalgamated company and that resultant company must, for purposes of determining any taxable income derived by that resultant company from a trade

carried on by it, be deemed to be one and the same person with respect to the date of acquisition of that asset by that amalgamated company and the amount and date of incurral by that amalgamated company of any cost or expenditure incurred in respect of that asset as contemplated in section 11(a) or 22(1) or (2):

Provided that this paragraph does not apply to any asset disposed of in terms of an amalgamation transaction contemplated in paragraph (b) of the definition of "amalgamation transaction" if, on the date of that disposal, the market value of that asset is less than the amount taken into account in respect of that asset in terms of section 11(a) or 22(1) or (2).

(3) Where an amalgamated company disposes of—

(a) an asset that constitutes an allowance asset for that amalgamated company to a resultant company as part of an amalgamation transaction and that resultant company acquires that asset as an allowance asset or that resultant company is a REIT or a controlled company, as defined in section 25BB(1), that acquires that asset as a capital asset or an allowance asset—

[words preceding subparagraph (i) substituted by section 56(1)(a) of Act 23 of 2018; effective date 18 December 2017]

(i) no allowance allowed to that amalgamated company in respect of that asset must be recovered or recouped by that amalgamated company or included in that amalgamated company's income for the year of that transfer; and

(ii) that amalgamated company and that resultant company must be deemed to be one and the same person for purposes of determining the amount of any allowance or deduction—

(aa) to which that resultant company may be entitled in respect of that asset; or

(bb) that is to be recovered or recouped by or included in the income of that resultant company in respect of that asset;

[item (bb) substituted by section 56(1)(b) of Act 23 of 2018; effective date 18 December 2017]

(b) a contract to a resultant company as part of a disposal of a business as a going concern in terms of an amalgamation transaction andan allowance in terms of section 24, 24C or 24P was allowable to that amalgamated company in respect of that contract for the year preceding that in which that contract is transferred or would have been allowable to that amalgamated company for the year of that transfer had that contract not been so transferred —

(i) no allowance allowed to that amalgamated companyunder those sections must be included in that amalgamated company's income for the year of that transfer; and

(ii) that amalgamated company and that resultant company must be deemed to be one and the same person for purposes of determining the amount of any allowance—

(aa) to which that resultant company may be entitledunder those sections; or

(bb) that is to be included in the income of that resultant companyunder those sections.

(4) The provisions of subsections (2) and (3) will not apply to a disposal of an asset by an amalgamated company to a resultant company as part of an amalgamation transaction to the extent that such asset is so disposed of in exchange for consideration other than—

(a) an equity share or shares in that resultant company; or

(b) the assumption by that resultant company of a debt of that amalgamated company,that—

(i) was incurred by that amalgamated company—

(aa) more than 18 months before that disposal; or

(bb) within a period of 18 months before that disposal, to the extent that the debt—

(A) constitutes the refinancing of any debt incurred as contemplated in subparagraph (aa); or

(B) is attributable to and arose in theordinary course ofa business undertaking disposed of, as a going concern, to that resultant company as part of that amalgamation transaction; and

(ii) was not incurred by that amalgamated company for the purpose of procuring, enabling, facilitating or funding the acquisition by that resultant company of any asset in terms of that amalgamation transaction.

(4A) For purposes of the definition of "contributed tax capital", if the resultant company issues shares in exchange for the disposal of an asset in terms of an amalgamation transaction, the amount received by or accrued to the resultant company as consideration for the issue of shares is deemed to be equal to an amount which bears to the contributed tax capital of the amalgamated company at the time of termination contemplated in paragraph (a)(ii) of the definition of "amalgamation transaction" in subsection (1) the same ratio as the value of the shares held in the amalgamated company at that time by shareholders other than the resultant company bears to the value of all shares held in the amalgamated company at that time: Provided that where the amalgamated company is a portfolio of a collective investment scheme in property, the price at which the participatory interests were issued shall be added to the contributed tax capital in respect of the class of shares issued by the resultant company.

(5) Where the resultant company acquires any asset, other than an asset contemplated in section 25BB(5), from the amalgamated company in terms of an amalgamation transaction that was subject to subsection (2) or (3) and that resultant company disposes of that asset within a period of 18 months after so acquiring that asset and—

[words preceding paragraph (a) substituted by section 41 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(a) that asset constitutes a capital asset in the hands of that resultant company—

(i) so much of any capital gain determined in respect of the disposal of that asset as does not exceed the amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date, may not be taken into account in determining any net capital gain or assessed capital loss of that resultant company but is subject to paragraph 10 of the Eighth Schedule for purpose of determining an amount of taxable capital gain derived from that gain, which taxable capital gain may not be set off against any assessed loss or balance of assessed loss of that resultant company; or

(ii) so much of any capital loss determined in respect of the disposal of that asset as does not exceed the amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date, must be disregarded in determining the aggregate capital gain or aggregate capital loss of that resultant company for purposes of the Eighth Schedule: Provided that the amount of any capital loss so disregarded may be deducted from the amount of any capital gain determined in respect of the disposal during that year or any subsequent year of assessment of any other asset acquired by that resultant company from that amalgamated company in terms of that amalgamation transaction; or

(b) that asset constitutes—

(i) trading stock in the hands of that resultant company, so much of the amount received or accrued in respect of the disposal of that trading stock as does not exceed the market value of that trading stock as at the beginning of that period of 18 months and so much of the amount taken into account in respect of that trading stock in terms of section 11(a) or 22(1) or (2) as is equal to the amount so taken into account in terms of subsection (2)(b): Provided that this subparagraph does not apply to any asset that constitutes trading stock that is regularly and continuously disposed of by that resultant company; or

(ii) an allowance asset in the hands of that resultant company other than a resultant company that is a REIT or a controlled company, as defined in section 25BB(1), so much of any allowance in respect of that asset that is recovered or recouped by or included in the income of that resultant company as a result of that disposal as does not exceed the amount that would have been recovered had that asset been disposed of at the beginning of that period of 18 months for an amount equal to market value of that asset as at that date,

must be deemed to be attributable to a separate trade carried on by that resultant company, the taxable income or assessed loss from which trade may not be set off against or added to any assessed loss or balance of assessed loss of that resultant company.

(6) (a) This subsection applies where any person that holds an equity share in an amalgamated company acquires an equity share in the resultant company by virtue of that shareholding and pursuant to an amalgamation transaction in respect of which subsection (2) or (3) applied—

(i) as either a capital asset or trading stock, in the case where that equity share in the amalgamated company is held as a capital asset; or

(ii) as trading stock in the case where that equity share in the amalgamated company is held as trading stock.

(b) The person contemplated in paragraph (a) is deemed, subject to paragraphs (d) and (e), to have—

(i) disposed of the equity share in that amalgamated company for an amount equal to the expenditure incurred by that person in respect of that equity share which is or was allowable in terms of paragraph 20 of the Eighth Schedule or taken into account in terms of section 11(a) or 22(1) or (2), as the case may be;

(ii) acquired the equity share in the resultant company on the date on which that person acquired the equity share in the amalgamated company for a cost equal to the expenditure incurred by that person as contemplated in subparagraph (i);

(iii) incurred the cost contemplated in subparagraph (ii) on the date on which that person incurred the expenditure in respect of the equity share in the amalgamated company, which cost must be treated as—

(aa) an expenditure actually incurred by that person in respect of those equity shares for the purposes of paragraph 20 of the Eighth Schedule, if those equity shares in the resultant company are acquired as capital assets; or

(bb) the amount to be taken into account by that person in respect of those equity shares for the purposes of section 11(a) or 22(1) or (2), if those equity shares in the resultant company are acquired as trading stock; and

(iv) done any valuation of the equity share in the amalgamated company which was done by that person within the period contemplated in paragraph 29(4) of the Eighth Schedule, in respect of the equity share in the resultant company.

(c) An equity share in the resultant company that is acquired by the person contemplated in paragraph (a) is deemed not to be an amount transferred or applied by the amalgamated company for the benefit or on behalf of that person in respect of the share held by that person in that amalgamated company.

(d) Where the person contemplated in paragraph (a) becomes entitled to any consideration other than any equity share in the resultant company, the provisions of paragraph (b) must not apply in respect of the part of the equity share held by that person in the amalgamated company which bears the same ratio to that share as the amount of that other consideration bears to the amount of the full consideration in respect of that share.

(e) Where the person contemplated in paragraph (a) becomes entitled, by virtue of the equity share held by that person in the amalgamated company, to any consideration other than any equity share in the resultant company, so much of the amount of that other consideration as does not exceed the market value of all the assets of the amalgamated company immediately before the amalgamation, conversion or merger less—

(i) the liabilities; and

(ii) the sum of the contributed tax capital of all the classes of shares,

of the amalgamated company immediately before the amalgamation, conversion or merger must, for the purposes of the definitions of "dividend", "foreign dividend", "foreign return of capital" and "return of capital" in section 1, be deemed to be an amount transferred or applied by that amalgamated company for the benefit or on behalf of that person in respect of the share held by that person in the amalgamated company.

(8) Where an amalgamated company disposes of any equity shares in a resultant company that were acquired by that amalgamated company in terms of an amalgamation transaction that was subject to subsection (2) or (3), to a shareholder of that amalgamated company as part of that amalgamation transaction, that amalgamated company must disregard that disposal for purposes of determining its taxable income or assessed loss.

(9) *[subsection (9) deleted by section 56(1)(c) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]*

(13) The provisions of this section do not apply where the amalgamated company—

(a) has not, within a period of 36 months after the date of the amalgamation transaction, or such further period as the Commissioner may allow, taken the steps contemplated in section 41(4) to liquidate, wind up or deregister; or

(b) has at any stage withdrawn any step taken to liquidate, wind up or deregister that company, as contemplated in paragraph (a), or does anything to invalidate any step so taken, with the result that the company will not be liquidated, wound up or deregistered:

Provided that any tax which becomes payable as a result of the application of this subsection may be recovered from the resultant company.

(14) The provisions of this section do not apply—

(a) in respect of any transaction that constitutes a liquidation distribution as defined in section 47(1);

(b) in respect of any transaction if the resultant company is a company contemplated in paragraph (c) or (d) of the definition of "company";

(bA) in respect of any transaction if the resultant company is a portfolio of a collective investment scheme in securities and the amalgamated company is not a collective investment scheme in securities;

(bB) in respect of any transaction if the resultant company is a portfolio of a hedge fund investment scheme and the amalgamated company is not a portfolio of a hedge fund collective investment scheme;

(c) in respect of any transaction if the resultant company is a non-profit company as defined in section 1 of the Companies Act;

(d) in respect of any transaction contemplated in paragraph (a) of the definition of "amalgamated company" if the resultant company is a company contemplated in paragraph (b) or (e)(ii) of the definition of "company" and does not have its place of effective management in the Republic;

(e) in respect of any transaction if any amount constituting gross income of whatever nature would be exempt from tax in terms of section 10 were it to be received by or to accrue to the resultant company;

(f) in respect of any transaction if the resultant company is a public benefit organisation or recreational club approved by the Commissioner in terms of section 30 or 30A; or

(g) to a disposal of an asset by an amalgamated company to a resultant company—

(i) in terms of an amalgamation transaction contemplated in paragraph (a) of the definition of "amalgamation transaction" where that resultant company and the person contemplated in subsection (6) form part of the same group of companies immediately before and after that disposal; or

(ii) in terms of an amalgamation transaction contemplated in paragraph (b) of the definition of "amalgamation transaction" where that resultant company and the person contemplated in subsection (6) form part of the same group of companies (without regard to paragraph (i)(ee) of the proviso to the definition of "group of companies" in section 41) immediately before and after that disposal,

if that amalgamated company, resultant company and person jointly so elect.

45. Intra-group transactions

(1) For the purposes of this section—

"intra-group transaction" means any transaction—

(a) (i) in terms of which any asset is disposed of by one company (hereinafter referred to as the "transferor company") to another company that is a resident (hereinafter referred to as the "transferee company") and both companies form part of the same group of companies as at the end of the day of that transaction; and

(ii) as a result of which that transferee company acquires that asset from that transferor company—

(aa) as a capital asset, where that transferor company holds it as a capital asset; or

(bb) as trading stock, where that transferor company holds it as trading stock; or

(b) (i) in terms of which any asset that constitutes an equity share held by a transferor company as a capital asset in a foreign company is disposed of by that transferor company to a transferee company in exchange for the issue of debt or shares other than equity shares by that transferee company;

(ii) as a result of which that transferee company acquires that asset from that transferor company as a capital asset; and

(iii) if, immediately before and as at the end of the day of that transaction—

(aa) that transferor company and that transferee company form part of the same group of companies (as defined in section 1);

(bb) that transferor company is a resident or is a controlled foreign company in relation to one or more residents that form part of that group of companies; and

(cc) that transferee company is a resident or is a controlled foreign company in relation to one or more residents that form part of that group of companies.

(2) Where a transferor company disposes of—

(a) a capital asset in terms of an intra-group transaction to a transferee company which acquires it as a capital asset—

(i) the transferor company must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of that disposal; and

(ii) that transferor company and that transferee company must, for purposes of determining any capital gain or capital loss in respect of a disposal of that asset by that transferee company, be deemed to be one and the same person with respect to—

(aa) the date of acquisition of that asset by that transferor company and the amount and date of incurral by that transferor company of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and

(bb) any valuation of that asset effected by that transferor company as contemplated in paragraph 29(4) of the Eighth Schedule:

Provided that in the case of an intra-group transaction contemplated in paragraph (b) of the definition of "intra-group transaction", this paragraph does not apply to any asset that constitutes an equity share disposed of by a transferor company to a transferee company in terms of that intra-group transaction if—

(A) that transferor company is a controlled foreign company in relation to any resident;

(B) that transferee company is a resident; and

(C) the base cost of that equity share exceeds the market value of that equity share at the time of that disposal;

(b) an asset held by it as trading stock in terms of an intra-group transaction contemplated in paragraph (a) of the definition of "intra-group transaction" to a transferee company which acquires it as trading stock—

(i) that transferor company must be deemed to have disposed of that asset for an amount equal to the amount taken into account by that transferor company in respect of that asset in terms of section 11(a) or 22(1) or (2); and

(ii) that transferor company and that transferee company must, for purposes of determining any taxable income derived by that transferee company from a trade carried on by it, be deemed to be one and the same person with respect to the date of acquisition of that asset by that transferor company and the amount and date of incurral by that transferor company of any cost or expenditure incurred in respect of that asset as contemplated in section 11(a) or 22(1) or (2).

(3) Where a transferor company transfers—

(a) an asset that constitutes an allowance asset for that transferor company to a transferee company in terms of an intra-group transaction contemplated in paragraph (a) of the definition of "intra-group transaction" and that transferee company acquires that asset as an

allowance asset or that transferee company is a REIT or a controlled company, as defined in section 25BB(1), that acquires that asset as a capital asset or an allowance asset—

[words preceding subparagraph (i) substituted by section 57(1)(a) of Act 23 of 2018; effective date 18 December 2017]

(i) no allowance allowed to that transferor company in respect of that asset must be recovered or recouped by that transferor company or included in that transferor company's income for the year of that transfer; and

(ii) that transferor company and that transferee company must be deemed to be one and the same person for purposes of determining the amount of any allowance or deduction—

(aa) to which that transferee company may be entitled in respect of that asset; or

(bb) that is to be recovered or recouped by or included in the income of that transferee company in respect of that asset;

[item (bb) substituted by section 57(1)(b) of Act 23 of 2018; effective date 18 December 2017]

(b) a contract to a transferee company as part of a disposal of a business as a going concern in terms of an intra-group transaction contemplated in paragraph (a) of the definition of "intra-group transaction" and an allowance in terms of section 24, 24C or 24P was allowable to that transferor company in respect of that contract for the year preceding that in which that contract is transferred or would have been allowable to that transferor company for the year of that transfer had that contract not been so transferred—

(i) no allowance allowed to that transferor company under those sections must be included in that transferor company's income for the year of that transfer; and

(ii) that transferor company and that transferee company must be deemed to be one and the same person for purposes of determining the amount of any allowance—

(aa) to which that transferee company may be entitled under those sections; or

(bb) that is to be included in the income of that transferee company under those sections.

(3A) (a) This subsection applies where an asset is acquired by a transferee company from a transferor company in terms of an intra-group transaction and—

(i) any amount incurred by that transferee company as consideration for the acquisition of that asset from that transferor company is funded directly or indirectly by the issue of any debtor share other than an equity share; and

(ii) that debtor share—

(aa) is issued by a company that forms part of the same group of companies as the transferee company or the transferor company; and

(bb) is issued or used for the purposes of directly or indirectly facilitating or funding that intra-group transaction.

(b) The holder of any debtor share contemplated in paragraph (a) who is part of the same group of companies as the issuer of that debtor share must, for the purposes of—

(i) paragraph 20 of the Eighth Schedule, be deemed to have acquired that debtor share for an amount of expenditure of nil; and

(ii) section 11(a) or 22 (1) or (2), be deemed to have acquired that debtor share for an amount of expenditure or cost of nil.

(c) Where an amount, other than an amount of interest or an amount previously taken into account as interest, is received by or accrues to a holder in respect of a debt contemplated in paragraph (a) from any company that forms part of the same group of companies as that holder and that amount is applied by the holder in settlement of the amount outstanding in respect of that debt, that amount must be disregarded in determining the aggregate capital gain or the taxable income of that holder to the extent that that amount reduces the liability of the issuer of that debt to that holder.

(d) Where an amount, other than an amount that constitutes a dividend or an amount previously taken into account as a dividend, is received by or accrued to a holder in respect of a share contemplated in paragraph (a) from any company that forms part of the same group of companies, as defined in section 1, as that holder and that amount is applied in reduction of the capital subscribed for that share, that amount must be disregarded in determining the aggregate capital gain or the taxable income of that holder.

(3B) (a) This subsection applies where a debt or share is issued or used for purposes of directly or indirectly facilitating or funding the acquisition of an asset that is acquired as contemplated in subsection (3A), and subsequent to that acquisition—

(i) the transferee company, within a period of six years after the acquisition, ceases in relation to the transferor company or a controlling group company in relation to the transferor company, as contemplated in subsection (4), or the transferee company and the transferor company are deemed to have ceased in terms of subsection (4B), to form part of any group of companies as contemplated in subsection (4);

(ii) the transferee company and the transferor company still form part of the same group of companies on the sixth anniversary of that acquisition; or

(iii) the transferee company disposes of an asset in terms of any transaction other than a transaction contemplated under this Part.

[paragraph (a) substituted by section 16(1)(a) of Act 20 of 2022; effective date deemed to have been 1 January 2022, applies in respect of years of assessment commencing on or after that date]

(b) Where the holder of a debt or the holder of a share acquired that debt or share as a result of the issue or use of a debt or share as contemplated in paragraph (a), the holder of that debt or the holder of that share must, on the day on which the circumstances contemplated in paragraph (a) occur, be deemed to have incurred expenditure—

[words preceding subparagraph (i) substituted by section 16(1)(b) of Act 20 of 2022; effective date deemed to have been 1 January 2022, applies in respect of years of assessment commencing on or after that date]

(i) in respect of a debt, in an amount equal to the face value of that debt immediately after the acquisition of an asset as contemplated in paragraph (a) less any amount, other than an amount of interest or an amount previously taken into account as interest, that was received by or accrued to that holder in respect of that debt and was applied by that holder as settlement of the amount outstanding in respect of that debt; or

(ii) in respect of a share, in an amount equal to the price at which that share was subscribed for by that holder of that share less any amount, other than an amount that constitutes a dividend or an amount previously taken into account as a dividend, that was received by or accrued to that holder in respect of that share if that amount so

taken into account was previously applied in reduction of the amount of expenditure incurred in respect of the acquisition of that share:

Provided that the determination of any expenditure deemed to have been incurred shall be limited to the extent to which a debt or share facilitated the funding of the acquisition of an asset in respect of which the provisions of this section are applied.

[proviso substituted by section 16(1)(c) of Act 20 of 2022; effective date deemed to have been 1 January 2022, applies in respect of years of assessment commencing on or after that date]

[subsection (3B) added by section 33(1) of Act 23 of 2020; effective date 1 January 2021, and substituted by section 26(1)(a) of Act 20 of 2021; effective date 1 January 2022, applicable in respect of years of assessment commencing on or after that date]

(4) (a) This subsection applies in respect of a transferee company which has acquired an asset—

(i) in terms of a disposal by a transferor company by means of an intra-group transaction; or

(ii) in terms of one or more disposals subsequent to the disposal contemplated in subparagraph (i) and no capital gain or capital loss was determined in respect of any of those disposals as a result of the application of this Part:

Provided that this subsection does not apply to any asset that constitutes trading stock that is regularly and continuously disposed of by the transferee company.

(b) Where a transferee company contemplated in paragraph (a) of the definition of "intra-group transaction" which has acquired an asset as contemplated in paragraph (a) ceases within a period of six years after the acquisition to form part of any group of companies in relation to the transferor company contemplated in paragraph (a)(i) or a controlling group company in relation to the transferor company, and the transferee company has not disposed of that asset—

(i) an amount, in the case of an asset other than an asset contemplated in section 25BB(5), equal to the lesser of—

[words preceding item (aa) substituted by section 42(a) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(aa) the greatest capital gain that would have been determined in respect of any disposal of the asset in terms of an intra-group transaction within the period of six years preceding the date on which the transferee company ceased to form part of the group of companies, had subsection (2) not applied in respect of that disposal; or

(bb) the capital gain that would be determined if the asset was disposed of on the date on which the transferee company ceases to form part of the group of companies for an amount equal to the market value of the asset on that date,

is deemed to be a capital gain of the transferee company for the current year of assessment and the base cost of the asset must be increased by that amount and, where the asset is an allowance asset, the cost or value of the asset must be increased by 80 per cent of that amount;

[words following item (bb) substituted by section 42(b) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(ii) an amount equal to the greater of—

(aa) the greatest amount contemplated in paragraph (j) or (n) of the definition of "gross income" that would have been included in income as a result of any disposal of the asset in terms of an intra-group transaction within the period of six years preceding the date on which the transferee company ceases to form

part of the group of companies, had subsection (3) not applied in respect of that disposal; or

(bb) the amount contemplated in paragraph (j) or (n) of the definition of "gross income" that would be included in income if the asset was disposed of on the date on which the transferee company ceases to form part of the group of companies for an amount equal to the market value of the asset on that date,

must be included in the gross income of the transferee company for the current year of assessment and the cost or value of the asset for purposes of any deductions allowable in respect of that asset (other than deductions allowable in terms of section 12G or 12I) must be increased by that amount: Provided that where an amount contemplated in paragraph (j) of the definition of "gross income" is so included, the cost or value is deemed to be so increased immediately before any subsequent disposal of the asset; and

(iii) an amount equal to the lesser of—

(aa) the greatest amount of taxable income (other than any taxable capital gain and any taxable income derived as a result of an amount being included in gross income in terms of paragraph (j) or (n) of the definition of "gross income") that would have been determined in respect of any disposal of the asset in terms of an intra-group transaction within the period of six years preceding the date on which the transferee company ceases to form part of the group of companies, had subsection (2) not applied in respect of that disposal; or

(bb) the taxable income (other than any taxable capital gain and any taxable income derived as a result of an amount being included in gross income in terms of paragraph (j) or (n) of the definition of "gross income"), that would be determined if the asset was disposed of on the date on which the transferee company ceases to form part of the group of companies for an amount equal to the market value of the asset on that date,

must be included in the taxable income of the transferee company for the current year of assessment and the cost of the asset must be increased by that amount.

(bA) Where a transferee company contemplated in paragraph (b) of the definition of "intra-group transaction" which has acquired an asset that constitutes an equity share as contemplated in paragraph (a)—

(i) ceases within a period of six years after the acquisition—

(aa) to form part of any group of companies (as defined in section 1) in relation to—

(A) the transferor company contemplated in paragraph (a)(i); or

(B) any controlling group company of a group of companies (as defined in section 1) in relation to that transferor company; or

(bb) to be a controlled foreign company in relation to any resident that is part of any group of companies contemplated in item (aa); and

(ii) has not disposed of that equity share at the time of so ceasing,

an amount equal to the lesser of—

(AA) the greatest capital gain that would have been determined in respect of any disposal of the equity share in terms of an intra-group transaction within the period of six years preceding the date on which the transferee company ceased to form part of the group of companies as contemplated in item (aa), had subsection (2) not applied in respect of that disposal; or

(BB) the capital gain that would be determined if the asset was disposed of on the date on which the transferee company ceases to form part of the group of companies as contemplated in item (aa) or on the date before the day the transferee company ceases to be a controlled foreign company as contemplated in item (bb) for an amount equal to the market value of the equity share on that date,

[subparagraph (BB) substituted by section 42(c) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

must be deemed to be a capital gain of the transferee company for the year of assessment in which the transferee company ceased to form part of the group of companies as contemplated in item (aa) or on the date before the day the transferee company ceases to be a controlled foreign company as contemplated in item (bb) and applied to increase the base cost of the equity share.

[words following subparagraph (BB) substituted by section 42(c) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(c) Where the transferor company or transferee company contemplated in paragraph (b) is liquidated, wound up or deregistered at a time when a company which is a resident (hereinafter referred to as the "holding company") holds at least 70 per cent of the equity shares of that company which is liquidated, wound up or deregistered, the holding company and the company which is liquidated, wound up or deregistered must be deemed to be one and the same company for purposes of paragraph (b).

(d) Where the transferor company or transferee company contemplated in paragraph (bA) is liquidated, wound up or deregistered at a time when a company (hereinafter referred to as the "holding company"), which is a resident or a controlled foreign company in relation to any resident, holds at least 70 per cent of the equity shares of that company which is liquidated, wound up or deregistered, the holding company and the company which is liquidated, wound up or deregistered must be deemed to be one and the same company for purposes of paragraph (bA).

(4A) Subsection (4)(b) does not apply in respect of any asset disposed of—

(a) prior to 21 February 2008, where that transferee company and that transferor company contemplated in that subsection cease to form part of a group of companies by reason of the coming into operation of section 52(1)(c) of the Revenue Laws Amendment Act, 2007 (Act No. 35 of 2007); or

(b) on or after 1 January 2011, where that transferee company and that transferor company contemplated in that subsection cease to form part of a group of companies by reason of the coming into operation of section 6(1)(g) of the Taxation Laws Amendment Act, 2010.

(4B) A transferee company and a transferor company contemplated in subsection (4)(b) must for purposes of subsection (4) be deemed to have ceased to form part of any group of companies in relation to each other if a disposal contemplated in subsection (4) forms part of any transaction, operation or scheme in terms of which—

(a) any consideration received or accrued in respect of that disposal; or

(b) more than 10 per cent of any amount derived directly or indirectly from such consideration,

has, within two years of that disposal, been disposed of—

(i) by that transferor company; or

(ii) by any other company forming part of the same group of companies as the transferor company,

to any person that does not form part of the same group of companies as the transferor company—

(aa) for no consideration;

(bb) for a consideration which does not reflect an arm's length price; or

(cc) by means of a distribution.

(5) Where a transferee company disposes of an asset, other than an asset contemplated in section 25BB(5) or in terms of an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been a financial instrument, within a period of 18 months after acquiring that asset in terms of an intra-group transaction and—

[words preceding paragraph (a) substituted by section 42(d) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(a) that asset constitutes a capital asset in the hands of that transferee 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 transferee company but is subject to paragraph 10 of the Eighth Schedule for purpose of determining an amount of taxable capital gain derived from that gain, which taxable capital gain may not be set off against any assessed loss or balance of assessed loss of that transferee company; or

(ii) so much of any capital loss determined in respect of the disposal of that asset as does not exceed that amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date, must be disregarded in determining the aggregate capital gain or aggregate capital loss of that transferee company for purposes of the Eighth Schedule: Provided that the amount of any capital loss so disregarded may be deducted from the amount of any capital gain determined in respect of the disposal during that year or any subsequent year of assessment of any other asset acquired by that transferee company from the transferor company in terms of an intra-group transaction; or

(b) that asset constitutes—

(i) trading stock in the hands of that transferee company, so much of the amount received or accrued in respect of the disposal of that trading stock as does not exceed the market value of that trading stock as at the beginning of that period of 18 months and so much of the amount taken into account in respect of that trading stock in terms of section 11(a) or 22(1) or (2) as is equal to the amount so taken into account in terms of subsection (2)(b): Provided that this subparagraph does not apply to any asset that constitutes trading stock that is regularly and continuously disposed of by that transferee company; or

(ii) an allowance asset in the hands of that transferee company other than a transferee company that is a REIT or a controlled company, as defined in section 25BB(1), so much of any allowance in respect of that asset that is recovered or recouped by or included in the income of that transferee company as a result of that disposal as does not exceed the amount that would have been recovered had that asset been disposed of at the beginning of that period of 18 months for an amount equal to the market value of that asset as at that date,

must be deemed to be attributable to a separate trade carried on by that transferee company, the taxable income or assessed loss from which trade may not be set off against any assessed loss or balance of assessed loss of that transferee company:

Provided that no regard must be had to the provisions of this subsection if the provisions of subsection (4) have, subsequent to the acquisition of an asset by a transferee company from a transferor company in terms of an intra-group transaction in the manner contemplated in paragraph (a), been applied in respect of that asset:

[proviso added by section 42(e) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

Provided further that no regard must be had to the provisions of this subsection in the instance that—

(a) a capital gain is determined in respect of the disposal of an asset where a capital loss would have been determined had that asset been disposed of at the beginning of that period of 18 months; or

(b) a capital loss is determined in respect of the disposal of an asset where a capital gain would have been determined had that asset been disposed of at the beginning of that period of 18 months.

[further proviso added by section 26(1)(b) of Act 20 of 2021; effective date 1 January 2022, applicable in respect of the disposal of any asset on or after that date]

(6) This section does not apply in respect of the disposal of an asset if—

(b) all the receipts and accruals of the transferee company are exempt from tax in terms of section 10(1)(cA), (cN), (cO), (cP), (d) or (t);

(c) the asset was disposed of by the transferor company in exchange for equity shares issued by the transferee company;

(d) the asset constitutes a share that is distributed by the transferor company to the transferee company;

(e) the asset was disposed of by the transferor company to the transferee company in terms of a liquidation distribution referred to in section 47 regardless of whether or not an election has been made for the provisions of that section to apply and regardless of whether or not that transferee company acquired that asset as a capital asset or as trading stock;

(f) the asset constitutes a share in the transferee company; or

(g) at the time of the disposal of the asset, the transferor company and the transferee company agree in writing that this section does not apply to that disposal.

46. Unbundling transactions

(1) For the purposes of this section, "unbundling transaction" means any transaction—

(a) (i) in terms of which the equity shares in a company (hereinafter referred to as the "unbundled company"), which is a resident that are held by a company (hereinafter referred to as the "unbundling company"), which is a resident, are all distributed by that unbundling company to any shareholder of that unbundling company in accordance with the effective interest of the shareholders in the shares of that unbundling company, and if—

(aa) all of the equity shares of the unbundled company are listed shares or will become listed shares within 12 months after that distribution;

(bb) that shareholder to which that distribution is made by that unbundling company forms part of the same group of companies as that unbundling company; or

(cc) that distribution is made pursuant to an order in terms of the Competition Act, 1998 (Act No. 89 of 1998), made by the Competition Tribunal or the Competition Appeal Court; and

(ii) if the equity shares distributed as contemplated in subparagraph (i) constitute—

(aa) where that unbundled company is a listed company immediately before that distribution—

(A) and no shareholder of the unbundled company other than the unbundling company holds the same number of equity shares as or more equity shares than the unbundling company of that unbundled company, more than 25 per cent of the equity shares of the unbundled company; or

(B) and any shareholder of the unbundled company other than the unbundling company holds the same number of equity shares as or more equity shares than the unbundling company of that unbundled company, at least 35 per cent of the equity shares of that unbundled company; or

(bb) where that unbundled company is an unlisted company immediately before that distribution, more than 50 per cent of the equity shares of that unbundled company; or

(b) (i) in terms of which all the equity shares in an unbundled company which is aforeign company that are held by an unbundling company which is a resident or a controlled foreign company are all distributed by that unbundling company toany shareholderof that unbundling company in accordance with the effective interest of that shareholderin the shares of that unbundling company—

(aa) if that shareholder is a resident and that shareholder forms part of the same group of companies (as defined in section 1); or

(bb) if that shareholder is not a resident and that shareholder is a controlled foreign company in relation to any resident that forms part of the same group of companies (as defined in section 1),

as that unbundling company;

(ii) if, immediately before the distribution of the equity shares of an unbundled company by an unbundling company to any shareholder of that unbundling company as contemplated in subparagraph (i)—

(aa) the unbundling company holds more than 50 per cent of the equity shares of the unbundled company; and

(bb) each of those equity shares of that unbundled company are held by the unbundling company as a capital asset.

(2) Subject to subsection (7), where an unbundling company distributes shares in terms of an unbundling transaction, that unbundling company must disregard that distribution for purposes of determining its taxable income or assessed loss, or its net income as contemplated in section 9D.

[subsection (2) substituted by section 34(1)(a) of Act 23 of 2020; effective date 28 October 2020, applicable to unbundling transactions entered into on or after that date]

(3) (a) If a shareholder acquires equity shares (hereinafter referred to as "unbundled shares") in terms of an unbundling transaction—

(i) that shareholder must—

(aa) allocate a portion of the expenditure and any market value attributable to the equity shares held in the unbundling company (hereinafter referred to as the

"unbundling shares") to the unbundled shares in accordance with subparagraph (v); and

(bb) reduce the expenditure and market value attributable to the unbundling shares by the amount so allocated to the unbundled shares;

(ii) the unbundled shares must, other than for purposes of determining whether a share has been held for at least three years for the purposes of section 9C(2), be deemed to have been acquired on the same date as the unbundling shares;

(iii) the unbundled shares must be deemed to have been acquired as—

(aa) trading stock, if the unbundling shares were held as trading stock;

(bb) capital assets, if the unbundling shares were held as capital assets;

(iv) any expenditure allocated to the unbundled shares must be deemed to have been incurred on the date on which the expenditure was incurred in respect of the unbundling shares; and

(v) the proportionate amount of the expenditure and market value to be allocated to the unbundled shares in terms of subparagraph (i)(aa) must be determined in accordance with the ratio that the market value of the unbundled shares, as at the end of the day after that distribution, bears to the sum of the market value, as at the end of that day, of the unbundling shares and of the unbundled shares.

(b) For the purposes of this subsection—

"expenditure" means in relation to unbundled shares acquired as—

(i) trading stock, the amount taken into account prior to the unbundling transaction in respect of the unbundling shares for the purposes of section 11(a) or 22(1) or (2);

(ii) capital assets, the expenditure incurred prior to the unbundling transaction in respect of the unbundling shares that is allowable in terms of paragraph 20 of the Eighth Schedule; and

(iii) the amount which bears to the tax paid by the unbundling company of any equity share in respect of which this section does not apply as contemplated in subsection (7) the same ratio as the number of equity shares held by a shareholder that acquires unbundled shares in terms of an unbundling transaction in an unbundling company bears to the number of all the issued equity shares in that unbundling company immediately before that unbundling transaction;

[definition of "expenditure" substituted by section 27(1) of Act 20 of 2021; effective date 1 January 2022, applicable in respect of the allocation of expenditure to unbundled shares acquired on or after that date]

"market value" in relation to unbundling shares acquired prior to the valuation date as defined in paragraph 1 of the Eighth Schedule, means any market value adopted or determined by the shareholder in respect of those shares within the period contemplated in paragraph 29(4) of the Eighth Schedule.

(3A) If shares are distributed in terms of an unbundling transaction, the contributed tax capital of—

(a) the unbundling company immediately after the distribution is deemed to be an amount which bears to the contributed tax capital of that company immediately before distribution the same ratio as the aggregate market value, immediately after the distribution, of the shares in that company bears to the aggregate market value of the shares immediately before distribution; and

(b) the unbundled company immediately after the distribution is deemed to be an amount equal to the sum of—

(i) an amount which bears to the contributed tax capital of the unbundling company immediately before the distribution the same ratio as the aggregate market value of the distributed shares before the distribution bears to the aggregate market value of the shares in the unbundling company immediately before the distribution; and

(ii) an amount which bears to the contributed tax capital of the unbundled company immediately before the distribution the same ratio as the shares held in that company immediately before the distribution by persons other than the unbundling company bear to all shares held in that company immediately before the distribution;

(4) Where those shares are distributed by an unbundling company to a shareholder in terms of an unbundling transaction and that shareholder held the unbundling shares 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 unbundling shares must be included in the income of that shareholder—

(a) in the year of assessment during which that shareholder becomes entitled to dispose of those shares, which portion shall be an amount which bears to such gain the same ratio as that contemplated in subsection (3)(a); and

(b) in the year of assessment during which that person becomes entitled to dispose of the unbundling 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).

(5) Subject to subsection (7), where shares are distributed by an unbundling company to a shareholder in terms of an unbundling transaction, the distribution by that unbundling company of the shares must be disregarded in determining any liability for dividends tax.

[subsection (5) substituted by section 34(1)(b) of Act 23 of 2020; effective date 28 October 2020, applicable to unbundling transactions entered into on or after that date]

(5A) Where shares are distributed by an unbundling company to a shareholder in terms of an unbundling transaction, paragraph 76B of the Eighth Schedule does not apply to that distribution.

(6A) This section does not apply in respect of an unbundling transaction where the unbundling company is a REIT or a controlled company as defined in section 25BB(1).

(7) (a) In the case of an unbundling transaction contemplated in subsection (1)(a), this section does not apply in respect of any equity share that is distributed by an unbundling company to any shareholder that—

(i) is a disqualified person; and

(ii) holds at least 5 per cent of the equity shares in the unbundling company immediately before that unbundling transaction.

[paragraph (a) substituted by section 34(1)(c) of Act 23 of 2020; effective date 28 October 2020, applicable to unbundling transactions entered into on or after that date]

(b) For the purposes of paragraph (a), a "disqualified person" means—

(i) a person that is not a resident;

(ii) the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a);

(iii) a public benefit organisation as defined in section 30 that has been approved by the Commissioner in terms of that section;

(iv) a recreational club as defined in section 30A that has been approved by the Commissioner in terms of that section;

(v) a company or trust contemplated in section 37A;

(vi) a fund contemplated in section 10(1)(d)(i) or (ii); or

(vii) a person contemplated in section 10(1)(cA) or (t).

(8) Where an unlisted unbundling company disposes of shares in an unlisted unbundled company in terms of an unbundling transaction to a shareholder and that unbundled company is a controlled group company in relation to that shareholder immediately before and after that disposal, the provisions of this section will not apply to that disposal if that shareholder and that unbundling company agree in writing that this section does not apply to that disposal.

46A. Limitation of expenditure incurred in respect of shares held in an unbundling company

(1) Notwithstanding any other provision of this Act, if a taxpayer acquires a share in an unbundled company from an unbundling company in terms of an unbundling transaction defined in section 46 and a share in that unbundling company was within a period of two years preceding the acquisition held by a person who was a connected person in relation to the taxpayer at any time during that period, and any amount received by or accrued to that person in respect of the disposal of the share at any time during that period would not have been subject to normal tax or would not have been taken into account for purposes of determining the net income, as defined in section 9D, of that person, the expenditure incurred by the taxpayer in respect of any share held in that company as a result of that unbundling transaction shall not for purposes of this Act exceed an amount determined in accordance with subsection (2).

[subsection (1) substituted by section 28(1) of Act 20 of 2021; effective date 1 January 2022, applicable in respect of the allocation of expenditure to unbundled shares acquired on or after that date]

(2) The amount to be determined for purposes of subsection (1) is the sum of—

(a) the cost of the equity share to the connected person contemplated in subsection (1) that first held that share less the sum of all deductions that have been allowed in respect of the share to any connected person that held that share during that period;

(b) any amount contemplated in paragraph (n) of the definition of "gross income" in section 1 that is required to be included in the income of any connected person that held that share during that period that arises as a result of the disposal of the share by any such person; and

(c) any capital gain of any connected person that held that share during that period that arises as a result of the disposal of the share by any such person.

47. Transactions relating to liquidation, winding-up and deregistration

(1) For the purposes of this section "liquidation distribution" means any transaction—

(a) in terms of which any company (hereinafter referred to as the "liquidating company") which is a resident disposes of all of its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to its shareholders in anticipation of or in the course of the liquidation, winding up or deregistration of that company and other than assets required to satisfy any reasonably anticipated liabilities to any sphere of government of any country and costs of administration relating to the liquidation or winding up, but only to the extent to which those assets are so disposed of to another company (hereinafter referred to as the "holding company") which is a resident and which on the date of that disposal forms part of the same group of companies as the liquidating company; or

(b) in terms of which a liquidating company which is a controlled foreign company in relation to any resident disposes of all of its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to its shareholders in anticipation of or in the course of the liquidation, winding up or deregistration of that company—

(i) to the extent that those assets are so disposed of to a holding company which—

(aa) is a resident and which forms part of the same group of companies (as defined in section 1) as the liquidating company immediately before that distribution; or

(bb) is a controlled foreign company in relation to any resident;

(ii) if, immediately before that transaction, each of the shares held by the holding company in the liquidating company is held as a capital asset; and

(iii) if, immediately after that transaction, where that holding company is a controlled foreign company as contemplated in subparagraph (i)(bb), more than 50 per cent of the equity shares in the holding company are directly or indirectly held by a resident (whether alone or together with any other resident that forms part of the same group of companies as that resident).

(2) Where a liquidating company disposes of—

(a) a capital asset in terms of a liquidation distribution to its holding company which acquires it as a capital asset—

(i) that liquidating company must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of the disposal thereof; and

(ii) that liquidating company and that holding company must, for purposes of determining any capital gain or capital loss in respect of a disposal of that asset by that holding company, be deemed to be one and the same person with respect to—

(aa) the date of acquisition of that asset by that liquidating company and the amount and date of incurral by that liquidating company of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and

(bb) any valuation of that asset effected by that liquidating company as contemplated in paragraph 29(4) of the Eighth Schedule; or

(b) an asset held by it as trading stock in terms of a liquidation distribution to its holding company which acquires it as trading stock—

(i) that liquidating company must be deemed to have disposed of that asset for an amount equal to the amount taken into account by that liquidating company in respect of that asset in terms of section 11(a) or 22(1) or (2); and

(ii) that liquidating company and that holding company must, for purposes of determining any taxable income derived by that holding company from a trade carried on by it, be deemed to be one and the same person with respect to the date of acquisition of that asset by that liquidating company and the amount and date of incurral by that liquidating company of any cost or expenditure incurred in respect of that asset as contemplated in section 11(a) or 22(1) or (2):

Provided that in the case of a liquidation distribution contemplated in paragraph (b) of the definition of "liquidation distribution", this subsection does not apply to any asset disposed of in terms of that liquidation distribution to a holding company which is a resident and which forms part of the same group of companies (as defined in section 1) as the liquidating company if that asset constitutes—

(a) a capital asset acquired by the holding company as a capital asset and the base cost of that asset exceeds the market value of that asset at the time of that disposal; or

(b) trading stock acquired by the holding company as trading stock and the amount taken into account in respect of that asset in terms of section 11(a) or 22(1) or (2) exceeds the market value of that asset at the time of that disposal.

(3) Where a liquidating company disposes of—

(a) an asset that constitutes an allowance asset for that liquidating company to its holding company in terms of a liquidation distribution and that holding company acquires that asset as an allowance asset or that holding company is a REIT or a controlled company, as defined in section 25BB(1), that acquires that asset as a capital asset or allowance asset—

[words preceding subparagraph (i) substituted by section 58(1)(a) of Act 23 of 2018; effective date 18 December 2017]

(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 or deduction—

(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

[item (bb) substituted by section 58(1)(b) of Act 23 of 2018; effective date 18 December 2017]

(b) to its holding company as part of a disposal of a business as a going concern in terms of a liquidation distribution and an allowance in terms of section 24 or 24C was allowable to that liquidating company in respect of that contract 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 under those sections 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 under those sections; or

(bb) that is to be included in the income of that holding company under those sections.

(3A) The provisions of subsections (2) and (3) apply to a disposal of an asset by a liquidating company to its holding company in terms of a liquidation distribution only to the extent that—

(a) equity shares held by that holding company in that liquidating company are disposed of as a result of the liquidation, winding up or deregistration of that liquidating company; and

(b) that holding company has not assumed any debt of that liquidating company which was incurred by that liquidating company within a period of 18 months before that disposal, unless that debt—

(i) constitutes the refinancing of any debt incurred in more than 18 months before that disposal; or

(ii) is attributable to and arose in the normal course of a business undertaking disposed of, as a going concern, to that holding company as part of that liquidation distribution.

(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, other than an asset contemplated in section 25BB(5) constitutes a capital asset for that holding company—

[words preceding subparagraph (i) substituted by section 43 of Act 34 of 2019; effective date 15 January 2020, and by section 29 of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(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, other than a holding company that is a REIT or a controlled company, as defined in section 25BB(1), 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) a holding company disposes of any equity share in a liquidating company as a result of the liquidation, winding up or deregistration of that liquidating company; or

(b) in anticipation of or in the course of the liquidation, winding up or deregistration of a liquidating company, a return of capital by way of a distribution of cash or an asset *in specie* by that company is received by or accrues to a holding company,

the holding company must disregard that disposal or return of capital for purposes of determining its taxable income, assessed loss, aggregate capital gain or aggregate capital loss.

(6) The provisions of this section do not apply where—

(a) the holding company is—

(i) a public benefit organisation as defined in section 30 that has been approved by the Commissioner in terms of that section;

(ii) a recreational club as defined in section 30A that has been approved by the Commissioner in terms of that section; or

(iii) a person contemplated in section 10(1)(cA), (cP), (d), (e) or (t);

(b) the holding company and the liquidating company agree in writing that this section does not apply; or

(c) the liquidating company—

(i) has not, within a period of 36 months after the date of the liquidation distribution, or such further period as the Commissioner may allow, taken the steps contemplated in section 41(4) to liquidate, wind up or deregister; or

(ii) has at any stage withdrawn any step taken to liquidate, wind up or deregister that company, as contemplated in paragraph (i), or does anything to invalidate any step so taken, with the result that the company will not be liquidated, wound up or deregistered:

Provided that any tax which becomes payable as a result of the application of this paragraph shall be recoverable from the holding company or, where the holding company is a controlled foreign company, from any resident who directly or indirectly holds any participation rights in that controlled foreign company as contemplated in section 9D(2).

Part IIIA – Taxation of foreign entertainers and sportspersons

47A. Definitions

For purposes of this Part—

(a) "**entertainer or sportsperson**" includes any person who for reward—

(i) performs any activity as a theatre, motion picture, radio or television artiste or a musician;

(ii) takes part in any type of sport; or

(iii) takes part in any other activity which is usually regarded as of an entertainment character;

(b) "**specified activity**" means any personal activity exercised in the Republic or to be exercised by a person as an entertainer or sportsperson, whether alone or with any other person or persons.

47B. Imposition of tax

(1) Subject to subsection (3), there must be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the tax on foreign entertainers and sportspersons, in respect of any amount received by or accrued to any person who is not a resident (in this Part referred to as the "taxpayer") in respect of any specified activity exercised or to be exercised by that person or any other person who is not a resident.

(2) (a) The tax on foreign entertainers and sportspersons is a final tax and is levied—

(i) at a rate of 15 per cent; or

(ii) at such a rate as the Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, with effect from a date mentioned in that Announcement,

on all amounts received by or accrued to a taxpayer as contemplated in subsection (1).

(b) If the Minister makes an announcement contemplated in paragraph (a)(ii), that rate comes into effect on the date determined by the Minister in that announcement and continues to apply for a period of 12 months from that date subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.

(3) Subsection (1) does not apply in respect of any person who is not a resident, if that person—

(a) is an employee of an employer who is a resident; and

(b) is physically present in the Republic for a period or periods exceeding 183 full days in aggregate during any 12 month period commencing or ending during the year of assessment in which the specified activity is exercised.

47C. Liability for payment of tax

(1) A taxpayer must, within 30 days (or within such further period as the Commissioner may approve) after an amount contemplated in section 47B is received by or accrues to that taxpayer, pay to the Commissioner the amount of tax which is leviable in terms of this Part in respect of that amount.

(2) This section does not apply to any amounts received by or accrued to the taxpayer—

(a) from which the full amount of tax has been withheld by a resident in terms of section 47D; or

(b) which have been recovered from a resident who is personally liable for the amount in terms of section 47G(1).

47D. Withholding of amounts of tax

(1) Any resident who is liable to pay to a taxpayer any amount contemplated in section 47B(1) must deduct or withhold from that payment the amount of tax for which the taxpayer is liable under that section in respect of that amount.

(2) A taxpayer from whom an amount has been deducted or withheld in terms of this section is deemed to have received the amount so deducted or withheld.

47E. Payment of amounts of tax deducted or withheld

(1) A resident must pay any amount deducted or withheld in terms of section 47D to the Commissioner before the end of the month following the month during which that amount was so deducted or withheld.

(2) The payment contemplated in subsection (1) is a payment made on behalf of the taxpayer in respect of his or her liability under section 47B.

47F. Submission of return

(1) A taxpayer must, together with the payment contemplated in section 47C(1), submit to the Commissioner a return.

(2) A resident who pays to the Commissioner any amount in terms of section 47E, must together with that payment submit to the Commissioner a return.

47G. Personal liability of resident

(1) A resident who—

(a) fails to deduct or withhold an amount of tax in terms of section 47D from any payment made to a taxpayer; or

(b) deducts or withholds an amount of tax but fails to pay that amount over in terms of section 47E,

is personally liable for payment of that amount of tax in accordance with Part A of Chapter 10 of the Tax Administration Act.

(3) Subsection (1)(a) does not apply where the taxpayer has in terms of section 47C(1) paid to the Commissioner the amount of tax payable under this Part in respect of the payment from which the resident has so failed to deduct or withhold the tax.

47J. Currency of payments made to Commissioner

If an amount deducted or withheld by a resident in terms of section 47D is denominated in any currency other than the currency of the Republic, the amount so deducted or withheld and paid to the Commissioner must be translated to the currency of the Republic at the spot rate on the date on which that amount was so deducted or withheld.

47K. Notification of specified activity

Any resident who is primarily responsible for founding, organising, or facilitating a specified activity in the Republic and who will be rewarded directly or indirectly for that function of founding, organising or facilitating must, in the manner and form prescribed by the Commissioner—

(a) notify the Commissioner of that specified activity within 14 days after the agreement relating to that founding, organising or facilitating of that specified activity has been concluded; and

(b) provide to the Commissioner such other details relating thereto as may be required by the Commissioner.

Part IV – Turnover tax payable by micro businesses

48. Definitions

For purposes of this Part, unless the context otherwise indicates, any word or expression that has been defined in section 1 shall bear the meaning so defined and any word or expression that has been defined in the Sixth Schedule shall bear the meaning so defined.

48A. Imposition of tax

There must be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the turnover tax, payable by a person that was a registered micro business during a year of assessment, in respect of its taxable turnover for that year of assessment.

48B. Rates

(1) The rates of tax chargeable in terms of section 48A must be fixed annually by Parliament.

(2) The rates fixed by Parliament in respect of any year of assessment continue to apply until the next such determination of rates and will be applied for the purposes of calculating the tax payable in respect of the taxable turnover of a registered micro business during the next succeeding year of assessment if, in the opinion of the Commissioner, the calculation and collection of the

tax chargeable in respect of such taxable turnover cannot without the risk of loss of revenue be postponed until after the rates for that year have been determined.

48C. Transitional provisions

(1) Where an amount—

(a) was received by a person during a year of assessment when it was a registered micro business;

(b) was included in that person's taxable turnover for that year of assessment; and

(c) accrues to that person when it is no longer a registered micro business,

that amount must not be taken into account as a receipt or accrual for purposes of determining the taxable income of that person.

(2) Where an amount—

(a) accrued to a person when it was a registered micro business;

(b) would have been included in that person's taxable turnover had it been received on the date that it accrued; and

(c) is received by that person when it is no longer a registered micro business,

ten per cent of that amount must be included in the taxable income of that person for the year of assessment in which it is received.

(3) Where a registered micro business is deregistered, any trading stock held and not disposed of by it as at the date with effect from which it is deregistered shall, for purposes of the application of section 22, be deemed to have been trading stock held and not disposed of by it at the beginning of the year of assessment within which that date falls.

(4) Where in the course of a year of assessment a registered micro business is deregistered in terms of paragraph 10(2) of the Sixth Schedule and a person becomes liable for payment of tax in terms of section 5 in respect of the taxable income of that deregistered micro business, that person is exempt from any penalties for underpayment of tax for which that person, solely as a result of becoming so liable in respect of that taxable income, would otherwise become liable under the Fourth Schedule to this Act or Chapter 15 of the Tax Administration Act.

Part IVA – Withholding tax on royalties

49A. Definitions

In this Part—

"**foreign person**" means any person that is not a resident;

"**royalty**" means any amount that is received or accrues in respect of—

(a) the use or right of use of or permission to use any intellectual property as defined in section 23I; or

(b) the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information, or the rendering of or the undertaking to render any assistance or service in connection with the application or utilisation of such knowledge or information.

49B. Levy of withholding tax on royalties

(1) (a) There must be levied for the benefit of the National Revenue Fund a tax, to be known as the withholding tax on royalties, calculated—

(i) at the rate of 15 per cent; or

(ii) at such rate as the Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, with effect from a date mentioned in that Announcement,

of the amount of any royalty that is paid by any person to or for the benefit of any foreign person to the extent that the amount is regarded as having been received by or accrued to that foreign person from a source within the Republic in terms of section 9(2)(c), (d), (e) or (f).

(b) If the Minister makes an announcement contemplated in paragraph (a)(ii), that rate comes into effect on the date determined by the Minister in that announcement and continues to apply for a period of 12 months from that date subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.

(2) For the purposes of this Part, a royalty is deemed to be paid on the earlier of the date on which the royalty is paid or becomes due and payable.

(3) The withholding tax on royalties is a final tax.

(4) Where a person making payment of a royalty to or for the benefit of a foreign person has withheld an amount as contemplated in section 49E(1), that person must, for the purposes of this Part, be deemed to have paid the amount so withheld to that foreign person.

49C. Liability for tax

(1) A foreign person to which a royalty is paid is liable for the withholding tax on royalties to the extent that the royalty is regarded as having been received by or accrued to that foreign person from a source within the Republic in terms of section 9(2)(c), (d), (e) or (f).

(2) Any amount of withholding tax on royalties that is—

(a) withheld as contemplated in section 49E(1); and

(b) paid as contemplated in section 49F(1),

is a payment made on behalf of the foreign person to which the royalty is paid in respect of that foreign person's liability under subsection (1).

49D. Exemption from withholding tax on royalties

A foreign person is exempt from the withholding tax on royalties if—

(a) that foreign person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the royalty is paid; or

(b) the property in respect of which that royalty is paid is effectively connected with a permanent establishment of that foreign person in the Republic if that foreign person is registered as a taxpayer in terms of Chapter 3 of the Tax Administration Act; or

(c) that royalty is paid by a headquarter company in respect of the granting of the use or right of use of or permission to use intellectual property as defined in section 23I to which section 31 does not apply as a result of the exclusions contained in section 31(5)(c) or (d).

49E. Withholding of withholding tax on royalties by payers of royalties

(1) Subject to subsections (2) and (3), any person making payment of anyamount of royalties to or for the benefit of a foreign person must withhold an amountof withholding tax on royalties from that payment.

(2) A person must not withhold any amount from any payment contemplated in subsection (1)—

(a) to the extent that the royalty is exempt from the withholding tax on royalties in terms of section 49D(c); or

(b) if the foreign person to or for the benefit of which that payment is to be made has, before the royalty is paid, submitted to the person making the payment—

(i) a declaration in such form as may be prescribed by the Commissioner that the foreign person is, in terms of section 49D(a) or (b) or an agreement for the avoidance of double taxation, exempt from the withholding tax on royalties in respect of that payment; and

[subparagraph (i) substituted by section 30(1) of Act 20 of 2021; effective date 1 January 2022, applicable in respect of royalties paid on or after that date]

(ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the person making the payment in writing, should the circumstances affecting the exemption referred to in subparagraph (i) change or should the payment of the royalty no longer be for the benefit of that foreign person.

[paragraph (b) substituted by section 3(1)(a) of Act 33 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(3) The rate referred to in section 49B(1) must, for the purposes of that subsection, be reduced if the foreign person to or for the benefit of which the payment contemplated in that subsection is to be made has, before the royalty is paid, submitted to the person making the payment—

(a) a declaration in such form as may be prescribed by the Commissioner that the royalty is subject to that reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation; and

(b) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the person making the payment in writing, should the circumstances affecting the application of the agreement referred to in paragraph (a) change or should the payment of the royalty no longer be for the benefit of that foreign person.

[subsection (3) substituted by section 3(1)(b) of Act 33 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(4) A declaration and written undertaking submitted in terms of subsection (2)(b) or (3) are no longer valid after a period of five years from the date of the declaration.

[subsection (4) added by section 3(1)(c) of Act 33 of 2019; effective date 1 July 2020]

49F. Payment and recovery of tax

(1) If, in terms of section 49C, a foreign person is liable for any amount of withholding tax on royalties in respect of any amount of royalties that is paid to or for the benefit of the foreign person, that foreign person must pay that amount of withholding tax and submit a return by the last day of the month following the month during which the royalty is paid, unless the tax has been paid by any other person.

[subsection (1) substituted by section 3 of Act 21 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(2) Any person that withholds any withholding tax on royalties in terms of section 49E must submit a return and pay the tax to the Commissioner by the last day of the month following the month during which the royalty is paid.

49G. Refund of withholding tax on royalties

Notwithstanding Chapter 13 of the Tax Administration Act, if—

(a) an amount is withheld from a payment of a royalty as contemplated in section 49E(1);

(b) a declaration contemplated in section 49E(2) or (3) in respect of that royalty is not submitted to the person paying that royalty by the date of the payment of that royalty; and

(c) a declaration contemplated in section 49E(2) or (3) is submitted to the Commissioner within three years after the payment of the royalty in respect of which the declaration is made,

so much of that amount as would not have been withheld had that declaration been submitted by the date contemplated in the relevant subsection is refundable by the Commissioner to the person to which the royalty was paid.

49H. Currency of payments made to Commissioner

If an amount withheld by a person in terms of section 49E(1) is denominated in any currency other than the currency of the Republic, the amount so withheld must, for the purposes of determining the amount to be paid to the Commissioner in terms of section 49F(2), be translated to the currency of the Republic at the spot rate on the date on which the amount was so withheld.

Part IVB – Withholding tax on interest

50A. Definitions

In this Part—

"**bank**" means any—

(a) any bank or branch as defined in section 1 of the Banks Act respectively;

(b) mutual bank as defined in section 1 of the Mutual Banks Act, 1993 (Act No. 124 of 1993); or

(c) co-operative bank as defined in section 1 of the Co-operative Banks Act, 2007 (Act No. 40 of 2007);

"**Development Bank of Southern Africa**" means the Development Bank of Southern Africa Limited, incorporated in terms of the Development Bank of Southern Africa Act, 1997 (Act No. 13 of 1997);

"**foreign person**" means any person that is not a resident;

"**Industrial Development Corporation**" means the Industrial Development Corporation of South Africa Limited, registered in terms of the Industrial Development Corporation Act, 1940 (Act No. 22 of 1940);

"**interest**" means interest as contemplated in paragraph (a) or (b) of the definition of "interest" in section 24J(1), but does not include an amount of interest that is deemed to be a dividend *in specie* in terms of section 8F(2) or 8FA(2);

[definition of "interest" substituted by section 31(1)(b) of Act 20 of 2021; effective date 1 January 2022, applicable in respect of amounts paid on or after that date]

"**listed debt**" means any debt that is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule.

[section 50A amended by section 31(1)(a) of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

50B. Levy of withholding tax on interest

(1) (a) There must be levied for the benefit of the National Revenue Fund a tax, to be known as the withholding tax on interest, calculated—

(i) at the rate of 15 per cent; or

(ii) at such rate as the Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, with effect from a date mentioned in that Announcement,

of the amount of any interest that is paid by any person to or for the benefit of any foreign person to the extent that the amount is regarded as having been received or accrued from a source within the Republic in terms of section 9(2)(b).

(b) If the Minister makes an announcement contemplated in paragraph (a)(ii), that rate comes into effect on the date determined by the Minister in that announcement and continues to apply for a period of 12 months from that date subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.

(2) For the purposes of this Part, interest is deemed to be paid on the earlier of the date on which the interest is paid or becomes due and payable.

(3) The withholding tax on interest is a final tax.

(4) Where a person making payment of any amount of interest to or for the benefit of a foreign person has withheld an amount as contemplated in section 50E(1), that person must, for the purposes of this Part, be deemed to have paid the amount so withheld to that foreign person.

50C. Liability for tax

(1) A foreign person to which an amount of interest is paid is liable for the withholding tax on interest to the extent that the interest is regarded as having been received by or accrued to that foreign person from a source within the Republic in terms of section 9(2)(b).

(2) Where any amount of withholding tax on interest is—

(a) withheld as contemplated in section 50E(1); and

(b) paid as contemplated in section 50F(2),

that amount of withholding tax on interest must be regarded as an amount that is paid in respect of that foreign person's liability under subsection (1).

50D. Exemption from withholding tax on interest

(1) Subject to subsection (2), there must be exempt from the withholding tax on interest any amount of interest—

(a) if that amount of interest is paid to any foreign person—

(i) by—

(aa) the government of the Republic in the national, provincial or local sphere;

(bb) any bank, the South African Reserve Bank, the Development Bank of Southern Africa or the Industrial Development Corporation; or

(cc) a headquarter company in respect of the granting of financial assistance as defined in section 31(1) to which section 31 does not apply as a result of the exclusion contained in section 31(5)(a); or

(ii) in respect of any listed debt;

(b) payable as contemplated in section 21(6) of the Financial Markets Act to any foreign person that is a client as defined in section 1 of that Act;

(c) paid to a foreign person in respect of a debt owed by another foreign person unless—

(i) the other foreign person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve month period preceding the date on which the interest is paid; or

(ii) the debt claim in respect of which that interest is paid is effectively connected with a permanent establishment of that other foreign person in the Republic if that other foreign person is registered as a taxpayer in terms of Chapter 3 of the Tax Administration Act;

(d) if that amount of interest is paid to—

(i) the African Development Bank established on 10 September 1964;

(ii) the World Bank established on 27 December 1945 including the International Bank for Reconstruction and Development and International Development Association;

(iii) the International Monetary Fund established on 27 December 1945;

(iv) the African Import and Export Bank established on 8 May 1993;

(v) the European Investment Bank established on 1 January 1958 under the Treaty of Rome; or

(vi) the New Development Bank established on 15 July 2014; or

(e) included in the income of a resident as is attributable to a donation, settlement or other disposition made by a resident as contemplated in section 7(8)(a).

[paragraph (e) added by section 59 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(2) Interest paid to a foreign person in respect of any amount advanced by the foreign person to a bank is not exempt from the withholding tax on interest if the amount is advanced in the course of any arrangement, transaction, operation or scheme to which the foreign person and any other person are parties and in terms of which the bank advances any amount to that other person on the strength of the amount advanced by the foreign person to the bank.

(3) A foreign person is exempt from the withholding tax on interest if—

(a) that foreign person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the interest is paid; or

(b) the debt claim in respect of which that interest is paid is effectively connected with a permanent establishment of that foreign person in the Republic if that foreign person is registered as a taxpayer in terms of Chapter 3 of the Tax Administration Act.

50E. Withholding of withholding tax on interest by payers of interest

(1) Subject to subsections (2) and (3), any person who makes payment of any amount of interest to or for the benefit of a foreign person must withhold an amount of withholding tax on interest calculated at the rate contemplated in section 50B(1) from that payment.

(2) A person must not withhold any amount from any payment contemplated in subsection (1)—

(a) to the extent that the interest is exempt from the withholding tax on interest in terms of section 50D(1); or

(b) if the foreign person to or for the benefit of which that payment is to be made has, before the interest is paid, submitted to the person making the payment—

(i) a declaration in such form as may be prescribed by the Commissioner that the foreign person is, in terms of section 50D(3) or an agreement for the avoidance of double taxation, exempt from the withholding tax on interest in respect of that payment; and

(ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the person making the payment in writing, should the circumstances affecting the exemption referred to in subparagraph (i) change or should the payment of the interest no longer be for the benefit of that foreign person.

[paragraph (b) substituted by section 4(1)(a) of Act 33 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(3) The rate referred to in subsection (1) must, for the purposes of that subsection, be reduced if the foreign person to or for the benefit of which the payment contemplated in that subsection is to be made has, before the interest is paid, submitted to the person making the payment—

(a) a declaration in such form as may be prescribed by the Commissioner that the interest is subject to that reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation; and

(b) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the person making the payment in writing, should the circumstances affecting the application of the agreement referred to in paragraph (a) change or should the payment of the interest no longer be for the benefit of that foreign person.

[subsection (3) substituted by section 4(1)(b) of Act 33 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(4) A declaration and written undertaking submitted in terms of subsection (2)(b) or (3) are no longer valid after a period of five years from the date of the declaration, unless the person making the payment is subject to the provisions of—

(a) the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);

(b) the Agreement Between the Government of the Republic of South Africa and the Government of the United States of America to improve International Tax Compliance and to Implement the US Foreign Account Tax Compliance Act; or

(c) the regulations for purposes of paragraph (a) of the definition of ''international tax standard'' in section 1 of the Tax Administration Act,

with regard to the foreign person to or for the benefit of which the payment is to be made and takes account of these provisions in monitoring the continued validity of the declaration.

[subsection (4) added by section 4(1)(c) of Act 33 of 2019; effective date 1 July 2020]

50F. Payment and recovery of tax

(1) If, in terms of section 50C, a foreign person is liable for any amount of withholding tax on interest in respect of any amount of interest that is paid to or for the benefit of the foreign person, that foreign person must pay that amount of withholding tax and submit a return by the last day of the month following the month during which the interest is paid, unless the tax has been paid by any other person.

(2) Any person that withholds any withholding tax on interest in terms of section 50E must submit a return and pay the tax to the Commissioner by the last day of the month following the month during which the interest is paid.

(3) Any person that pays withholding tax on interest in terms of section 50E in respect of interest due and payable but not actually paid, must submit a return by the last day of the month following the month during which the interest became due and payable.

50G. Refund of withholding tax on interest

(1) Notwithstanding Chapter 13 of the Tax Administration Act, if—

(a) an amount is withheld from a payment of an amount of interest as contemplated in section 50E(1);

(b) a declaration contemplated in section 50E(2)(b) or (3) in respect of that interest is not submitted to the person paying that interest by the date of the payment of that interest; and

(c) a declaration contemplated in section 50E(2)(b) or (3) is submitted to the Commissioner within three years after the payment of the interest in respect of which the declaration is made,

so much of that amount as would not have been withheld had that declaration been submitted by the date contemplated in the relevant subsection is refundable by the Commissioner to the person to which the interest was paid.

(2) Notwithstanding Chapter 13 of the Tax Administration Act, if—

(a) an amount of withholding tax on interest is paid as contemplated in section 50E(1) in respect of an amount of interest that became due and payable; and

(b) the amount of interest subsequently becomes irrecoverable,

so much of that amount as would not have been paid had the interest not become due and payable is refundable by the Commissioner to the person who paid the tax.

50H. Currency of payments made to Commissioner

If an amount withheld by a person in terms of section 50E(1) is denominated in any currency other than the currency of the Republic, the amount so withheld must, for the purposes of determining the amount to be paid to the Commissioner in terms of section 50F(2), be translated to the currency of the Republic at the spot rate on the date on which the amount was so withheld.

Part V – Donations tax

54. Levy of donations tax

Subject to the provisions of section 56, there shall be paid for the benefit of the National Revenue Fund a tax (in this Act referred to as donations tax) on the value of any property disposed of (whether directly or indirectly and whether in trust or not) under any donation by any resident (in this Part referred to as the donor).

55. Definitions for purposes of this Part

(1) In this Part, unless the context otherwise indicates—

"**donation**" means any gratuitous disposal of property including any gratuitous waiver or renunciation of a right;

"**donee**" means any beneficiary under a donation and includes, where property has been disposed of under a donation to any trustee to be administered by him for the benefit of any beneficiary, such trustee: Provided that any donations tax paid or payable by any trustee in his capacity as such may,

notwithstanding anything to the contrary contained in the trust deed concerned, be recovered by him from the assets of the trust;

"**fair market value**", means—

(a) the price which could be obtained upon a sale of the property between a willing buyer and a willing seller dealing at arm's length in an open market; or

(b) in relation to immovable property on which a *bona fide* farming undertaking is being carried on in the Republic, the amount determined by reducing the price which could be obtained upon a sale of the property between a willing buyer and a willing seller dealing at arm's length in an open market by 30 per cent;

"**property**" means any right in or to property movable or immovable, corporeal or incorporeal, wheresoever situated.

(3) For the purposes of this Part a donation shall be deemed to take effect upon the date upon which all the legal formalities for a valid donation have been complied with.

56. Exemptions

(1) Donations tax shall not be payable in respect of the value of any property which is disposed of under a donation—

(a) to or for the benefit of the spouse of the donor under a duly registered antenuptial or post-nuptial contract or under a notarial contract entered into as contemplated in section 21 of the Matrimonial Property Act, 1984 (Act No. 88 of 1984);

(b) to or for the benefit of the spouse of the donor who is not separated from him under a judicial order or notarial deed of separation;

(c) as a *donatio mortis causa*;

(d) in terms of which the donee will not obtain any benefit thereunder until the death of the donor;

(e) which is cancelled within six months from the date upon which it took effect;

(f) made by or to or for the benefit of any traditional council, traditional community or any tribe referred to in section (10)(1)(t)(vii);

(g) if such property consists of any right in property situated outside the Republic and was acquired by the donor—

(i) before the donor became a resident of the Republic for the first time; or

(ii) by inheritance from a person who at the date of his death was not ordinarily resident in the Republic or by a donation if at the date of the donation the donor was a person (other than a company) not ordinarily resident in the Republic; or

(iii) out of funds derived by him from the disposal of any property referred to in sub-paragraph (i) or (ii) or, if the donor disposed of such last-mentioned property and replaced it successively with other properties (all situated outside the Republic and acquired by the donor out of funds derived by him from the disposal of any of the said properties), out of funds derived by him from the disposal of, or from revenue from any of those properties; or

(h) by or to any person (including any sphere of government) referred to in section 10(1)(a), (cA), (cE), (cN), (cO), (cQ), (d) or (e);

(k) as a voluntary award—

(i) the value of which is required to be included in the gross income of the donee in terms of paragraph (c), (d) or (i) of the definition of "gross income" in section 1; or

(ii) the gain in respect of which must be included in the income of the donee in terms of section 8A, 8B or 8C;

(l) if such property is disposed of under and in pursuance of any trust;

(m) if such property consists of a right (other than a fiduciary, usufructuary or other like interest) to the use or occupation of property used for farming purposes, for no consideration or for a consideration which is not an adequate consideration, and the donee is a child of the donor;

(n) on or after the seventeenth day of August, 1966, by any company which is recognized as a public company in terms of section 38;

(o) where such property consists of the full ownership in immovable property, if—

(i) (aa) such immovable property was acquired by any beneficiary entitled to any grant or services in terms of the Land Reform Programme, as contemplated in the White Paper on South African Land Policy, 1997; and

(bb) the Minister of Land Affairs or a person designated by him has, on such terms and conditions as such Minister may in consultation with the Commissioner prescribe, approved the particular project in terms of which such immovable property is so acquired; or

(ii) such immovable property was acquired by a person in terms of land reform initiatives by virtue of the measures as contemplated in Chapter 6 of the National Development Plan: Vision 2030 of 11 November 2011 released by the National Planning Commission, Presidency of the Republic of South Africa;

(r) by a company to any other company that is a resident and is a member of the same group of companies as the company making that donation.

(2) Donations tax shall not be payable in respect of—

(a) so much of the sum of the values of all casual gifts made by a donor other than a natural person during any year of assessment as does not exceed R10 000: Provided that where the year of assessment exceeds or is less than 12 months, the amount in respect of which the tax shall not be payable in terms of this paragraph shall be an amount which bears to R10 000 the same ratio as that year of assessment bears to twelve months;

(b) so much of the sum of the values of all property disposed of under donations by a donor who is a natural person as does not during any year of assessment exceed R100 000;

(c) so much of any *bona fide* contribution made by the donor towards the maintenance of any person as the Commissioner considers to be reasonable.

57. Donations by a body corporate at the instance of any person

(1) If—

(a) any property is disposed of under any donation by any company at the instance of any person; and

(b) that disposal would have been treated as a donation had that disposal been made by that person, that property must for the purposes of this Part be deemed to be disposed of under a donation by that person.

57A. Donations by spouses married in community of property

For the purposes of this Part, in the case of spouses married in community of property, where any property is disposed of in terms of a donation by one of the spouses and—

(a) such property falls within the joint estate of the spouses, such donation shall be deemed to have been made in equal shares by each spouse; and

(b) such property was excluded from the joint estate of the spouses, such donation shall be deemed to have been made solely by the spouse making the donation.

57B. Disposal of the right to receive an asset which would otherwise have been acquired in consequence of services rendered or to be rendered

(1) This section applies where—

(a) a person ("the employee") has agreed to render services to another person ("the employer");

(b) the whole or part of the compensation for those services is to be paid by the employer in the form of an asset as defined in paragraph 1 of the Eighth Schedule; and

(c) prior to the employee becoming entitled to that asset, that employee disposes of the right to the asset to another person.

(2) For purposes of this Act, where subsection (1) applies—

(a) that disposal must be disregarded and that employee must be treated as having acquired that asset on the date that it would otherwise have been received by or accrued to him or her for an amount of expenditure equal to the amount included in that employee's gross income under paragraph (ii) of the proviso to paragraph (c) or under paragraph (i) of the definition of "gross income"; and

(b) that employee must be treated as having disposed of that asset to that other person by way of donation for an amount received or accrued equal to the expenditure contemplated in subsection (2)(a), and that other person must be deemed to have acquired that asset for expenditure equal to that same amount.

[section 57B inserted by section 32(1) of Act 20 of 2021; effective date 1 March 2022, applicable in respect of the disposal of the right to receive an asset on or after that date]

58. Property disposed of under certain transactions deemed to have been disposed of under a donation

(1) Where any property has been disposed of for a consideration which, in the opinion of the Commissioner, is not an adequate consideration that property shall for the purposes of this Part be deemed to have been disposed of under a donation: Provided that in the determination of the value of such property a reduction shall be made of an amount equal to the value of the said consideration.

(2) Where a person disposes of a restricted equity instrument, as defined in section 8C, under the circumstances contemplated in section 8C(5)(a) or (b), that restricted equity instrument shall for the purposes of this Part be deemed to have been donated by that person at the time that it is deemed to vest for the purposes of section 8C and to have a value equal to the fair market value of that instrument at that time: Provided that in the determination of the value of that restricted equity instrument a reduction shall be made of an amount equal to the value of any consideration in respect of that donation.

59. Persons liable for the tax

The person liable for donations tax shall be the donor: Provided that if the donor fails to pay the tax within the period prescribed in subsection (1) of section sixty the donor and the donee shall be jointly and severally liable for the tax.

60. Payment and assessment of the tax

(1) Donations tax shall be paid to the Commissioner by the end of the month following the month during which a donation takes effect or such longer period as the Commissioner may allow from the date upon which the donation in question takes effect.

(2) Where a donor has during the year of assessment disposed of property under more than one donation in respect of which an exemption may be applicable under the provisions of section 56(2)(a) or (b), the amount to be exempted in respect of any such donation shall be calculated according to the order in which such donations took effect.

(3) Where a donor has disposed of property under more than one donation on the same date those donations shall for the purpose of determining the tax payable in respect of each donation be deemed to have taken effect—

(a) in such order as the donor may elect; or

(b) if the donor fails to make an election within fourteen days after having been called upon by the Commissioner to do so, in such order as the Commissioner may determine.

(4) The payment of the tax in terms of subsection (1) shall be accompanied by a return.

(5) The Commissioner may, in accordance with Chapter 8 of the Tax Administration Act, at any time assess either the donor or the donee or both the donor and the donee for the amount of donations tax payable or, where the Commissioner is satisfied that the tax payable under this Part has not been paid in full, for the difference between the amount of the tax payable and the amount paid, but the payment by either of those parties of the amount payable under such assessment shall discharge the joint obligation.

[subsection (5) substituted by section 5 of Act 33 of 2019; effective date 15 January 2020, date of promulgation of that Act]

61. Extension of scope of certain provisions of Act for purposes of donations tax

For the purposes of the donations tax—

(a) any reference in paragraph (a) or (e) of the definition of "representative taxpayer" in section 1 to the income of any person or to the gross income received by or accrued to or in favour of any person shall be deemed to include a reference to property disposed of by any person under a donation or to the value of such property, as the context may require;

(d) the reference in paragraphs (b) and (c) of the definition of "representative taxpayer" in section 1 to the income under the management, disposition or control of an agent or to income which is the subject of any trust, as the case may be, shall be deemed to include a reference to any property disposed of under a donation which is under the management, disposition or control of the agent or to property disposed of under a donation which is the subject of the trust, as the case may be;

62. Value of property disposed of under donations

(1) For the purposes of donations tax the value of any property shall be deemed to be—

(a) in the case of any fiduciary, usufructuary or other like interest in property, an amount determined by capitalizing at twelve per cent. the annual value of the right of enjoyment of the property over which such interest was or is held, to the extent to which the donee

becomes entitled to such right of enjoyment, over the expectation of life of the donor, or if such right of enjoyment is to be held for a lesser period than the life of the donor, over such lesser period;

(b) in the case of any right to any annuity, an amount equal to the value of the annuity capitalized at twelve per cent. over the expectation of life of the donor, or if such right is to be held by the donee for a lesser period than the life of the donor, over such lesser period;

(c) in the case of a right of ownership in any movable or immovable property which is subject to a usufructuary or other like interest in favour of any person, the amount by which the fair market value of the full ownership of such property exceeds the value of such interest, determined—

(i) in the case of a usufructuary interest, by capitalizing at twelve per cent. the annual value of the right of enjoyment of the property subject to such usufructuary interest over the expectation of life of the person entitled to such interest, or, if such right of enjoyment is to be held for a lesser period than the life of such person, over such lesser period;

(ii) in the case of an annuity charged upon the property, by capitalizing at twelve per cent. the amount of the annuity over the expectation of life of the person entitled to such annuity, or, if it is to be held for a lesser period than the life of such person, over such lesser period; or

(iii) in the case of any other interest, by capitalizing at twelve per cent such amount as the Commissioner may consider reasonable as representing the annual yield of such interest, over the expectation of life of the person entitled to such interest, or, if such interest is to be held for a lesser period than the life of such person, over such lesser period;

(d) in the case of any other property, the fair market value of such property as at the date upon which the donation takes effect: Provided that in any case in which, as a result of conditions which in the opinion of the Commissioner were imposed by or at the instance of the donor, the value of any property is reduced in consequence of the donation, the value of such property shall be determined as though the conditions in terms of which the value of the said property is reduced in consequence of the donation, had not been imposed.

(1A) Where any company not quoted on any stock exchange owns immovable property on which *bona fide* farming operations are being carried on in the Republic, the value of such immovable property shall, in so far as it is relevant for the purposes of determining the value of any shares in such company, be determined in the manner prescribed in the definition of "fair market value" in section 55(1).

(2) For the purposes of paragraphs (a) and (c) of subsection (1) the annual value of the right of enjoyment of a property means an amount equal to twelve per cent. upon the value of the full ownership of the property which is subject to any fiduciary, usufructuary or other like interest: Provided that—

(a) where the Commissioner is satisfied that the property which is subject to any such interest could not reasonably be expected to produce an annual yield equal to 12 per cent on such value of the property, the Commissioner may fix such sum as representing the annual yield as may seem to him to be reasonable, and the sum so fixed shall for the purposes of paragraphs (a) and (c) of subsection (1) be deemed to be the annual value of the enjoyment of such property;

(b) where the property which is subject to any such interest consists of books, pictures, statuary or other objects of art, the annual value of the right of enjoyment shall for the purposes of paragraph (a) of subsection (1) be deemed to be the average net receipts (if any) derived by the person entitled to such right of enjoyment of such property during the three years immediately preceding the date on which the donation took effect.

(3) Where for the purposes of subsection (1) any calculation is required to be made over the expectation of life of any person, such calculation shall, in the case of a person who is not a natural person, be made over a period of fifty years.

(4) If the Commissioner is of the opinion that the amount shown in any return as the fair market value of any property is less than the fair market value of that property, he or she may fix the fair market value of that property, and the value so fixed is deemed for the purposes of this Part to be the fair market value of such property.

(5) In fixing the fair market value of any property in terms of subsection (4), the Commissioner shall have regard *inter alia*—

(a) to the municipal or divisional council valuation (if any) of such property;

(b) to any sworn valuation of such property furnished by or on behalf of the donor or the donee; and

(c) to any valuation of such property made by any competent and disinterested person appointed by the Commissioner.

64. Rate of donations tax

(1) The rate of the donations tax chargeable under section 54 in respect of the value of any property disposed of under a donation shall be—

(a) (i) 20 per cent of that value if the aggregate of that value and the value of any other property disposed of under a taxable donation on or after 1 March 2018 until the date of that donation does not exceed R30 million; and

[subparagraph (i) substituted by section 35(1) of Act 23 of 2020; effective date 1 March 2018]

(ii) 25 per cent of that value to the extent that that value is not taxed under subparagraph (i); or

[paragraph (a) substituted by section 5(1) of Act 21 of 2018; effective date 1 March 2018]

(b) such percentage of such value as the Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, with effect from a date mentioned in that Announcement.

(2) If the Minister makes an announcement contemplated in subsection (1)(b), that rate comes into effect on the date determined by the Minister in that announcement and continues to apply for a period of 12 months from that date subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.

Part VIII – Dividends tax

64D. Definitions

In this Part—

"**beneficial owner**" means the person entitled to the benefit of the dividend attaching to a share;

"**dividend**" means any dividend or foreign dividend as defined in section 1, including any amount contemplated in section 31(3)(i), that is—

(a) paid by a company that is a resident; or

(b) paid by a foreign company—

(i) if the share in respect of which that foreign dividend is paid is a listed share; and

(ii) to the extent that that foreign dividend does not consist of a distribution of an asset *in specie*;

[words preceding paragraph (a) substituted by section 60(1)(a) of Act 23 of 2018; effective date 1 January 2019, and by section 36(1) of Act 23 of 2020; effective date 17 January 2019]

"**dividend cycle**" *[definition of "dividend cycle" deleted by section 60(1)(b) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]*;

"**effective date**" means the date on which this Part comes into operation;

"**regulated intermediary**" means any—

(a) central securities depository participant contemplated in section 32 of the Financial Markets Act;

(b) authorised user as defined in section 1 of the Financial Markets Act;

(c) approved nominee contemplated in section 76(3) of the Financial Markets Act;

(d) nominee that holds investments on behalf of clients as contemplated in section 9.1 of Chapter 1 and section 8 of Chapter II of the Codes of Conduct for Administrative and Discretionary Financial Service Providers, 2003 (Board Notice 79 of 2003) published in *Government Gazette* No. 25299 of 8 August 2003;

(e) portfolio of a collective investment scheme in securities;

(f) transfer secretary that is a person other than a natural person and that has been approved by the Commissioner subject to such conditions and requirements as may be determined by the Commissioner; or

(g) a portfolio of a hedge fund collective investment scheme.

"**STC credit**" *[definition of "STC credit" deleted by section 60(1)(b) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]*

64E. Levy of tax

(1) (a) Subject to paragraph 3 of the Tenth Schedule, there must be levied for the benefit of the National Revenue Fund a tax, to be known as the dividends tax, calculated—

(i) at the rate of 20 per cent; or

(ii) at such rate as the Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, with effect from a date mentioned in that Announcement,

of the amount of any dividend paid by any company other than a headquarter company.

(b) If the Minister makes an announcement contemplated in paragraph (a)(ii), that rate comes into effect on the date determined by the Minister in that announcement and continues to apply for a period of 12 months from that date subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.

(2) For the purposes of this Part, a dividend must, to the extent that the dividend—

(a) does not consist of a distribution of an asset *in specie* and is declared by a company that is—

(i) a listed company, be deemed to be paid on the date on which the dividend is paid; or

(ii) not a listed company, be deemed to be paid on the earlier of the date on which the dividend is paid or becomes due and payable; or

(b) consists of a distribution of an asset *in specie*, be deemed to be paid on the earlier of the date on which the dividend is paid or becomes due and payable.

(3) Where a company declares and pays a dividend and that dividend consists of a distribution of an asset *in specie*, the amount of the dividend must, for the purposes of subsection (1), be deemed—

(a) in the case of an asset which is a financial instrument listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule and for which a price was quoted on that exchange, to be equal to the ruling price of that financial instrument on that recognised exchange at close of business on the last business day before the date that the dividend is, in terms of subsection (2), deemed to be paid; or

(b) in the case of an asset which is not an asset contemplated in paragraph (a), to be equal to the market value of the asset on the date that the dividend is, in terms of subsection (2), deemed to be paid.

(4) (a) Where, during any year of assessment, any amount is owing to a company by—

(i) a person that is—

(aa) not a company;

(bb) a resident; and

(cc) a connected person in relation to that company; or

(ii) a person that is—

(aa) not a company;

(bb) a resident; and

(cc) a connected person in relation to a person contemplated in subparagraph (i),

in respect of a debt, that company must, for the purposes of this Part, be deemed to have paid a dividend if that debt arises by virtue of any share held in that company by a person contemplated in subparagraph (i).

(b) The amount of the dividend that is deemed to have been paid in terms of paragraph (a) must —

(i) the market-related interest in respect of that loan or advance, less the amount of interest that is payable to that company in respect of that loan or advance for that year of assessment; or

(ii) for the purposes of subsection (1), be deemed to be equal to the greater of—

(aa) the market-related interest in respect of that debt, less the amount of interest that is payable to that company in respect of that debt for that year of assessment; or

(bb) nil.

(c) Where during any year of assessment a company is deemed to have paid a dividend in terms of paragraph (a), that dividend must be deemed to have been paid on the last day of that year of assessment.

(d) For the purposes of this subsection, “market-related interest”, in relation to any debt owed to a company means the amount of interest that would be payable to that company on the amount owing to that company in respect of that debt for a period during a year of assessment if the debt had been owed for that period at the official rate of interest.

(e) This subsection does not apply to the extent that the amount owing to a company in respect of a debt contemplated in paragraph (a) was deemed to be a dividend that was subject to the secondary tax on companies.

(5) For the purposes of subsection (1), where any amount of any dividend is denominated in any currency other than the currency of the Republic, that amount must be translated to the currency of the Republic by applying the spot rate applicable at the time that the dividend is paid.

(6) Where a—

(a) company that makes payment of a dividend to any person withholds an amount of dividends tax from that payment in terms of section 64G(1); or

(b) regulated intermediary that makes payment of a dividend to any person withholds an amount of dividends tax from that payment in terms of section 64H(1),

that company or regulated intermediary must, for the purposes of this Part, be deemed to have paid the amount so withheld to that person.

64EA. Liability for tax

Any—

[words preceding paragraph (a) substituted by section 44 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(a) beneficial owner of a dividend, to the extent that the dividend does not consist of a distribution of an asset *in specie*; or

(b) company that is a resident that declares and pays a dividend to the extent that the dividend consists of a distribution of an asset *in specie*,

is liable for the dividends tax in respect of that dividend.

64EB. Deemed beneficial owners of dividends

(1) For the purposes of this Part, where—

(a) a person contemplated in section 64F(1) acquires the right to a dividend in respect of a share, including a dividend that has not yet been declared or has not yet accrued, by way of cession; and

(b) an amount in respect of that dividend is received by or accrues to the person who acquired that right,

any person ceding that right is deemed to be the beneficial owner of that dividend: Provided that this subsection does not apply to any cession in respect of a share if the person to whom those rights are ceded holds all the rights attaching to the share after the cession.

[words preceding the proviso substituted by section 61(1)(a) of Act 23 of 2018; effective date 1 January 2019, and by section 37(1)(a) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of amounts paid on or after that date in respect of shares that are borrowed or acquired in terms of a collateral arrangement]

(2) For the purposes of this Part, where—

(a) a person that is—

(i) a company which is a resident;

(ii) the government of the Republic in the national, provincial or local sphere;

(iii) a public benefit organisation approved by the Commissioner in terms of section 30(3);

(iv) a trust contemplated in section 37A;

(v) an institution, board or body contemplated in section 10(1)(cA);

(vi) a fund contemplated in section 10(1)(d)(i) or (ii);

(vii) a person contemplated in section 10(1)(t);

(x) a portfolio of a collective investment scheme in securities;

(xi) any person to the extent that the dividend constitutes income of that person;

(xiii) any fidelity or indemnity fund contemplated in section 10(1)(d)(iii); or

(xiv) a small business funding entity as contemplated in section 10(1)(cQ),

borrows from another person or acquires a listed share in terms of a collateral arrangement entered into with another person; and

[words following subparagraph (xiv) substituted by section 61(1)(b) of Act 23 of 2018; effective date 1 January 2019, and by section 37(1)(b) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of amounts paid on or after that date in respect of shares that are borrowed or acquired in terms of a collateral arrangement]

(b) a dividend in respect of that share or any amount determined with reference to a dividend in respect of that share is received by or accrues to that person,

[paragraph (b) substituted by section 61(1)(c) of Act 23 of 2018; effective date 1 January 2019, and by section 37(1)(c) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of amounts paid on or after that date in respect of shares that are borrowed or acquired in terms of a collateral arrangement]

any amount paid by that person to that other person not exceeding that dividend or amount determined with reference to a dividend in respect of that share is deemed to be a dividend paid by that person for the benefit of that other person.

[words following paragraph (b) substituted by section 61(1)(d) of Act 23 of 2018; effective date 1 January 2019, and by section 37(1)(d) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of amounts paid on or after that date in respect of shares that are borrowed or acquired in terms of a collateral arrangement]

(3) For the purposes of this Part, where—

(a) a person that is contemplated in section 64F(1) acquires a share in a listed company (or any right in respect of that share) from another person;

[paragraph (a) substituted by section 61(1)(e) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]

(b) that acquisition is part of a resale agreement between the person acquiring that share and that other person or any other company forming part of the same group of companies as that other person; and

(c) a dividend in respect of that share is received by or accrues to that person,

[paragraph (c) added by section 61(1)(f) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]

that other person or other company is deemed to be the beneficial owner of that dividend.

(4) For the purposes of this section, "resale agreement" means the acquisition of a share by any person subject to an agreement in terms of which that person undertakes to dispose of that share or any other share of the same kind and of the same or equivalent quality at a future date.

64F. Exemption from tax in respect of dividends other than dividends comprising distribution of assets *in specie*

[heading substituted by section 62(a) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(1) Any dividend is exempt from the dividends tax to the extent that it does not consist of a dividend that comprises a distribution of an asset *in specie* if the beneficial owner is—

[words preceding paragraph (a) substituted by section 62(b) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(a) a company which is a resident;

(b) the government of the Republic in the national, provincial or local sphere;

(c) a public benefit organisation approved by the Commissioner in terms of section 30(3);

(d) a trust contemplated in section 37A;

(e) an institution, board or body contemplated in section 10(1)(cA);

(f) a fund contemplated in section 10(1)(d)(i) or (ii);

(g) a person contemplated in section 10(1)(t);

(h) a holder of shares in a registered micro business, as defined in the Sixth Schedule, paying that dividend, to the extent that the aggregate amount of dividends paid by that registered micro business to all holders of shares in that registered micro business during the year of assessment in which that dividend is paid does not exceed the amount of R200 000; or

(i) a small business funding entity as contemplated in section 10(1)(cQ);

(j) a person that is not a resident and the dividend is a dividend contemplated in paragraph (b) of the definition of "dividend" in section 64D;

(k) *[paragraph (k) deleted by section 62(c) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]*

(l) any person to the extent that the dividend constitutes income of that person; or

(m) any person to the extent that the dividend was subject to the secondary tax on companies;

(n) any fidelity or indemnity fund contemplated in section 10(1)(d)(iii); or

(o) a natural person or deceased estate or insolvent estate of that person in respect of a dividend paid in respect of a tax free investment as contemplated in section 12T(1).

(2) Any dividend paid by a REIT or a controlled company, as defined in section 25BB, and received or accrued before 1 January 2014 is exempt from the dividends tax to the extent that the dividend does not consist of a dividend that comprises a distribution of an asset *in specie*.

[subsection (2) substituted by section 62(d) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

64FA. Exemption from and reduction of tax in respect of dividends *in specie*

(1) Where a company declares and pays a dividend that consists of a distribution of an asset *in specie*, that dividend is exempt from the dividends tax to the extent that it constitutes a distribution of an asset *in specie* if—

(a) the person to whom the payment is made has, before the dividend is paid, submitted to the company—

[words preceding subparagraph (i) substituted by section 6(1)(a) of Act 33 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(i) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the portion of the dividend that constitutes a distribution of an asset *in specie* would, if that portion had not constituted a distribution of an asset *in specie*, have been exempt from the dividends tax in terms of section 64F; and

(ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing should the circumstances affecting the exemption applicable to the beneficial owner referred to in subparagraph (i) change or the beneficial owner cease to be a beneficial owner;

(b) the beneficial owner forms part of the same group of companies, as defined in section 41, as that company;

(c) the dividend constitutes a disposal as contemplated in paragraph 51A of the Eighth Schedule; or

(d) the dividend constitutes a disposal as contemplated in paragraph 67B(2) of the Eighth Schedule.

(2) A company that declares and pays a dividend that consists of a distribution of an asset *in specie* is liable for the dividends tax at a reduced rate in respect of the portion of the dividend that constitutes the distribution of an asset *in specie* if the person to whom the payment is made has, before the dividend is paid, submitted to the company—

[words preceding paragraph (a) substituted by section 6(1)(b) of Act 33 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(a) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the portion of the dividend that constitutes a distribution of an asset *in specie* would, if that portion had not constituted a distribution of an asset *in specie*, have been subject to that reduced rate as a result of the application of an agreement for the avoidance of double taxation; and

(b) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing should the circumstances affecting the reduced rate applicable to the beneficial owner referred to in paragraph (a) change or the beneficial owner cease to be the beneficial owner.

(3) A declaration and written undertaking submitted in terms of subsection (1)(a) or (2) are no longer valid after a period of five years from the date of the declaration, unless the company that is making the payment is subject to the provisions of—

(a) the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);

(b) the Agreement Between the Government of the Republic of South Africa and the Government of the United States of America to improve International Tax Compliance and to Implement the US Foreign Account Tax Compliance Act; or

(c) the regulations for purposes of paragraph (a) of the definition of "international tax standard" in section 1 of the Tax Administration Act,

with regard to the person to whom the payment is made and takes account of these provisions in monitoring the continued validity of the declaration.

[subsection (3) added by section 6(1)(c) of Act 33 of 2019; effective date 1 July 2020]

64G. Withholding of dividends tax by companies declaring and paying dividends

(1) Subject to subsections (2) and (3), a company that declares and pays a dividend must withhold an amount of dividends tax from that payment calculated as contemplated in section 64E except to the extent that the dividend consists of a distribution of an asset *in specie*.

[subsection (1) substituted by section 45 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(2) A company must not withhold any dividends tax from the payment of a dividend contemplated in subsection (1) if—

(a) the person to whom the payment is made has, before the dividend is paid, submitted to the company—

(i) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend is exempt from the dividends tax in terms of section 64F or an agreement for the avoidance of double taxation; and

[subparagraph (i) substituted by section 33(1) of Act 20 of 2021; effective date 1 January 2022, applicable in respect of dividends paid on or after that date]

(ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing, should the circumstances affecting the exemption applicable to the beneficial owner referred to in subparagraph (i) change or the beneficial owner cease to be the beneficial owner;

[paragraph (a) substituted by section 7(1)(a) of Act 33 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(b) the beneficial owner forms part of the same group of companies, as defined in section 41, as the company that paid the dividend; or

(c) the payment is made to a regulated intermediary.

(3) A company must withhold dividends tax from the payment of a dividend contemplated in subsection (1) at a reduced rate if the person to whom the payment is made has, before the dividend is paid, submitted to the company—

(a) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend is subject to that reduced rate as a result of the application of an agreement for the avoidance of double taxation; and

(b) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing, should the circumstances affecting the reduced rate in paragraph (a) change or should the beneficial owner cease to be the beneficial owner.

[subsection (3) substituted by section 7(1)(b) of Act 33 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(4) A declaration and written undertaking submitted in terms of subsection (2)(a) or (3) are no longer valid after a period of five years from the date of the declaration, unless the company that is making the payment is subject to the provisions of—

(a) the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);

(b) the Agreement Between the Government of the Republic of South Africa and the Government of the United States of America to improve International Tax Compliance and to Implement the US Foreign Account Tax Compliance Act; or

(c) the regulations for purposes of paragraph (a) of the definition of "international tax standard" in section 1 of the Tax Administration Act,

with regard to the person to whom the payment is made and takes account of these provisions in monitoring the continued validity of the declaration.

[subsection (4) added by section 7(1)(c) of Act 33 of 2019; effective date 1 July 2020]

64H. Withholding of dividends tax by regulated intermediaries

(1) Subject to subsections (2) and (3), a regulated intermediary that pays a dividend that was declared by any other person must withhold an amount of dividends tax from that payment calculated as contemplated in section 64E except to the extent that the dividend consists of a distribution of an asset *in specie*.

[subsection (1) substituted by section 46 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(2) A regulated intermediary must not withhold any dividends tax from the payment of a dividend contemplated in subsection (1) if—

(a) the person to whom the payment is made has, before the dividend is paid, submitted to the regulated intermediary—

(i) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend is exempt from the dividends tax in terms of section 64F or an agreement for the avoidance of double taxation, or that the payment is made to a vesting trust of which the sole beneficiary is another regulated intermediary; and

[subparagraph (i) substituted by section 34(1) of Act 20 of 2021; effective date 1 January 2022, applicable in respect of dividends paid on or after that date]

(ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the regulated intermediary in writing,

should the circumstances affecting the exemption applicable to the beneficial owner referred to in subparagraph (i) change or should the beneficial owner cease to be the beneficial owner;

[paragraph (a) substituted by section 8(1)(a) of Act 33 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(b) the payment is made to another regulated intermediary; or

(c) the dividend is exempt from dividends tax in terms of section 64F(1)(o).

[paragraph (c) inserted by section 8(1)(c) of Act 33 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(3) A regulated intermediary must withhold dividends tax from the payment of a dividend contemplated in subsection (1) at a reduced rate if the person to whom the payment is made has, before the dividend is paid, submitted to the regulated intermediary—

(a) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend is subject to that reduced rate as a result of the application of an agreement for the avoidance of double taxation; and

(b) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the regulated intermediary in writing should the circumstances affecting the reduced rate applicable to the beneficial owner referred to in paragraph (a) change or should the beneficial owner cease to be the beneficial owner.

[subsection (3) substituted by section 8(1)(d) of Act 33 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(4) A declaration and written undertaking submitted in terms of subsection (2)(a) or (3) are no longer valid after a period of five years from the date of the declaration, unless the regulated intermediary is subject to the provisions of—

(a) the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);

(b) the Agreement Between the Government of the Republic of South Africa and the Government of the United States of America to improve International Tax Compliance and to Implement the US Foreign Account Tax Compliance Act; or

(c) the regulations for purposes of paragraph (a) of the definition of "international tax standard" in section 1 of the Tax Administration Act,

with regard to the person to whom the payment is made and takes account of these provisions in monitoring the continued validity of the declaration.

[subsection (4) added by section 8(1)(e) of Act 33 of 2019; effective date 1 July 2020]

64I. Withholding of dividends tax by insurers

If a dividend, to the extent that the dividend does not consist of a distribution of an asset *in specie*, is paid to an insurer as defined in section 29A, the insurer must be deemed to be a regulated intermediary and the dividend must, to the extent that the dividend is allocated to a fund contemplated in section 29A(4)(b), be deemed to be paid to a natural person that is a resident by the regulated intermediary on the date that the dividend is paid to the insurer.

64J. ***

[section 64J repealed by section 63 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

64K. Payment and recovery of tax

(1) (a) If, in terms of section 64EA(a), a beneficial owner is liable for any amount of dividends tax in respect of a dividend, that beneficial owner must pay that amount to the Commissioner by the last day of the month following the month during which that dividend is paid by the company that declared the dividend, unless the tax has been paid by any other person.

(b) If, in terms of section 64EA(b), a company is liable for any amount of dividends tax in respect of a dividend, that company must pay that amount to the Commissioner by the last day of the month following the month during which that dividend is paid by the company.

(c) If, in terms of this Part, a person is required to withhold any amount of dividends tax in respect of a dividend, that person must pay that amount, less any amount refundable in terms of section 64L or 64M, to the Commissioner by the last day of the month following the month during which that dividend is paid by that person as contemplated in section 64G or 64H.

(1A) If, in terms of this Part a person has paid a dividend, that person must submit a return in respect of that dividend to the Commissioner by the last day of the month following the month during which the dividend is paid.

[subsection (1A) substituted by section 1 of Act 22 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(4) Where a person—

(a) has, in terms of section 64G(3) or 64H(3), withheld dividends tax in accordance with a reduced rate in respect of the payment of any dividend; or

(b) that is a company which was, in terms of section 64FA(2), liable for dividends tax at a reduced rate in respect of the declaration and payment of any dividend,

that person must submit to the Commissioner any declaration—

(i) submitted to the person by or on behalf of a beneficial owner; and

(ii) relied upon by the person in determining the amount of dividends tax so withheld,

at the time and in the manner prescribed by the Commissioner.

64L. Refund of tax in respect of dividends declared and paid by companies

(1) Notwithstanding the provisions of Chapter 13 of the Tax Administration Act, if—

(a) an amount is withheld by a company from the payment of a dividend in terms of section 64G(1);

(b) a declaration contemplated in subsection (2)(a) or (3) of that section in respect of that dividend is not submitted to the company by the date contemplated in the relevant subsection; and

(c) both the declaration and the written undertaking contemplated in section 64G(2)(a) or (3) are submitted to the company within three years after the date of payment of the dividend in respect of which they are made,

so much of that amount as would not have been withheld had that declaration been submitted by the date contemplated in the relevant subsection is refundable to the person to whom the dividend was paid.

(1A) If—

(a) an amount is withheld by a company from the payment of a dividend in terms of section 64G(1); and

(b) a rebate in respect of foreign taxes paid on that dividend should have been deducted from that amount in terms of section 64N,

so much of that amount as would not have been withheld had that rebate been deducted from the amount, is refundable to the person to whom the dividend was paid: Provided such rebate is claimed within three years after the date of payment of the relevant dividend.

(2) Any amount that is refundable in terms of subsection (1) or (1A) must be refunded by the company that withheld that amount to the person to whom the dividend was paid—

(a) from any amount of dividends tax withheld by that company within a period of one year after the submission of the declaration contemplated in subsection (1)(c) or the claim of a rebate contemplated in subsection (1A); or

(b) to the extent that the amount that is refundable exceeds the amount of dividends tax withheld as contemplated in paragraph (a), from an amount recovered by the company from the Commissioner in terms of subsection (3).

(3) Subject to subsection (4), if any amount is refundable to any person by a company in terms of subsection (1) or (1A) and that amount exceeds the amount of dividends tax withheld as contemplated in subsection (2)(a), the company contemplated in subsection (2) may recover the excess from the Commissioner.

(4) No amount may be recovered in terms of subsection (3) if the company submits the claim for recovery to the Commissioner after the expiry of a period of four years reckoned from the date of the payment contemplated in subsection (1)(a) or (1A)(a).

64LA. Refund of tax in respect of dividends *in specie*

Notwithstanding the provisions of Chapter 13 of the Tax Administration Act, if—

(a) dividends tax is paid by a company in respect of a dividend that consists of a distribution of an asset *in specie* as a result of the company being unable to obtain the declaration and written undertaking contemplated in section 64FA(1)(a) or (2) by the date contemplated in that section; and

(b) both the declaration and the written undertaking are submitted to the company within three years after the date of payment of the dividend in respect of which they are made,

[paragraph (b) substituted by section 4(1) of Act 21 of 2021; effective date 19 January 2022, date of promulgation of that Act]

so much of the amount of dividends tax paid as would not have been payable had that declaration and written undertaking been submitted by the date contemplated in section 64FA(1)(a) or (2) is refundable to the company by SARS if claimed within three years of the date of payment of the tax.

64M. Refund of tax in respect of dividends paid by regulated intermediaries

(1) Notwithstanding the provisions of Chapter 13 of the Tax Administration Act, if—

(a) an amount is withheld by a regulated intermediary from the payment of a dividend in terms of section 64H(1);

(b) a declaration contemplated in subsection (2)(a) or (3) of that section in respect of that dividend is not submitted to the regulated intermediary by the date contemplated in the relevant subsection; and

(c) both the declaration and the written undertaking contemplated in section 64H(2)(a) or (3) are submitted to the regulated intermediary within three years after the date of payment of the dividend in respect of which they are made,

so much of that amount as would not have been withheld had that declaration been submitted by the date contemplated in the relevant subsection is refundable to the person to whom the dividend was paid.

(1A) If—

(a) an amount is withheld by a regulated intermediary from the payment of a dividend in terms of section 64H(1); and

(b) a rebate in respect of foreign taxes paid on that dividend should have been deducted from that amount in terms of section 64N,

so much of that amount as would not have been withheld had that rebate been deducted from the amount, is refundable to the person to whom the dividend was paid: Provided such rebate is claimed within three years after the date of payment of the relevant dividend.

(2) Any amount that is refundable in terms of subsection (1) or (1A) must be refunded by the regulated intermediary contemplated in subsection (1)(a) or (1A)(a) from any amount of dividends tax withheld by the regulated intermediary after the submission of the declaration as contemplated in subsection (1)(c) or the claim of a rebate contemplated in subsection (1A).

64N. Rebate in respect of foreign taxes on dividends

(1) A rebate determined in accordance with this section must be deducted from the dividends tax payable in respect of a dividend contemplated in paragraph (b) of the definition of "dividend" in section 64D.

(2) The amount of the rebate contemplated in subsection (1) is equal to the amount of any tax paid to any sphere of government of any country other than the Republic, without any right of recovery by any person, on a dividend contemplated in subsection (1).

(3) The amount of the rebate contemplated in subsection (2) must not exceed the amount of the dividends tax imposed in respect of the dividend contemplated in subsection (1).

(4) For the purposes of this section, the amount of any tax paid as contemplated in subsection (2) must be translated to the currency of the Republic by applying the exchange rate used to convert the amount of the dividend in respect of which that tax is paid to the currency of the Republic.

(5) A company or regulated intermediary must obtain proof of any tax paid to any sphere of government of any country other than the Republic and deducted from the dividends tax payable in terms of this section, in the form and manner prescribed by the Commissioner.

Chapter III
General provisions

Part I – Returns

66. Notice by Commissioner requiring returns for assessment of normal tax under this Act

(1) The Commissioner must annually give public notice of the persons who are required by the Commissioner to furnish returns for the assessment of normal tax within the period prescribed in that notice.

(4) The Commissioner may, prior to the issue of any such annual notice, require any person by notice in writing to render interim returns for any period he may designate in such notice, and may proceed to make an assessment in respect of that period.

(5A) Any person who is not in terms of this section required to furnish a return in respect of any year of assessment may for the purpose of having that person's liability for normal tax determined on assessment furnish such a return within three years after the end of such year of assessment.

(13) The return for normal tax to be made by any person in respect of any year of assessment shall be a 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 February: Provided that where—

(i) a person dies, a return shall be made for the period commencing on the first day of that period and ending on the date of death;

(ii) the estate of a person is sequestrated, separate returns must be made for the periods—

(aa) commencing on the first day of that period and ending on the date preceding the date of sequestration; and

(bb) commencing on the date of sequestration and ending on the last day of that period; or

(iii) a person ceases to be a resident, a return shall be made for the period commencing on the first day of that period and ending on the day preceding the date that the person ceases to be a resident; or

[paragraph (a) substituted by section 2 of Act 22 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(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 a company ceases to be a resident, a return shall be made for the period commencing on the first day of that financial year and ending on the day preceding the date that the company ceases to be a resident.

(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 (13A) and (13C), the word "income" must be construed as including any aggregate capital gain or aggregate capital loss.

(13C) Where—

(a) a company does not close its accounts on the last day of its financial year, the Commissioner may accept accounts in respect of the taxpayer's income drawn to a fixed day approved by the Commissioner, which day shall fall within 10 days before or after the last day of the financial year;

(b) 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 a subsequent year of assessment.

67. Registration as taxpayer

(1) Every person who at any time becomes liable for any normal tax or who becomes liable to submit any return contemplated in section 66 must apply to the Commissioner to be registered as a taxpayer in accordance with Chapter 3 of the Tax Administration Act.

68. Income and capital gain of married persons and minor children

(1) Any—

(a) income received by or accrued to or in favour of any person married in or out of community of property which in terms of section 7(2) is deemed to be income received by or accrued to such person's spouse; or

(b) capital gain which is in terms of paragraph 68 of the Eighth Schedule taken into account in the determination of the aggregate capital gain or aggregate capital loss of such person's spouse,

shall be included by such spouse in returns of income required to be rendered by that spouse under this Act.

(2) In the event of the death of any person during any year in respect of which such income is chargeable or in which such capital gain is taken into account, the income or capital gain of such person's spouse for the period elapsing between the date of such death and the last day of the year of assessment shall be returned as the separate income of such spouse.

(3) (a) Every parent shall be required to include in his return—

(i) any income received by or accrued to or in favour of any of that parent's minor children either directly or indirectly from that parent; or

(ii) any capital gain or capital loss in respect of any transaction entered into directly or indirectly by that parent, which is taken into account in the determination of the aggregate capital gain or aggregate capital loss of any of that parent's minor children,

together with such particulars as may be required by the Commissioner.

(b) Every parent shall be required to include in that parent's return any income deemed to be that parent's income in terms of subsection (3) or (4) of section 7 or any capital gain deemed to be that parent's capital gain in terms of paragraph 69 of the Eighth Schedule.

72A. Return relating to controlled foreign company

(1) Every resident who on the last day of the foreign tax year of a controlled foreign company or immediately before a foreign company ceases to be a controlled foreign company directly or indirectly, together with any connected person in relation to that resident, holds at least 10 per cent of the participation rights in any controlled foreign company (otherwise than indirectly through a company which is a resident), must submit to the Commissioner a return.

(2) A resident must have available for submission to the Commissioner when so requested, a copy of the financial statements of the controlled foreign company for the relevant foreign tax year of that controlled foreign company.

(3) Where a person in respect of any year of assessment fails to comply with the provisions of—

(b) subsection (2) and no reasonable grounds exist either for that failure which is outside the control of the person or for that person to believe that such person was not subject to that requirement—

(i) the proportional amount which must be included in the income of that person in terms of section 9D for that year shall be determined with reference only to the receipts and accruals of the controlled foreign company; and

(ii) the provisions of section 6quat shall not apply in respect of any tax proved to be payable to the government of any other country with respect to the proportional amount of the net income of that controlled foreign company which is included in the income of that person in terms of section 9D.

Part IIA

80A. Impermissible tax avoidance arrangements

An avoidance arrangement is an impermissible avoidance arrangement if its sole or main purpose was to obtain a tax benefit and—

(a) in the context of business—

(i) it was entered into or carried out by means or in a manner which would not normally be employed for *bona fide* business purposes, other than obtaining a tax benefit; or

(ii) it lacks commercial substance, in whole or in part, taking into account the provisions of section 80C;

(b) in a context other than business, it was entered into or carried out by means or in a manner which would not normally be employed for a *bona fide* purpose, other than obtaining a tax benefit; or

(c) in any context—

(i) it has created rights or obligations that would not normally be created between persons dealing at arm's length; or

(ii) it would result directly or indirectly in the misuse or abuse of the provisions of this Act (including the provisions of this Part).

80B. Tax consequences of impermissible tax avoidance

(1) The Commissioner may determine the tax consequences under this Act of any impermissible avoidance arrangement for any party by—

(a) disregarding, combining, or re-characterising any steps in or parts of the impermissible avoidance arrangement;

(b) disregarding any accommodating or tax-indifferent party or treating any accommodating or tax-indifferent party and any other party as one and the same person;

(c) deeming persons who are connected persons in relation to each other to be one and the same person for purposes of determining the tax treatment of any amount;

(d) reallocating any gross income, receipt or accrual of a capital nature, expenditure or rebate amongst the parties;

(e) re-characterising any gross income, receipt or accrual of a capital nature or expenditure; or

(f) treating the impermissible avoidance arrangement as if it had not been entered into or carried out, or in such other manner as in the circumstances of the case the Commissioner deems appropriate for the prevention or diminution of the relevant tax benefit.

(2) Subject to the time limits imposed by sections 99, 100 and 104(5)(b) of the Tax Administration Act, the Commissioner must make compensating adjustments that he or she is satisfied are necessary and appropriate to ensure the consistent treatment of all parties to the impermissible avoidance arrangement.

80C. Lack of commercial substance

(1) For purposes of this Part, an avoidance arrangement lacks commercial substance if it would result in a significant tax benefit for a party (but for the provisions of this Part) but does not have a significant effect upon either the business risks or net cash flows of that party apart from any effect attributable to the tax benefit that would be obtained but for the provisions of this Part.

(2) For purposes of this Part, characteristics of an avoidance arrangement that are indicative of a lack of commercial substance include but are not limited to—

(a) the legal substance or effect of the avoidance arrangement as a whole is inconsistent with, or differs significantly from, the legal form of its individual steps; or

(b) the inclusion or presence of—

(i) round trip financing as described in section 80D; or

(ii) an accommodating or tax indifferent party as described in section 80E; or

(iii) elements that have the effect of offsetting or cancelling each other.

80D. Round trip financing

(1) Round trip financing includes any avoidance arrangement in which—

(a) funds are transferred between or among the parties (round tripped amounts); and

(b) the transfer of the funds would—

(i) result, directly or indirectly, in a tax benefit but for the provisions of this Part; and

(ii) significantly reduce, offset or eliminate any business risk incurred by any party in connection with the avoidance arrangement.

(2) This section applies to any round tripped amounts without regard to—

(a) whether or not the round tripped amounts can be traced to funds transferred to or received by any party in connection with the avoidance arrangement;

(b) the timing or sequence in which round tripped amounts are transferred or received; or

(c) the means by or manner in which round tripped amounts are transferred or received.

(3) For the purposes of this section, the term "funds" includes any cash, cash equivalents or any right or obligation to receive or pay the same.

80E. Accommodating or tax-indifferent parties

(1) A party to an avoidance arrangement is an accommodating or tax-indifferent party if—

(a) any amount derived by the party in connection with the avoidance arrangement is either—

(i) not subject to normal tax; or

(ii) significantly offset either by any expenditure or loss incurred by the party in connection with that avoidance arrangement or any assessed loss of that party; and

(b) either—

(i) as a direct or indirect result of the participation of that party an amount that would have—

(aa) been included in the gross income (including the recoupment of any amount) or receipts or accruals of a capital nature of another party would be included in the gross income or receipts or accruals of a capital nature of that party; or

(bb) constituted a non-deductible expenditure or loss in the hands of another party would be treated as a deductible expenditure by that other party; or

(cc) constituted revenue in the hands of another party would be treated as capital by that other party; or

(dd) given rise to taxable income to another party would either not be included in gross income or be exempt from normal tax; or

(ii) the participation of that party directly or indirectly involves a prepayment by any other party.

(2) A person may be an accommodating or tax-indifferent party whether or not that person is a connected person in relation to any party.

(3) The provisions of this section do not apply if either—

(a) the amounts derived by the party in question are cumulatively subject to income tax by one or more spheres of government of countries other than the Republic which is equal to at least two-thirds of the amount of normal tax which would have been payable in connection with those amounts had they been subject to tax under this Act; or

(b) the party in question continues to engage directly in substantive active trading activities in connection with the avoidance arrangement for a period of at least 18 months: Provided these activities must be attributable to a place of business, place, site, agricultural land, vessel, vehicle, rolling stock or aircraft that would constitute a foreign business establishment as defined in section 9D(1) if it were located outside the Republic and the party in question were a controlled foreign company.

(4) For the purposes of subsection (3)(a), the amount of tax imposed by another country must be determined after taking into account any applicable agreements for the prevention of double taxation and any assessed loss, credit or rebate to which the party in question may be entitled or any other right of recovery to which that party or any connected person in relation to that party may be entitled.

80F. Treatment of connected persons and accommodating or tax-indifferent parties

For the purposes of applying section 80C or determining whether or not a tax benefit exists for purposes of this Part, the Commissioner may—

(a) treat parties who are connected persons in relation to each other as one and the same person; or

(b) disregard any accommodating or tax-indifferent party or treat any accommodating or tax-indifferent party and any other party as one and the same person.

80G. Presumption of purpose

(1) An avoidance arrangement is presumed to have been entered into or carried out for the sole or main purpose of obtaining a tax benefit unless and until the party obtaining a tax benefit proves that, reasonably considered in light of the relevant facts and circumstances, obtaining a tax benefit was not the sole or main purpose of the avoidance arrangement.

(2) The purpose of a step in or part of an avoidance arrangement may be different from a purpose attributable to the avoidance arrangement as a whole.

80H. Application to steps in or parts of an arrangement

The Commissioner may apply the provisions of this Part to steps in or parts of an arrangement.

80I. Use in the alternative

The Commissioner may apply the provisions of this Part in the alternative for or in addition to any other basis for raising an assessment.

80J. Notice

(1) The Commissioner must, prior to determining any liability of a party for tax under section 80B, give the party notice that he or she believes that the provisions of this Part may apply in respect of an arrangement and must set out in the notice his or her reasons therefor.

(2) A party who receives notice in terms of subsection (1) may, within 60 days after the date of that notice or such longer period as the Commissioner may allow, submit reasons to the Commissioner why the provisions of this Part should not be applied.

(3) The Commissioner must within 180 days of receipt of the reasons or the expiry of the period contemplated in subsection (2)—

(a) request additional information in order to determine whether or not this Part applies in respect of an arrangement;

(b) give notice to the party that the notice in terms of subsection (1) has been withdrawn; or

(c) determine the liability of that party for tax in terms of this Part.

(4) If at any stage after giving notice to the party in terms of subsection (1), additional information comes to the knowledge of the Commissioner, he or she may revise or modify his or her reasons for applying this Part or, if the notice has been withdrawn, give notice in terms of subsection (1).

80L. Definitions

For purposes of this Part—

"**arrangement**" means any transaction, operation, scheme, agreement or understanding (whether enforceable or not), including all steps therein or parts thereof, and includes any of the foregoing involving the alienation of property;

"**avoidance arrangement**" means any arrangement that, but for this Part, results in a tax benefit;

"**impermissible avoidance arrangement**" means any avoidance arrangement described in section 80A;

"**party**" means any—

(a) person;

(b) permanent establishment in the Republic of a person who is not a resident;

(c) permanent establishment outside the Republic of a person who is a resident;

(d) partnership; or

(e) joint venture,

who participates or takes part in an arrangement;

"**tax**" includes any tax, levy or duty imposed by this Act or any other Act administered by the Commissioner;

89quat. ***

Part IV – Payment and recovery of tax

90. Persons by whom normal tax payable

Subject to the provisions of this Act and the Tax Administration Act, any normal tax is payable by the person by whom any taxable income is received or to whom or in whose favour it accrues or who is legally entitled to the receipt thereof:

Provided that any person may recover so much of the taxation paid by him under this Act as is due to the inclusion in—

(i) his income of any income deemed to have been received by him or to be his income, as the case may be, in terms of section 7(3), (4), (5), (6), (7) or (8), from the person entitled, whether on his own behalf or in a representative capacity, to the receipt of the income so included; or

(ii) his taxable income of any capital gain in terms of paragraph 68, 69, 70, 71 or 72 of the Eighth Schedule from the person entitled, whether personally or in a representative capacity, to the proceeds on the disposal of the asset, as contemplated in the Eighth Schedule, which gave rise to the capital gain:

Provided further that nothing herein contained shall be construed as relieving any person required to make any payment by way of employees' tax under the provisions of the Fourth Schedule from any liability, responsibility or duty imposed upon him by this Act.

91. Recovery of tax

(4) So much of any tax payable by any person as is due to the inclusion in his income of any income deemed to have been received by him or to be his income, as the case may be, in terms of subsection (3), (4), (5), (6), (7) or (8) of section seven, may be recovered from the assets by which the income so included was produced.

(4A) So much of any tax payable by any person as is due to the inclusion in the taxable income of such person of any capital gain in terms of paragraph 68, 69, 70, 71 or 72 of the Eighth Schedule, may be recovered from the proceeds on the disposal of the asset, as contemplated in the Eighth Schedule, which gave rise to the capital gain.

(5) So much of any interest payable in terms of Chapter 12 of the Tax Administration Act as relates to such portion of any tax as is in terms of subsection (4) recoverable from the assets referred to in that subsection may also be recovered from such assets.

Part VI – Miscellaneous

102. Refunds

(1A) The Commissioner may refuse to authorise a refund under section 190 of the Tax Administration Act, if—

(a) that person has failed to furnish a return as required in terms of this Act, until that person has furnished such return as required; or

(b) the refund is claimed by that person after a period of three years after the end of the year of assessment, in the case where that person was not required by any provision of this Act to furnish a return of income for that year of assessment and did not render such a return during the period of three years since the end of that year of assessment.

103. Transactions, operations or schemes for purposes of avoiding or postponing liability for or reducing amounts of taxes on income

(2) Whenever the Commissioner is satisfied that—

(a) any agreement affecting any company or trust; or

(b) any change in—

(i) the shareholding in any company; or

(ii) the members' interests in any company which is a close corporation; or

(iii) the trustees or beneficiaries of any trust,

as a direct or indirect result of which—

(A) income has been received by or has accrued to that company or trust during any year of assessment; or

(B) any proceeds received by or accrued to or deemed to have been received by or to have accrued to that company or trust in consequence of the disposal of any asset, as contemplated in the Eighth Schedule, result in a capital gain during any year of assessment,

has at any time been entered into or effected by any person solely or mainly for the purpose of utilizing any assessed loss, any balance of assessed loss, any capital loss or any assessed capital loss, as the case may be, incurred by the company or trust, in order to avoid liability on the part of that company or trust or any other person for the payment of any tax, duty or levy on income, or to reduce the amount thereof—

(aa) the set-off of any such assessed loss or balance of assessed loss against any such income shall be disallowed;

(bb) the set-off of any such assessed loss or balance of assessed loss against any taxable capital gain, to the extent that such taxable capital gain takes into account such capital gain, shall be disallowed; or

(cc) the set off of such capital loss or assessed capital loss against such capital gain shall be disallowed.

(4) If in any objection and appeal proceedings relating to a decision under subsection (2) it is proved that the agreement or change in shareholding or members' interests or trustees or beneficiaries of the trust in question would result in the avoidance or the postponement of liability for payment of any tax, duty or levy imposed by this Act or any previous Income Tax Act or any other law administered by the Commissioner, or in the reduction of the amount thereof, it shall be presumed, until the contrary is proved in the case of any such agreement or change in shareholding or members' interests or trustees or beneficiaries of such trust, that it has been entered into or effected solely or mainly for the purpose of utilising the assessed loss, balance of assessed loss, capital loss or assessed capital loss in question in order to avoid or postpone such liability or to reduce the amount thereof.

(5) Where under any transaction, operation or scheme—

(a) any taxpayer has ceded the right to receive any amount in exchange for any amount of dividends; and

(b) in consequence of that cession the liability for normal tax of the taxpayer or any other party to the transaction, operation or scheme, as determined before applying the provisions of this subsection, has been reduced or extinguished,

the Commissioner shall determine the liability for normal tax of the taxpayer and any other party to the transaction, operation or scheme as if that cession had not been effected.

107. Regulations

(1) The Minister of Finance may make regulations—

(a) prescribing the duties of all persons engaged or employed in the administration of this Act;

(b) defining the limits of areas within which such persons are to act;

(c) prescribing the nature and contents of the accounts to be rendered by any taxpayer in support of any returns rendered under this Act and the manner in which such accounts shall be authenticated;

(d) prescribing the method of valuation of annuities or of fiduciary, usufructuary or other limited interests in property referred to in section sixty-two,

(g) prescribing the information that must be contained in a report that the Commissioner must submit to the Minister, in the form and manner and at the time that the Minister may prescribe, advising the Minister of matters as the Minister may prescribe.

and generally for giving effect to the objects and purposes of this Act.

(2) The regulations may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine of R2 000.

(3) Any regulation made under the Income Tax Act, 1941, and in force at the date of commencement of this Act, shall be deemed to have been made under this Act.

108. Prevention of or relief from double taxation

(1) The National Executive may enter into an agreement with the government of any other country, whereby arrangements are made with such government with a view to the prevention, mitigation or discontinuance of the levying, under the laws of the Republic and of such other country, of tax in respect of the same income, profits or gains, or tax imposed in respect of the same donation, or to the rendering of reciprocal assistance in the administration of and the collection of taxes under the said laws of the Republic and of such other country.

(2) As soon as may be after the approval by Parliament of any such agreement, as contemplated in section 231 of the Constitution, the arrangements thereby made shall be notified by publication in the *Gazette* and the arrangements so notified shall thereupon have effect as if enacted in this Act.

(5) The duty imposed by any law to preserve secrecy with regard to such tax shall not prevent the disclosure to any authorized officer of the country contemplated in subsection (1), of the facts, knowledge of which is necessary to enable it to be determined whether immunity, exemption or relief ought to be given or which it is necessary to disclose in order to render or receive assistance in accordance with the arrangements notified in terms of subsection (2).

111. Repeal of laws

(1) Subject to the provisions of subsection (2), the laws specified in the Third Schedule are hereby repealed to the extent set out in the third column of that Schedule: Provided that any tax or other amount which but for such repeal would have been capable of being levied, assessed or recovered and which has not been levied, assessed or recovered at the commencement of this Act, may be levied, assessed or recovered as if such repeal had not been effected.

(2) Any notice or proclamation issued or regulation made or anything done under any provision of a law repealed by subsection (1) shall be deemed to have been issued, made or done under the corresponding provision of this Act.

112. Short title and commencement

This Act shall be called the Income Tax Act, 1962, and shall come into operation on the first day of July, 1962.

First Schedule (Section twenty-six of this Act)

Computation of taxable income derived from pastoral, agricultural or other farming operations

1. In this Schedule—

   (a) a reference to a year of assessment shall in the case of any taxpayer who has under the provisions of section 66(13A) of this Act been permitted to furnish accounts in respect of the income derived by him from pastoral, agricultural or other farming operations made up to a date other than the last day of the relevant year of assessment, be construed as a reference to the period covered by such accounts; and

   (b) a reference to the end of a year of assessment includes, where the period assessed ends on a date other than the last day of the year of assessment, a reference to the end of that period.

2. Every farmer shall include in his return rendered for income tax purposes the value of all livestock or produce held and not disposed of by him at the beginning and at the end of each year of assessment.

3. (1) Subject to the provisions of sub-paragraphs (2) and (3), the value of livestock or produce held and not disposed of at the end of the year of assessment shall be included in income for such year of assessment, and there shall be allowed as a deduction from such income the value of livestock or produce, as determined in accordance with the provisions of paragraph 4, held and not disposed of at the beginning of the year of assessment.

   (2) For the purposes of subparagraph (1), the value of livestock or produce held and not disposed of at the end of any year of assessment by any person who discontinued farming operations during such year, shall be included in his income for such year and for all subsequent years of assessment so long as such livestock or produce, or any portion thereof, is so held and not disposed of.

   (3) Any livestock which is the subject of any "sheep lease" or similar agreement concerning livestock, and any produce which is the subject of a similar agreement, shall be deemed to be held and not disposed of by the grantor of such lease or agreement.

4. (1) The values of livestock and produce held and not disposed of at the beginning of any year of assessment shall, subject to the provisions of sub-paragraph (2), be deemed to be—

   (a) in the case of a farmer who was carrying on farming operations on the last day of the year immediately preceding the year of assessment, the sum of—

   (i) the values of livestock and produce held and not disposed of by him at the end of the year immediately preceding the year of assessment; and

   (ii) the market value of livestock or produce—

   (aa) acquired by such farmer during the current year of assessment otherwise than by purchase or natural increase or in the ordinary course of farming operations; or

   (bb) held by such farmer otherwise than for purposes of pastoral, agricultural or other farming operations, which such farmer during such year of assessment commenced to hold for purposes of pastoral, agricultural or other farming operations; or

(b) in the case of any person commencing or recommencing farming operations during the year of assessment, the sum of—

(i) the value of any livestock or produce held and not disposed of by him at the end of the day immediately preceding the date of such commencement or recommencement; and

(ii) the market value of livestock or produce (other than livestock or produce to which sub-item (i) refers)—

(aa) acquired by such person during the year of assessment otherwise than by purchase or natural increase or in the ordinary course of farming operations; or

(bb) held by such person otherwise than for purposes of pastoral, agricultural or other farming operations, which such person during such year of assessment commenced to hold for purposes of pastoral, agricultural or other farming operations.

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

6. (1) The standard value applicable to any class of livestock shall be—

(a) in the case of any farmer (other than a company or the estate of a deceased person) who on or after the first day of July, 1955, and before the first day of July, 1962, rendered returns of income in respect of farming operations, the standard value which in relation to such farmer applied to that class of livestock in accordance with the provisions of paragraph 13 of the Third Schedule to the Income Tax Act, 1941;

(b) in the case of any other farmer (other than a company or the estate of a deceased person) or in the case of any farmer (other than a company or the estate of a deceased person) who on or after 1 July 1962 includes that class of livestock in his return of income for the first time, either—

(i) such standard value as may be fixed for that class of livestock by regulation made under this Act; or

(ii) such other standard value as the farmer may, subject to the provisions of subparagraphs (2) and (3), adopt for that class of livestock when rendering his return of income on or after the said date in respect of farming operations, or when so including in any return of income such a class of livestock for the first time;

(c) in the case of any company or estate of a deceased person the return of income of which in respect of farming operations for the first year of assessment of that company or estate ending on or after 1 January 1977 includes that class of livestock, either—

(i) such standard value as may be fixed for that class of livestock by regulation made under this Act; or

(ii) such other standard value as such company or the executor of such estate, as the case may be, may, subject to the provisions of subparagraphs (2) and (3), adopt for that class of livestock when rendering the said return of income;

(d) in the case of any company or estate of a deceased person the return of income of which in respect of farming operations for a year of assessment subsequent to the year of assessment referred to in item (c), includes that class of livestock for the first time, either—

(i) such standard value as may be fixed for that class of livestock by regulation made under this Act; or

(ii) such other standard value as such company or the executor of such estate, as the case may be, may subject to the provisions of subparagraphs (2) and (3), adopt for that class of livestock when rendering the said return of income.

(2) No standard value adopted under subparagraph (1)(b)(ii), (1)(c)(ii) or (1)(d)(ii) in respect of any class of livestock shall be more than twenty per cent higher or lower than the standard value fixed by regulation under this Act in respect of livestock of that class.

(3) Any farmer who classifies any kind of his livestock on a basis other than that applied by a regulation referred to in subparagraph (1)(b)(i), (1)(c)(i) or (1)(d)(i), may adopt in respect of any class into which he so classifies that livestock such a standard value as may be approved by the Commissioner with due regard to the values fixed by regulation.

7. The exercise of an option under subparagraph (1)(b)(ii), (1)(c)(ii) or (1)(d)(ii) of paragraph 6 shall be binding upon the farmer in respect of all subsequent returns for income tax purposes, and no standard value fixed by any farmer whether under this Act or any previous Income Tax Act may be varied by him in respect of any subsequent year of assessment.

8. (1) Where any farmer has during any year of assessment incurred expenditure in respect of the acquisition of livestock, the deduction which may be allowed to him under section 11(a) of this Act in respect of the cost price of such livestock shall be limited to an amount which, together with the value of livestock held and not disposed of by him at the beginning of such year, does not exceed the income received by or accrued to him from farming during such year and the value of livestock held and not disposed of by him at the end of such year.

(2) Any amount which has been disallowed under the provisions of subparagraph (1) shall be carried forward and be deemed to be expenditure incurred by the farmer in respect of the acquisition of livestock during the succeeding year of assessment.

(3) The provisions of this paragraph shall not apply—

(a) in any case where it is shown by the farmer that livestock the cost of which falls to be dealt with under such provisions is no longer held and not disposed of by him; and

(b) to so much of any expenditure (including any amount which has been carried forward under the provisions of subparagraph (2)) which falls to be disallowed under subparagraph (1) as, together with the value of livestock held and not disposed of by him at the beginning of the year of assessment, exceeds such amount as is shown by him to be market value of all livestock held and not disposed of by him at the end of such year.

9. The value to be placed upon produce included in any return shall be a fair and reasonable value.

11. If during any year of assessment livestock or produce—

(a) has been applied by the farmer for his private or domestic use or consumption;

(b) has, for purposes other than that of the production to the farmer of income from sources within the Republic, been removed by him from the Republic; or

(c) (i) has been donated by the farmer;

(ii) has been disposed of by the farmer, other than in the ordinary course of his farming operations, for a consideration less than the market value thereof;

(iii) where the farmer is a company, has on or after 21 June 1993 been distributed *in specie* to a holder of a share in such company; or

(iv) has been applied by the farmer for any other purpose other than the disposal thereof in the ordinary course of his farming operations and under circumstances other than those contemplated in subparagraph (a) or (b) or item (i), (ii) or (iii) of this subparagraph,

there shall be included in the income of such farmer for that year of assessment—

(A) where such livestock or produce has been applied in a manner contemplated in subparagraph (a), an amount equal to the cost price to him of such livestock or produce, or where the cost price cannot be readily determined, the market value of such livestock or produce; or

(B) where such livestock or produce has been applied, disposed of or distributed in a manner contemplated in subparagraph (b) or (c), an amount equal to the market value of such livestock or produce:

Provided that where—

(a) any livestock or produce so applied, is used or consumed by the farmer in the ordinary course of his farming operations, the amount included in his income under this paragraph shall for the purposes of this Act be deemed to be expenditure incurred in respect of the acquisition by him of such livestock or produce; or

(b) the provisions of subparagraph (c)(ii) are applicable and an amount of consideration as contemplated in such subparagraph has been received by or accrued to the farmer, the amount included in his income in terms of this paragraph shall be reduced by such consideration.

[paragraph 11 amended by section 78 of Act 25 of 2015; that section retroactively repealed by section 109(1) of Act 23 of 2018]

12. (1) Subject to the provisions of subparagraphs (2) to (6), inclusive, there shall be allowed as deductions in the determination of the taxable income derived by any farmer the expenditure incurred by him during the year of assessment in respect of—

(a) the eradication of noxious plants and alien invasive vegetation;

(b) the prevention of soil erosion;

(c) dipping tanks;

(d) dams, irrigation schemes, boreholes and pumping plants;

(e) fences;

(f) the erection of, or extensions, additions or improvements (other than repairs) to, buildings used in connection with farming operations, other than those used for domestic purposes;

(g) the planting of trees, shrubs or perennial plants for the production of grapes or other fruit, nuts, tea, coffee, hops, sugar, vegetable oils or fibres, and the establishment of any area used for the planting of such trees, shrubs or plants;

(h) the building of roads and bridges used in connection with farming operations;

(i) the carrying of electric power from the main transmission lines to the farm apparatus or under an agreement concluded with the Electricity Supply Commission in terms of which the farmer has undertaken to bear a portion of the cost incurred by the said Commission in connection with the supply of electric power consumed by the farmer wholly or mainly for farming purposes;

(1A) For purposes of this Schedule, expenditure incurred in respect of any matter contemplated in subparagraph (1)(a), (b), (d) or (e) to conserve and maintain land owned by the taxpayer shall be deemed to be expenditure incurred in the carrying on of pastoral, agricultural or other farming operations if—

(a) conservation and maintenance is carried out in terms of a biodiversity management agreement that has a duration of at least five years; and

(b) the agreement contemplated in item (a) is entered into by the taxpayer in terms of section 44 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004); and

(c) land utilised by the taxpayer for purposes of carrying on the pastoral, agricultural or other farming operations consists or includes or is in the immediate proximity of the land that is the subject of the agreement contemplated in item (a).

(1B) (a) Where any asset in respect of which any deduction has been allowed to a farmer under the provisions of subparagraph (1) or (1A) (whether in the current or any previous year of assessment) and which is or has become a movable asset, is disposed of by the farmer, there shall be included in his income so much of the amounts received by or accrued to or in favour of the farmer in respect of such disposal as does not exceed the expenditure in respect of such asset allowed under subparagraph (1) or the original cost to him of such asset taken into account under subparagraph (1A), as the case may be, less any amounts which in terms of item (c) of this subparagraph are not allowable as deductions under subparagraph (1A) in respect of such asset in respect of the succeeding year or years of assessment referred to in the said item.

(b) Where any allowance was granted in respect of such asset under the provisions of section 11(e) of this Act the provisions of section 8(4)(a) of this Act shall not apply in respect of any amount recovered or recouped in respect of such allowance.

(1C) For the purposes of this paragraph, where any asset in respect of which any deduction has been allowed to a farmer under the provisions of subparagraph (1) or (1A) (whether in the current or any previous year of assessment) and which is or has become a movable asset, is disposed of by the farmer to any other person by way of donation or for a consideration which is not an adequate consideration or is not readily capable of valuation, a consideration equal in value to the fair value of such asset shall be deemed to have been received by the farmer in respect of his disposal of the asset and to have been paid by such other person in respect of his acquisition of the asset: Provided that the last-mentioned consideration shall not exceed the cost to the farmer of such asset.

(1D) If during the current or any previous year of assessment deductions are allowed to the taxpayer in terms of subparagraph (1A) in respect of capital expenditure incurred to conserve or maintain land in terms of an agreement contemplated in that subparagraph and the taxpayer is in breach of that agreement or violates that declaration, an amount equal to the deductions allowed in respect of expenditure incurred within the period of five years preceding the breach of violation must be included in the income of the taxpayer for the current year.

(2) No deduction under section 11(e) or (o) of this Act shall be allowed in respect of any machinery, implements, utensils or articles for which a deduction is allowable under subparagraph (1) or (1A) of this paragraph.

[subparagraph (2) substituted by section 47 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(3) The amount by which the total expenditure incurred by any farmer during any year of assessment in respect of the matters referred to in items (c) to (i), inclusive, of subparagraph (1) exceeds the taxable income (as calculated before allowing the deduction of such expenditure and before the inclusion as hereinafter provided of the said amount in the farmer's income) derived by him from farming operations during that year of assessment shall be included in his income from such operations for that year and be carried forward and be deemed for the purposes of subparagraph (1) to be expenditure which has been incurred by him during the next succeeding year of assessment in respect of the matters referred to in the said items.

[subparagraph (3) substituted by section 64 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(3A) For the purposes of subparagraph (3) any amount which has been carried forward from the year of assessment ended 30 June 1961 in terms of the proviso to paragraph 17(3) of the Third Schedule to the Income Tax Act, 1941, shall be deemed to be an amount which has been so carried forward in terms of the said subparagraph.

(3B) Where an amount (hereinafter referred to as the recoupment) falls to be included in a farmer's income for any year of assessment under the provisions of subparagraph (1B) and an amount (hereinafter referred to as the qualifying balance) has in terms of subparagraph (3) been carried forward to the year of assessment in question from the preceding year of assessment the recoupment shall to the extent that it does not exceed the qualifying balance be deducted therefrom, and in such case—

(a) the recoupment shall, to the extent that it has been deducted from the qualifying balance, not be included in the farmer's income under subparagraph (1B); and

(b) only so much of the qualifying balance as remains after the deduction therefrom of the recoupment shall be taken into account for the purposes of subparagraph (3) as expenditure incurred during the year of assessment in question in respect of the matters mentioned in that subparagraph.

(3C) The amount of any expenditure carried forward and deemed to be incurred by a person in the next succeeding year in terms of subparagraph (3) must be reduced by any amount of expenditure in respect of which an election has been made in terms of paragraph 20A(1) of the Eighth Schedule.

(4) (a) For the purposes of this paragraph "employees", in relation to any farmer, means persons employed by that farmer in connection with his or her farming operations, but does not include his or her relatives or, where the farmer is a company, the holders of shares (or the relatives of holders of shares) in that company or in any company which is associated with it by virtue of the holding of shares.

(b) For the purposes of item (a) "holders of shares" in relation to any company does not include persons who hold all their shares in that company solely because they are employed by that company and who will, in terms of the articles of association of that company, not be entitled to hold those shares after they cease to be so employed.

(6) If in any year of assessment any building in relation to which a deduction has been allowed to any farmer under item (f) of sub-paragraph (1) of this paragraph or item (f) of sub-paragraph (1) of paragraph 17 of the Third Schedule to the Income Tax Act, 1941, whether in the current or in any previous year of assessment, is used for the domestic purposes of any person other than an employee of that farmer, there shall be included in the income of that farmer for the current year of assessment the amount of such deduction less one-tenth of the said amount in respect of each completed period of one year, but not exceeding ten years, during which such building was used by the said farmer in connection with his farming operations other than for the domestic purposes of persons who are not his employees.

13. (1) If—

(a) any farmer—

(i) has in any year of assessment sold livestock on account of drought, stock disease or damage to grazing by fire or plague; and

(ii) has within four years after the close of the said year of assessment purchased livestock to replace the livestock so sold; or

(b) any farmer—

(i) has in any year of assessment (other than a year of assessment in respect of which the normal tax chargeable in the case of such farmer is required to be determined under paragraph 19) sold livestock by reason of his participation in a livestock reduction scheme organised by the Government; and

(ii) has within nine years after the close of the said year of assessment purchased livestock to replace the livestock so sold,

the cost of the livestock so purchased shall, notwithstanding anything in this Schedule contained, be allowed, at the option of such farmer, as a deduction in the determination of his taxable income

for the year of assessment during which the livestock was so sold, provided the claim for such deduction is made within five years after the close of that year of assessment in the case of a farmer referred to in item (a), or within ten years after the close of that year of assessment in the case of a farmer referred to in item (b).

(2) The cost of livestock so allowed as a deduction shall not be allowed as a deduction in the year of assessment in which the purchases were made.

(3) Every farmer who desires to claim a deduction in terms of subparagraph (1), shall for the year of assessment in which he or she sold livestock on account of conditions of drought or stock disease or by reason of his or her participation in a livestock reduction scheme organised by the Government notify the Commissioner accordingly in such form and within such time as may be prescribed and obtain and retain full particulars in regard to the livestock so sold.

(5) The provisions of this paragraph shall not apply to the cost of any livestock purchased to replace livestock sold if the proceeds derived from the sale of such last-mentioned livestock have been dealt with under the provisions of paragraph 13A.

(6) The Commissioner may, notwithstanding the provisions of sections 99 and 100 of the Tax Administration Act, raise an assessment for any year of assessment with respect to which a deduction in terms of subparagraph (1) is allowed.

[subparagraph (6) added by section 4 of Act 21 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(7) Where a deduction in terms of subparagraph (1)(a) or (b) may be claimed in respect of a year of assessment, the period prescribed under section 29(3) of the Tax Administration Act after which records, books of account or documents need not be retained shall be extended to six years or eleven years respectively for such year of assessment.

[subparagraph (7) added by section 4 of Act 21 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(8) Where a deduction in terms of subparagraph (1)(b) may be claimed in a year of assessment, the period prescribed under section 97(4) of the Tax Administration Act after which a record of assessment may be destroyed shall be extended to eleven years for such year of assessment.

[subparagraph (8) added by section 4 of Act 21 of 2021; effective date 19 January 2022, date of promulgation of that Act]

13A. (1) If any farmer has on or after 1 March 1982 disposed of any livestock on account of drought, and the whole or any portion of the proceeds of such disposal has as soon as possible, but in any case within three months after the receipt thereof by the farmer, been deposited by him in an account in his name with the Land and Agricultural Bank of South Africa, so much of such proceeds as has been so deposited by him shall, notwithstanding the provisions of section 23(e) of this Act but subject to the provisions of subparagraph (3), be deemed not to be gross income derived by such farmer.

(2) Every farmer who desires that the proceeds derived by him or her from the disposal of livestock be dealt with under the provisions of this paragraph shall notify the Commissioner in such form and within such time as may be prescribed by the Commissioner.

(3) Any amount, being the whole or any portion of a sum deposited in an account following the disposal of livestock as contemplated in subparagraph (1), shall—

(a) if it is withdrawn from such account before the expiration of a period of six months after the last day of the year of assessment in which such disposal took place, be deemed to be gross income derived by the taxpayer from the disposal of livestock on the date of such disposal; or

(aA) if it is withdrawn from such account after the expiration of a period of six months but before the expiration of a period of six years after the last day of the year of assessment in which such disposal took place, be deemed to be gross income derived by the taxpayer from the disposal of livestock on the date of such withdrawal; or

(b) in the event of the taxpayer's death or insolvency before the expiration of the said period, be deemed to be gross income so derived on the day before the date of his death or insolvency, as the case may be; or

(c) if it is not so withdrawn and the taxpayer does not die or become insolvent before the expiration of such period, be deemed to be gross income so derived on the last day of such period.

14. (1) Any amount received by or accrued to a farmer in respect of the disposal of any plantation shall, whether such plantation is disposed of separately or with the land on which it is growing, be deemed not to be a receipt or accrual of a capital nature and shall form part of such farmer's gross income.

(2) Where any plantation is disposed of by a farmer with the land on which it is growing the amount to be included in such farmer's gross income in terms of sub-paragraph (1) shall—

(a) if the amount representing the consideration payable in respect of the disposal of the plantation is agreed to between the parties to the transaction, be the amount so agreed to; or

(b) failing such agreement, be such portion of the consideration payable in respect of the disposal of the land and the plantation as represents the consideration payable for the plantation.

15. (1) In the determination of the taxable income of any farmer there shall be allowed as a deduction—

(a) any expenditure incurred by such farmer during the year of assessment in respect of the establishment and maintenance of plantations;

(b) any expenditure incurred by such farmer prior to the first day of July, 1948, in respect of the establishment and maintenance of any plantation or the cost of acquisition of any plantation purchased by such farmer whether before or after the first day of July, 1948: Provided that—

(i) any deductions allowed under this item in respect of any plantation shall not in respect of any year of assessment exceed the gross income derived by such farmer in that year from the said plantation;

(ii) the aggregate of the deduction allowed in terms of this item or the corresponding provisions of the Income Tax Act, 1941, or by virtue of any other provisions of the last-mentioned Act or the Income Tax Act, 1925 (Act No. 40 of 1925), in respect of plantations shall not exceed the amount of such expenditure or such cost of acquisition.

(2) For the purpose of calculating the cost of acquisition of any plantation the provisions of subparagraph (2) of paragraph 14 shall apply *mutatis mutandis* in the case of any plantation acquired by any farmer with the land on which it is growing.

(3) If in any year of assessment the income of any farmer other than a company includes income derived from the disposal of plantations or forest produce and the taxable income derived by him in that year from the disposal of plantations and forest produce (determined as though the income derived by him from that source were his only income) exceeds the annual average taxable income derived by him from that source (as so determined) over the three years of assessment immediately preceding the said year of assessment, the normal tax chargeable in the case of such farmer for the said year of assessment shall, subject to the provisions of section 5 of this Act, be determined in accordance with the provisions of subsection (10) of that section: Provided that—

(i) the provisions of this subparagraph shall not apply unless the disposal of plantations or forest produce forms part of the normal farming operations of the farmer concerned;

(ii) for the purposes of this subparagraph, where the farmer has in respect of any of the aforesaid years of assessment derived any excess plantation farming profits determined under paragraph 20(3)(g) such excess plantation farming profits shall—

(aa) where such excess plantation farming profits have been derived during the first-mentioned year of assessment, be excluded from the farmer's taxable income derived in that year from the disposal of plantations and forest produce;

(bb) where such excess plantation farming profits have been derived during any of the aforesaid three years of assessment, not be taken into account in the determination of the aforesaid average taxable income derived by the farmer over those years;

(iii) the Commissioner's determination as to what portion of a farmer's taxable income is derived from the disposal of plantations and forest produce shall be final;

(iv) nothing in this paragraph contained shall be construed as relieving any farmer from liability for taxation under this Act upon any portion of his taxable income;

(v) the provisions of this subparagraph shall not apply if the normal tax chargeable in the case of such farmer in respect of the first-mentioned year of assessment is required to be determined under the provisions of paragraph 19.

16. For the purposes of paragraphs 14, 15 and 20—

"plantation" means any artificially established tree as ordinarily understood (not being a tree of the nature described in paragraph 12(1)(g)) or any forest of such trees and includes any natural extension of such trees;

"forest produce" means trees (other than trees of the nature described in paragraph 12(1)(g)) and anything derived from such trees, including timber, wood, bark, leaves, seeds, gum, resin and sap.

17. Where the sugar cane fields of any farmer other than a company have been damaged by fire and the taxable income of such farmer for any year of assessment includes taxable income derived from the disposal of sugar cane as a result of such fire which but for such fire would not have been derived by him in such year, the normal tax chargeable in the case of such farmer in respect of such year shall, subject to the provisions of section 5 of this Act, be determined in accordance with the provisions of subsection (10) of that section, but nothing in this paragraph contained shall be construed as relieving such farmer from liability for taxation under this Act upon any portion of his taxable income: Provided that the provisions of this paragraph shall not apply if the normal tax chargeable in the case of such farmer in respect of the said year of assessment is required to be determined under the provisions of paragraph 19.

19. (1) If any taxpayer has made an election as provided in subparagraph (5) which is binding upon him in respect of any period of assessment (hereinafter referred to as the relevant period) during which he or his spouse has carried on farming operations or has derived income from farming operations, and his taxable income derived during the relevant period from farming exceeds his average taxable income from farming as determined in relation to the relevant period in accordance with subparagraph (2), the normal tax chargeable in respect of his taxable income for the relevant period shall, subject to the provisions of section 5 of this Act, be determined in accordance with section 5(10).

(2) For the purposes of subparagraph (1) the taxpayer's average taxable income from farming in relation to the relevant period shall be deemed to be—

(a) where the taxpayer or his spouse carried on farming operations before the commencement of the relevant period, such amount as represents the taxpayer's annual average taxable income (if any) from farming in respect of the periods of assessment—

(aa) for which the taxpayer was assessable under this Act and which fall within the period of five years ending on the last day of the relevant period; and

(bb) during which such farming operations were carried on or farming income was derived by the taxpayer:

Provided that any excess farming profits derived by the taxpayer in any of the said periods of assessment shall not be taken into account in the determination of such annual average taxable income: Provided further that in the case of the estate of an insolvent person any farming operations carried on by such person prior to insolvency, any income derived by him from such operations and any deductions allowable against such income under this Act shall, so far as such estate is concerned, be deemed for the purposes of this item to be respectively operations, income or deductions of such estate, and the annual average taxable income derived by such estate from farming shall be determined accordingly; or

(b) where the taxpayer is a person referred to in subparagraph (5)(a) and did not carry on farming operations before the commencement of the relevant period, an amount equal to two-thirds of such taxable income.

(3) Where the taxpayer's assessment for a relevant period has in terms of section 100 of the Tax Administration Act, become final and conclusive, the Commissioner shall not, merely by reason of the fact that the amount determined under subparagraph (2)(a), as the taxpayer's annual average taxable income from farming in relation to such period is incorrect, be required to make a further assessment upon the taxpayer for such period in terms of section 99 of that Act or to authorize a refund under section 190 of that Act of any tax overpaid in respect of such period, unless it appears that such annual average taxable income from farming should be increased or reduced by at least six hundred rand.

(4) In determining under this paragraph any amount of normal tax which is or would be chargeable no regard shall be had to the deductions provided for in section 6 of this Act, and nothing in this paragraph contained shall be construed as relieving any person from liability for taxation under this Act upon any portion of that person's taxable income.

(5) Any person—

(a) who is a natural person and whose taxable income for any period of assessment consists of or includes taxable income derived from farming operations carried on by him for his own benefit or by his spouse for such spouse's own benefit; or

(b) who is the executor of the estate of any deceased person or the trustee of the insolvent estate of a natural person and who in his capacity as such has during the period of assessment commencing immediately after the death or insolvency of the said person continued farming operations commenced by such deceased or insolvent person prior to his death or insolvency,

may, within three months after the end of such period of assessment or within such further time as the Commissioner may approve and in such form as the Commissioner may prescribe, elect that the normal tax chargeable in respect of his taxable income if item (a) is applicable or the taxable income of such estate if item (b) is applicable, be determined as provided in subparagraph (1), and such election shall be binding upon such natural person or estate, as the case may be, in respect of the said period of assessment and every succeeding period of assessment: Provided that—

(i) no election may be made under this subparagraph by any person in respect of any period of assessment referred to in item (a) if during such period such person was married and such person's income for such period is in terms of section 7(2) of this Act deemed to be income accrued to such person's spouse;

(ii) where an election has been made by such person in respect of any period of assessment referred to in item (a) and such person's income for any succeeding period of assessment is in terms of section 7(2) of this Act deemed to be income accrued to such person's spouse, such election shall, with effect from such succeeding period, cease to have any force or effect.

20. (1) If a taxpayer (other than a company) who derives income from farming operations makes an election as provided in subparagraph (6) and if—

(a) the taxpayer's income was in whole or in part derived from farming operations carried on on any land acquired—

(i) by the State (including the Railways Administration and any provincial administration) or any local authority as defined in section 1 of the Expropriation Act, 1975 (Act No. 63 of 1975); or

(ii) by any juristic person or body mentioned in section 3(2) of the said Act, if such juristic person or body acquired the land by expropriation or, where the owner of the land agreed to dispose of it, the Minister referred to in subparagraph (6)(b)(ii) has given a certificate as contemplated therein;

(b) in consequence of the acquisition of such land as aforesaid the farming undertaking on such land (hereinafter referred to as the undertaking) has been or is being wound up; and

(c) the taxpayer's income for any year of assessment (being the year of assessment during which the said land was acquired as aforesaid or the first or the second year of assessment succeeding the first-mentioned year of assessment) includes any abnormal farming receipts or accruals referred to in subparagraph (2) which relate to the aforesaid farming operations,

the normal tax chargeable (as determined before the deduction of any rebate) in respect of the taxpayer's taxable income for such year of assessment shall, notwithstanding any other provisions of this Act to the contrary, be determined at an amount equal to the sum of—

(i) an amount equal to the taxpayer's excess farming profits for the year of assessment (as determined in accordance with subparagraph (3)(a)) multiplied by the relevant rate of tax fixed for the year of assessment in terms of section 5(2) in respect of the first rand of taxable income; and

(ii) an amount equal to the amount of normal tax (as determined before the deduction of any rebate) which would have been payable by the taxpayer in respect of the year of assessment if his or her taxable income for that year had been an amount equal to the balance of his or her taxable income for that year (as determined in accordance with, subparagraph (4)).

(1A) Where the land referred to in subparagraph (1) was acquired as contemplated in item (a) of that subparagraph within the period of twelve months after the owner accepted an offer to purchase the land, it shall be deemed for purposes of that subparagraph that such land was acquired on the date on which the offer was accepted.

(2) For the purposes of subparagraph (1)(c), the taxpayer's abnormal farming receipts or accruals for any year of assessment referred to in subparagraph (1)(c) shall be deemed to be such amounts as consist of—

(a) any amounts derived from disposals, in the course of the winding-up of the undertaking, of livestock normally held for the purposes of the undertaking; or

(b) any amounts derived from the disposal of any plantation together with the land referred to in subparagraph (1)(a) or from the disposal in the course of the winding-up of the undertaking of any plantation on such land or any forest produce from such plantation.

(3) (a) For the purposes of this paragraph the taxpayer's excess farming profits for any year of assessment referred to in subparagraph (1)(c) shall be deemed to be the sum of the taxpayer's excess livestock profits (if any) for such year, as determined under item (b), and the taxpayer's excess plantation farming profits (if any) for such year, as determined under item (g): Provided that the amount of such excess farming profits shall not be determined at an amount exceeding the amount of the taxpayer's taxable income for such year.

(b) The taxpayer's excess livestock profits for such year shall be so much of the sum of the amounts referred to in subparagraph (2)(a) which have been derived by the taxpayer during

such year as does not exceed the taxpayer's abnormal livestock profits for such year, as determined under item (c).

(c) The taxpayer's abnormal livestock profits for such year shall be the amount by which his livestock profits for such year, as determined under item (d) or (f), exceed his average livestock profits (as determined under item (e) or (f)) for the years of assessment (but not exceeding five years of assessment) which immediately precede the said year and during which the undertaking was carried on.

(d) For the purposes of this subparagraph, the taxpayer's livestock profits for any year of assessment shall be the amount by which the sum of the amounts included in his income from farming for such year in respect of disposals of livestock during such year and the value (as determined under this Schedule) of the livestock held and not disposed of by him at the end of such year exceeds the sum of the amounts allowed to be deducted from such income in respect of livestock acquired by him during such year and the value (as determined under this Schedule) of the livestock held and not disposed of by him at the beginning of such year, and the taxpayer's livestock loss for such year shall be determined accordingly.

(e) The taxpayer's average livestock profits for the years of assessment referred to in item (c) shall be the sum of his livestock profits for the said years, as determined under item (d) (reduced by any livestock loss as determined under that item in respect of any such years), divided by the number of such years of assessment.

(f) If by reason of disposals of livestock otherwise than in the ordinary course of farming or because of any unusual circumstances the taxpayer's livestock profits or loss for any year of assessment cannot be determined in a satisfactory manner under item (d) or the taxpayer's average livestock profits for the years of assessment referred to in item (c) cannot be determined in a satisfactory manner under item (e), such livestock profits or loss or such average livestock profits shall be determined by the Commissioner on application by the taxpayer.

(g) The taxpayer's excess plantation farming profits for any year of assessment referred to in item (a) shall be so much of the sum of the amounts referred to in subparagraph (2)(b) which have been derived by the taxpayer during such year, as does not exceed the amount by which the taxpayer's taxable income (as determined under subparagraph (3) of paragraph 15 before applying paragraph (ii) of the proviso to the said subparagraph) derived during such year from the disposal of plantations and forest produce exceeds the annual average taxable income (as determined under paragraph 15(3)) derived by him from that source over the three years of assessment immediately preceding the said year of assessment.

(4) For the purposes of this paragraph, the balance of the taxpayer's taxable income for a year of assessment referred to in subparagraph (1)(c) shall be deemed to be the amount remaining after deducting the taxpayer's excess farming profits for that year (as determined under subparagraph (3)(a)) from the full amount of the taxpayer's taxable income for such year, as determined under this Act.

(6) (a) Any taxpayer (other than a company) may elect for the normal tax payable by the taxpayer to be determined under this paragraph.

(b) For purposes of such election the following records must be obtained and retained—

(i) a certificate by the head of the department of State or the administration concerned in the acquisition by the State or such administration of the land referred to in item (a) of subparagraph (1), or where such land was acquired by a local authority, juristic person or body referred to in the said item, by the chief executive officer of such local authority, juristic person or body, to the effect that the State or such administration, local authority, juristic person or body, as the case may be, has acquired such land; and

(ii) where such land was acquired by such juristic person or body, a certificate by a Minister referred to in section 3(1) of the Expropriation Act, 1975, to the effect that

the land was acquired by such juristic person or body by expropriation or, where the owner of the land agreed to dispose of it, to the effect that, if the owner had not so agreed, steps would have been taken for the expropriation of the land.

Second Schedule (Paragraph (e) of the definition of "gross income" in section one of this Act)

Computation of gross income derived by way of lump sum benefits

1. For the purposes of this Schedule—

"**lump sum benefit**" includes—

(a) any amount determined in respect of the commutation of an annuity or portion of an annuity—

(i) payable by; or

(ii) provided in consequence of membership or past membership of,

a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;

(b) any fixed or ascertainable amount (other than an annuity)—

(i) payable by; or

(ii) provided in consequence of membership or past membership of,

a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and

(c) any amount transferred for the benefit of that person on or after normal retirement age, as defined in the rules of the fund, but before retirement date, less any deductions permitted under the provisions of paragraph 6A,

whether in one amount or in instalments, but does not include any amount deemed to be income accrued to a person in terms of section 7(11);

"**pension fund**", in relation to any person, means—

(a) a fund which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a pension fund under paragraph (c) of the definition of "pension fund" in section 1 or a corresponding definition in any previous Income Tax Act; or

(b) a public sector fund (other than a fund referred to in paragraph (b) of the definition of "provident fund"), the rules of which wholly or mainly provide for annuities on retirement to its members,

if during any such year the person was a member of such fund;

"**provident fund**", in relation to any person, means—

(a) a fund which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a provident fund as defined in section 1 of this Act or the corresponding provisions of any previous Income Tax Act; or

(b) a public sector fund, the rules of which provide for benefits in a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments and annuities) to its members on retirement,

if during any such year the person was a member of such fund;

"**public sector fund**" means a fund referred to in paragraph (a), (b) or (d) of the definition of "pension fund" or paragraph (a), (b) or (c) of the definition of "provident fund" in section 1(1);

[definition of "public sector fund" substituted by section 38(1) of Act 23 of 2020; effective date 1 March 2021, applicable in respect of years of assessment commencing on or after that date]

"**retire**", in relation to a person who is a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, means to become entitled to the annuity or lump sum benefit contemplated in the definition of "retirement date";

"**retirement annuity fund**" in relation to any person, means a fund which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a retirement annuity fund as defined in section 1 of this Act or the corresponding provisions of any previous Income Tax Act, if during any such year the person was a member of such fund.

2. (1) Subject to section 9(2)(i) and paragraphs 2A, 2C and 2D, the amount to be included in the gross income of any person for any year of assessment in terms of paragraph (e) of the definition of "gross income" in section 1 shall be—

[words preceding item (a) substituted by section 48 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(a) any amount received by or accrued to that person by way of a lump sum benefit derived in consequence of or following upon—

(i) his or her retirement or death;

(ii) the termination or loss of his or her employment due to—

(AA) his or her employer having ceased to carry on or intending to cease carrying on the trade in respect of which he or she was employed or appointed; or

(BB) that person having become redundant in consequence of his or her employer having effected a general reduction in personnel or a reduction in personnel of a particular class:

Provided that this subitem does not apply to any amount received by or accrued to a person by way of a lump sum benefit where that person's employer is a company and that person at any time held more than five per cent of the equity shares or members' interest in that company; or

(iii) the commutation of an annuity or portion of an annuity,

less any deduction permitted under the provisions of paragraph 5 or 6;

(b) any amount—

(iA) assigned in terms of a divorce order granted on or after 13 September 2007 under section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), to the extent that the amount so assigned—

(aa) constitutes a part of a pension interest, as defined in section 1 of the Divorce Act, 1979 (Act No. 70 of 1979), of a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and

(bb) is due and payable on or after 1 March 2012 to a person who is the former spouse of that member by that pension fund, pension preservation fund, provident fund or provident preservation fund or retirement annuity fund;

(iB) that is transferred for the benefit of that person to any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund from any pension fund, pension preservation fund, provident fund, provident

preservation fund or retirement annuity fund of which that person is or previously was a member; and

(ii) other than an amount contemplated in item (a) or subitem (iA) or (iB), received by or accrued to that person by way of a lump sum benefit from or in consequence of membership or past membership of any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund,

less any deduction permitted under paragraph 6; and

(c) any amount transferred for the benefit of that person on or after normal retirement age, as defined in the rules of the fund, but before retirement date, less any deductions permitted under the provisions of paragraph 6A.

[item (c) added by section 62(1) of Act 17 of 2017; effective date 1 March 2018, applies in respect of years of assessment commencing on or after that date]

(2) An amount contemplated in subparagraph (1)(b) shall be deemed to accrue to a person—

(a) in the case of an amount contemplated in subparagraph (1)(b)(iA), on the date on which the amount is due and payable as contemplated in subparagraph (1)(b)(iA)(bb); and

(b) in the case of an amount contemplated in subparagraph (1)(b)(iB), on the date of its transfer.

2A. Where any lump sum benefit is received or accrues from a public sector fund, the amount to be included in the gross income of any person in terms of paragraph (e) of the definition of "gross income" in section 1 shall be deemed to be an amount equal to the amount determined in accordance with the following formula:

$$A = \frac{B}{C} \times D$$

in which formula—

(a) "A" represents the amount which has to be determined;

(b) "B" represents—

(i) where the number of completed years of employment of a person who is or was a member of a fund are in terms of the rules of that fund taken into account for the purpose of determining the amount of a benefit payable by the fund, the number of completed years of employment of the member after 1 March 1998, including previous or other periods of service approved as pensionable service in terms of the rules of any fund after 1 March 1998, other than completed years of employment representing—

(aa) any benefit of a person who is a member of any public sector fund, which is after 1 March 1998 paid for the benefit of any person into another public sector fund in respect of any previous or other periods of service or membership accounted for prior to 1 March 1998 in terms of the rules of any public sector fund; or

(bb) years of pensionable service recognised as such in terms of Rule 10.5 or 10.6 of the Rules of the Government Employees Pension Fund, contained in Schedule 1 to the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), to the extent that those years are not taken into account under item (aa); or

(ii) where the number of completed years of employment are not taken into account as contemplated in subitem (i), the number of completed years after 1 March 1998 during which the member had, until the date of accrual of any benefit, been a member of any public sector fund or funds;

(c) "C" represents—

(i) where the number of completed years of employment of a person who is or was a member of a fund are in terms of the rules of that fund taken into account for the purpose of determining the amount of the benefits payable to any person by the fund, the total number of completed years of employment so taken into account; or

(ii) where the number of completed years of employment are not taken into account as contemplated in subitem (i), the number of completed years during which the member had, until the date of accrual of any benefit, continuously been a member of any public sector fund or funds; and

(d) "D" represents the lump sum benefit payable to the person.

2C. Any lump sum benefit, or part thereof, received by or accrued to a person subsequent to the person's retirement or death, or withdrawal or resignation from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund or the winding up of any such fund, and in consequence of or following upon an event that is prescribed by the Minister by notice in the *Gazette* and contemplated by the rules of any such fund or the approval of a scheme in terms of section 15B of the Pension Funds Act or paragraph 5.3(1)(b) of the Schedule which amends regulation 30 of the Regulations under the Long-term Insurance Act shall not constitute gross income of that person.

2D. Any lump sum benefit, or part thereof, received by or accrued to a person subsequent to the person's retirement, death, withdrawal or resignation from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund held by or under the control of an administrator, as defined in section 1(1) of the Pension Funds Act, in consequence of an event prescribed by the Minister by notice in the *Gazette* shall not constitute gross income of that person.

[paragraph 2D inserted by section 49 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

3. Any lump sum benefit which becomes recoverable from—

(a) a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; or

(b) an insurer as defined in section 29A(1) if that lump sum benefit is payable by, or provided in consequence of membership or past membership of, a fund contemplated in subparagraph (a),

in consequence of or following upon the death of a person who is or was a member of that fund must, on the date of payment of that lump sum benefit, be deemed to have accrued to that person immediately prior to the death of that person: Provided that—

(i) so much of any tax payable as is due to the provisions of this paragraph may be recovered from the person by whom the lump sum benefit in question is received;

(ii) where any annuity or portion of an annuity (including a living annuity) which becomes payable on or in consequence of or following upon the death of a person who is or was a member of any such fund has been commuted for a lump sum, such lump sum shall for the purposes of this paragraph be deemed to be a lump sum benefit which has become recoverable in consequence of or following upon the death of such person;

(iii) where any such lump sum benefit becomes payable but the dependants or nominees of that person elect an annuity (including a living annuity) that is purchased or provided by that fund, no lump sum benefit shall be deemed to have so accrued to the extent that the lump sum benefit was utilised to purchase or provide the annuity; and

(v) where any such lump sum benefit is paid to a pension preservation fund or provident preservation fund as an unclaimed benefit as defined in the Pension Funds Act, no lump sum benefit shall be deemed to have so accrued.

3A. Any lump sum benefit which becomes recoverable from—

(a) a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; or

(b) an insurer as defined in section 29A(1) if that lump sum benefit is payable by or provided in consequence of membership or past membership of a fund contemplated in subparagraph (a),

in consequence of or following upon the death of any person other than a person who is or was a member of that fund shall, on the date of payment of that lump sum benefit, be deemed to have accrued to the deceased person immediately prior to the death of that person: Provided that—

(i) so much of any tax payable as is due to the provisions of this paragraph may be recovered from the person by whom the lump sum benefit in question is received;

(ii) where any annuity or portion of an annuity (including a living annuity) which becomes payable on or in consequence of or following upon the death of a person other than a person who was a memberof any such fund has been commuted for a lump sum, such lump sum shall for the purposes of this paragraph be deemed to be a lump sum benefit which has become recoverable in consequence of or following upon the death of such deceased person;

(iii) where any such lump sum benefit becomes payable but the dependants or nominees of that person elect an annuity (including a living annuity) that is purchased or provided by that fund, no lump sum benefit shall be deemed to have so accrued to the extent that the lump sum benefit was utilised to purchase or provide the annuity; and

(iv) where any such lump sum benefit is paid to a pension preservation fund or provident preservation fund as an unclaimed benefit as defined in the Pension Funds Act, no lump sum benefit shall be deemed to have so accrued.

3B. Any lump sum benefit which becomes recoverable from—

(a) a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; or

(b) an insurer as defined in section 29A(1) if that lump sum benefit is payable by or provided in consequence of membership or past membership of a fund contemplated in subparagraph (a),

in consequence of the termination of a trust shall in pursuance of that termination, on the date of payment of that lump sum benefit, be deemed to have accrued to that trust immediately prior to the date of termination of the trust.

[paragraph 3B inserted by section 39 of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

4. (1) Notwithstanding the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, and subject to paragraphs 3 and 3A, any lump sum benefit shall be deemed to have accrued to a person who is a member of such fund on the earliest of the date—

(a) on which an election is made in respect of which the benefit becomes recoverable;

(b) on which any amount is deducted from the benefit in terms of section 37D(1)(a), (b) or (c) of the Pension Funds Act;

(c) on which the benefit is transferred to another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;

(e) of his or her death,

and shall be assessed to tax in respect of the year of assessment during which such lump sum benefit is deemed to accrue.

(2) If upon a member's withdrawal or resignation from or the winding up of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund on or after the fifteenth day of March, 1961, a policy of insurance is ceded or otherwise made over to or in favour of such member before the date of promulgation of the Income Tax Act, 1964, any lump sum due in respect of such policy upon its maturity or surrender before such date shall be deemed to be a lump sum benefit accruing to such member from a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, as the case may be, on the date of such maturity or surrender, or, if such member dies before such last-mentioned date, on the date of his or her death, and shall be assessed to tax in respect of the year of assessment during which such benefit is deemed to accrue as though it were a lump sum benefit derived by him or her upon his or her withdrawal or resignation from the fund or upon his or her retirement or immediately prior to his or her death, as the case may be: Provided that if after the cession or making over of such policy any premiums are paid thereon by such member, there shall be deducted from such lump sum, in addition to any other deduction to which such member may be entitled in terms of this Schedule, an amount which bears to such lump sum the same ratio as the sum of the premiums paid by him after such cession or making over bears to the sum of all the premiums paid on such policy.

(2bis) If a policy of insurance is ceded or otherwise made over to or in favour of a person who is a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund by that fund on or after the date of commencement of the Income Tax Act, 1964, the surrender value of such policy shall, provided such person retired or ceased to be a member of such fund on or after the fifteenth day of March, 1961, be deemed for the purposes of this Schedule to be a lump sum benefit accruing to such person from such fund on the date of such cession or making over.

(3) If a person who is a member of a provident fund retires from such fund before he or she reaches the age of 55 years on grounds other than ill-health, any lump sum benefits received by or accrued to such person in consequence of or following upon such retirement shall, unless the Commissioner on application by the fund and having regard to the circumstances of the case otherwise directs, be assessed to tax not in accordance with the provisions of paragraph 5 but in accordance with the provisions of paragraph 6 as though it were a lump sum benefit derived by such person in consequence of or following upon such person's withdrawal or resignation from such fund.

Benefits acrruing upon retirement and benefits deemed to have accrued immediately prior to person's death: deductions

5. (1) The deduction to be allowed for the purposes of paragraph 2(1)(a) is an amount equal to so much of —

(a) contributions that did not rank for a deduction against the person's income in terms of section 11F to any pension fund, pension preservation fund, provident fund, provident preservation fund and retirement annuity fund of which he or she is or previously was a member;

[item (a) substituted by section 40(1) of Act 23 of 2020; effective date 1 March 2016]

(b) any amount transferred for the benefit of the person to any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as a result of an election made in terms of section 37D(4)(b)(ii) of the Pension Funds Act;

(c) any amount that is deemed to have accrued to the person as contemplated in paragraph 2(2)(b);

(d) any amount, to the extent that that amount was paid or transferred to a pension preservation fund or provident preservation fund as an unclaimed benefit as defined in section 1 of the Pension Funds Act and was subject to tax prior to that transfer or payment; and

(e) any other amounts in respect of which the formula in paragraph 2A applies, which have been —

(i) paid into a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for the person's benefit by a public sector fund; and

(ii) transferred into a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund directly from a fund contemplated in subitem (i) for the person's benefit,

less the amount represented by symbol A when so applying that formula,

as has not been exempted in terms of section 10C or has not previously been allowed to the taxpayer as a deduction in terms of this Schedule in determining the amount to be included in that taxpayer's gross income.

(2) The amount determined in terms of subparagraph (1) may not exceed the amount of the lump sum benefit in respect of which it is allowable as a deduction.

(3) For the purposes of this paragraph, the surrender value of any policy of insurance ceded or otherwise made over to the person by any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund and ceded or otherwise made over by the person to any other such fund, or any amount paid by the person into the latter fund in lieu of or as representing such surrender value or a portion thereof, shall be deemed to be an amount paid into the latter fund by the former fund for the benefit of the person.

Withdrawal or resignation: winding up: deductions

6. (1) The deduction to be allowed for the purposes of paragraph 2(1)(a)(ii) or (b) is an amount equal to—

(a) in the case of a lump sum benefit contemplated in paragraph 2(1)(b)(iA) and (iB), so much of the benefit as is paid or transferred for the benefit of the person from a—

(i) pension fund, pension preservation fund, provident fund or provident preservation fund into any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; or

(ii) retirement annuity fund into any retirement annuity fund; and

[item (a) substituted by section 113(1)(a) of Act 31 of 2013 (effective date amended by section 128 of Act 43 of 2014, by section 159 of Act 25 of 2015, and by section 5 of Act 2 of 2016), amended by section 65(1)(a) and (b) of Act 23 of 2018, and substituted by section 50(1)(a) of Act 34 of 2019, and by section 50(1)(b) of Act 34 of 2019; effective date 1 March 2021, applies in respect of contributions made on or after that date]

(b) in any other case, so much of the aggregate of—

(i) contributions that did not rank for a deduction against the person's income in terms of section 11F to any pension funds, pension preservation funds, provident funds, provident preservation funds and retirement annuity funds of which he or she is or previously was a member;

[subitem (i) substituted by section 41(1) of Act 23 of 2020; effective date 1 March 2016]

(ii) any amount transferred for the benefit of the person to any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as a result of an election made as contemplated in section 37D(4)(b)(ii)(cc) of the Pension Funds Act;

(iii) any amount that is deemed to have accrued to the person as contemplated in paragraph 2(1)(b)(iB);

(iv) any amount, to the extent that that amount was paid or transferred to a pension preservation fund or provident preservation fund as an unclaimed benefit as defined in section 1 of the Pension Funds Act and was subject to tax prior to that transfer or payment; and

(v) any other amounts in respect of which the formula in paragraph 2A applies, which have been—

(aa) paid into a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for the person's benefit by a public sector fund; and

(bb) transferred into a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund directly from a fund contemplated in sub-subitem (aa) for the person's benefit,

[sub-subitem (bb) substituted by section 65(1)(c) of Act 23 of 2018; effective date 1 March 2018; Note: words following sub-subitem (bb) repeated at end of provision in amendment Act but left as wrap-up text in this consolidation]

less the amount represented by symbol A when applying that formula,

as has not been exempted in terms of section 10C or has not previously been allowed to the person as a deduction in terms of this Schedule in determining any amount to be included in that person's gross income.

(2) The amount determined in terms of subparagraph (1) may not exceed the amount of the lump sum benefit in respect of which it is allowable as a deduction.

(3) For the purposes of this paragraph, the surrender value of any policy of insurance ceded or otherwise made over to the person by any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund and ceded or otherwise made over by the person to any other such fund, or any amount paid by the person into the latter fund in lieu of or as representing such surrender value or a portion thereof, shall be deemed to be an amount paid into the latter fund by the former fund for the benefit of the person.

Transfer on or after normal retirement age but before retirement date: deductions

6A. The deduction to be made from a lump sum benefit contemplated in paragraph 2(1)(c) is equal to so much of that lump sum benefit as is transferred for the benefit of a person from a—

(a) pension fund into a pension preservation fund, provident preservation fund or a retirement annuity fund;

[subparagraph (a) substituted by section 66(1)(a) of Act 23 of 2018; effective date 1 March 2019, and by section 42(1) of Act 23 of 2020; effective date 1 March 2021]

(b) provident fund into a pension preservation fund, provident preservation fund or a retirement annuity fund; or

[subparagraph (b) substituted by section 66(1)(a) of Act 23 of 2018; effective date 1 March 2019, applicable in respect of years of assessment commencing on or after that date]

(c) pension preservation or provident preservation fund into another pension preservation or provident preservation fund or a retirement annuity fund.

[subparagraph (c) added by section 35(1) of Act 20 of 2021; effective date 1 March 2022, applicable in respect of years of assessment commencing on or after that date]

[words following subparagraph (b) substituted by section 66(1)(b) of Act 23 of 2018; effective date 1 March 2018, and deleted by section 66(1)(c) of Act 23 of 2018; effective date 1 March 2019, applicable in respect of years of assessment commencing on or after that date]

Third Schedule

Laws repealed

Number and year of Law	Short title	Extent of repeal
Act No. 29 of 1939	Co-operative Societies Act, 1939	Subsections (2) and (3) of section ninety-nine
Act No. 31 of 1941	Income Tax Act, 1941	The whole
Act No. 46 of 1941	Special Taxation Act, 1941	The whole
Act No. 34 of 1942	Income Tax Act, 1942	The whole
Act No. 26 of 1943	Income Tax Act, 1943	The whole
Act No. 31 of 1943	Special Taxation Amendment Act, 1943	The whole
Act No. 47 of 1944	Income Tax Act, 1944	The whole
Act No. 39 of 1945	Income Tax Act, 1945	The whole
Act No. 55 of 1946	Income Tax Act, 1946	The whole
Act No. 52 of 1947	Income Tax Act, 1947	The whole
Act No. 40 of 1948	Income Tax Act, 1948	The whole
Act No. 45 of 1949	Income Tax Act, 1949	The whole
Act No. 35 of 1950	Income Tax Act, 1950	The whole
Act No. 64 of 1951	Income Tax Act, 1951	The whole

Number and year of Law	Short title	Extent of repeal
Act No. 56 of 1952	Income Tax Act, 1952	The whole
Act No. 34 of 1953	Income Tax Act, 1953	The whole, except section two
Act No. 55 of 1954	Income Tax Act, 1954	The whole
Act No. 43 of 1955	Income Tax Act, 1955	The whole, except sections fourteen and fifteen
Act No. 55 of 1956	Income Tax Act, 1956	The whole
Act No. 61 of 1957	Income Tax Act, 1957	The whole, except section three
Act No. 36 of 1958	Income Tax Act, 1958	The whole, except sections three and nineteen
Act No. 78 of 1959	Income Tax Act, 1959	The whole, except section three
Act No. 58 of 1960	Income Tax Act, 1960	The whole
Act No. 80 of 1961	Income Tax Act, 1961	The whole, except sections thirty-two and thirty-three

Fourth Schedule (Section 5 of this Act)

Amounts to be deducted or withheld by employers and provisional payments in respect of normal tax

Part I – Definitions

1.

For the purposes of this Schedule, unless the context otherwise indicates—

"**employee**" means—

(a) any person (other than a company) who receives any remuneration or to whom any remuneration accrues;

(b) any person who receives any remuneration or to whom any remuneration accrues by reason of any services rendered by such person to or on behalf of a labour broker;

(c) any labour broker;

(d) any person or class or category of person whom the Minister of Finance by notice in the *Gazette* declares to be an employee for the purposes of this definition;

(e) any personal service provider; or

(g) *[paragraph (g) deleted by section 4(1) of Act 22 of 2018; effective date 1 March 2019, applicable to years of assessment commencing on or after that date]*

"**employees' tax**" means the tax required to be deducted or withheld by an employer in terms of paragraph 2 from remuneration paid or payable to an employee;

"**employees' tax certificate**" means a certificate required to be issued by an employer in terms of paragraph 13;

"**employer**" means any person (excluding any person not acting as a principal, but including any person acting in a fiduciary capacity or in his capacity as a trustee in an insolvent estate, an executor or an administrator of a benefit fund, pension fund, pension preservation fund, provident fund, provident preservation fund, retirement annuity fund or any other fund) who pays or is liable to pay to any person any amount by way of remuneration, and any person responsible for the payment of any amount by way of remuneration to any person under the provisions of any law or out of public funds (including the funds of any provincial council or any administration or undertaking of the State) or out of funds voted by Parliament or a provincial council;

"**labour broker**" means any natural person who conducts or carries on any business whereby such person for reward provides a client of such business with other persons to render a service or perform work for such client, or procures such other persons for the client, for which services or work such other persons are remunerated by such person;

"**month**" means any of the twelve portions into which any calendar year is divided;

"**personal service provider**" means any company or trust, where any service rendered on behalf of such company or trust to a client of such company or trust is rendered personally by any person who is a connected person in relation to such company or trust, and—

(a) such person would be regarded as an employee of such client if such service was rendered by such person directly to such client, other than on behalf of such company or trust; or

(b) where those duties must be performed mainly at the premises of the client, such person or such company or trust is subject to the control or supervision of such client as to the manner in which the duties are performed or are to be performed in rendering such service; or

(c) where more than 80 per cent of the income of such company or trust during the year of assessment, from services rendered, consists of or is likely to consist of amounts received directly or indirectly from any one client of such company or trust, or any associated institution as defined in the Seventh Schedule to this Act, in relation to such client,

except where such company or trust throughout the year of assessment employs three or more full-time employees who are on a full-time basis engaged in the business of such company or trust of rendering any such service, other than any employee who is a holder of a share in the company or settlor or beneficiary of the trust or is a connected person in relation to such person;

"**provisional tax**" means any payment in respect of liability for normal tax required to be made in terms of paragraph 17;

"**provisional taxpayer**" means—

(a) any person (other than a company) who derives income by way of—

(i) any remuneration from an employer that is not registered in terms of paragraph 15; or

(ii) any amount which does not constitute remuneration or an allowance or advance contemplated in section 8(1);

(b) any company; and

(c) any person who is notified by the Commissioner that he or she is a provisional taxpayer,

but shall exclude—

(aa) any public benefit organisation as contemplated in paragraph (a) of the definition of "**public benefit organisation**" in section 30(1) that has been approved by the Commissioner in terms of section 30(3);

(bb) any recreational club as contemplated in the definition of "**recreational club**" in section 30A(1) that has been approved by the Commissioner in terms of section 30A(2);

(cc) any body corporate, share block company or association of persons contemplated in section 10(1)(e);

(dd) any—

(A) person in respect of whose liability for normal tax for the relevant year of assessment payments are required to be made under section 33;

(B) natural person who does not derive any income from the carrying on of any business, if—

(AA) the taxable income of that person for the relevant year of assessment does not exceed the tax threshold; or

(BB) the taxable income of that person for the relevant year of assessment which is derived from interest, dividends, foreign dividends, rental from the letting of fixed property and any remuneration from an employer that is not registered in terms of paragraph 15 does not exceed R30 000;

(ee) a small business funding entity; and

(ff) a deceased estate;

"**remuneration**" means any amount of income which is paid or is payable to any person by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, whether in cash or otherwise and whether or not in respect of services rendered, including—

(a) any amount referred to in paragraph (a), (c), (cA), (cB), (d), (e), (eA) or (f) of the definition of "**gross income**" in section 1of this Act;

(b) any amount required to be included in such person's gross income under paragraph (i) of that definition, excluding an amount described in paragraph 7 of the Seventh Schedule;

(bA) any allowance or advance, which must be included in the taxable income of that person in terms of section 8(1)(a)(i), other than—

(i) an allowance in respect of which paragraph (c) or (cA) applies; or

(ii) an allowance or advance paid or granted to that person in respect of accommodation, meals or other incidental costs while that person is by reason of the duties of his or her office obliged to spend at least one night away from his or her usual place of residence in the Republic: Provided that where—

(aa) such an allowance or advance was paid or granted to a person during any month in respect of a night away from his or her usual place of residence; and

(bb) that person has not by the last day of the following month either spent the night away from his or her usual place of residence or refunded that allowance or advance to his or her employer,

that allowance or advance is deemed not to have been paid or granted to that person during that first-mentioned month in respect of accommodation, meals or other incidental costs, but is deemed to be an amount which has become payable to that person in that following month in respect of services rendered by that person;

(c) 50 per cent of the amount of any allowance referred to in section 8(1)(d) granted to the holder of a public office contemplated in section 8(1)(e);

(cA) 80 per cent of the amount of any allowance or advance in respect of transport expenses referred to in section 8(1)(b), other than any such allowance or advance contemplated in section 8(1)(b)(iii) that is based on the actual distance travelled by the recipient: Provided that where the employer is satisfied that at least 80 per cent of the use of the motor vehicle for a year of assessment will be for business purposes, then only 20 per cent of the amount of such allowance or advance must be included;

(cB) 80 per cent of the amount of the taxable benefit as determined in terms of paragraph 7 of the Seventh Schedule: Provided that where the employer is satisfied that at least 80 per cent of the use of the motor vehicle for a year of assessment will be for business purposes, then only 20 per cent of such amount must be included;

(cC) 100 per cent of so much of the amount paid or granted as an allowance or advance referred to in section 8(1)(b)(iii) as exceeds the amount determined by applying the rate per kilometre for the simplified method in the notice fixing the rate per kilometre under section 8(1)(b)(ii) and (iii) to the actual distance travelled;

(d) any gain determined in terms of section 8B, which must be included in that person's income under that section;

(e) any amount referred to in section 8C which is required to be included in the income of that person;

(f) any amount deemed to be income accrued to that person in terms of section 7(11);

(g) any amount received by or accrued to that person by way of a dividend contemplated in—

(i) paragraph (dd) of the proviso to section 10(1)(k)(i);

(ii) paragraph (ii) of the proviso to section 10(1)(k)(i);

(iii) paragraph (jj) of the proviso to section 10(1)(k)(i);

(iv) paragraph (kk) of the proviso to section 10(1)(k)(i),

but not including—

(ii) any amount paid or payable in respect of services rendered or to be rendered by any person (other than a person who is not a resident or an employee contemplated in paragraph (b), (c), (d) or (e) of the definition of "**employee**") in the course of any trade carried on by him independently of the person by whom such amount is paid or payable and of the person to whom such services have been or are to be rendered: Provided that for the purposes of this paragraph a person shall be deemed not to carry on a trade independently as aforesaid if the services are required to be performed mainly at the premises of the person by whom such amount is paid or payable or of the person to whom such services were or are to be rendered and the person who rendered or will render the services is subject to the control or supervision of any other person as to the manner in which his or her duties are performed or to be performed or as to his or her hours of work: Provided further that a person will be deemed to be carrying on a trade independently as aforesaid if he throughout the year of assessment employs three or more employees who are on a full time basis engaged in the business of such person of rendering any such service, other than any employee who is a connected person in relation to such person;

[first proviso to paragraph (ii) of the exclusion substituted by section 36 of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(iii) any pension or additional pension under the Aged Persons Act, 1967 (Act No. 81 of 1967), or the Blind Persons Act, 1968 (Act No. 26 of 1968), any disability grant or additional or supplementary allowance under the Disability Grants Act, 1968 (Act No. 27 of 1968), or any grant or contribution under the provisions of section 89 of the Children's Act, 1960 (Act No. 33 of 1960);

(vi) any amount paid or payable to any employee wholly in reimbursement of expenditure actually incurred by such employee in the course of his employment;

(viii) any annuity under an order of divorce or decree of judicial separation or under any agreement of separation;

"**representative employer**" means—

(a) in the case of any company, the public officer of that company, or, in the event of such company being placed under business rescue in terms of Chapter 6 of the Companies Act, in liquidation or under judicial management, the business rescue practitioner, liquidator or judicial manager, as the case may be;

(b) in the case of any municipality or any body corporate or unincorporated (other than a company or a partnership), any manager, secretary, officer or other person responsible for paying remuneration on behalf of such municipality or body;

(c) in the case of a person under legal disability, any guardian, curator, administrator or other person having the management or control of the affairs of the person under legal disability; or

(d) in the case of any employer who is not resident in the Republic, any agent of such employer having authority to pay remuneration,

who resides in the Republic, but nothing in this definition shall be construed as relieving any person from any liability, responsibility or duty imposed upon him or her by this Schedule; and

"**tax threshold**" in relation to a natural person means the maximum amount of taxable income of that person in respect of a year of assessment which would result in no tax payable when the rates of tax contemplated in section 5 of this Act and the rebates contemplated in section 6 of this Act for that year of assessment are applied to the taxable income of that person;

Part II – Employees' tax

Employers to deduct tax

2.

(1) Every—

(a) employer who is a resident; or

(b) representative employer in the case of any employer who is not a resident,

(whether or not registered as an employer under paragraph 15) who pays or becomes liable to pay any amount by way of remuneration to any employee shall, unless the Commissioner has granted authority to the contrary, deduct or withhold from that amount, or, where that amount constitutes any lump sum contemplated in paragraph 2(1)(b) of the Second Schedule, deduct from the employee's benefit or minimum individual reserve as contemplated in that paragraph, by way of employees' tax an amount which shall be determined as provided in paragraph 9, 10 or 11 or section 95 of the Tax Administration Act, whichever is applicable, in respect of the liability for normal tax of that employee, or, if such remuneration is paid or payable to an employee who is married and such remuneration is under the provisions of section 7(2) of this Act deemed to be income of the employee's spouse, in respect of such liability of that spouse, and shall, subject to the Employment Tax Incentive Act, 2013, pay the amount so deducted or withheld to the Commissioner within seven days after the end of the month during which the amount was deducted or withheld, or in the case of a person who ceases to be an employer before the end of such month, within seven days after the day on which that person ceased to be an employer, or in either case within such further period as the Commissioner may approve.

(1A) Notwithstanding the provisions of subparagraph (1), a person shall not be required to deduct or withhold employee's tax in respect of any year of assessment of a company or trust solely by virtue of paragraph (c) of the definition of "personal service provider" where the company or trust has in respect of such year of assessment provided that person with an affidavit or solemn declaration stating that the relevant paragraph does not apply and that person relied on that affidavit or declaration in good faith.

(1B) Notwithstanding the provisions of subparagraph (1), a person shall deduct or withhold employees' tax in respect of any amount payable in respect of variable remuneration, as defined in section 7B(1), on the date on which the amount is paid to the employee by the employer as contemplated in section 7B(2).

(2) Any employer may, at the written request of any employee, deduct or withhold from any amount of remuneration an amount by way of employees' tax greater than that required to be deducted or withheld in terms of sub-paragraph (1), and shall remit such amount to the Commissioner, and the provisions of this Schedule relating to employees' tax shall *mutatis mutandis* apply in respect of such amount.

(2A) An employer may deduct the amount of the employment tax incentive for which the employer is eligible in terms of the Employment Tax Incentive Act, 2013, from the amount of the employees' tax to be paid to the Commissioner by that employer in terms of subparagraph (1), unless section 8 of that Act applies.

(2B) Notwithstanding the provisions of subparagraph (1), a person that pays an annuity and is a pension fund, pension preservation fund, provident fund, provident 30 preservation fund, retirement annuity fund or is licensed as an insurer under the Insurance Act shall, when deducting or withholding employees' tax in respect of any year of assessment, apply the fixed tax rate that the Commissioner directs must be used in determining the amount of employees' tax to be withheld, where the person to whom that annuity is paid receives an amount of remuneration from more than one employer.

[subparagraph (2B) added by section 51(1) of Act 34 of 2019; effective date retroactively amended by section 79(1) of Act 23 of 2020 to 1 March 2022, and substituted by section 37(1) of Act 20 of 2021; effective date 1 March 2022]

(4) The amount required to be deducted or withheld from any remuneration under this Schedule by way of employees' tax must be calculated on the balance of the remuneration remaining after deducting therefrom—

(a) any contribution by the employee concerned to any pension fund or provident fund which the employer is entitled or required to deduct from that remuneration, but limited to the deduction to which the employee is entitled under section 11F having regard to the remuneration and the period in respect of which it is payable;

(b) at the option of the employer, any contribution to a retirement annuity fund by the employee in respect of which proof of payment has been furnished to the employer, but limited to the deduction to which the employee is entitled under section 11F having regard to the remuneration and the period in respect of which it is payable;

(bA) any contribution made or amount paid by the employer to any retirement annuity fund on behalf of or for the benefit of the employee, but limited to the deduction to which the employee is entitled under section 11F having regard to the remuneration and the period in respect of which it is payable;

[item (bA) substituted by section 67(1) of Act 23 of 2018; effective date 1 March 2018]

(f) so much of any donation made by the employer on behalf of the employee—

(i) as does not exceed 5 per cent of that remuneration after deducting therefrom the amounts contemplated in items (a), (b) and (bA); and

(ii) for which the employer will be issued a receipt as contemplated in section 18A(2)(a):

Provided that at any time during the year of assessment the amount of the contribution to be deducted in terms of paragraphs (a), (b) and (bA) must not exceed an amount that bears to the amount stipulated in section 11F(2)(a) the same ratio as the period during which remuneration was paid by an employer to the employee bears to a whole year.

(5) (a) The Commissioner shall on application made to him by any person who is a labour broker or who is an employee by reason of the provisions of paragraph (d) of the definition of "employee" in paragraph 1, issue to such person a certificate of exemption if—

(i) such person carries on an independent trade and is registered as a provisional taxpayer under the provisions of paragraph 17;

(ii) in the case of any such labour broker, he is registered as an employer under the provisions of paragraph 15; and

(iii) such person has, subject to any extension granted by the Commissioner, submitted all such returns as are required to be submitted by him under this Act:

Provided that the Commissioner shall not issue a certificate of exemption if—

(aa) more than 80 per cent of the gross income of such person during the year of assessment consists of, or is likely to consist of, an amount or amounts received from any one client of such person, or any associated institution as defined in the Seventh Schedule to this Act in relation to such client, unless that person is a labour broker who throughout the year of assessment employs three or more full-time employees—

(A) who are on a full-time basis engaged in the business of that labour broker of providing persons to or procuring persons for clients of that labour broker; and

(B) who are not connected persons in relation to that labour broker;

(bb) such labour broker provides to any of its clients the services of any other labour broker; or

(cc) such labour broker is contractually obliged to provide a specified employee of such labour broker to render any service to such client.

(b) The certificate of exemption referred to in item (a) shall be issued in such form as the Commissioner may decide and shall be valid for such period as the Commissioner may indicate thereon.

(c) An employer shall not be required to deduct or withhold employees tax from any remuneration paid or payable by him to any person who produces to the employer a valid certificate of exemption issued by the Commissioner under item (a).

(6) Any amount included in gross income in terms of paragraph (eA) of the definition of "gross income" shall for the purposes of this Schedule be deemed to be an amount which an employer pays or becomes liable to pay by way of remuneration to an employee.

3.

(1) The liability of any employer to deduct or withhold any amount of employees' tax in terms of paragraph 2 shall not be reduced or extinguished by reason of the fact that the employer has a right or is otherwise than in terms of any law under an obligation to deduct or withhold any other amount from the employees' remuneration, and such right or obligation shall notwithstanding anything to the contrary in any other law contained, for all purposes be deemed to have reference only to the amount of the remuneration remaining after the amount of employees' tax referred to in that paragraph has been deducted or withheld.

(2) The provisions of paragraph 2 shall apply in respect of all amounts payable by way of remuneration, notwithstanding the provisions of any law which provide that any such amount shall not be reduced or shall not be subject to attachment.

4.

Any amount required to be deducted or withheld in terms of paragraph 2 shall be a debt due to the State and the employer concerned shall save as otherwise provided be absolutely liable for the due payment thereof to the Commissioner.

5.

(1) Subject to the provisions of subparagraph (6), if an employer is personally liable for the payment of employees' tax under Chapter 10 of the Tax Administration Act, the employer shall pay that amount to the Commissioner not later than the date on which payment should have been made if the employees' tax had in fact been deducted or withheld in terms of paragraph 2.

[subparagraph (1) substituted by section 38 of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(1A) The liability of the employer as contemplated in paragraph 2 must be deemed to have been discharged if the employer made payment of the outstanding employees' tax in terms of subparagraph (1).

(2) Where the employer has failed to deduct or withhold employees' tax in terms of paragraph 2 and the failure was not due to an intent to postpone payment of the tax or to evade the employer's obligations under this Schedule, the Commissioner may, on application in the prescribed form and manner by the employer and if he or she is satisfied that there is a reasonable prospect of ultimately recovering the tax from the employee, absolve the employer from the employer's liability under sub-paragraph (1) of this paragraph.

(3) An employer who has not been absolved from liability as provided in sub-paragraph (2) shall have a right of recovery against the employee in respect of the amount paid by the employer in terms of sub-paragraph (1) in respect of that employee, and such amount may in addition to any other right of recovery be deducted from future remuneration which may become payable by the employer to that employee, in such manner as the Commissioner on application in the prescribed form and manner by the employer decides.

(4) Until such time as an employee pays to his employer any amount which is due to the employer in terms of sub-paragraph (3), such employee shall not be entitled to receive from the employer an employees' tax certificate in respect of that amount.

(5) Any amount which an employer is required to pay in terms of sub-paragraph (1) and which the employer does not recover from the employee shall, insofar as the employer only is concerned, for the purposes of section 23(d) be deemed to be a penalty due and payable by that employer.

(6) The provisions of sub-paragraph (1) shall not apply in respect of any amount or any portion of any amount of employees' tax which an employer has failed to deduct or withhold and in respect of which the provisions of sub-paragraph (3) of paragraph 28 apply.

6.

(1) If an employer fails to pay any amount of employees' tax for which the employer is liable within the period allowable for payment thereof in terms of paragraph 2 SARS must, in accordance with Chapter 15 of the Tax Administration Act, impose a penalty equal to ten per cent of such amount.

[subparagraph (1) substituted by section 39 of Act 20 of 2021; effective date 19 January 2022, and by section 6 of Act 21 of 2021; effective date 19 January 2022, date of promulgation of that Act]

7.

Any agreement between an employer and an employee whereby the employer undertakes not to deduct or withhold employees' tax shall be void.

9.

(1) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister in his budget statement and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe—

(a) deduction tables applicable to such classes of employees as the Commissioner may determine, taking into account the rebates applicable in terms of section 6; and

(b) the manner in which such tables shall be applied,

and the amount of employees' tax to be deducted from any amount of remuneration shall, subject to the provisions of subparagraphs (3) and (4) of this paragraph and paragraphs 10 and 11 and section 95 of the Tax Administration Act, be determined in accordance with such tables or where subparagraph (3) or (4) is applicable, in accordance with that subparagraph.

(2) Any tables prescribed by the Commissioner in accordance with sub-paragraph (1) shall come into force on a date prescribed by the Commissioner, and shall remain in force until withdrawn by the Commissioner.

(3) (a) The amount to be deducted or withheld in respect of employees' tax from any lump sum to which paragraph (d) or (e) of the definition of "gross income" in section 1 or section 7A applies, shall be ascertained by the employer from the Commissioner before paying out such lump sum, and the Commissioner's determination of the amount to be so deducted or withheld shall be final.

(4) The amount to be deducted or withheld in respect of any amount contemplated in paragraph (eA) of the definition of "gross income" in section 1 of this Act, shall be ascertained by the employer on inquiry from the Commissioner before the date of transfer or conversion of any amount for the benefit or ultimate benefit of any member as contemplated in such paragraph and the Commissioner's determination of the amount to be so deducted or withheld shall be final.

(6) There must be deducted from the amount to be withheld or deducted by way of employees' tax as contemplated in paragraph 2 the amount—

(a) of the medical scheme fees tax credit that applies in respect of that employee in terms of section 6A; and

(b) where the employee is entitled to a rebate under section 6(2)(b), of the additional medical expenses tax credit that applies in respect of that employee in terms of section 6B(3)(a)(i),

if—

(i) the employer effects payment of the medical scheme fees as contemplated in section 6A(2)(a); or

(ii) the employer does not effect payment of the medical scheme fees as contemplated in section 6A(2)(a), at the option of the employer, if proof of payment of those fees has been furnished to the employer.

10.

(1) If the Commissioner is satisfied that the circumstances warrant a variation of the basis provided in paragraph 9 for the determination of amounts of employees' tax to be deducted or withheld from remuneration of employees in the case of any employer, the Commissioner may agree with such employer as to the basis of determination of the said amounts to be applied by that employer, and

the amounts to be deducted or withheld by that employer in terms of paragraph 2 shall, subject to the provisions of paragraph 11 and section 95 of the Tax Administration Act, be determined accordingly.

(2) Any agreement made in terms of sub-paragraph (1) shall remain in force indefinitely, but the Commissioner or the employer concerned may give notice of termination thereof and upon the expiration of a period of three months from the date of such notice such agreement shall terminate.

11.

The Commissioner may, having regard to the circumstances of the case, issue a directive—

(a) to an employer authorising that employer—

(i) to refrain from deducting or withholding any amount under paragraph 2 by way of employees' tax from any remuneration due to any employee of that employer; or

(ii) to deduct or withhold by way of employees' tax from any remuneration in terms of paragraph 2, a specified amount or an amount to be determined in accordance with a specified rate or scale,

in order to alleviate hardship to that employee due to circumstances outside the control of the employee or to correct any error in regard to the calculation of employees' tax, or in the case of remuneration constituting commission or where the remuneration is paid or payable to a personal service provider and that directive must be complied with; or

11A.

(1) Where by virtue of the provisions of paragraph (b), (d), (e) or (g) of the definition of "remuneration" in paragraph 1, the remuneration of an employee includes—

(a) any gain made by the exercise, cession or release of any right to acquire any marketable security as contemplated in section 8A;

(b) any gain made from the disposal of any qualifying equity share as contemplated in section 8B; or

(c) any amount referred to in section 8C which is required to be included in the income of that employee; or

(d) any amount received by or accrued to that employee by way of a dividend contemplated in—

(i) paragraph (dd) of the proviso to section 10(1)(k)(i);

(ii) paragraph (ii) of the proviso to section 10(1)(k)(i);

(iii) paragraph (jj) of the proviso to section 10(1)(k)(i); or

(iv) paragraph (kk) of the proviso to section 10(1)(k)(i),

the person by whom that right was granted or from whom the equity instrument or qualifying equity share that gave rise to the gain or amount was acquired, as the case may be, is deemed to be a person who pays or is liable to pay to that employee the amount of the gain referred to in paragraph (a) or (b) or the amount referred to in paragraph (c) or (d).

(2) Employees' tax in respect of the amount of remuneration contemplated in subparagraph (1) must, unless the Commissioner has granted authority to the contrary, be deducted or withheld by the person referred to in subparagraph (1) from—

(a) any consideration paid or payable by that person to that employee in respect of the cession, or release of that right or the disposal of that qualifying equity share, as the case may be;

(b) any cash remuneration paid or payable by that person to that employee after that right has to the knowledge of that person been exercised, ceded or released or that equity instrument has to the knowledge of that person vested or that qualifying equity share has to the knowledge of that person been disposed of; or

(c) any amount of a dividend contemplated in subparagraph (1)(d) accrued to that employee:

Provided that where that person is an "associated institution", as defined in paragraph 1 of the Seventh Schedule, in relation to any employer who pays or is liable to pay to that employee any amount by way of remuneration during the year of assessment during which the gain contemplated in subparagraph (1)(a) or (b) or the amount contemplated in subparagraph (1)(c) or (d) arises, and—

(i) that person is not resident nor has a representative employer;

(ii) that person is unable to deduct or withhold the full amount of employees' tax during the year of assessment during which the gain or the amount arises, by reason of the fact that the amount to be deducted or withheld from that remuneration by way of employees' tax exceeds the amount from which the deduction or withholding can be made; or

(iii) the amount of the dividend referred to in paragraph (c) consists of an equity instrument referred to in section 8C,

that person and that employer must deduct or withhold from the remuneration payable by them to that employee during that year of assessment an aggregate amount equal to the employees' tax payable in respect of that gain or that amount and shall be jointly and severally liable for that aggregate amount of employees' tax.

(3) The provisions of this Schedule apply in relation to the amount of employees' tax deducted or withheld under subparagraph (2) as though that amount had been deducted or withheld from the amount of the gain referred to in subparagraph (1)(a) or (b) or the amount referred to in subparagraph (1)(c) or (d).

(4) Before deducting or withholding employees' tax under subparagraph (2) in respect of remuneration contemplated in subparagraph (1)(a), (c) or (d), that person and that employer must ascertain from the Commissioner the amount to be so deducted or withheld.

(5) If that person and that employer are, by reason of the fact that the amount to be deducted or withheld by way of employees' tax exceeds the amount from which the deduction or withholding is to be made, unable to deduct or withhold the full amount of employees' tax during the year of assessment during which the gain referred to in subparagraph (1)(a) or (b) or the amount referred to in subparagraph (1)(c) or (d) arises, they must immediately notify the Commissioner of the fact.

(6) Where an employee has—

(a) under any transaction to which neither that person nor that employer is a party made any gain; or

(b) disposed of any qualifying equity share as contemplated in subparagraph (1),

that employee must immediately inform that person and that employer of the transaction or the disposal and of the amount of that gain.

(7) Any employee who, without just cause shown by him or her, fails to comply with the provisions of subparagraph (6) shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000.

13. Furnishing and obtaining of employees' tax certificates

(1) Subject to the provisions of paragraphs 5, 14(5) and 28, every employer who during any period contemplated in subparagraph (1A) deducts or withholds any amount by way of employees' tax as required by paragraph 2 shall within the time allowed by subparagraph (2) of this paragraph deliver to each employee or former employee to whom remuneration has during the period in question

been paid or become due by such employer, an employees' tax certificate in such form as the Commissioner may prescribe or approve, which shall show the total remuneration of such employee or former employee and the sum of the amounts of employees' tax deducted or withheld by such employer from such remuneration during the said period, excluding any amount of remuneration or employees' tax included in any other employees' tax certificate issued by such employer unless such other certificate has been surrendered to such employer by the employee or former employee and has been cancelled by such employer and dealt with by the employer as provided in subparagraph (10).

(1A) The period referred to in subparagraph (1) shall be the period of 12 months ending on the last day of February of any year or, at the option of the employer which may be exercised by him in relation to all his employees or any class of his employees, the period, whether of 12 months or not (to be known as an alternate period), commencing on the day following the last day of the preceding alternate period in relation to the employer and ending on a date falling not more than 14 days (or such greater number of days as the Commissioner having regard to the circumstances of the case may allow) before or after the last day of February of any year.

(1B) Where any employer has in relation to any employee exercised an option as contemplated in subparagraph (1A), any remuneration which is paid or becomes payable to the employee by the employer during an alternate period shall for the purposes of this Act be deemed to have been paid or to have become payable to the employee during the year of assessment ended on the last day of February of the calendar year in which such alternate period ended.

(2) The employees' tax certificate referred to in sub-paragraph (1) shall be delivered—

(a) if the employer who is required to deliver the certificate has not ceased to be an employer in relation to the employee concerned, within 60 days after the end of the period to which the certificate relates;

(b) if the said employer has ceased to be an employer in relation to the employee concerned but has continued to be an employer in relation to other employees, within fourteen days of the date on which he has so ceased; or

(c) if the said employer has ceased to be an employer, within 14 days of the date on which the employer has so ceased,

or in any particular case within such further period as the Commissioner may approve.

(3) For the purposes of sub-paragraph (2) an employer shall, if the Commissioner having regard to the circumstances of the case so directs be deemed not to have ceased to be an employer in relation to any of his casual employees who is likely from time to time to be re-employed by such employer.

(4) Notwithstanding the provisions of sub-paragraphs (1) and (2) any employer who has deducted or withheld employees' tax from the remuneration of any employee shall as and when required by the Commissioner deliver to such employee an employees' tax certificate in such form as the Commissioner may prescribe or approve, which shall show the total remuneration of such employee or former employee and the sum of the amounts of employees' tax deducted or withheld by such employer from such remuneration during any period specified by the Commissioner but excluding any amount of remuneration or employees' tax included in any other employees' tax certificate issued by such employer unless such other certificate has been surrendered to such employer by the employee or former employee and has been cancelled by such employer and dealt with by him as provided in sub-paragraph (10).

(5) It shall be the duty of any employee or former employee who has not received an employees' tax certificate within the time allowed by sub-paragraph (2) forthwith to apply to the employer for such certificate.

(7) It shall be sufficient compliance with the provisions of sub-paragraph (1) or (4) in regard to the delivery of any employee's tax certificate to any employee or former employee if such certificate is delivered to the employees' authorized agent or the representative taxpayer in respect of the remuneration shown in such certificate or, where delivery cannot conveniently be effected by

personal delivery, if such certificate is sent to the employee or former employee or such agent or representative taxpayer.

(8) An employer may at the request of the employee or former employee issue a duplicate employees' tax certificate but any such duplicate shall be clearly marked as such and shall disclose full details of the original certificate.

(9) Unless authorized thereto by the Commissioner no duplicate employees' tax certificate may be issued by an employer otherwise than as provided in sub-paragraph (8).

(10) Any cancelled or spoiled employees' tax certificate shall not be destroyed by the employer concerned but shall be retained by him until the Commissioner requires it to be surrendered to him.

(11) The Commissioner shall control the issue to employers of stocks of unused employees' tax certificates and may prescribe conditions in regard to the manner in which such unused certificates may be used or as to the surrender of unused stocks of such certificates and every employer shall account to the Commissioner for used, unused, cancelled or spoiled certificates as and when required by the Commissioner.

(13) Every person who ceases to be an employer shall, unless the Commissioner otherwise directs, within fourteen days of his ceasing to be an employer surrender to the Commissioner all unused employees' tax certificates in his possession.

(14) If any person fails to surrender any unused employees' tax certificates as required by sub-paragraph (12) or (13), any officer engaged in carrying out the provisions of this Act who has in relation to such person been authorized thereto by the Commissioner in writing or by telegram may without previous notice, at any time during the day enter any premises whatsoever and on such premises search for and seize such certificates and in carrying out such search, open or cause to be removed and open any article in which he suspects any such certificates to be contained.

(15) For the purposes of this Schedule any employees' tax certificate on which appears the name or any trade name of any employer shall until the contrary is proved be deemed to have been issued by such employer if such certificate is in a form prescribed by the Commissioner for general use and was supplied by the Commissioner to such employer for use by him or is in a form approved by the Commissioner under sub-paragraph (12) for use by such employer.

14. Employers to keep records and furnish returns

(1) In addition to the records required in accordance with Part A of Chapter 4 of the Tax Administration Act, every employer shall in respect of each employee maintain a record showing—

(a) the amounts of remuneration paid or due by him or her to such employee;

(b) the amount of employees' tax deducted or withheld from the amounts of remuneration contemplated in item (a);

(c) the income tax reference number of that employee where that employee is registered as a taxpayer in terms of section 67; and

(d) such further information as the Commissioner may prescribe,

and such record shall be retained by the employer and shall be available for scrutiny by the Commissioner.

(2) Every employer shall when making any payment of employees' tax submit to the Commissioner a return.

(3) Every employer shall—

(a) by such date or dates as prescribed by the Commissioner by notice in the *Gazette*; and

(b) if the employer ceases to carry on any business or other undertaking in respect of which the employer has paid or becomes liable to pay remuneration to any employee or otherwise

ceases to be an employer, within 14 days after the date on which the employer has so ceased to carry on that business or undertaking or to be an employer, as the case may be,

or within such longer time as the Commissioner may approve, render to the Commissioner a return.

(5) Unless the Commissioner otherwise directs, no employees' tax certificate as contemplated in paragraph 13(2)(a) or (c) shall be delivered by the employer until such time as the return contemplated in subparagraph (3) has been rendered to the Commissioner.

(6) If an employer fails to render to the Commissioner a complete return referred to in subparagraph (3) within the period prescribed in that subparagraph, the Commissioner may impose on that employer a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, for each month that the employer fails to submit a complete return which, in total, may not exceed 10 per cent of the total amount of employees' tax deducted or withheld, or which should have been deducted or withheld by the employer from the remuneration of employees for the period described in that subparagraph.

[subparagraph (6) substituted by section 9 of Act 33 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(7) If the total amount of employees' tax deducted or withheld, or which should have been deducted or withheld for the period described in subparagraph (3), is 20 unknown, the Commissioner may estimate the total amount based on information readily available and impose the penalty under subparagraph (6) on the amount so estimated.

[subparagraph (7) added by section 7 of Act 21 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(8) Where, upon determining the actual employees' tax of the person in respect of whom the penalty was imposed under subparagraph (7), it appears that the total amount of employees' tax was incorrectly estimated under subparagraph (7), the penalty must be adjusted in accordance with the correct amount of employees' tax with effect from the date of the imposition of the penalty under subparagraph (6) read with subparagraph (7).

[subparagraph (8) added by section 7 of Act 21 of 2021; effective date 19 January 2022, date of promulgation of that Act]

15. Registration of employers

(1) Every person who is an employer shall apply to the Commissioner in accordance with Chapter 3 of the Tax Administration Act for registration: Provided that where no one of such employer's employees is liable for normal tax, the provisions of this paragraph shall not apply to such employer.

(3) Every person who is registered as an employer shall within 14 days after ceasing to be an employer, notify the Commissioner in writing of the fact of the employer having ceased to be an employer.

Part III – Provisional tax

17. Payment of provisional tax

(1) Every provisional taxpayer shall in the manner provided in this Part make payments (called provisional tax) to the Commissioner in respect of his liability for normal tax in respect of every year of assessment.

(3) Where for the purpose of determining any amount of provisional tax required to be paid by any provisional taxpayer in respect of any year of assessment the liability of such taxpayer for normal tax is required to be estimated in respect of such year, such liability shall be deemed to be the amount of normal tax which, calculated at the relevant rate referred to in subparagraph (4), would be payable by the provisional taxpayer in respect of the amount of taxable income estimated by

such taxpayer in terms of paragraph 19(1) during the period prescribed by this Schedule for the payment of the said amount of provisional tax or if the amount so estimated has been increased by the Commissioner in terms of paragraph 19(3), the amount of normal tax which, calculated at the said rate, would be payable by the provisional taxpayer in respect of the amount of taxable income as so increased, or if the Commissioner has estimated the provisional taxpayer's taxable income in terms of paragraph 19(2), the amount of normal tax which, calculated at the said rate, would be payable by the provisional taxpayer in respect of the amount of taxable income so estimated.

(4) For the purposes of any calculation of normal tax under subparagraph (3) the rate at which such tax is to be calculated shall be the relevant rate which on the date of payment of the provisional tax in question is in force in respect of the year of assessment in respect of which such provisional tax is required to be paid under this Schedule, or if at the said date the rate has not been fixed, the relevant rate in respect of that year foreshadowed by the Minister of Finance in his budget statement, or if at that date the rate has not been fixed or so foreshadowed, the relevant rate which is in force in respect of the latest preceding year of assessment in respect of which rates have been fixed by Parliament.

(5) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister in his or her budget statement or to the rebates applicable in terms of section 6(2) of this Act and taking into account any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe tables for optional use by provisional taxpayers falling within any category specified by the Commissioner, or by provisional taxpayers generally, for the purpose of estimating the liability of such taxpayers for normal tax, and the Commissioner may prescribe the manner in which such tables shall be applied together with the period for which such tables shall remain in force.

(7) The provisions of subparagraphs (3) and (4) shall not apply where the liability of a provisional taxpayer for normal tax is estimated in accordance with any tables prescribed for his use under the provisions of subparagraph (5) and not withdrawn under the provisions of subparagraph (6).

19. Estimates of taxable income to be made by provisional taxpayers

(1) (a) Every provisional taxpayer (other than a company) shall, during every period within which provisional tax is or may be payable by that provisional taxpayer as provided in this Part, submit to the Commissioner (unless the Commissioner directs otherwise) a return of an estimate of the total taxable income which will be derived by the taxpayer in respect of the year of assessment in respect of which provisional tax is or may be payable by the taxpayer: Provided that—

(i) such estimate will not include any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or any severance benefit received by or accrued to or to be received by or accrue to the taxpayer during the relevant year of assessment; and

(ii) in respect of the year of assessment in which a person dies, no estimate is required to be made in respect of the period ending on the date of death of that person.

[proviso substituted by section 10 of Act 33 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(b) Every company which is a provisional taxpayer shall, during every period within which provisional tax is or may be payable by it as provided in this Part submit to the Commissioner (unless the Commissioner directs otherwise) a return of an estimate of the total taxable income which will be derived by the company in respect of the year of assessment in respect of which provisional tax is or may be payable by the company.

(c) The amount of any estimate so submitted by a provisional taxpayer (other than a company) during the period referred to in paragraph 21(1)(a), or by a company (as a provisional taxpayer) during the period referred to in paragraph 23(a), shall not be less than the basic amount applicable to the estimate in question, as contemplated in item (d), unless the circumstances of the case justify the submission of an estimate of a lower amount.

(d) The basic amount applicable to any estimate submitted by a provisional taxpayer under this paragraph shall, for the purposes of this paragraph, be deemed to be—

(i) as respects an estimate submitted by a provisional taxpayer (other than a company) under item (a), the taxpayers' taxable income, as assessed by the Commissioner, for the latest preceding year of assessment in relation to such estimate, less—

(aa) the amount of any taxable capital gain contemplated in section 26A;

(bb) the taxable portion of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit (other than any amount contemplated in paragraph (eA) of the definition of "gross income" in section 1); and

(bbA) any amount (other than a severance benefit) contemplated in paragraph (d) of the definition of "gross income" in section 1,

included in the taxpayer's taxable income for that year of assessment;

(ii) as respects an estimate submitted by a company under item (b), the company's taxable income, as assessed by the Commissioner, for the latest preceding year of assessment in relation to such estimate, less the amount of any taxable capital gain included therein in terms of section 26A:

Provided that, if an estimate under item (a) or (b) must be made more than 18 months after the end of the latest preceding year of assessment in relation to such estimate, the basic amount determined in terms of subitems (i) and (ii) shall be increased by an amount equal to eight per cent per annum of that amount, from the end of such year to the end of the year of assessment in respect of which the estimate is made.

(e) For the purposes of item (d), the latest preceding year of assessment in relation to any estimate under this paragraph shall be deemed to be the latest of the years of assessment—

(i) preceding the year of assessment in respect of which the estimate is made; and

(ii) in respect of which a notice of assessment relevant to the estimate has been issued by the Commissioner not less than 14 days before the date on which the estimate is submitted to the Commissioner.

(2) If any provisional taxpayer fails to submit any estimate as required by subparagraph (1), the Commissioner may estimate the taxable income which is required to be estimated.

(3) The Commissioner may call upon any provisional taxpayer to justify any estimate made by the provisional taxpayer in terms of sub-paragraph (1), or to furnish particulars of the provisional taxpayer's income and expenditure or any other particulars that may be required, and, if the Commissioner is dissatisfied with the said estimate, he or she may increase the amount thereof to such amount as he or she considers reasonable, which increase of the estimate is not subject to objection and appeal.

(5) Any estimate or increase made by the Commissioner under the provisions of sub-paragraph (2) or (3) shall be deemed to take effect in respect of the relevant period within which the provisional taxpayer is required to make any payment of provisional tax in terms of this Part.

(6) Subject to subparagraph (2), if an estimate of a provisional taxpayer's taxable income in respect of any year of assessment is not submitted in terms of subparagraph (1)(a) or (b) by the last day of a period of four months after the last day of the year of assessment, the provisional taxpayer shall, for the purposes of this paragraph and paragraph 20, be deemed to have submitted an estimate of an amount of nil taxable income.

20. Penalty for underpayment of provisional tax as a result of underestimation

(1) If in respect of a year of assessment the taxable income of a provisional taxpayer, as determined under this Act, is—

(a) more than R1 million and the final or last estimate of taxable income submitted by that provisional taxpayer in terms of paragraph 19(1)(a) or (b) in respect of that year of assessment is less than 80 per cent of the amount of the provisional taxpayer's taxable income, the Commissioner must impose a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to 20 per cent of the difference between—

(i) the amount of normal tax, calculated at the rates applicable in respect of that year of assessment and after taking into account any amount of a rebate deductible in terms of this Act in the determination of normal tax payable, in respect of a taxable income equal to 80 per cent of the provisional taxpayer's taxable income; and

(ii) the amount of employees' tax and provisional tax in respect of that year of assessment paid by the end of the year of assessment; or

(b) R1 million or less and the final or last estimate of taxable income submitted by that provisional taxpayer in terms of paragraph 19(1)(a) or (b) in respect of that year of assessment is less than 90 per cent of the amount of the provisional taxpayer's taxable income and is also less than the basic amount applicable to that estimate, as contemplated in paragraph 19(1)(d), the Commissioner must impose a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to 20 per cent of the difference between—

(i) the lesser of—

(aa) the amount of normal tax, calculated at the rates applicable in respect of such year of assessment and after taking into account any amount of a rebate deductible in terms of this Act in the determination of normal tax payable, in respect of a taxable income equal to 90 per cent of the provisional taxpayer's taxable income; and

(bb) the amount of normal tax calculated in respect of a taxable income equal to such basic amount, at the rates applicable in respect of such year of assessment and after taking into account any amount of a rebate deductible in terms of this Act in the determination of normal tax payable; and

(ii) the amount of employees' tax and provisional tax in respect of such year of assessment paid by the end of the year of assessment:

Provided that any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit received by or accrued to or to be received by or accrue to the taxpayer during the relevant year of assessment shall not be taken into account for purposes of this subparagraph.

(2) Where the Commissioner is satisfied that the amount of any estimate referred to in subparagraph (1)(b) was seriously calculated with due regard to the factors having a bearing thereon and was not deliberately or negligently understated, or if the Commissioner is partly so satisfied, the Commissioner may in his or her discretion remit the penalty or a part thereof.

(2B) Any penalty imposed under subparagraph (1) in respect of a year of assessment must be reduced by any penalty imposed under paragraph 27(1) in respect of payment referred to in paragraph 21(1)(b) or 23(b).

(2C) If—

(a) a provisional taxpayer is deemed in terms of paragraph 19(6) to have submitted an estimate of an amount of nil taxable income due to a failure to submit an estimate by the last day of a period of four months after the last day of the year of assessment; and

(b) the Commissioner is satisfied that the provisional taxpayer's failure was not due to an intent to evade or postpone the payment of provisional tax or normal tax,

the Commissioner may remit the whole or any part of a penalty imposed under subparagraph (1).

21. Payment of provisional tax by provisional taxpayers (other than companies)

(1) Subject to the provisions of subparagraph (2), provisional tax shall be paid by every provisional taxpayer (other than a company) in the following manner, namely—

(a) within the period of six months reckoned from the commencement of the year of assessment in question, one half of an amount equal to the total estimated liability of such taxpayer (as determined in accordance with paragraph 17) for normal tax in respect of that year, less the total amount of—

(i) any employees' tax deducted by the taxpayer's employer from the taxpayer's remuneration during such period; and

(ii) any tax proved to be payable to the government of any other country which will qualify as a rebate under section 6quat; and

(b) not later than the last day of the year of assessment in question, an amount equal to the total estimated liability of such taxpayer (as finally determined in accordance with paragraph 17) for normal tax in respect of that year, less the total amount of—

(i) any employee's tax deducted by the taxpayer's employer from the taxpayer's remuneration during such year and the amount paid in terms of item (a); and

(ii) any tax proved to be payable to the government of any other country which will qualify as a rebate under section 6quat.

(1A) Subparagraph (1)(a) does not apply where the duration of the year of assessment in question does not exceed a period of six months.

[subparagraph (1A) inserted by section 8 of Act 21 of 2021; effective date 19 January 2022, date of promulgation of that Act]

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

23. Provisional tax payments by companies

(1) Provisional tax shall be paid by every company which is a provisional taxpayer in the following manner, namely—

(a) within the period ending 6 months after the commencement of the year of assessment in question, one half of an amount equal to the total estimated liability of such company (as determined in accordance with paragraph 17) for normal tax in respect of that year;

(b) within the period ending on the last day of that year, an amount equal to the total estimated liability of such company (as so determined) for normal tax in respect of that year less the amount paid in terms of item (a),

less, in either case, the total amount of—

(i) any employees' tax deducted by the taxpayer's employer from the taxpayer's remuneration during the relevant period; and

(ii) any tax proved to be payable to the government of any other country which will qualify as a rebate under section 6quat.

[paragraph 23 renumbered to subparagraph (1) by section 9(a) of Act 21 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(2) Subparagraph (1)(a) does not apply where the duration of the year of assessment in question does not exceed a period of six months.

[subparagraph (2) added by section 9(b) of Act 21 of 2021; effective date 19 January 2022, date of promulgation of that Act]

23A. Additional provisional tax payments

(1) Any provisional taxpayer may for the purpose of avoiding or reducing his or her liability for any interest which may become payable by him or her in respect of any year of assessment under Chapter 12 of the Tax Administration Act, elect to make an additional payment of provisional tax in respect of such year.

24.

The Commissioner may absolve any provisional taxpayer from making payment of any amount of provisional tax payable in terms of paragraph 21(1)(a) or paragraph 23(a), if the Commissioner is satisfied that the taxable income which may be derived by such taxpayer for the year of assessment in question cannot be estimated on the facts available at the time when payment of the amount in question has to be made.

25. Extension of time for payment of provisional tax

(1) If after the end of any period within which provisional tax is payable in terms of this Schedule the Commissioner has under the provisions of subparagraph (3) of paragraph 19 increased the amount of any estimate of taxable income submitted by any provisional taxpayer during such period, any additional provisional tax payable as a result of the Commissioner having made such increase shall, notwithstanding the provisions of paragraphs 21 and 23, be payable within such period as the Commissioner may determine.

27. Penalty on late payment of provisional tax

(1) If any provisional taxpayer fails to pay any amount of provisional tax for which he or she is liable within the period allowed for payment thereof in terms of paragraph 21 or 23, or paragraph 25(1), the Commissioner must, under Chapter 15 of the Tax Administration Act, impose a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to ten per cent of the amount not paid.

Part IV – General

28. Employees' tax and provisional tax to be set off against tax liability

(1) There shall be set off against the liability of the taxpayer in respect of any taxes (as defined in subparagraph (8)) due by the taxpayer, the amounts of employees' tax deducted or withheld by the taxpayer's employer during any year of assessment for which the taxpayer's liability for normal tax has been assessed by the Commissioner and the amounts of provisional tax paid by the taxpayer in respect of any such year, and if—

(a) the sum of the said amounts of employees' tax and provisional tax exceeds the amount of the taxpayer's total liability for the said taxes, the excess amount shall be refunded to the taxpayer; or

(b) the taxpayer's total liability for the aforesaid taxes exceeds the sum of the said amounts of employees' tax and provisional tax, the amount of the excess shall be payable by the taxpayer to the Commissioner.

[subparagraph (1) substituted by section 52 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(2) The burden of proof that any amount of employees' tax has been deducted or withheld by his employer shall be upon the taxpayer and any employees' tax certificate shall be *prima facie* evidence that the amount of employees' tax reflected therein has been deducted by the employer.

(3) If the Commissioner is satisfied that the amount or any portion of the amount of employees' tax shown in any employees' tax certificate has not been deducted or withheld by the employer and the amount of employees' tax shown in such tax certificate has been applied as provided in sub-paragraph (1), the employer and the employee shall be jointly and severally liable to pay to the Commissioner the amount which should not have been so applied and such amount shall be recoverable under this Act as if it were a tax.

(4) An employer who has under sub-paragraph (3) paid to the Commissioner an amount which has but should not have been applied under the provisions of sub-paragraph (1), may, if the amount was shown or included in the certificate because of a *bona fide* error, recover the amount so paid from the employee concerned, and in that case the provisions of sub-paragraph (3) of paragraph 5 shall *mutatis mutandis* apply.

(5) No employees' tax certificate shall be issued by the employer in respect of any amount recovered by him from the employee in terms of sub-paragraph (4) nor shall any such amount be included in any return rendered in terms of sub-paragraph (3) of paragraph 14.

(6) If the Commissioner is satisfied that the employee to whom an employees' tax certificate refers was directly or indirectly responsible for an incorrect amount being shown on such certificate he may absolve the employer from the liability imposed upon him by sub-paragraph (3), and in that case the employee shall be solely liable under that sub-paragraph.

(8) For the purposes of this paragraph, "taxes" means the normal tax levied under this Act.

28A.

Payments by way of employees' tax and provisional tax must, for the purposes of this Act and subject to the provisions of paragraph 28, be regarded as having been made in respect of the taxpayer's liability for tax whether or not the liability has been ascertained or determined at the date of any payment.

29.

No refund of any amount of employees' tax or provisional tax shall be made to the taxpayer concerned otherwise than as provided in paragraph 28 or in such circumstances as may be determined by the Commissioner in any deduction tables prescribed by him or her under paragraph 9.

30. Offences

(1) Any person who wilfully and without just cause—

(a) makes or becomes liable to make any payment of remuneration and who fails to deduct or withhold therefrom any amount of employees' tax or to pay such amount to the Commissioner as and when required by paragraph 2; or

(b) uses or applies any amount deducted or withheld by him by way of employees' tax for purposes other than the payment of such amount to the Commissioner; or

(f) fails or neglects to deliver to any employee or former employee any employees' tax certificate as required by paragraph 13; or

(g) fails to comply with any condition prescribed by the Commissioner in terms of sub-paragraph (11) of paragraph 13 in regard to the manner in which employees' tax certificates may be used or as to the surrender of unused stocks of such certificates, or to account for used, unused or spoiled employees' tax certificates when required by the Commissioner under that paragraph or on ceasing to be an employer fails to surrender unused employees' tax certificates in his possession as required by sub-paragraph (13) of that paragraph; or

(j) being a registered employer under paragraph 15(1), fails or neglects to notify the Commissioner of having ceased to be an employer as required by paragraph 15(3); or

(l) not being an employer and without being duly authorized by any person who is an employer, issues or causes to be issued any document purporting to be an employees' tax certificate; or

(m) fails to submit to the Commissioner any estimate of his taxable income as required under paragraph 19,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

(2) For the purposes of item (b) of sub-paragraph (1) an amount which has been deducted or withheld by any person from remuneration shall until the contrary is proved be deemed to have been used or applied by such person for purposes other than the payment of such amount to the Commissioner if such amount is not paid to the Commissioner within the period allowed for payment under paragraph 2.

Sixth Schedule (Part IV of Chapter II)

Determination of turnover tax payable by micro businesses

Part I – Interpretation

1. Definitions

In this Schedule, unless the context indicates otherwise, any meaning ascribed to a word or expression in this Act must bear the meaning so ascribed and—

"**investment income**" means—

(i) any income in the form of annuities, dividends, foreign dividends, interest, rental derived in respect of immovable property, royalties, or income of a similar nature; and

[paragraph (i) substituted by section 68 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(ii) any proceeds derived from the disposal of financial instruments;

"**micro business**" means a person that meets the requirements set out in Part II of this Schedule;

"**professional service**" means a service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, consulting, draftsmanship, education, engineering, financial service broking, health, information technology, journalism, law, management, real estate broking, research, sport, surveying, translation, valuation or veterinary science;

"**qualifying turnover**" means the total receipts from carrying on business activities, excluding any—

(a) amount of a capital nature; and

(b) amount exempt from normal tax in terms of section 10(1)(zK) or 12P;

"**registered micro business**" means a micro business that is registered in terms of paragraph 8;

"**taxable turnover**" means the amount determined in terms of paragraph 5 of this Schedule.

Part II – Application of schedule

2. Persons that qualify as micro businesses

(1) A person qualifies as a micro business if that person is a—

(a) natural person (or the deceased or insolvent estate of a natural person that was a registered micro business at the time of death or insolvency); or

(b) company,

where the qualifying turnover of that person for the year of assessment does not exceed an amount of R1 million.

(2) If a person described in subparagraph (1) carries on a business during the relevant year of assessment for a period which is less than 12 months, the amount described in subparagraph (1) is reduced proportionally taking into account the number of full months that it did not carry on business during that year.

3. Persons that do not quality as micro businesses

A person does not qualify as a micro business for a year of assessment where—

(a) that person at any time during that year of assessment holds any shares or has any interest in the equity of a company other than a share or interest described in paragraph 4;

(b) more than 20 per cent of that person's total receipts during that year of assessment consists of—

(i) where that person is a natural person (or the deceased or insolvent estate of a natural person that was a registered micro business at the time of death or insolvency), income from the rendering of a professional service; and

(ii) where that person is a company, investment income and income from the rendering of a professional service;

(c) at any time during that year of assessment that person is a "personal service provider" or a "labour broker", as defined in the Fourth Schedule, other than a labour broker in respect of which a certificate of exemption has been issued in terms of paragraph 2(5) of that Schedule;

(e) the total of all amounts received by that person from the disposal of—

(i) immovable property used mainly for business purposes; and

(ii) any other asset of a capital nature used mainly for business purposes, other than any financial instrument,

exceeds R1,5 million over a period of three years comprising the current year of assessment and the immediately preceding two years of assessment, or such shorter period during which that person was a registered micro business;

(f) in the case of a company—

(i) its year of assessment ends on a date other than the last day of February;

(ii) at any time during its year of assessment, any holder of shares in that micro business is a person other than a natural person (or the deceased or insolvent estate of a natural person);

(iii) at any time during its year of assessment, any holder of shares in that micro business holds any shares or has any interest in the equity of any other company other than a share or interest described in paragraph 4: Provided that the provisions of this item do not apply to the holding of any shares in or interest in the equity of a company, if the company—

(aa) has not during any year of assessment—

(A) carried on any trade; and

(B) owned assets, the total market value of which exceeds R5 000; or

(bb) has taken the steps contemplated in section 41(4) to liquidate, wind up or deregister: Provided further that this paragraph ceases to apply if the company has at any stage withdrawn any step so taken or does anything to invalidate any step so taken, with the result that the company will not be liquidated, wound up or deregistered;

(iv) it is a public benefit organisation approved by the Commissioner in terms of section 30;

(v) it is a recreational club approved by the Commissioner in terms of section 30A;

(vi) it is an association approved by the Commissioner in terms of section 30B; or

(vii) it is a small business funding entity approved by the Commissioner in terms of section 30C;

(g) in the case of a person that is a partner in a partnership during that year of assessment—

(i) any of the partners in that partnership is not a natural person;

(ii) that person is a partner in more than one partnership at any time during that year of assessment; or

(iii) the qualifying turnover of that partnership for that year of assessment exceeds the amount described in paragraph 2.

4. Permissible shares and interests

The disqualification in terms of paragraph 3(a) or 3(f)(iii) does not apply to a share or interest—

(a) in a company as described in paragraph (a) of the definition of a "listed company";

(b) in a portfolio in a collective investment scheme as described in paragraph (e) of the definition of a company;

(c) in a company as described in section 10(1)(e);

(d) in a venture capital company as defined in section 12J;

(e) that constitutes less than 5 per cent of the interest in a social or consumer co-operative or a co-operative burial society as defined in section 1 of the Co-operatives Act, 2005 (Act No. 14 of 2005), or any other similar co-operative if all of the income derived from the trade of that co-operative during any year of assessment is solely derived from its members;

(f) that constitutes less than 5 per cent of the interest in a primary savings co-operative bank or a primary savings and loans co-operative bank as defined in the Co-operative Banks Act, 2007 (Act No. 40 of 2007), that may provide, participate in or undertake only banking services as described in section 14(2)(a) or (b) of that Act; or

(g) in any friendly society as defined in section 1 of the Friendly Societies Act, 1956 (Act No. 25 of 1956).

Part III – Taxable turnover

5. Taxable turnover

The taxable turnover of a registered micro business in relation to any year of assessment consists of all amounts not of a capital nature received by that registered micro business during that year of assessment from carrying on business activities in the Republic, including amounts described in paragraph 6 and excluding amounts described in paragraph 7, less any amounts refunded to any person by that registered micro business in respect of goods or services supplied by that registered micro business to that person during that year of assessment or any previous year of assessment.

6. Inclusions in taxable turnover

The taxable turnover of a registered micro business includes—

(a) 50 per cent of all receipts of a capital nature from the disposal of—

(i) immovable property mainly used for business purposes, other than trading stock; and

(ii) any other asset used mainly for business purposes, other than any financial instrument; and

(b) in the case of a company, investment income (other than dividends and foreign dividends).

7. Exclusions from taxable turnover

The taxable turnover of a registered micro business does not include—

(a) in the case of a natural person, investment income;

(b) any amount exempt from normal tax in terms of section 10(1)(zK) or 12P;

(c) any amount received by that registered micro business where that amount accrued to it prior to its registration as a micro business and that amount accrued was subject to tax in terms of this Act; and

(d) any amount received by that registered micro business from any person by way of a refund in respect of goods or services supplied by that person to that registered micro business.

Part IV – Registration

8. Registration

(1) A person that meets the requirements set out in Part II may elect to be registered as a micro business—

(a) before the beginning of a year of assessment or such later date during that year of assessment as the Commissioner may prescribe by notice in the *Gazette*; or

(b) in the case of a person that commenced business activities during a year of assessment, within two months from the date of commencement of business activities.

(2) A person that elected to be registered in terms of subparagraph (1) must be registered by the Commissioner with effect from the beginning of that year of assessment.

(3) A person that is deregistered in terms of paragraph 9 or 10 may not again be registered as a micro business.

9. Voluntary deregistration

(1) A registered micro business may elect to be deregistered before the beginning of a year of assessment or such later date during that year of assessment as the Commissioner may prescribe by notice in the *Gazette*.

(2) A registered micro business that elects to be deregistered under subparagraph (1) must be deregistered by the Commissioner with effect from the beginning of that year of assessment.

10. Compulsory deregistration

(1) A registered micro business must notify the Commissioner within 21 days from the date on which—

(a) the qualifying turnover of that registered micro business for a year of assessment exceeds the amount described in paragraph 2, or there are reasonable grounds for believing that the qualifying turnover will exceed that amount; or

(b) that registered micro business is disqualified in terms of paragraph 3.

(2) The Commissioner must, subject to subparagraph (3), deregister a registered micro business with effect from the beginning of the month following the month during which the event as described in subparagraph (1)(a) or (1)(b) occurred.

(3) If the increase in the qualifying turnover of that person to an amount greater than the amount described in paragraph 2 is of a nominal and temporary nature, the person must apply to the Commissioner for a decision whether the person must remain a registered micro business or not.

Part V – Administration

11. Interim payments

(1) A registered micro business must, within six calendar months from the first day of the year of assessment—

(a) estimate the taxable turnover for the year of assessment;

(b) calculate the amount of tax payable on the estimated taxable turnover; and

(c) pay an amount equal to 50 per cent of the amount of tax so calculated.

(2) The estimate described in paragraph (1)(a) may not be less than the taxable turnover of the previous year of assessment unless the Commissioner, on application by the taxpayer and having regard to the circumstances, approves a lower estimate.

(4) A registered micro business must, by the last day of the year of assessment—

(a) estimate the taxable turnover for the year of assessment;

(b) calculate the amount of tax payable on the estimated taxable turnover; and

(c) pay an amount equal to the amount of tax so calculated less the amount paid in terms of subparagraph (1).

(4A) For the purposes of paragraph 2(1) of the Fourth Schedule, section 89bis(2), section 6 of the Skills Development Levies Act, 1999 (Act No. 9 of 1999), and section 8 of the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002), a registered micro business may elect to pay the amounts deducted or withheld in terms of that paragraph or those sections to the Commissioner—

(i) with regard to amounts deducted or withheld during the first six calendar months from the first day of the year of assessment, within seven days after the end of such period; and

(ii) with regard to amounts deducted or withheld within the next six calendar months following the period in item (i), within seven days after the end of such period.

(4B) If a registered micro business has made an election in terms of subparagraph (4A), the election must apply to all amounts deducted or withheld in terms of the applicable provisions referred to in that subparagraph.

(5) Where full payment of the amount described in subparagraph (4)(c) is not received by the Commissioner by the last day of the year of assessment, interest at the prescribed rate is payable from the day following the last day of the year of assessment to the earlier of the date on which the shortfall is received and the due date of the assessment for that year of assessment.

(6) Where the estimate described in subparagraph 4(a) is less than 80 per cent of the taxable turnover for the year of assessment, a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to 20 per cent of the difference between the tax payable on 80 per cent of the taxable turnover for the year of assessment and the tax payable on that estimate must be charged.

(7) Where the Commissioner is satisfied that the estimate described in subparagraph (4)(a) was not deliberately or negligently understated and was seriously made based on the information available, or is partly so satisfied, the Commissioner must waive the penalty charged in terms of subparagraph (6) in full or in part.

(8) Where the Commissioner has issued an assessment in respect of the payment required in terms of subparagraph (4), a penalty must not be imposed in terms of subparagraph (6).

Part VI – Miscellaneous

13. Amounts received by a connected person may be included in qualifying turnover

The total amount received from carrying on business activities by a connected person in relation to a person described in paragraph 2(1)(a) or (b) must be included in the qualifying turnover of that person for purposes of applying paragraph 2, where—

(a) the connected person carries on business activities that should properly be regarded as forming part of the business activities carried on by that person; and

(b) the main reason or one of the main reasons for the connected person carrying on business activities in the way that the connected person does is to ensure that the qualifying turnover of that person does not exceed the amount as described in that paragraph.

14. Record keeping

Notwithstanding the provisions of Part A of Chapter 4 of the Tax Administration Act, a registered micro business must only retain a record of—

(a) amounts received by that registered micro business during a year of assessment;

(b) dividends declared by that registered micro business during a year of assessment;

(c) each asset of that registered micro business as at the end of a year of assessment with a cost price of more than R10 000; and

(d) each liability of that registered micro business as at the end of a year of assessment that exceeded R10 000.

Seventh Schedule (Paragraph (i) of the definition of "gross income" in section 1 of this Act)

Benefits or advantages derived by reason of employment or the holding of any office

1. Definitions

For the purposes of this Schedule, unless the context otherwise indicates—

"**associated institution**", in relation to any single employer, means—

(a) where the employer is a company, any other company which is associated with the employer company by reason of the fact that both companies are managed or controlled directly or indirectly by substantially the same persons; or

(b) where the employer is not a company, any company which is managed or controlled directly or indirectly by the employer or by any partnership of which the employer is a member; or

(c) any fund established solely or mainly for providing benefits for employees or former employees of the employer or for employees or former employees of the employer and any company which is in terms of paragraph (a) or (b) an associated institution in relation to the employer, but excluding any fund established by a trade union or industrial council and any fund established for postgraduate research otherwise than out of moneys provided by the employer or by any associated institution in relation to the employer;

"**consideration**", as respects any reference in this Schedule to any consideration given by an employee, does not include any consideration in the form of services rendered or to be rendered by the employee;

"**employee**", in relation to any employer, means a person who is an employee in relation to such employer for the purposes of the Fourth Schedule, excluding any person who prior to 1 March 1992 by reason of superannuation, ill-health or other infirmity retired from the employ of such employer, but including, in relation to any company, any director of such company and any person who was previously employed by, or was a director of, such company if such person is or was the sole holder of shares in or one of the controlling holders of shares in such company and, for the purposes of paragraphs 2(h) and 13, including any person who has retired as aforesaid and who, after the employee's retirement, is released by the employee's employer from an obligation which arose before the employee's retirement to reimburse the employer for an amount paid by the employer on behalf of the employee or to pay any amount which became owing by the employee to the employer before the employee's retirement;

"**employer**" means any person who is an employer as defined in paragraph 1 of the Fourth Schedule and includes—

(a) any company; and

(b) for the purpose of paragraph 2 and the determination of the cash equivalent of the value of any taxable benefit granted to any person who derives remuneration as defined in the said paragraph from employment in the public service or any administration or undertaking of the State or who holds office under the Republic, the State;

"**employment**" means any office or employment;

"**month**" means any of the twelve portions into which any calendar year is divided;

"**taxable benefit**" means a taxable benefit contemplated in paragraph 2, whether the grant of such benefit is voluntary or otherwise, but excluding—

(a) any benefit the amount or value of which is exempt from normal tax under the provisions of section 10 of this Act;

(b) any benefit provided by any benefit fund in respect of medical, dental and similar services, hospital services, nursing services and medicines;

(c) any lump sum benefit payable by a benefit fund, pension fund, pension preservation fund, provident fund or provident preservation fund being a benefit referred to in the definition of "**benefit fund**" in section 1 of this Act or in paragraph (i) of the proviso to paragraph (c) of the definition of "pension fund" in that section or in paragraph (a) of the definition of "provident fund" in that section;

(d) any benefit or privilege received by or accrued to a person contemplated in section 9(2)(g) or (h) stationed outside the Republic which is attributable to that person's services rendered outside the Republic; or

(e) any severance benefit.

2. Taxable Benefits

For the purposes of this Schedule and of paragraph (i) of the definition of "gross income" in section 1 of this Act, a taxable benefit shall be deemed to have been granted by an employer to his employee in respect of the employee's employment with the employer, if as a benefit or advantage of or by virtue of such employment or as a reward for services rendered or to be rendered by the employee to the employer—

(a) any asset consisting of any goods, commodity, financial instrument or property of any nature (other than money) has been acquired by the employee from the employer or any associated institution in relation to the employer or from any person by arrangement with the employer, either for no consideration or for a consideration given by the employee which is less than the value of such asset, as determined under paragraph 5(2): Provided that the provisions of this subparagraph shall not apply in respect of—

(i) any meal, refreshment, voucher, board, fuel, power or water with which the employee has been provided as contemplated in subparagraph (c) or (d);

(ii) any marketable security acquired by the exercise by the employee, as contemplated in section 8A, of any right to acquire any marketable security;

(iii) any qualifying equity share acquired by an employee as contemplated in section 8B; or

(iv) any equity instrument contemplated in section 8C; or

(b) the employee has been granted the right to use any asset (other than any residential accommodation or household goods supplied with such accommodation) for his or her private or domestic purposes either free of charge or for a consideration payable by the employee which is less than the value of such use, as determined under paragraph 6 in the case of an asset other than a motor vehicle or under paragraph 7 in the case of a motor vehicle; or

(c) the employee has been provided with any meal or refreshment or voucher entitling him to any meal or refreshment (other than any board or meals referred to in item (d)), either free of charge or for

a consideration less than the value of such meal, refreshment or voucher, as the case may be, as determined under paragraph 8(2); or

(d) the employee has been provided with residential accommodation (whether furnished or unfurnished and with or without board, meals, fuel, power or water) either free of charge or for a rental consideration payable by the employee which is less than the rental value of such accommodation as determined under the applicable provisions of paragraph 9; or

(e) any service (other than a service to which the provisions of subparagraph (j) or (k) or paragraph 9(4)(a) apply) has at the expense of the employer been rendered to the employee (whether by the employer or by some other person), where that service has been utilized by the employee for his or her private or domestic purposes and no consideration has been given by the employee to the employer in respect of that service or, if any consideration has been given, the amount thereof is less than the amount of the lowest fare referred to in item (a) of subparagraph (1) of paragraph 10, or the cost referred to in item (b) of that subparagraph, as the case may be; or

(f) a debt (other than a debt for purposes of the payment by the employee of any consideration in respect of any qualifying equity share contemplated in section 8B to comply with the minimum requirements of the Companies Act or the payment of any securities transfer tax payable in respect of that share, or a debt in respect of which a subsidy is payable as contemplated in subparagraph (gA)) has been incurred by the employee, whether in favour of the employer or in favour of any other person by arrangement with the employer or any associated institution in relation to the employer, and either—

(i) no interest is payable by the employee in respect of such debt; or

(ii) interest is payable by the employee in respect thereof at a rate of lower than the official rate of interest; or

(g) the employer has paid any subsidy in respect of the amount of interest or capital repayments payable by the employee in terms of any debt; or

(gA) the employer has, in respect of any debt owed by the employee to any lender, paid to such lender any subsidy, being an amount which, together with any interest payable by the employee in respect of that debt, exceeds the amount of the interest which, if calculated at the official rate of interest, would have been payable in respect of that debt; or

(h) the employer has, whether directly or indirectly, paid any debt owing by the employee to any third person (other than an amount in respect of which item (i) or (j) applies), without requiring the employee to reimburse the employer for the amount paid or the employer has released the employee from an obligation to pay any debt owing by the employee to the employer: Provided that where any debt owing by the employee to the employer has been extinguished by prescription the employer shall be deemed to have released the employee from his or her obligation to pay the amount of such debt if the employer could have recovered the debt owing or caused the running of the prescription to be interrupted, unless the employer's failure to recover the debt owing or to cause the running of the prescription to be interrupted was not due to any intention of the employer to confer a benefit on the employee; or

(i) the employer has during any period directly or indirectly made any contribution or payment to any fund contemplated in paragraph (b) of the definition of "benefit fund" in section 1 for the benefit of any employee or the dependants of any employee; or

(j) the employer has, directly or indirectly, incurred any amount (other than a contribution or payment contemplated in item (i)) in respect of any medical, dental and similar services, hospital services, nursing services or medicines provided to the employee or his or her spouse, child, relative or dependant.

(k) the employer has made any payment to any insurer under an insurance policy directly or indirectly for the benefit of the employee or his or her spouse, child, dependant or nominee: Provided that this paragraph shall not apply in respect of an insurance policy that relates to an event arising solely out of and in the course of employment of the employee;

(l) the employer has made any contribution for the benefit of any employee to any pension fund or provident fund: Provided that this subparagraph shall not apply to the transfer of any surplus as contemplated in section 15E(1)(b), (d) and (e) of the Pension Funds Act; or

[subparagraph (l) substituted and proviso added by section 69(1)(a) of Act 23 of 2018; effective date 1 March 2017, applicable in respect of years of assessment commencing on or after that date]

(m) the employer has made any contribution for the benefit of any employee to any bargaining council established under section 27 of the Labour Relations Act, 1995 (Act No. 66 of 1995), in respect of a scheme or fund as contemplated in section 28(1)(g) of that Act, other than any payment to a pension fund or provident fund as contemplated in subparagraph (l).

[subparagraph (m) added by section 69(1)(b) of Act 23 of 2018; effective date 1 March 2019, applicable in respect of years of assessment commencing on or after that date]

2A.

For the purposes of paragraph 2, a partner is deemed to be an employee of the partnership.

3. Determination of cash equivalent of value of taxable benefit

(1) The cash equivalent of the value of a taxable benefit shall, for the purposes of paragraph (i) of the definition of "gross income" in section 1 of this Act, be determined in accordance with the provisions of this Schedule by the employer by whom the taxable benefit has been granted.

(2) The Commissioner may, if no determination is made, or if such determination appears to him or her to be incorrect, re-determine such cash equivalent—

(a) and issue the employer with a notice of the assessment in terms of section 96 of the Tax Administration Act for the unpaid amount of employees' tax that is required to be deducted or withheld from such cash equivalent; or

(b) upon the assessment of the liability for normal tax of the employee to whom such taxable benefit has been granted.

(3) If the employee concerned is dissatisfied with any determination or proposed determination by his employer of the cash equivalent of the value of any taxable benefit included in the remuneration of the employee for employees tax purposes, the employee or the employer may refer the matter to the Commissioner and the Commissioner may, if it appears to him that the determination or proposed determination should be adjusted, issue a directive to the employer as to the manner in which such determination should be made and the employer shall be obliged to act upon such directive: Provided that nothing in this subparagraph contained shall be construed as preventing the Commissioner from making a re-determination of such cash equivalent under the provisions of subparagraph (2).

4. Taxable benefits granted by associated institutions

Where any associated institution in relation to any employer has given any employee of that employer, by reason of the fact that the employee is in the employment of the employer, or as a benefit or advantage of such employment or as a reward for services rendered or to be rendered by the employee to the employer any benefit or advantage which, if such benefit or advantage had been given to the employee directly by the employer in the circumstances contemplated in paragraph 2, would have constituted a taxable benefit, such benefit or advantage shall for the purposes of this Schedule be deemed to be a taxable benefit granted by the employer to the employee and the cash equivalent of the value of such taxable benefit shall be determined accordingly.

5. Acquisition of an asset at less than actual value

(1) Where an asset has been acquired by an employee as contemplated in paragraph 2(a), the cash equivalent of the value of the taxable benefit shall be so much of the value of such asset (as determined under subparagraph (2) of this paragraph) as exceeds the value of any consideration given by the employee for such asset.

(2) The value to be placed on such asset shall be the market value thereof at the time the asset is acquired by the employee: Provided that where the asset in question is movable property (other than marketable securities or an asset which the employer had the use of prior to acquiring ownership thereof) and was acquired by the employer in order to dispose of it to the employee or the asset in question (other than marketable securities) was held by the employer as trading stock, the value to be placed thereon shall be the cost thereof to the employer or, where such asset was held as trading stock and the market value thereof was less than such cost, such market value: Provided further that where—

(a) any asset is presented by an employer to an employee as an award for bravery, such value to be placed thereon shall be reduced by the lesser of the cost to the employer of all such assets so awarded to the employee during the year of assessment and R5 000; or

(b) any asset is given by an employer to an employee for long service, such value to be placed thereon shall be reduced by the lesser of the cost to the employer of all such assets so given to the employee during the year of assessment and R5 000: Provided that the aggregate value of an amount reduced under this paragraph together with all amounts determined under paragraphs 6(4)(d) and 10(2)(e) of this Schedule and paragraph (vii) of the proviso to paragraph (c) of the definition of 'gross income' in section 1 does not exceed R5 000.

[paragraph (b) substituted by section 40(1) of Act 20 of 2021; effective date 1 March 2022, applicable in respect of years of assessment commencing on or after that date]

(3) No value shall be placed under this paragraph on fuel or lubricants supplied by an employer to his employee for use in a motor vehicle where the value of the private use of such vehicle has been determined under paragraph 7.

(3A) No value shall be placed under this paragraph on any immovable property used for residential purposes, and acquired by an employee as contemplated in paragraph 2(a): Provided that this subparagraph must not apply if—

[words preceding the proviso substituted by section 43 of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(a) the remuneration proxy of the employee exceeds R250 000 in relation to the year of assessment during which the immovable property is so acquired;

(b) the market value of the immovable property on the date of that acquisition exceeds R450 000; or

(c) the employee is a connected person in relation to the employer.

(4) For the purposes of this paragraph, "long service" means an initial unbroken period of service of not less than 15 years or any subsequent unbroken period of service of not less than 10 years.

6. Right of use of any asset (other than residential accommodation or any motor vehicle)

(1) Where an employee has been granted the right to use any asset (other than residential accommodation or any motor vehicle) as contemplated in paragraph 2(b), the cash equivalent of the value of the taxable benefit shall be so much of the value of the private or domestic use of such asset (as determined under subparagraph (2) of this paragraph for the period of use) as exceeds any consideration given by the employee for the use of such asset during such period or any amount expended by the employee on the maintenance or repair of such asset.

(2) The value to be placed on the private or domestic use of such asset shall be—

(a) where the asset is held by the employer as the lessee under a lease or hiring agreement, the amount of the rental payable by the employer in respect of the period during which the employee has the use of the asset; or

(b) where the asset is owned by the employer, an amount calculated for the period during which the employee has the use of the asset at the rate of 15 per cent per annum on the lesser of the cost of such asset to the employer or the market value thereof at the date of commencement of the period of use: Provided that where an employee is granted the sole right of the use of the asset for a period extending over the useful life of the asset or over a major portion thereof, the value to be placed on the private or domestic use of the asset shall be the cost thereof to the employer, and in such case the taxable benefit in respect of such use shall be deemed to have accrued to the employee on the date on which he was first granted the right of use of such asset.

(3) For employees tax purposes an appropriate portion of the said cash equivalent shall be apportioned to each period during the year of assessment in respect of which any cash remuneration is paid or becomes payable by the employer to the employee.

(4) No value shall be placed under this paragraph on the private or domestic use of an asset by an employee, if—

(a) such use is incidental to the use of the asset for the purposes of the employer's business or the asset is provided by the employer as an amenity to be enjoyed by the employee at his place of work or for recreational purposes at that place or a place of recreation provided by the employer for the use of his employees in general: Provided that this item shall not apply in respect of clothing; or

(b) the asset consists of any equipment or machine which the employer concerned allows his employees in general to use from time to time for short periods and the value of the private or domestic use of the asset, as determined under subparagraph (2), as does not exceed an amount determined on a basis as set out in a public notice issued by the Commissioner;

(bA) the asset consists of telephone or computer equipment which the employee uses mainly for the purposes of the employer's business;

(c) the asset consists of books, literature, recordings or works of art; or

(d) such use is granted by an employer to an employee for long service as defined in paragraph 5(4) to the extent that it does not exceed R5 000: Provided that the aggregate value of an amount determined under this paragraph together with amounts determined under paragraph (vii) of the proviso to paragraph (c) of the definition of "gross income" in section 1 and paragraphs 5(2)(b) and 10(2)(e) of the Seventh Schedule does not exceed R5 000.

[item (d) added by section 41(1) of Act 20 of 2021; effective date 1 March 2022, applicable in respect of years of assessment commencing on or after that date]

7. Right of use of motor vehicle

(1) For the purposes of this paragraph, "determined value", in relation to a motor vehicle, means—

(a) where such motor vehicle (not being a vehicle in respect of which paragraph (b)(ii) of this definition applies) was acquired by the employer, the retail market value thereof as determined by the Minister by regulation (excluding any finance charge or interest payable by the employer in respect of the employer's acquisition thereof); or

(b) where such motor vehicle—

(i) is held by the employer under a lease (other than an "operating lease" as defined in section 23A(1)); or

(ii) was held by the employer under a lease (other than an "operating lease" as defined in section 23A(1)) and the ownership thereof was acquired by the employer on the termination of the lease,

the retail market value thereof at the time the employer first obtained the right of use of the vehicle or, where at such time such lease was a lease contemplated in paragraph (b) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act, the cash value thereof as contemplated in the definition of "cash value" in the said section; or

(c) in any other case, the retail market value, as determined by the Minister by regulation, of such motor vehicle at the time when the employer first obtained the vehicle or right of use thereof or manufactured the vehicle:

Provided that—

(a) where an employee has been granted the right of use of such motor vehicle as contemplated in subparagraph (2) (other than a motor vehicle acquired under an operating lease as defined in section 23A(1)) and such vehicle, or the right of use thereof, was acquired by the employer not less than 12 months before the date on which the employee was granted such right of use, there shall be deducted from the amount determined under the foregoing provisions of this subparagraph a depreciation allowance calculated according to the reducing balance method at the rate of 15 per cent for each completed period of 12 months from the date on which the employer first obtained such vehicle or the right of use thereof to the date on which the said employee was first granted the right of use thereof; and

(b) where such motor vehicle was acquired by the employer from an associated institution in relation to the employer and the employee concerned had, prior to such acquisition, enjoyed the right of use of such motor vehicle, the determined value shall be the determined value as at the date on which the employee was granted the right of use of such motor vehicle for the first time.

(2) Where an employee has been granted the right to use any motor vehicle as contemplated in paragraph 2(b), the cash equivalent of the value of the taxable benefit shall be so much of the value of the private use of such vehicle (as determined under this paragraph in respect of the period of use) as exceeds any consideration given by the employee to the employer for the use of such vehicle during such period, other than consideration in respect of the cost of the licence, insurance, maintenance or fuel in respect of such vehicle.

(3) (a) Where an employer's rights and obligations under a lease in respect of a motor vehicle are transferred to his employee the employer shall for the purposes of this Schedule be deemed to have granted the employee the right to use such vehicle for the remainder of the period of the lease.

(b) In such case—

(i) any rentals becoming payable by the employee under the lease shall be deemed to be a consideration payable by him for the said right; and

(ii) the determined value of the vehicle shall be deemed to be an amount determined in accordance with the provisions of subparagraph (1)(b);

(4) Subject to subparagraph (10), the value to be placed on the private use of such vehicle shall be determined for each month or part of a month during which the employee was entitled to use the vehicle for private purposes (including travelling between the employee's place of residence and his or her place of employment or any other travelling done for his or her private or domestic purposes) and the said value shall—

(a) as respects each such month—

(i) be an amount equal to 3,5 per cent of the determined value of such motor vehicle: Provided that where the motor vehicle is the subject of a maintenance plan at the time

the employer acquired the motor vehicle or the right of use thereof, that amount shall be reduced to an amount equal to 3,25 per cent of the determined value of the motor vehicle; or

(ii) where such vehicle is acquired by the employer under an "operating lease" as defined in section 23A(1) concluded by parties transacting at arm's length and that are not connected persons in relation to each other, be—

(aa) the actual cost to the employer incurred under that operating lease; and

(bb) the cost of fuel in respect of that vehicle; and

(b) as respects any such part of a month, be an amount which bears to the appropriate amount determined in accordance with item (a)(i) or (ii) for a month the same ratio as the number of days in such part of a month bears to the number of days in the month in which such part falls.

(5) No reduction in the value determined under subparagraph (4) shall be made for the purposes of item (b) of that subparagraph by reason of the fact that the vehicle in question was during any period for any reason temporarily not used by the employee for private purposes.

(6) Where more than one motor vehicle is made available by an employer to a particular employee at the same time and each such vehicle was used by the employee during the year of assessment primarily for business purposes, the value to be placed on the private use of all the said vehicles shall be deemed to be the value of the private use of the vehicle having the highest value of private use or such other vehicle as the Commissioner may decide, on application by the taxpayer: Provided that the preceding provisions of this subparagraph shall not apply where the provisions of subparagraph (7) or (8) are applied.

(7) Where accurate records of distances travelled for business purposes in such vehicle are kept, upon the assessment of the employee's liability for normal tax for the year of assessment the value placed on the private use of the vehicle, calculated under subparagraph (4), must be reduced by an amount that bears to that calculated value the same ratio as the number of kilometres travelled for business purposes bears to the total amount of kilometres travelled in such vehicle during that year of assessment.

(8) Where accurate records of distances travelled for private purposes in such vehicle (other than a vehicle acquired as contemplated in subparagraph (4)(a)(ii)) are kept and the employee bears—

(a) (i) the full cost of the licence for such vehicle, upon the assessment of the employee's liability for normal tax for the year of assessment the value placed on the private use of such vehicle calculated under subparagraph (4) must be reduced by an amount that bears to the amount of the cost of the licence for such vehicle the same ratio as the number of kilometres travelled for private purposes bears to the total number of kilometres travelled in such vehicle during that year of assessment;

(ii) the full cost of the insurance of such vehicle, upon the assessment of the employee's liability for normal tax for the year of assessment the value placed on the private use of such vehicle calculated under subparagraph (4) must be reduced by an amount that bears to the amount of the cost of the insurance for such vehicle the same ratio as the number of kilometres travelled for private purposes bears to the total number of kilometres travelled in such vehicle during that year of assessment; or

(iii) the full cost of the maintenance of such vehicle, upon the assessment of the employee's liability for normal tax for the year of assessment the value placed on the private use of such vehicle calculated under subparagraph (4) must be reduced by an amount that bears to the amount of the cost of the maintenance for such vehicle the same ratio as the number of kilometres travelled for private purposes bears to the total number of kilometres travelled in such vehicle during that year of assessment;

(b) the full cost of fuel for private use of such vehicle, upon the assessment of the employee's liability for normal tax for the year of assessment the value placed on the private use of the

vehicle during that year of assessment calculated under subparagraph (4) must be reduced by an amount determined for the total kilometres travelled for private purposes by applying the rate per kilometre for fuel fixed by the Minister in the *Gazette* for the purposes of section 8(1)(b)(ii) and (iii).

(8A) For the purposes of subparagraphs (7) and (8), if the employee contemplated in those subparagraphs is a "judge" or a "Constitutional Court judge" as defined in section 1 of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), the kilometres travelled between the judge's place of residence and the court over which the judge presides must be deemed to be kilometres travelled for business purposes and not for private purposes.

(10) For the purposes of this paragraph the private use by an employee of a motor vehicle shall be deemed to have no value, if—

(a) (i) the vehicle is available to and is in fact used by employees of the employer in general;

(ii) the private use of the vehicle by the employee concerned is infrequent or is merely incidental to its business use; and

(iii) the vehicle is not normally kept at or near the residence of the employee concerned when not in use outside of business hours; or

(b) the nature of the employee's duties are such that he or she is regularly required to use the vehicle for the performance of those duties outside his or her normal hours of work, and he or she is not permitted to use that vehicle for private purposes other than—

(i) travelling between his or her place of residence and his or her place of work; or

(ii) private use which is infrequent or is merely incidental to its business use.

(11) For the purposes of this paragraph, "maintenance plan", in relation to a motor vehicle, means a contractual obligation undertaken by a provider in the ordinary course of trade with the general public to underwrite the costs of all maintenance of that motor vehicle, other than the costs related to top-up fluids, tyres or abuse of the motor vehicle, for at least a period of not less than three years and a distance travelled by the motor vehicle of not less than 60 000 kilometres from the date that the provider undertakes the contractual obligation: Provided that the contractual obligation may terminate at the earlier of—

(a) the end of the period of three years; or

(b) the date on which the distance of 60 000 kilometres is travelled by that motor vehicle.

8. Meals, refreshments and meal and refreshment vouchers

(1) Where an employee has been provided with any meal, refreshment or voucher as contemplated in paragraph 2(c), the cash equivalent of the taxable benefit shall be so much of the value of such meal, refreshment or voucher (as determined under subparagraph (2) of this paragraph) as exceeds any consideration given by the employee in respect of such meal, refreshment or voucher.

(2) The value to be placed on such meal, refreshment or voucher shall be the cost to the employer of such meal, refreshment or voucher.

(3) No value shall be placed under this paragraph on—

(a) any meal or refreshment supplied by an employer to his employee in any canteen, cafeteria or dining room operated by or on behalf of the employer and patronised wholly or mainly by his employees or on the business premises of the employer;

(b) any meal or refreshment supplied by an employer to an employee during business hours or extended working hours or on a special occasion; or

(c) any meal or refreshment enjoyed by an employee in the course of providing a meal or refreshment to any person whom the employee is required to entertain on behalf of the employer.

9. Residential accommodation

(1) For the purposes of this paragraph—

(2) The cash equivalent of the value of the taxable benefit derived from the occupation of residential accommodation as contemplated in paragraph 2(d) shall be the rental value of such accommodation (as determined under subparagraph (3), (3C), (4) or (5) of this paragraph in respect of the year of assessment) less any rental consideration given by the employee for such accommodation in respect of such year, any rental consideration given by him in respect of household goods supplied with such accommodation and any charge made to the employee by the employer in respect of power or fuel provided with the accommodation.

(3) Subject to the provisions of subparagraph (3C) and (4), the rental value to be placed on such accommodation for any year of assessment shall be an amount determined in accordance with the formula

$$(A - B) \times \frac{C}{100} \times \frac{D}{12},$$

in which formula—

(i) "A" represents the remuneration proxy as determined in relation to the year of assessment;

(ii) "B" represents an abatement equal to an amount of R91 250: Provided that in any case where —

[words preceding the proviso substituted by section 6(1) of Act 21 of 2018; effective date 1 March 2018, by section 3(1) of Act 32 of 2019; effective date 1 March 2019, by section 8(1) of Act 22 of 2020; effective date 1 March 2020, by section 4(1) of Act 19 of 2021; effective date 1 March 2021, and by section 4(1) of Act 19 of 2022; effective date 1 March 2022, applies in respect of years of assessment commencing on or after that date]

(aa) the employer is a private company and the employee or his spouse controls the company or is one of the persons controlling the company, whether control is exercised directly as a shareholder in the company or as a shareholder in any other company; or

(bb) the employee, his spouse or minor child has a right of option or pre-emption granted by the employer or by any other person by arrangement with the employer or any associated institution in relation to the employer whereby the employee, his spouse or minor child may become the owner of the accommodation, whether directly or indirectly by virtue of a controlling interest in a company or otherwise,

the said abatement shall be reduced to zero;

(iii) "C" represents a quantity of 17: Provided that where the accommodation consists of a house, flat or apartment consisting of at least four rooms—

(aa) "C" represents a quantity of 18 if—

(A) such accommodation is unfurnished and power or fuel is supplied by the employer; or

(B) such accommodation is furnished but power or fuel is not supplied; or

(bb) "C" represents a quantity of 19 if such accommodation is furnished and power or fuel is supplied by the employer; and

(iv) "D" represents the number of months in relation to a year of assessment during which the employee was entitled to occupation of such accommodation.

(3B) Where the employee has an interest in the accommodation in question, subparagraph (3) shall apply.

(3C) Where the employer or associated institution in relation to the employer supplies accommodation, obtained in terms of a transaction at arm's length with a person that is not a connected person in relation to that employer or associated institution and the full ownership does not vest in the employer or associated institution, the value to be placed on such accommodation shall be the lower of—

(a) the amount determined in accordance with subparagraph (3); and

(b) the amount of the expenditure incurred in respect of that accommodation by that employer or associated institution.

(4) The rental value to be placed on accommodation occupied temporarily for the purposes of a holiday shall be—

(a) where such accommodation is hired by the employer from a person other than an associated institution in relation to the employer, so much of the rental payable and any amounts chargeable in respect of meals, refreshments or any services relating to such accommodation as have been borne by the employer and are connected with the period during which the accommodation was so occupied; or

(b) in any other case, an amount calculated at the prevailing rate per day at which such accommodation could normally be let to any person who is not an employee of the employer or of any associated institution in relation to the employer.

(5) Where, by reason of the situation, nature or condition of the accommodation or any other factor, the Commissioner is satisfied that the rental value of such accommodation is less than the rental value thereof determined in accordance with the formula contemplated in subparagraph (3) or the rental value determinable under subparagraph (4), he or she may determine such rental value at such lower amount as to him or her appears fair and reasonable.

(6) Where any employee has been provided by his employer with residential accommodation consisting of two or more residential units situated at different places which the employee is entitled to occupy from time to time while performing his duties the cash equivalent of the value of the benefit of such units which shall be included in the gross income of the employee shall be the value of the unit with the highest rental value determined under subparagraph (2) over the full period during which the employee was entitled to occupy more than one unit.

(7) No rental value shall be placed under this paragraph on any accommodation away from an employee's usual place of residence in the Republic provided by his employer while such employee is absent from his usual place of residence in the Republic for the purposes of performing the duties of his or her employment: Provided that the preceding provisions of this subparagraph shall not apply in respect of any residential unit referred to in subparagraph (6).

(7A) Subject to subparagraph (7B), no rental value shall be placed under this paragraph on any accommodation provided by an employer to an employee away from such employee's usual place of residence outside the Republic—

(a) for a period not exceeding 2 years from the date of arrival of that employee in the Republic, for the purposes of performing the duties of his or her employment; or

(b) if that accommodation is provided to that employee during the year of assessment and that employee is physically present in the Republic for a period of less than 90 days in that year.

(7B) The provisions of subparagraph (7A)(a) do not apply—

(i) if that employee was present in the Republic for a period exceeding 90 days during the year of assessment immediately preceding the date of arrival referred to in subparagraph (7A); or

(ii) to the extent that the cash equivalent of the value of the taxable benefit derived from the occupation of the residential accommodation exceeds an amount equal to R25 000 multiplied by the number of months during which subparagraph (7A) applies.

(8) For employees' tax purposes an appropriate portion of the cash equivalent referred to in subparagraph (2) shall be apportioned to each period during the year of assessment in respect of which any cash remuneration is paid or becomes payable by the employer to the employee.

(9) Where the employee has been provided with residential accommodation by his employer or any associated institution in relation to the employer and such employee has an interest in the accommodation in question, as contemplated in subparagraph (10), and the accommodation has been let to the employer or to any associated institution in relation to the employer, the said rental shall for the purposes of this Act (excluding this subparagraph) be deemed not to have been received by or to have accrued to the employee or any connected person in relation to the employee.

(10) For the purposes of subparagraphs (3B) and (9), an employee shall be deemed to have an interest in accommodation if—

(a) such accommodation is owned by the employee or a connected person in relation to such employee;

(b) any increase in the value of the accommodation in any manner whatsoever, whether directly or indirectly, accrues for the benefit of the employee or a connected person in relation to such employee; or

(c) such employee or a connected person in relation to such employee, has a right to acquire the accommodation from his employer.

10. Free or cheap services

(1) The cash equivalent of the value of any taxable benefit derived from the rendering of a service to any employee as contemplated in paragraph 2(e) shall be—

(a) in the case of any travel facility granted by any employer who is engaged in the business of conveying passengers for reward by sea or by air to enable any employee or any relative of such employee to travel to any destination outside the Republic for his or her private or domestic purposes, an amount equal to the lowest fare payable by a passenger utilising such facility (had he or she paid the full fare), less the amount of any consideration given by the employee or his or her relative in respect of such facility: Provided that for the purposes hereof a forward journey and a return journey shall be regarded as one journey; or

(b) in the case of the rendering of any other service as contemplated in the said paragraph, the cost to the employer in rendering such service or having such service rendered, less the amount of any consideration given by the employee in respect of such service.

(2) No value shall be placed under this paragraph on—

(a) any travel facility granted by any employer who is engaged in the business of conveying passengers for reward by land, sea or air to enable any employee in his employment or such employee's spouse or minor child to travel—

(i) to any destination in the Republic or to travel overland to any destination outside the Republic; or

(ii) to any destination outside the Republic if such travel was undertaken on a flight or voyage made in the ordinary course of the employer's business and such employee,

spouse or minor child was not permitted to make a firm advance reservation of the seat or berth occupied by him or her;

(b) any transport service rendered by any employer to his employees in general for the conveyance of such employees from their homes to the place of their employment and vice versa;

(bA) any communication service provided to an employee if the service is used mainly for the purposes of the employer's business;

(c) any services rendered by an employer to his employees at their place of work for the better performance of their duties or as a benefit to be enjoyed by them at that place or for recreational purposes at that place or a place of recreation provided by the employer for the use of his employees in general;

(d) any travel facility granted by an employer to the spouse or any minor child of an employee if —

(i) that employee is for the duration of the term of his or her employment stationed for purposes of the business of that employer at a specific place in the Republic further than 250 kilometers away from his or her usual place of residence in the Republic;

(ii) that employee is required to spend more than 183 days during the relevant year of assessment at that specific place for purposes of the business of that employer; and

(iii) that facility is granted in respect of travel between that employee's usual place of residence in the Republic and that specific place where the employee is so stationed; or

(e) any services granted by an employer to an employee for long service as defined in paragraph 5(4) to the extent that it does not exceed R5 000: Provided that the aggregate value of an amount determined under this paragraph together with all amounts determined under paragraph (vii) of the proviso to paragraph (c) of the definition of "gross income" in section 1 and paragraphs 5(2)(b) and 6(4)(d) of the Seventh Schedule does not exceed R5 000.

[item (e) added by section 42(1) of Act 20 of 2021; effective date 1 March 2022, applicable in respect of years of assessment commencing on or after that date]

10A.

(1) Where—

(a) any employee has been granted the right to occupy residential accommodation owned by his employer or by any associated institution in relation to his employer;

(b) the employee, his spouse or minor child is in terms of an agreement entered into with such employer or associated institution, entitled or obliged to acquire such residential accommodation at a future date at a price stated in such agreement; and

(c) the employee is required to pay in respect of his occupation of such residential accommodation a rental which is calculated wholly or partly as a percentage of the price referred to in item (b),

it shall be deemed for the purposes of this Schedule that the employer or, where the residential accommodation is owned by such associated institution, the associated institution, has granted to the employee a loan equal to the price referred to in item (b) and that interest is payable on such loan at a rate equal to the percentage referred to in item (c).

(2) The provisions of paragraph 2(d) shall not apply to any residential accommodation with which an employee has been provided in the circumstances contemplated in subparagraph (1), and the provisions of paragraph 2(a) shall not apply where any such residential accommodation is acquired by the employee in terms of an agreement referred to in item (b) of that subparagraph at a price

which is not lower than the market value of such residential accommodation on the date such agreement is concluded.

11. Benefits in respect of interest on debt

(1) The cash equivalent of the value of the taxable benefit derived in consequence of the debt owed by an employee in the circumstances contemplated in paragraph 2(f) shall be the amount of interest that would have been payable on the amount owing in respect of the debt in respect of the year of assessment if the employee had been obliged to pay interest on such amount during such year at the official rate of interest, less the amount of interest (if any) actually incurred by the employee in respect of the debt in respect of such year.

(2) For the purposes of this Act—

(a) a portion of the said cash equivalent shall be deemed to have accrued to the employee—

(i) where interest in respect of the debt in question becomes payable by the employee at regular intervals, on each date during the year of assessment on which interest becomes so payable for a portion of such year;

(ii) where interest in respect of the debt in question becomes payable by the employee at irregular intervals or where interest on the loan is not payable by him or her, on the last day of each period during the year of assessment in respect of which any cash remuneration becomes payable by the employer to the employee; and

(b) the said portion shall be determined by calculating interest at the official rate of interest for the portion of the year referred to in subparagraph (2)(a)(i) or the period referred to in subparagraph (2)(a)(ii), as the case may be, and deducting therefrom so much of the amount of interest (if any) payable by him or her on the debt as relates to the said portion of a year or the said period, as the case may be: Provided that where the official rate of interest has been altered with effect from any date, any cash equivalent which is under item (a) deemed to have accrued to the employee on any date falling before the date on which such interest rate was so altered shall be determined as though such rate of interest had not been so altered.

(3) A different method of calculation of the said cash equivalent or portions thereof may be employed if the Commissioner decides, on application by the taxpayer, that such method achieves substantially the same result as the methods provided in subparagraphs (1) and (2).

(4) No value shall be placed under this paragraph on the taxable benefit derived in consequence of—

(a) a debt owed by any employee to his or her employer if such debt or the aggregate of such debts does not exceed the sum of R3 000 at any relevant time; or

(b) the debt owed to any employer by an employee incurred for the purpose of enabling that employee to further his or her own studies;

(c) a debt owed to his or her employer in consequence of a loan by that employer to that employee as does not exceed the amount of R450 000 if—

(i) the debt was assumed for the purposes of acquiring immovable property used for residential purposes by the employee;

[subitem (i) substituted by section 44 of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(ii) the market value of the immovable property acquired does not exceed R250 000 in relation to the year of assessment during which the property is acquired;

(iii) the remuneration proxy of the employee does not exceed R250 000 in relation to the year of assessment during which the loan is granted; and

(iv) the employee is not a connected person in relation to the employer.

[item (c) added by section 70(1) of Act 23 of 2018; effective date 1 March 2019, applicable in respect of years of assessment commencing on or after that date]

(5) Where any amount, being the cash equivalent as determined under the provisions of this paragraph, of the value of a taxable benefit derived by any taxpayer in consequence of a debt owed by him or her, has been included in such taxpayer's taxable income in any year of assessment, such amount shall for the purposes of section 11(a) of this Act be deemed to be interest actually incurred by him or her in that year of assessment in respect of the said debt where such amount, had it been actually incurred as interest, would have been incurred by the taxpayer in the production of his or her income.

12. Subsidies in respect of debt

The cash equivalent of the value of the taxable benefit consisting of any subsidy in respect of the amounts of interest or capital repayments referred to in paragraph 2(g) or any subsidy contemplated in paragraph 2(gA) shall be the amount of such subsidy.

12A. Contribution to benefit fund

(1) The cash equivalent of the value of the taxable benefit contemplated in paragraph 2(i) is the amount of any contribution or payment made by the employer in respect of a year of assessment, directly or indirectly, to any medical scheme registered under the Medical Schemes Act or to any fund which is registered under any similar provision contained in the laws of any other country where the medical scheme is registered, for the benefit of any employee or dependants, as defined in that Act, of that employee.

(2) Where any contribution or payment made by an employer contemplated in subparagraph (1) is made in such a manner that an appropriate portion thereof cannot be attributed to the relevant employee or his or her dependants, the amount of that contribution or payment in relation to that employee and his or her dependants is deemed, for purposes of subparagraph (1), to be an amount equal to the total contribution or payment by the employer to the fund during the relevant period for the benefit of all employees and their dependants divided by the number of employees in respect of whom the contribution or payment is made.

(3) If the apportionment of the contribution or payment amongst all employees in accordance with subparagraph (2) does not reasonably represent a fair apportionment of that contribution or payment amongst the employees, the Commissioner may, on application by the taxpayer, decide that the apportionment be made in such other manner as is fair and reasonable.

(5) No value shall be placed in terms of this paragraph on the taxable benefit derived from an employer by—

(a) a person who by reason of superannuation, ill-health or other infirmity retired from the employ of such employer; or

(b) the dependants of a person after such person's death, if such person was in the employ of such employer on the date of death; or

(c) the dependants of a person after such person's death, if such person retired from the employ of such employer by reason of superannuation, ill-health or other infirmity;

12B. Incurral of costs relating to medical services

(1) The cash equivalent of the value of the taxable benefit contemplated in paragraph 2(j) is the amount incurred by the employer during any month, directly or indirectly, in respect of any medical, dental and similar services, hospital services, nursing services or medicines in respect of that employee, his or her spouse, child or other relative or dependants.

(2) Where the payment of any amount contemplated in subparagraph (1) is made in such a manner that an appropriate portion thereof cannot be attributed to the relevant employee and his or her spouse, children, relatives and dependants, the amount of that payment in relation to that employee and his or her spouse, children, relatives and dependants is, for purposes of subparagraph (1), deemed to be an amount equal to the total amount incurred by the employer during the relevant period in respect of all medical, dental and similar services, hospital services, nursing services or medicines for the benefit of all employees and their spouses, children, relatives and dependants divided by the number of employees who are entitled to make use of those services.

(3) No value must be placed in terms of this paragraph on any taxable benefit—

(a) resulting from the provision of medical treatment listed in any category of the prescribed minimum benefits determined by the Minister of Health in terms of section 67(1)(g) of the Medical Schemes Act which is provided to the employee or his or her spouse or children in terms of a scheme or programme of that employer—

(i) which constitutes the carrying on of the business of a medical scheme if that scheme or programme has been approved by the Registrar of Medical Schemes as being exempt from complying with the requirements of medical schemes in terms of that Act; or

(ii) which does not constitute the carrying on of the business of a medical scheme, if that employee and his or her spouse and children—

(aa) are not beneficiaries of a medical scheme registered under the Medical Schemes Act; or

(bb) are beneficiaries of such a medical scheme, and the total cost of that treatment is recovered from that medical scheme;

(aA) where the services are rendered or the medicines are supplied for purposes of complying with any law of the Republic;

(b) derived from an employer by—

(i) a person who by reason of superannuation, ill-health or other infirmity retired from the employ of that employer;

(ii) the dependants of a person after that person's death, if that person was in the employ of that employer on the date of death;

(iii) the dependants of a person after that person's death, if that person retired from the employ of that employer by reason of superannuation, ill-health or other infirmity; or

(iv) a person who during the relevant year of assessment is entitled to a rebate under section 6(2)(b); or

(c) where the services are rendered by the employer to its employees in general at their place of work for the better performance of their duties.

12C. Benefits in respect of insurance policies

(1) The cash equivalent of the value of a taxable benefit deemed to have been granted as contemplated in paragraph 2(k) is the amount of any expenditure incurred by an employer during a year of assessment in respect of any premiums payable under a policy of insurance directly or indirectly for the benefit of an employee or his or her spouse, child, dependant or nominee.

(3) Where an appropriate portion of any expenditure contemplated in subparagraph (1) cannot be attributed to the employee for whose benefit the premium is paid, the amount of that expenditure in relation to that employee is deemed, for the purposes of subparagraph (1), to be an amount equal to the total expenditure incurred by the employer during that year of assessment for the benefit of all employees divided by the number of employees in respect of whom the expenditure is incurred.

12D. Valuation of contributions made by employers to certain retirement funds

(1) For the purposes of this paragraph—

"benefit" in relation to an employee that is a member of a pension fund, provident fund or retirement annuity fund, means any amount payable to that member or a dependant or nominee of that member by that fund in terms of the rules of the fund;

"contribution certificate" means the certificate contemplated in subparagraph (4);

"defined benefit component" means a benefit or part of a benefit receivable from a pension fund, provident fund or retirement annuity fund by a member of that fund or a dependant or nominee of that member other than a defined contribution component or underpin component of a fund;

"defined contribution component" means a benefit or part of a benefit receivable from a pension fund, provident fund or retirement annuity fund—

(a) where the interest of each member in the fund in respect of that benefit has a value equal to the value of—

(i) the contributions paid by the member and by the employer in terms of the rules of the fund that determine the rates of both their contributions at a fixed rate;

(ii) less such expenses as the board of that fund determines should be deducted from the contributions paid;

(iii) plus any amount credited to the member's individual account upon—

(A) the commencement of the member's membership of the fund;

(B) the conversion of the component of the fund to which the member belongs from a defined benefit component to a defined contribution component; or

(C) the amalgamation of that fund with any other fund, if any, other than amounts taken into account in terms of subparagraph (iv);

(iv) plus any other amounts lawfully permitted, credited to or debited from the member's individual account, if any,

as increased or decreased by fund return; or

(b) which consists of a risk benefit provided by the fund directly or indirectly for the benefit of a member of the fund if the risk benefit is provided by means of a policy of insurance or a risk benefit policy;

[paragraph (b) substituted by section 43(1)(a) of Act 20 of 2021; effective date 1 March 2022, applicable in respect of years of assessment commencing on or after that date]

"fund member category" in relation to members of a pension fund, provident fund or retirement annuity fund, means any group of members in respect of whom, in terms of the rules of the fund—

(a) the employers of those members and those members must respectively make a contribution to that fund in an amount in respect of retirement funding income at the same fixed rate; and

(b) the determination of the value of the benefits of the members referred to in paragraph (a) and the determination of the entitlement of those members to those benefits are made according to the same method;

"fund member category factor" means the fund member category factor contemplated in subparagraph (5)(a);

"fund return", in relation to—

(a) the assets of a fund, means any income (received or accrued) and capital gains and losses (realised or unrealised) earned on the assets of the fund, net of expenses and tax charges, associated with the acquisition, holding or disposal of assets; or

(b) any portion of the assets of a fund if the assets are separately identifiable, means any income (received or accrued) and capital gains and losses (realised or unrealised) earned on those assets, net of expenses and tax charges associated with the acquisition, holding or disposal of assets; or

(c) the assets of a fund, to the extent that those assets consist of long-term policies which are "fund member policies" as defined in Part 5 of the Regulations under the Long-term Insurance Act means the "growth rate" (as defined in those Regulations) applicable to those policies, as determined in accordance with those Regulations;

"member" means in relation to a pension, provident or retirement annuity fund, any member or former member of that fund but does not include any member or former member or person who has received all the benefits which may be due to them from the fund and whose membership has thereafter been terminated in accordance with rules of the fund;

"retirement-funding income" means—

(a) in relation to any employee or the holder of an office (including a member of a body of persons whether or not established by or in terms of any law) who in respect of his or her employment derives any income constituting remuneration as defined in paragraph 1 of the Fourth Schedule and who is a member of or, as an employee, contributes to a pension fund or provident fund established for the benefit of employees of the employer from whom such income is derived, the income that is taken into account in the determination of the contributions made by the employer or the pension fund or provident fund for the benefit of the employee to such pension fund or provident fund in terms of the rules of the fund; or

(b) in relation to a partner in a partnership (other than a partner contemplated in paragraph (a)) that part of the partner's income from the partnership in the form of the partner's share of profits as is taken into account in the determination of the contributions made by the partnership for the benefit of the partner to a pension fund or provident fund in terms of the rules of the fund: Provided that for the purposes of this definition a partner in a partnership must be deemed to be an employee of the partnership and a partnership must be deemed to be the employer of the partners in that partnership;

"risk benefit" means a benefit payable by the fund in respect of the death or permanent disablement of a member to that member or to a dependant or nominee of that member;

"risk benefit policy" means a policy under which the risk benefit provided by the fund directly or indirectly for the benefit of a member of the fund is provided by means other than a policy of insurance;

[definition of "risk benefit policy" inserted by section 43(1)(b) of Act 20 of 2021; effective date 1 March 2022, applicable in respect of years of assessment commencing on or after that date]

"underpin component" means a benefit receivable from a pension fund, provident fund or retirement annuity fund the value of which benefit, in terms of the rules of the fund, is the greater of the amount of a defined contribution component or a defined benefit component other than a risk benefit.

(2) The cash equivalent of the value of the taxable benefit contemplated in paragraph 2(l), where the benefits payable to members in respect of a fund member category of a pension, provident or retirement annuity fund consists solely of defined contribution components, is the value of the amount contributed by the employer for the benefit of an employee who is a member of that fund.

(3) Where the taxable benefits payable to members in respect of a fund member category of a pension, provident or retirement annuity fund consists of components other than only defined contribution

components, the cash equivalent of the value of the taxable benefit contemplated in paragraph 2(l) is an amount that must be determined in accordance with the formula

X = (A × B) — C

in which formula—

(a) "X" represents the amount to be determined;

(b) "A" represents the fund member category factor in respect of the fund member category of which the employee is a member;

(c) "B" represents the amount of the retirement funding income of the employee;

(d) "C" represents the sum of the amounts contributed by the employee to the fund in terms of the rules of the fund, excluding any additional voluntary contributions contributed to the fund by the employee, and buyback, in respect of that year of assessment.

(4) The board of a fund must provide to the employer of the employees who are members of a fund a contribution certificate in respect of the benefit contemplated in subparagraph (3)—

(a) no later than one month before the commencement of the year of assessment in respect of which the contribution certificate is issued: Provided that the board of the fund must not provide a contribution certificate in respect of any year of assessment in respect of which those benefits remain unaltered subsequent to the issue of that contribution certificate;

(b) where the rules of the fund are amended and those amendments or for any reason affect the value of or entitlement to any benefit payable to a member of that fund or a dependant or nominee of that member, the contribution certificate must be supplied to the employer no later than one month after the day on which those amendments become effective;

(c) where an error occurred in calculating the fund member category factor contemplated in subparagraph (5)(a), a corrected contribution certificate must be supplied to the employer and that corrected certificate will have effect from the first day of the month following the month during which that corrected certificate was received; or

[item (c) added by section 71(1) of Act 23 of 2018; effective date 1 March 2018, applicable in respect of years of assessment commencing on or after that date]

(d) where the fund member category factor changed during the year of assessment, the contribution certificate must be supplied to the employer no later than one month after the day on which those changes become effective.

[item (d) added by section 71(1) of Act 23 of 2018; effective date 1 March 2018, applicable in respect of years of assessment commencing on or after that date]

(5) The Minister must make regulations prescribing—

(a) the manner in which a fund must determine all fund member category factors; and

(b) the information that the contribution certificate contemplated in subparagraph (4) must contain.

(6) No value must be placed in terms of this paragraph on the taxable benefit derived from any contribution made by an employer to a fund—

(a) for the benefit of a member of that fund who has retired from that fund; or

(b) in respect of the dependants or nominees of a deceased member of that fund.

12E. Contribution to bargaining council

(1) The cash equivalent of the value of the taxable benefit contemplated in paragraph 2(m) is the amount of any contribution or payment made by the employer in respect of a year of assessment,

directly or indirectly, to any bargaining council that is established in terms of section 27 of the Labour Relations Act, 1995 (Act No. 66 of 1995), in respect of a scheme or fund as contemplated in section 28(1)(g) of that Act.

(2) Where an appropriate portion of any expenditure contemplated in subparagraph (1) cannot be attributed to the employee for whose benefit the amount is paid, the amount of that expenditure in relation to that employee is deemed, for the purposes of subparagraph (1), to be an amount equal to the total expenditure incurred by the employer during that year of assessment for the benefit of all employees divided by the number of employees in respect of whom the expenditure is incurred.

[paragraph 12E inserted by section 72(1) of Act 23 of 2018; effective date 1 March 2019, applicable in respect of years of assessment commencing on or after that date]

13. Payment of employee's debt or release of employee from obligation to pay a debt

(1) The cash equivalent of the value of the taxable benefit derived by reason of the payment of any amount by an employer in the circumstances contemplated in paragraph 2(h) shall be an amount equal to such amount and the cash equivalent of the benefit to an employee by reason of his release from the obligation to pay an amount owing, as contemplated in the said paragraph, shall be an amount equal to the amount that was owing.

(2) No value shall be placed under this paragraph on the value of any taxable benefit derived by reason of the fact that an employer has paid—

(b) subscriptions due by his or her employee to a professional body, if membership of such body is a condition of the employee's employment; or

(bA) insurance premiums indemnifying an employee solely against claims arising from negligent acts or omissions on the part of the employee in rendering services to the employer;

(c) any portion of the value of a benefit which is payable by a former member of a non-statutory force or service as defined in the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), to the Government Employees' Pension Fund as contemplated in Rule 10(6)(d) or (e) of the Rules of the Government Employees Pension Fund contained in Schedule 1 to that Proclamation.

(3) Where—

(a) in consideration for the grant by any employer (hereinafter referred to as the former employer) to an employee of any bursary, study loan or similar assistance, the employee assumed an obligation to render services to the former employer for an agreed period;

(b) in consequence of the employee having terminated his services with the former employer before the expiry of the said period and having taken up employment with another employer (hereinafter referred to as the present employer), the employee thereupon became liable to pay an amount to the former employer;

(c) such amount was paid to the former employer on the employee's behalf by the present employer; and

(d) the employee has in consideration for such payment by the present employer assumed an obligation to render services to the present employer for a period which is not shorter than the unexpired portion of the period during which he had been obliged to render services to the former employer,

no value shall be placed under this paragraph on the value of any taxable benefit derived by reason of the payment referred to in item (c).

16. Benefits granted to relatives of employees and others

(1) For the purposes of this Schedule and of paragraph (i) of the definition of "gross income" in section 1 of this Act, an employee shall be deemed to have been granted a taxable benefit in respect of

his employment with an employer if as a benefit or advantage of or by virtue of the employee's employment with the employer or as a reward for services rendered or to be rendered by the employee—

(a) the employer has granted a benefit or advantage (whether directly or indirectly) to a relative of the employee, other than a benefit or advantage in respect of which paragraph 10(2)(d) applies; or

(b) anything is done by the employer under any agreement, transaction or arrangement so as to confer any benefit or advantage upon any person other than the employee (whether directly or indirectly),

and such benefit or advantage, if it had been granted directly by the employer to the employee, would have constituted a taxable benefit contemplated in paragraph 2.

(2) The provisions of this Schedule shall apply in relation to the taxable benefit so deemed to have been granted as though the taxable benefit had in fact been granted to the employee.

17. Certificates by employers

(1) Every employer shall, within 30 days after the end of any year or period of assessment during which an employee of that employer has enjoyed any taxable benefit granted by the employer, or, in any particular case, within such further period as the Commissioner may approve, deliver to such employee a certificate which shall show the nature of such taxable benefit and the full cash equivalent of the value thereof during such year or period.

(2) The provisions of subparagraph (1) shall also apply in respect of any taxable benefit referred to in paragraph 4 or 16.

(3) Such employer shall within the said period of 30 days or the said further period, deliver to the Commissioner a copy of such certificate.

(4) *[subparagraph (4) repealed by section 10 of Act 21 of 2021; effective date 19 January 2022, date of promulgation of that Act]*

(6) The preceding provisions of this paragraph shall not apply where the cash equivalent of such taxable benefit constituted remuneration in the hands of the employee concerned from which employees tax was deducted or withheld by the employer and such cash equivalent has been included in an employees tax certificate delivered to the employee in terms of paragraph 13 of the Fourth Schedule, except to the extent that such cash equivalent was understated in such certificate.

18. Annual statements by employers

(1) Every employer shall on the return referred to in paragraph 14 of the Fourth Schedule declare that all taxable benefits enjoyed by employees of such employer during the period in respect of which such return was furnished, are declared on the employees' tax certificates delivered to such employees or on any other return as may be required by the Commissioner.

(2) Every such return shall, in the case of a company, be certified as correct by a director of such company.

20. Amendments to this Schedule

(1) The Minister of Finance may by notice in the *Gazette* amend—

(b) the provisions of paragraph 5(2) so as to vary the amount specified therein;

(c) the provisions of paragraph 7(4) so as to substitute a different scale for the scale specified therein and so as to vary the amounts specified in the proviso thereto;

(d) the provisions of paragraph 7(7) so as to vary the distance in kilometres specified therein;

(e) the provisions of paragraph 9(3) so as to vary the amount and quantities specified therein;

(h) the provisions of paragraph 10(1)(a) so as to vary the amount specified therein;

(i) the provisions of paragraph 10(2) so as to vary the amount specified therein; and

(j) the provisions of paragraph 11(4)(a) so as to vary the amount specified therein.

(2) Any amendment made in terms of subparagraph (1) which is in force immediately before the date of promulgation of the Act of Parliament fixing rates of normal tax for the said year of assessment shall, unless Parliament otherwise provides, lapse on that date, and in such case it shall as from that date cease to have the force of law.

Eighth Schedule (Section 26A of this Act)

Determination of taxable capital gains and asessed capital losses

Part I – General

1. Definitions

In this Schedule, unless the context indicates otherwise, any meaning ascribed to any word or expression in section 1 of this Act must bear the meaning so ascribed, and—

"**asset**" includes—

(a) property of whatever nature, whether movable or immovable, corporeal or incorporeal, excluding any currency, but including any coin made mainly from gold or platinum; and

(b) a right or interest of whatever nature to or in such property;

"**base cost**" means the amount to be determined in terms of Part V;

"**boat**" means any vessel used or capable of being used in, under or on the sea or internal waters, whether —

(a) self-propelled or not; or

(b) equipped with an inboard or outboard motor;

"**capital gain**" means the amount to be determined in terms of paragraph 3;

"**capital loss**" means the amount to be determined in terms of paragraph 4;

"**disposal**" means an event, act, forbearance or operation of law envisaged in paragraph 11 or an event, act, forbearance or operation of law which is in terms of this Act treated as the disposal of an asset, and "dispose" must be construed accordingly;

[definition of "disposal" substituted by section 73(a) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

"**individual policyholder fund**" means a fund contemplated in section 29A(4)(b);

"**insurer**" means an insurer as defined in section 29A(1);

"**market value**" means market value as contemplated in paragraph 31;

[definition of "market value" inserted by section 73(b) of Act 23 of 2018; effective date 17 January 2019, and substituted by section 53 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

"**net capital gain**" means the amount to be determined in terms of paragraph 8;

"**personal-use asset**" means an asset contemplated in paragraph 53;

"**pre-valuation date asset**" means an asset acquired prior to valuation date by a person and which has not been disposed of by that person before valuation date;

"**primary residence**" means a primary residence contemplated in paragraph 44;

"**proceeds**" means the amount to be determined in terms of Part VI;

"**recognised exchange**" means—

(a) an exchange licensed under the Financial Markets Act; or

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

"**residence**" means a residence contemplated in paragraph 44;

"**ruling price**" means—

(a) in the case of a financial instrument listed on a recognised exchange in the Republic, the last sale price of that financial instrument at close of business of the exchange, unless there is a higher bid or a lower offer on that day subsequent to the last sale in which case the price of that higher bid or lower offer will prevail; or

(b) in the case of a financial instrument listed on a recognised exchange outside the Republic, the ruling price of that financial instrument as determined in item (a) and if the ruling price is not determined in this manner by that exchange, the last price quoted in respect of that financial instrument at close of business of that exchange;

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

"**valuation date**" means—

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

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

"**value shifting arrangement**" means an arrangement by which a person retains an interest in a company, trust or partnership, but following a change in the rights or entitlements of the interests in that company, trust or partnership (other than as a result of a disposal at market value as determined before the application of paragraph 38), the market value of the interest of that person decreases and—

(a) the value of the interest of a connected person in relation to that person held directly or indirectly in that company, trust or partnership increases; or

(b) a connected person in relation to that person acquires a direct or indirect interest in that company, trust or partnership.

2. Application

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

(a) any asset of a resident; and

(b) the following assets of a person who is not a resident, namely—

(i) immovable property situated in the Republic held by that person or any interest or right of whatever nature of that person to or in immovable property situated in the Republic including rights to variable or fixed payments as consideration for the working of, or the right to work mineral deposits, sources and other natural resources; or

(ii) any asset effectively connected with a permanent establishment of that person in the Republic.

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

(a) 80 per cent or more of the market value of those equity shares, ownership or right to ownership or vested interest, as the case may be, at the time of disposal thereof is attributable directly or indirectly to immovable property situated in the Republic or any interest or right of whatever nature to or in immovable property situated in the Republic including rights to variable or fixed payments as consideration for the working of, or the right to work mineral deposits, sources and other natural resources in the Republic; and

[item (a) substituted by section 74 of Act 23 of 2018; effective date 17 January 2019, and by section 45 of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(b) in the case of a company or other entity, that person (whether alone or together with any connected person in relation to that person), directly or indirectly, holds at least 20 per cent of the equity shares in that company or ownership or right to ownership of that other entity.

Part II – Taxable capital gains and assessed capital losses

3. Capital gain

A person's capital gain for a year of assessment, in respect of the disposal of an asset—

(a) during that year, is equal to the amount by which the proceeds received or accrued in respect of that disposal exceed the base cost of that asset;

(b) in a previous year of assessment, other than a disposal contemplated in subparagraph (c), is equal to—

(i) so much of any amount received by or accrued to that person during the current year of assessment, as constitutes part of the proceeds of that disposal which has not been taken into account—

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

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

(ii) so much of the base cost of that asset that has been taken into account in determining the capital gain or capital loss in respect of that disposal as has been recovered or recouped during the current year of assessment, otherwise than by way of any reduction of any debt owed by that person, and which has not been taken into account in the redetermination of the capital gain or capital loss in terms of paragraph 25(2); or

(iii) the sum of—

(aa) any capital gain redetermined in terms of paragraph 25(2) in the current year of assessment in respect of that disposal; and

(bb) any capital loss (if any) determined in respect of that disposal in terms of paragraph 25 for the last year of assessment during which that paragraph applied in respect of that disposal; or

(c) in a previous year of assessment that has been reacquired as contemplated in paragraph 20(4), is equal to any capital loss determined in respect of that disposal.

4. Capital loss

A person's capital loss for a year of assessment in respect of the disposal of an asset—

(a) during that year, is equal to the amount by which the base cost of that asset exceeds the proceeds received or accrued in respect of that disposal;

(b) in a previous year of assessment, other than a disposal contemplated in subparagraph (c), is equal to—

(i) so much of the proceeds received or accrued in respect of the disposal of that asset that have been taken into account during any year in determining the capital gain or capital loss in respect of that disposal—

(aa) as that person is no longer entitled to as a result of the cancellation, termination or variation of any agreement, or due to the prescription or waiver of a claim or a release from an obligation or any other event during the current year of assessment;

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

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

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

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

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

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

(iii) the sum of—

(aa) any capital loss redetermined in terms of paragraph 25(2) in the current year of assessment in respect of that disposal; and

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

(c) in a previous year of assessment that has been reacquired as contemplated in paragraph 20(4), is equal to any capital gain determined in respect of that disposal.

5. Annual exclusion

(1) Subject to subparagraph (2), the annual exclusion of a natural person and a special trust in respect of a year of assessment is R40 000.

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

(3) (a) The Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act that, with effect from a date or dates mentioned in that announcement, the annual exclusion of the person mentioned in subparagraph (1) or (2) will be altered to the extent mentioned in the announcement.

(b) If the Minister makes an announcement of an alteration contemplated in item (a), that alteration comes into effect on the date or dates determined by the Minister in that announcement and continues to apply for a period of 12 months from that date or those

dates subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.

[subparagraph (3) added by section 75 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

6. Aggregate capital gain

A person's aggregate capital gain for a year of assessment is the amount by which the sum of that person's capital gains for that year and any other capital gains which are required to be taken into account in the determination of that person's aggregate capital gain or aggregate capital loss for that year, exceeds the sum of—

(a) that person's capital losses for that year; and

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

7. Aggregate capital loss

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

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

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

8. Net capital gain

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

(a) the amount by which that person's aggregate capital gain for that year exceeds that person's assessed capital loss for the previous year of assessment; and

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

9. Assessed capital loss

A person's assessed capital loss for a year of assessment, where that person has—

(a) an aggregate capital gain for that year, is the amount by which that person's assessed capital loss for the previous year of assessment exceeds the amount of that person's aggregate capital gain for that year;

(b) an aggregate capital loss for that year, is the sum of that person's aggregate capital loss for that year and that person's assessed capital loss for the previous year; or

(c) neither an aggregate capital gain nor an aggregate capital loss for that year, is the amount of that person's assessed capital loss for the previous year.

10. Taxable capital gain

(1) A person's taxable capital gain for the year of assessment is—

[subparagraph number (1) inserted by section 76(a) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(a) in the case of a natural person or a special trust as defined in section 1 of the Act, 40 per cent;

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

(i) individual policyholder fund, 40 per cent;

(ii) untaxed policyholder fund, 0 per cent;

(iii) company policyholder fund, 80 per cent; and

(iv) risk policy fund, 80 per cent; or

(c) in any other case, 80 per cent,

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

(2) (a) The Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act that, with effect from a date or dates mentioned in that announcement, the percentage used in determining a person's taxable capital gain for the year of assessment under subparagraph (1) will be altered to the extent mentioned in the announcement.

(b) If the Minister makes an announcement of an alteration contemplated in item (a), that alteration comes into effect on the date or dates determined by the Minister in that announcement and continues to apply for a period of 12 months from that date or those dates subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.

[subparagraph (2) added by section 76(b) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

Part III – Disposal and acquisition of assets

11. Disposals

(1) Subject to subparagraph (2), a disposal is any event, act, forbearance or operation of law which results in the creation, variation, transfer or extinction of an asset, and includes—

(a) the sale, donation, expropriation, conversion, grant, cession, exchange or any other alienation or transfer of ownership of an asset;

(b) the forfeiture, termination, redemption, cancellation, surrender, discharge, relinquishment, release, waiver, renunciation, expiry or abandonment of an asset;

(c) the scrapping, loss, or destruction of an asset;

(d) the vesting of an interest in an asset of a trust in a beneficiary;

(e) the distribution of an asset by a company to a holder of shares;

(f) the granting, renewal, extension or exercise of an option; or

(g) the decrease in value of a person's interest in a company, trust or partnership as a result of a value shifting arrangement.

(2) There is no disposal of an asset—

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

(b) by a company in respect of—

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

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

(c) by a portfolio of a collective investment scheme in respect of the issue of a participatory interest in that portfolio, or by a portfolio in respect of the granting of an option to acquire a participatory interest in that portfolio;

(d) by a person in respect of the issue of any debt by or to that person;

(g) by a person where a disposal is made to correct an error in the registration in the deeds registry of immovable property in that person's name;

(h) by a lender to a borrower or by a borrower to a lender where any security or bond has been lent by a lender to a borrower in terms of a securities lending arrangement; or

(i) by a person where that asset vests in the Master of the High Court or in a trustee, in consequence of the sequestration of the estate of the spouse of that person, as contemplated in section 21 of the Insolvency Act, 1936 (Act No. 24 of 1936), and where that asset is subsequently released by the Master or that trustee as contemplated in that section;

(k) by a person on the cession or release of a right to acquire a marketable security in whole or in part for a consideration which consists of or includes another right to acquire a marketable security in the circumstances contemplated in section 8A(5);

(l) by a person of shares held in a company where that company—

(i) subdivides or consolidates those shares;

(ii) converts shares of par value to no par value or of no par value to par value; or

(iii) converts shares in terms of section 40A or 40B,

solely in substitution of the shares held by that person, and—

(aa) the proportionate participation rights and interests of that person in that company remain unaltered; and

(bb) no other consideration whatsoever passes directly or indirectly in consequence of that subdivision, consolidation or conversion;

(m) by a person where that person exchanges a qualifying equity share for another qualifying equity share as contemplated in section 8B(2);

(n) by a transferor to a transferee or by a transferee to a transferor where any share or bond has been transferred in terms of a collateral arrangement;

(o) by a person that—

(i) disposed of an asset to another person in terms of an agreement; and

(ii) reacquired that asset from that other person by reason of the cancellation or termination, during the year of assessment during which that asset was so disposed of, of that agreement and the restoration of both persons to the position they were in prior to entering into that agreement.

12. Events treated as disposals and acquisitions

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

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

(a) a person—

(i) that commences to be a resident; or

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

in respect of all assets of that person other than—

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

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

(b) an asset of a person that is not a resident, which asset—

(i) becomes an asset of that person's permanent establishment in the Republic otherwise than by way of acquisition; or

(ii) ceases to be an asset of that person's permanent establishment in the Republic otherwise than by way of a disposal contemplated in paragraph 11;

(c) assets that are held by a person otherwise than as trading stock, when they commence to be held by that person as trading stock;

(d) an asset which ceases to be held by a person as a personal-use asset otherwise than by way of a disposal contemplated in paragraph 11;

(e) an asset which is held by a person otherwise than as a personal-use asset, when that asset commences to be held by that person as a personal-use asset; or

(f) an asset transferred by an insurer contemplated in section 29A from one fund contemplated in section 29A(4) to any other such fund.

(3) Where assets that are held by a person as trading stock cease to be held by that person as trading stock, otherwise than by way of a disposal contemplated in paragraph 11, that person will be treated as having disposed of those assets for a consideration equal to the amount included in that person's income in terms of section 22(8) and to have immediately reacquired those assets for a cost equal to that amount, which cost must be treated as an amount of expenditure actually incurred for the purposes of paragraph 20(1)(a).

[subparagraph (3) substituted by section 46(a) of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

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

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

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

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

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

[item (b) substituted by section 46(b) of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

12A. Concession or compromise in respect of a debt

(1) For the purposes of this paragraph—

"**allowance asset**" *[definition of "allowance asset" deleted by section 54 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]*;

"**capital asset**" *[definition of "capital asset" deleted by section 54 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]*;

"**concession or compromise**" means any arrangement in terms of which—

(a) a debt is—

(i) cancelled or waived; or

(ii) extinguished by—

(aa) redemption of the claim in respect of that debt by the person owing that debt or by any person that is a connected person in relation to that person; or

(bb) merger by reason of the acquisition, by the person owing that debt, of the claim in respect of that debt,

otherwise than as the result or by reason of the implementation of an arrangement described in paragraph (b);

(b) a debt owed by a company to a person is settled, directly or indirectly—

(i) by being converted to or exchanged for shares in that company; or

(ii) by applying the proceeds from shares issued by that company;

[definition of "concession or compromise" substituted by section 77(1)(a) of Act 23 of 2018; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

"**debt**" means any amount that is owed by a person in respect of—

(a) expenditure incurred by that person; or

(b) a loan, advance or credit that was used, directly or indirectly, to fund any expenditure incurred by that person,

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

[definition of "debt" substituted by section 77(1)(b) of Act 23 of 2018; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

"**debt benefit**", in respect of a debt owed by a person to another person, means—

(a) in the case of an arrangement described in paragraph (a)(i) of the definition of "concession or compromise", the amount cancelled or waived;

(b) in the case of the extinction of that debt by means of an arrangement described in paragraph (a)(ii) of the definition of "concession or compromise", the amount by which the face value

of the claim in respect of that debt held by the person to whom the debt is owed prior to the entering into of that arrangement exceeds the expenditure incurred in respect of—

(i) the redemption of that debt; or

(ii) the acquisition of the claim in respect of that debt;

(c) in the case of the settling of that debt by means of an arrangement described in paragraph (b) of the definition of "concession or compromise", where the person who acquired shares in a company in terms of that arrangement held no effective interest in the shares of that company prior to the entering into of that arrangement, the amount by which the face value of the claim held in respect of that debt prior to the entering into of that arrangement exceeds the market value of the shares acquired by reason or as a result of the implementation of that arrangement; or

(d) in the case of the settling of that debt by means of an arrangement described in paragraph (b) of the definition of "concession or compromise", where the person who acquired shares in a company in terms of that arrangement held an effective interest in the shares of that company prior to the entering into of that arrangement, the amount by which the face value of the claim held in respect of that debt prior to the entering into of that arrangement exceeds the amount by which the market value of the effective interest held by that person in the shares of that company immediately after the implementation of that arrangement exceeds, solely as a result of the implementation of that arrangement, the market value of the effective interest held by that person in the shares of that company immediately prior to the entering into of that arrangement;

[definition of "debt benefit" substituted by section 77(1)(c) of Act 23 of 2018; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

"**group of companies**" means a group of companies as defined in section 41; and

[definition of "group of companies" amended by section 44(1)(a) of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

"**market value**", in relation to shares acquired or held by reason or as a result of implementing a concession or compromise in respect of a debt, means the market value of those shares immediately after the implementation of that concession or compromise.

[definition of "market value" inserted by section 77(1)(d) of Act 23 of 2018; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

(2) Subject to subparagraph (6), this paragraph applies where—

(a) a debt benefit in respect of a debt owed by a person arises in respect of a year of assessment by reason or as a result of a concession or compromise in respect of that debt during that year of assessment; and

[item (a) substituted by section 77(1)(e) of Act 23 of 2018; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

(b) the amount of that debt is owed by that person in respect of, or was used by that person to fund, directly or indirectly, any expenditure, other than expenditure in respect of trading stock in respect of which a deduction or allowance was granted in terms of this Act.

[item (b) substituted by section 77(1)(e) of Act 23 of 2018; effective date 1 January 2018, by section 47 of Act 23 of 2020; effective date 20 January 2021, and by section 44(1)(b) of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(3) Where—

(a) a debt benefit arises in respect of a debt owed by a person as contemplated in subparagraph (2); and

(b) the amount of that debt is owed in respect of or was used as contemplated in item (b) of that subparagraph to fund expenditure incurred in respect of an asset that was not disposed of by that person in a year of assessment prior to that in which that debt benefit arises,

[item (b) substituted by section 77(1)(f) of Act 23 of 2018; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

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

(4) Where—

(a) a debt benefit arises in respect of a debt owed by a person as contemplated in subparagraph (2); and

(b) the amount of that debt is owed in respect of or was used as contemplated in item (b) of that subparagraph to fund expenditure incurred in respect of an asset that was disposed of in a year of assessment prior to that in which that debt benefit arises, that person must if the amount determined in respect of that disposal as—

(i) a capital gain; or

(ii) a capital loss,

[item (b) substituted by section 77(1)(g) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]

differs from the amount that would have been determined, whether as a capital gain or as a capital loss, in respect of that disposal had that debt benefit been taken into account in the year of the disposal of that asset, treat that absolute difference as a capital gain to be taken into account in respect of the year of assessment in which the debt benefit arises: Provided that in taking that debt benefit into account in respect of the year of disposal of that asset that person must take into account the extent to which the expenditure in respect of that asset has been reduced by any other debt benefit taken into account, in terms of this subparagraph, in respect of that disposal.

[words following item (b) substituted and indented by section 77(1)(g) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date; Note: subparagraph (4)(a) no longer has a continuation with the amendment applied as per the amendment Act]

(5) Where subparagraph (3) or (4) applies in respect of a debt that was used to fund expenditure in respect of a pre-valuation date asset of a person, for the purposes of determining the date of acquisition of that asset and the expenditure incurred in respect of that asset, that person must be treated as having—

(a) disposed of that asset at a time immediately before that debt benefit arose as contemplated in subparagraph (3)(a) or (4)(a), as the case may be, for an amount equal to the market value of that asset at that time; and

(b) immediately reacquired that asset at that time at an expenditure equal to that market value —

(i) less any capital gain, and

(ii) increased by any capital loss,

that would have been determined had the asset been disposed of at market value at that time, which expenditure must be treated as an amount of expenditure actually incurred at that time for the purposes of paragraph 20(1)(a).

(6) This paragraph must not apply to a debt benefit in respect of any debt owed by a person—

(a) that is an heir or legatee of a deceased estate, to the extent that—

(i) the debt is owed to that deceased estate;

(ii) the debt is reduced by the deceased estate; and

(iii) the amount by which the debt is reduced by the deceased estate forms part of the property of the deceased estate for the purposes of the Estate Duty Act;

(b) to the extent that the debt is reduced by way of—

(i) donation as defined in section 55(1); or

(ii) any transaction to which section 58 applies,

in respect of which donations tax is payable;

[item (b) substituted by section 77(1)(h) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of years of assessment commencing on or after that date]

(c) to an employer of that person, to the extent that the debt is reduced in the circumstances contemplated in paragraph 2(h) of the Seventh Schedule;

(d) to another person where the person that owes that debt is a company, if—

(i) that company owes that debt to a company that forms part of the same group of companies as that company; and

(ii) that company has not carried on any trade,

during the year of assessment during which that debt benefit arises and the immediately preceding year of assessment: Provided that this subitem must not apply in respect of any debt—

(aa) incurred, directly or indirectly, by that company to fund expenditure incurred in respect of any asset that was subsequently disposed of by that company by way of an asset-for-share, intra-group or amalgamation transaction or a liquidation distribution in respect of which the provisions of section 42, 44, 45 or 47, as the case may be, applied; or

(bb) incurred or assumed by that company in order to settle, take over, refinance or renew, directly or indirectly, any debt incurred by—

(A) any other company that forms part of the same group of companies; or

(B) any company that is a controlled foreign company in relation to any company that forms part of the same group of companies;

(e) that is a company, where—

(i) that debt is reduced in the course, or in anticipation, of the liquidation, winding up, deregistration or final termination of the existence of that company; and

(ii) the person to whom the debt is owed is a connected person in relation to that company,

to the extent that debt benefit in respect of that debt does not, at the time that the debt benefit arises, exceed the amount of expenditure contemplated in paragraph 20 incurred in respect of that debt by the connected person: Provided that this subitem must not apply—

(a) if—

(i) the debt was reduced as part of any transaction, operation or scheme entered into to avoid any tax imposed by this Act; and

(ii) that company became a connected person in relation to the person to whom the debt is owed after the debt (or any debt issued in substitution of that debt) arose; or

(b) if that company—

(i) has not, within 36 months of the date on which the debt is reduced or such further period as the Commissioner may allow, taken the steps contemplated in section 41(4) to liquidate, wind up, deregister or finally terminate its existence;

(ii) has at any stage withdrawn any step taken to liquidate, wind up, deregister or finally terminate its corporate existence; or

(iii) does anything to invalidate any step contemplated in subparagraph (i), with the result that the company is or will not be liquidated, wound up, deregistered or finally terminate its existence;

[subparagraph (iii) substituted by section 44(1)(c) of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

(f) to another person where the person that owes that debt is a company that—

(i) owes that debt to a company that forms part of the same group of companies as that company; and

(ii) reduces or settles that debt, directly or indirectly, by means of shares issued by that company:

Provided that this subitem must not apply in respect of any debt that was incurred or assumed by that company in order to settle, take over, refinance or renew, directly or indirectly, any debt incurred by another company which—

(aa) did not form part of that same group of companies at the time that that other company incurred that debt; or

(bb) does not form part of that same group of companies at the time that company reduces or settles that debt, directly or indirectly, by means of shares issued by that company; or

(g) to the extent that the debt so owed—

(i) is settled by means of an arrangement described in paragraph (b) of the definition of "concession or compromise"; and

(ii) does not consist of or represent an amount owed by that person in respect of any interest as defined in section 24J incurred by that person during any year of assessment.

[subitem (ii) substituted by section 44(1)(d) of Act 20 of 2021; effective date 1 January 2022, applicable in respect of years of assessment commencing on or after that date]

[item (g) added by section 77(1)(i) of Act 23 of 2018; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

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

13. Time of disposal

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

(a) a change of ownership effected or to be effected from one person to another because of an event, act, forbearance or by operation of law is, in the case of—

(i) an agreement subject to a suspensive condition, the date on which the condition is satisfied;

(ii) any agreement which is not subject to a suspensive condition, the date on which the agreement is concluded;

(iiA) the distribution of an asset of a trust by a trustee to a beneficiary to the extent that the beneficiary has a vested interest in the asset, the date on which the interest vests;

(iiB) the granting by a trust to a beneficiary of an equity instrument contemplated in section 8C, the time that equity instrument vests in that beneficiary as contemplated in that section;

(iii) a donation of an asset, the date of compliance with all legal requirements for a valid donation;

(iv) the expropriation of an asset, the date on which the person receives the full compensation agreed to or finally determined by a competent tribunal or court;

(v) the conversion of an asset, the date on which that asset is converted;

(vi) the granting, renewal or extension of an option, the date on which the option is granted, renewed or extended;

(vii) the exercise of an option, the date on which the option is exercised;

(viii) the termination of an option granted by a company to a person to acquire a share, participatory interest or debenture of that company, the date on which that option terminates; or

(ix) any other case, the date of change of ownership;

(b) the extinction of an asset including by way of forfeiture, termination, redemption, cancellation, surrender, discharge, relinquishment, release, waiver, renunciation, expiry or abandonment, the date of the extinction of the asset;

(c) the scrapping, loss or destruction of an asset is the date—

(i) when the full compensation in respect of that scrapping, loss or destruction is received; or

(ii) if no compensation is payable, the later of the date when the scrapping, loss or destruction is discovered or the date on which it is established that no compensation will be payable;

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

(f) the decrease of a person's interest in a company, trust or partnership as a result of a value shifting arrangement, is the date on which the value of that person's interest decreases; or

(g) the happening of an event contemplated in—

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

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

(2) A person to whom an asset is disposed of is treated as having acquired that asset at the time of disposal of that asset as contemplated in subparagraph (1).

14. Disposal by spouse married in community of property

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

(a) falls within the joint estate of the spouses, that disposal is treated as having been made in equal shares by each spouse; and

(b) was excluded from the joint estate of the spouses, that disposal is treated as having been made solely by the spouse making the disposal.

Part IV – Limitation of losses

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

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

(a) An aircraft with an empty mass exceeding 450 kg;

(b) a boat exceeding ten metres in length;

(c) any fiduciary, usufructuary or other similar interest, the value of which decreases over time;

(d) any lease of immovable property;

(e) any—

(i) time-sharing interest as defined in section 1 of the Property Time-sharing Control Act, 1983 (Act No. 75 of 1983); or

(ii) share in a share block company, as defined in section 1 of the Share Blocks Control Act,

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

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

16. Intangible assets acquired prior to valuation date

(1) A person must, in determining the aggregate capital gain or aggregate capital loss of that person, disregard any capital loss determined in respect of the disposal of an intangible asset acquired prior to valuation date—

(a) from a connected person in relation to that person; or

(b) which was associated with a business taken over by that person or any connected person in relation to that person.

(2) For the purposes of subparagraph (1), "intangible asset" means—

(a) goodwill;

(b) any patent as defined in the Patents Act or any design as defined in the Designs Act or any trade mark as defined in the Trade Marks Act or any copyright as defined in the Copyright Act or any rights recognised under the Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976), or any model, pattern, plan, formula or process or any other property or right of a similar nature;

(c) any intellectual property right or property or right of a similar nature in respect of which a proprietary interest may be established in terms of the common law of the Republic of South Africa; or

(d) any other intangible property except any financial instrument.

17. Forfeited deposits

(1) Where—

(a) a person has made a deposit for the purpose of acquiring an asset which is not intended for use wholly and exclusively for business purposes; and

(b) that deposit has been forfeited,

the capital loss determined in respect of that forfeiture must be disregarded when determining that person's aggregate capital gain or aggregate capital loss.

(2) Subparagraph (1) does not apply in respect of—

(a) a coin made mainly from gold or platinum, of which the market value is mainly attributable to the material from which it is minted or cast;

(b) immovable property, other than immovable property intended to be the primary residence of that person;

(c) a financial instrument; or

(d) any right or interest in any asset contemplated in items (a), (b) or (c).

18. Disposal of options

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

(a) to acquire an asset not intended for use wholly and exclusively for business purposes; or

(b) to dispose of an asset not used wholly and exclusively for business purposes,

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

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

(a) a coin made mainly from gold or platinum, of which the market value is mainly attributable to the material from which it is minted or cast;

(b) immovable property, other than immovable property—

(i) in the case of subparagraph (1)(a), which is intended to be the primary residence of the person entitled to exercise the option; or

(ii) in the case of subparagraph (1)(b), is the primary residence of the person entitled to exercise the option;

(c) a financial instrument; or

(d) any right or interest in those assets contemplated in items (a), (b) and (c).

19. Losses on the disposal of certain shares

(1) Subject to paragraph 43A, where a person disposes of a share in a company—

[words preceding item (a) substituted by section 55(a) of Act 34 of 2019; effective date 15 January 2020, date of prolmulgation of that Act]

(a) as a result of the acquisition by the company from that person of that share or as part of the liquidation, winding-up or deregistration of that company, that person must disregard so much of any capital loss resulting from the disposal as does not exceed any exempt dividends; or

(b) in circumstances other than those contemplated in item (a), that person must disregard so much of any capital loss resulting from the disposal (other than a disposal deemed to have taken place in terms of section 29B) as does not exceed any extraordinary exempt dividends.

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

(3) For the purposes of this paragraph—

(a) the period of 18 months does not include any days during which the person disposing of a share—

(i) has an option to sell, is under a contractual obligation to sell, or has made (and not closed) a short sale of, substantially similar financial instruments;

(ii) is the grantor of an option to buy substantially similar financial instruments; or

(iii) has otherwise diminished risk of loss with respect to that share by holding one or more contrary positions with respect to substantially similar financial instruments;

(b) "exempt dividend" means any dividend or foreign dividend to the extent that the dividend or foreign dividend is—

(i) not subject to any tax under Part VIII of Chapter II; and

(ii) exempt from normal tax in terms of section 10(1)(k)(i) or section 10B(2)(a), (b) or (e);

[subitem (ii) substituted by section 55(b) of Act 34 of 2019; effective date 15 January 2020, date of prolmulgation of that Act]

(c) "extraordinary exempt dividends" means so much of the amount of the aggregate of any exempt dividends received or accrued within the period of 18 months contemplated in subparagraph (1)—

(i) as exceeds 15 per cent of the proceeds received or accrued from the disposal contemplated in that subparagraph; and

(ii) as has not been taken into account as an extraordinary dividend in terms of paragraph 43A(2).

[item (c) substituted by section 55(c) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

Part V – Base cost

20. Base cost of asset

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

(a) the expenditure actually incurred in respect of the cost of acquisition or creation of that asset;

(b) the expenditure actually incurred in respect of the valuation of the asset for the purpose of determining a capital gain or capital loss in respect of the asset;

(c) the following amounts actually incurred as expenditure directly related to the acquisition or disposal of that asset namely—

(i) the remuneration of a surveyor, valuer, auctioneer, accountant, broker, agent, consultant or legal advisor, for services rendered;

(ii) transfer costs;

(iii) stamp duty, transfer duty, tax payable in terms of the Securities Transfer Tax Act, 2007 (Act No. 25 of 2007), or similar duty or tax;

(iv) advertising costs to find a seller or to find a buyer;

(v) the cost of moving that asset from one location to another;

(vi) the cost of installation of that asset, including the cost of foundations and supporting structures;

(vii) despite section 23(d), in the case of a disposal of an asset by a person by way of a donation as contemplated in paragraph 38, so much of any donations tax payable by that person in respect of that donation, as determined in accordance with paragraph 22;

(viii) despite section 23(d), if that person acquired that asset by way of a donation and the donations tax levied in respect of that donation was paid by that person, so much of the donations tax which bears to the full amount of the donations tax so payable the same ratio as the capital gain of the donor determined in respect of that donation, bears to the market value of that asset on the date of that donation; and

(ix) if that asset was acquired or disposed of by the exercise of an option (other than the exercise of an option contemplated in item (f)), the expenditure actually incurred in respect of the acquisition of the option;

(d) the expenditure actually incurred for purposes of establishing, maintaining or defending a legal title to or right in that asset;

(e) the expenditure actually incurred in effecting an improvement to or enhancement of the value of that asset;

[item (e) substituted by section 56(1)(a) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

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

(g) one-third of the interest as contemplated in section 24J excluding any interest contemplated in section 24O on money borrowed to finance the expenditure contemplated in items (a)

or (e) in respect of a share listed on a recognised exchange or a participatory interest in a portfolio of a collective investment scheme (including money borrowed to refinance those borrowings);

(h) in the case of—

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

(ii) any other asset—

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

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

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

(dd) where an amount has been included in that person's gross income in terms of paragraph (c) of the definition of "gross income" in section 1, the value placed on the asset for the purposes of determining the amount so included in that person's gross income;

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

(bb) a right in a controlled foreign company held directly by another controlled foreign company, an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10) of that first-mentioned controlled foreign company and of any other controlled foreign company in which both the first- and second-mentioned controlled foreign companies directly or indirectly have an interest, which during any year of assessment would have been included in the income of that second-mentioned controlled foreign company in terms of section 9D had it been a resident, reduced by the amount of any foreign dividend distributed by that first-mentioned controlled foreign company to the second-mentioned controlled foreign company if that dividend would have been exempt from tax in terms of section 10B(2)(a) or (c) had that second-mentioned controlled foreign company been a resident;

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

(v) an asset which was acquired by a resident by way of inheritance from the deceased estate of a person who at the time of his or her death was not resident—

(aa) the market value of that asset immediately before the death of that deceased person; and

(bb) any expenditure contemplated in this paragraph incurred by the executor of that deceased estate in respect of that asset in the process of liquidation or distribution of that deceased estate:

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

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

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

(a) the market value or value placed on the asset under the Seventh Schedule, as the case may be, is determined; or

(b) the asset was disposed of, where the amount received or accrued from the disposal is taken into account in determining the gain or loss in terms of section 8C,

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

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

(a) borrowing costs, including any interest as contemplated in section 24J, raising fees, bond registration costs or bond cancellation costs;

[item (a) substituted by section 56(1)(b) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

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

(c) the valuation date value of any option or right to acquire any marketable security contemplated in section 8A(1),

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

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

(a) (i) is or was allowable or is deemed to have been allowed as a deduction in determining the taxable income of that person ; and

(ii) is not included in the taxable income of that person in terms of section 9C(5),

before the inclusion of any taxable capital gain; or

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

(i) taken into account as a recoupment in terms of section 8(4)(a) or paragraph (j) of the definition of "gross income";

(ii) reduced in terms of section 12P; or

(iii) applied to reduce an amount of expenditure incurred in respect of—

(aa) trading stock as contemplated in section 19(3); or

(bb) any other asset as contemplated in paragraph 12A(3); or

[subitem (iii) substituted by section 56(1)(c) of Act 34 of 2019; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

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

(4) A person who—

(a) disposed of an asset to another person in terms of an agreement; and

(b) reacquired that asset from that other person by reason of the cancellation or termination of that agreement and the restoration of both persons to the position they were in prior to entering into that agreement,

must be treated as having acquired that asset for an amount equal to—

(i) the base cost of that asset prior to that disposal; and

(ii) so much of any expenditure incurred in respect of that asset by that other person that has been recovered from that person as would have constituted expenditure contemplated in subparagraph (1)(e) had it been incurred by that person.

20A. Provisions relating to farming development expenditure

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

(a) ceased to carry on such pastoral, agricultural or other farming operations during any year of assessment; and

(b) at any time thereafter disposes of immovable property on which those operations were carried on,

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

[words following item (b) substituted by section 48 of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

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

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

(b) in any other case, any amount allowable in terms of paragraph 20.

(3) Where a person adopts or determines the market value of immovable property on which pastoral, agricultural or other farming operations were carried on as the valuation date value of that asset in terms of paragraph 29(4), only capital development expenditure incurred by that person on or after 1 October 2001 must be taken into account for the purpose of calculating the amount in respect of which an election can be made in terms of subparagraph (1).

21. Limitation of expenditure

(1) Where, but for the provisions of this subparagraph, an amount qualifies or has qualified as an allowable expenditure or may otherwise be taken into account in determining a capital gain or capital loss under more than one provision of this Schedule, that amount or portion thereof, shall not be allowed as expenditure or be taken into account more than once in determining that capital gain or capital loss.

(2) No expenditure shall be allowed under paragraph 20(1)(a) or (e) where any amount of that expenditure is allowable under any other provision of this Schedule, despite that that other provision imposes any limitation on the amount of the expenditure.

22. Amount of donations tax to be included in base cost

The amount of the donations tax payable by a person in respect of the disposal of an asset which may be taken into account in terms of paragraph 20(1)(c)(vii) must be determined in accordance with the formula —

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

where—

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

(b) "M" represents the market value of the asset donated in respect of which the donations tax is payable;

(c) "A" represents all amounts allowed to be taken into account in determining the base cost of the asset in terms of this Part (other than paragraph 20(1)(c)(vii)); and

(d) "D" represents the total amount of donations tax so payable:

Provided that where the amount included in "A" is greater than the amount included in "M", the amount of donations tax to be taken into account in terms of paragraph 20(1)(c)(vii) shall be nil.

23. Base cost in respect of value shifting arrangement

In the case of a disposal by way of a value shifting arrangement—

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

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

where—

(i) "Y" represents the amount to be determined;

(ii) "A" is the market value of that person's interests immediately prior to the disposal;

(iii) "B" is the person's base cost of the interests calculated immediately prior to the disposal; and

(iv) "C" is the market value of that person's interests immediately after the disposal;

(b) the base cost of a person—

(i) whose interests increased in value as a result of a value shifting arrangement contemplated in subparagraph (a) is increased by that proportion of the proceeds on disposal contemplated in paragraph 35(2) in respect of the value shifting arrangement which resulted in the increase in market value of that person's interest; or

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

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

(1) The base cost of an asset, other than an asset situated in the Republic listed in paragraph 2(1)(b)(i) and (ii) or an asset held by a person if any amount received or accrued from the disposal of the asset would be taken into account for purposes of determining the net income as contemplated in section 9D of that person, acquired by a person before the date on which that person became a resident is the sum of the value of that asset determined in terms of subparagraphs (2) or (3) and the expenditure allowable in terms of paragraph 20 incurred on or after that date in respect of that asset.

(2) Where an asset contemplated in paragraph 12(2) or (4) has been disposed of by a person on or after the date on which that person commenced to be a resident and the proceeds from that disposal and the expenditure allowable in terms of paragraph 20 incurred prior to that date (determined without regard to paragraph 12(2) or (4)) in respect of that asset are each lower than the market value of that asset as contemplated in paragraph 12(2) or (4), that person must be treated as having acquired that asset at a cost equal to the higher of—

(a) the expenditure allowable in terms of paragraph 20 incurred in respect of that asset prior to that date; or

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

(3) Where an asset contemplated in paragraph 12(2) or (4) has been disposed of by a person on or after the date on which that person commenced to be a resident and the proceeds from the disposal of that asset and the market value of that asset as contemplated in paragraph 12(2) or (4) are each lower than the expenditure allowable in terms of paragraph 20 incurred prior to that date

(determined without regard to paragraph 12(2) or (4)) in respect of that asset, that person must be treated as having acquired that asset at a cost equal to the higher of—

(a) that market value; or

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

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

25. Determination of base cost of pre-valuation date assets

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

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

(a) any amount of proceeds is received or accrued in respect of that disposal which has not been taken into account in any prior year in determining the capital gain or capital loss in respect of that disposal;

(b) any amount of proceeds which was taken into account in determining the capital gain or capital loss in respect of that disposal has become irrecoverable, or has become repayable or that person is no longer entitled to those proceeds as a result of the cancellation, termination or variation of any agreement or due to the prescription or waiver of a claim or a release from an obligation or any other event during the current year;

(c) any amount of expenditure is incurred which forms part of the base cost of that asset which has not been taken into account in any prior year in determining the capital gain or loss in respect of that disposal; or

(d) any amount of base cost of that asset that has been taken into account in any prior year in determining the capital gain or capital loss in respect of that disposal, has been recovered or recouped,

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

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

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

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

(a) the market value of the asset on the valuation date as contemplated in paragraph 29;

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

(c) the time-apportionment base cost of the asset as contemplated in paragraph 30.

(2) Where the expenditure incurred before valuation date in respect of a pre-valuation date asset cannot be determined by the person who disposed of that asset or the Commissioner, that person must adopt any of the following as the valuation date value of that asset—

(a) the market value of the asset on the valuation date as contemplated in paragraph 29; or

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

(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.

27. Valuation date value where proceeds do not exceed expenditure

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

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

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

(a) the expenditure allowable in terms of paragraph 20 incurred before the valuation date in respect of that asset—

(i) is equal to or exceeds the proceeds from the disposal of that asset; and

(ii) exceeds the market value of that asset on valuation date,

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

(aa) that market value; or

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

(b) the provisions of item (a) do not apply, the valuation date value of that asset must be the lower of—

(i) that market value; or

(ii) the time-apportionment base cost of that asset as contemplated in paragraph 30.

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

28. Valuation date value of an instrument

(1) Despite paragraph 29, the valuation date value of an instrument as defined in section 24J must be—

(a) the adjusted initial amount as determined in terms of that section on valuation date; or

(b) the price which could have been obtained upon a sale of that instrument between a willing buyer and a willing seller dealing at arm's length in an open market—

(i) in the case of an instrument which is listed on a recognised exchange, on the last trading day before valuation date; or

(ii) in any other case, on valuation date.

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

29. Market value on valuation date

(1) The market value on the valuation date of—

(a) a financial instrument listed on a recognised exchange and for which a price was quoted on that exchange both before and after the valuation date is, subject to subparagraphs (2) and (2A), in the case of a financial instrument listed on an exchange—

(i) in the Republic, the price published by the Commissioner in the *Gazette*, which is the aggregate value of all transactions in that financial instrument as traded on that recognised exchange during the five business days preceding the valuation date, divided by the total quantity of that financial instrument traded during the same period; and

(ii) outside the Republic and which is not listed on any exchange in the Republic, the ruling price in respect of that financial instrument on that recognised exchange on the last business day before valuation date;

(b) an asset which is not listed on a recognised exchange and which constitutes a right of a unit holder or holder of a participatory interest, as the case may be, in—

(i) any company contemplated in paragraph (e)(i) of the definition of "company" in section 1 of the Act, or any unit portfolio comprised in any unit trust scheme in property shares carried on in the Republic, the price published by the Commissioner in the *Gazette*, which is the average of the price at which a unit could be sold to the management company of the scheme for the last five trading days before valuation date; or

(ii) any arrangement or scheme contemplated in paragraph (e)(ii) of the definition of "company", the last price published before the valuation date at which a participatory interest could be sold to the management company of the scheme or where there is not a management company the price which could have been obtained upon a sale of the asset between a willing buyer and a willing seller dealing at arm's length in an open market on valuation date;

(c) any other asset, the market value determined in terms of paragraph 31 on valuation date.

(2) Where—

(a) a person holds a controlling interest in a company the shares of which are listed on a recognised exchange, and that entire controlling interest is disposed of to another person

(who is not a connected person in relation to that person), who acquires that entire controlling interest; and

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

the valuation date market value of that share so disposed of, as determined in terms of subparagraph (1)(a), must be increased or decreased, as the case may be, by an amount which bears to that market value the same ratio as the amount of the deviation bears to that ruling price.

(2A) Where—

(i) a financial instrument listed on an exchange in the Republic was not traded during the last five business days preceding valuation date;

(ii) a financial instrument listed on an exchange in the Republic is suspended for any period during September 2001; or

(iii) the market value of a financial instrument determined in terms of subparagraph (1)(a)(i), exceeds the average of the ruling price of that financial instrument, determined for the first 14 business days of the month of September 2001, by five per cent or more,

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

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

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

(a) in the case where the valuation date is 1 October 2001—

(i) that person has valued that asset on or before 30 September 2004;

(ii) the price of that asset has been published by the Commissioner in terms of this paragraph in the *Gazette*; or

(iii) that person has acquired that asset from that person's spouse as contemplated in section 9HB and the transferor spouse had adopted or determined a market value in terms of this paragraph, and for this purpose the transferee spouse must be treated as having adopted or determined that same market value; or

[subitem (iii) substituted by section 57 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(b) in the case where the valuation date is after 1 October 2001—

(i) that person has valued that asset within two years after valuation date; or

(ii) that asset is one contemplated in paragraph 31(1)(a) or (c)(i) and the market value of that asset on valuation date is determined in terms of one of those paragraphs.

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

(a) the market value of that asset exceeds R10 million;

(b) that asset is an intangible asset (excluding financial instruments) and the market value thereof exceeds R1 million; or

(c) that asset is an unlisted share in a company and the market value of all the shares held by that person in that company exceeds R10 million,

that person may only adopt the market value as the valuation date value of that asset if that person has furnished proof of that valuation to the Commissioner in the form as the Commissioner may prescribe, with the first return submitted by that person after the date or period contemplated in subparagraph (4).

(6) Where a person disposes of—

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

(b) any other asset which has been valued,

that person must retain proof of that valuation.

(7) The Commissioner may, notwithstanding any proof of valuation submitted by a person to the Commissioner as contemplated in subparagraph (5) or (6)—

(a) request any such further information or documents relating to that valuation; or

(b) where the Commissioner is not satisfied with any value at which an asset has been valued, the Commissioner may adjust the value accordingly.

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

30. Time-apportionment base cost

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

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

where—

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

(b) "B" represents the amount of expenditure incurred prior to the valuation date in respect of that asset that is allowable before, on or after the valuation date in terms of paragraph 20;

(c) "P" represents the proceeds as determined in terms of paragraph 35, in respect of the disposal of that asset, or where subparagraph (2) applies, the amount of proceeds attributable to the expenditure in "B" as determined in accordance with subparagraph (2);

(d) "N" represents the number of years determined from the date that the asset was acquired to the day before valuation date, which number of years may not exceed 20 in the case where the expenditure allowable in terms of paragraph 20 in respect of that asset was incurred in more than one year of assessment prior to the valuation date;

(e) "T" represents the number of years determined from valuation date until the date the asset was disposed of after valuation date:

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

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

of the time apportionment base cost of the asset must be determined in accordance with the formula—

$$PR \times \frac{B}{(A+B)},$$

where—

(a) "P" represents the proceeds attributable to B;

(b) "R" represents the total amount of proceeds as determined in terms of paragraph 35 in consequence of the disposal of the pre-valuation date asset;

(c) "A" represents the amount of expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred on or after valuation date;

(d) "B" represents the amount of expenditure incurred prior to the valuation date in respect of that asset that is allowable before, on or after the valuation date in terms of paragraph 20;

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

(a) that person has incurred expenditure contemplated in paragraph 20(1)(a), (c) or (e) on or after the valuation date;

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

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

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

$$Y = B + \frac{[(P1 - B1) \times N]}{T + N},$$

and

$$P1 = \frac{R1 \times B1}{(A1 + B1)}$$

where—

(a) "Y" represents the time apportionment base cost of the asset;

(b) "P_1" represents the proceeds attributable to the expenditure in B_1;

(c) "A_1" represents the sum of the expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred on or after valuation date, and any amount of that expenditure that has been recovered or recouped as contemplated in paragraph 35(3)(a);

(d) "B_1" represents the sum of the expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred before valuation date, and any amount of that expenditure that has been recovered or recouped as contemplated in paragraph 35(3)(a);

(e) "B", "N" and "T" bear the same meanings ascribed to those symbols in subparagraph (1); and

(f) "R_1" represents the sum of the proceeds and any amount contemplated in paragraph 35(3)(a) in respect of that asset.

(5) For purposes of this paragraph—

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

(i) in the case where subparagraph (2) or (3) applies, the amounts represented by the symbols "R" and "R_1", respectively; and

(ii) in any other case, the amount represented by the symbol "P";

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

(c) "selling expenses" means expenditure—

(i) contemplated in paragraph 20(1)(c)(i) to (iv) incurred directly for the purposes of disposing of that asset; and

(ii) which would, but for the provisions of item (b), have constituted expenditure allowable in terms of paragraph 20.

31. Market value

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

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

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

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

(ii) the amount which according to the insurer is the fair market value of that policy should it run its remaining policy term as determined on that day;

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

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

(ii) any arrangement or scheme contemplated in paragraph (e)(ii) of the definition of "company", the price at which a participatory interest can be sold to the management company of the scheme on that date or where there is not a management company the price which could have been obtained upon a sale of the asset between a willing buyer and a willing seller dealing at arm's length in an open market on that date;

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

(e) any asset which is subject to a fiduciary, usufructuary or other similar interest in favour of any person, the amount by which the market value of the full ownership of that asset exceeds

the value of that fiduciary, usufructuary or other like interest determined in accordance with item (d);

(f) any asset which constitutes immovable property on which a *bona fide* farming undertaking is being carried on, subject to subparagraph (4), either—

(i) the value of that property determined as contemplated in paragraph (b) of the definition of "fair market value" in section 1 of the Estate Duty Act; or

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

(g) any other asset, the price which could have been obtained upon a sale of the asset between a willing buyer and a willing seller dealing at arm's length in an open market.

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

(a) the annual value of the right of enjoyment of any asset which is subject to any fiduciary, usufructuary or other like interest, means an amount equal to 12 per cent of the market value of the full ownership of the asset: Provided that where the asset which is subject to that interest cannot reasonably be expected to produce an annual yield equal to 12 per cent on that value of the asset, the Commissioner must decide, on application by the taxpayer, such sum as reasonably represents the annual yield, and the sum so fixed must for the purposes of subparagraph (1)(d) be treated as being the annual value of the right of enjoyment of that asset; and

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

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

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

(3) The market value of any shares of a person in a company not listed on a recognised exchange must be determined at a value equal to the price which could have been obtained upon a sale of the share between a willing buyer and a willing seller dealing at arm's length in an open market subject to the following—

(a) no regard shall be had to any provision—

(i) restricting the transferability of the shares therein, and it shall be assumed that those shares were freely transferable; or

(ii) whereby or whereunder the value of the shares is to be determined;

(b) if upon the winding-up of the company that person would have been entitled to share in the assets of the company to an extent that is not in proportion to that person's holding of shares, the value of the shares held by that holder of shares must not be less than the amount to which that holder of shares would have been so entitled if the company had been in the course of winding-up and the said amount had been determined as at valuation date.

(4) The value contemplated in subparagraph (1)(f)(i) may only be used on the death of a person or when the immovable property is disposed of by way of donation or non-arm's length transaction, if —

(a) that value was used for the purposes of paragraph 26 or 27; or

(b) the person acquired the immovable property by way of donation or inheritance or non-arm's length transaction at that value.

32. Base cost of identical assets

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

(2) For the purposes of this paragraph "identical assets" means a group of similar assets which—

(a) if any one of them were disposed of, would realise the same amount regardless of which of them was so disposed of; and

(b) are not able to be individually distinguished apart from any identifying numbers which they may bear.

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

(a) specific identification; or

(b) the first in first out method.

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

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

(b) constitute participatory interests—

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

(ii) in any portfolio comprised in any collective investment scheme managed or carried on by a company registered as a manager under section 42 of the Collective Investment Schemes Control Act for purposes of Parts IV and V of that Act; or

(iii) in any arrangement or scheme contemplated in paragraph (e)(ii) of the definition of "company" in section 1 of the Act, which is approved in terms of section 65 of the Collective Investment Schemes Control Act by the Registrar as defined in section 1 of the latter Act;

(c) constitute coins made mainly from gold or platinum, where the prices of these coins are regularly published in a national or international newspaper; or

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

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

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

(a) that constitutes—

(i) an instrument as defined in section 24J(1);

(ii) an interest rate agreement as defined in section 24K(1);

(iii) a contractual right or obligation the value of which is determined directly or indirectly with reference to—

(aa) an instrument contemplated in subparagraph (i);

(bb) an interest rate agreement contemplated in subparagraph (ii); or

(cc) any specified rate of interest;

(iv) trading stock; or

(v) a policy of reinsurance; or

(b) held by an insurer if that insurer is a Category III Financial Services Provider as defined in section 29B(1) and that asset is held by that insurer in its capacity as a Category III Financial Services Provider.

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

(a) the weighted average base cost, on valuation date, of identical assets acquired and not disposed of before valuation date is equal to the valuation date value of those identical assets, as contemplated in paragraph 28, or the market value of those identical assets, as contemplated in paragraph 29, divided by the number of those identical assets; and

(b) the weighted average base cost, thereafter, of identical assets must be calculated by—

(i) adding expenditure allowable in terms of paragraph 20 in respect of identical assets to the base cost of identical assets acquired and not disposed of before that expenditure was incurred; and

(ii) dividing that amount by the number of identical assets acquired and not disposed of after that expenditure was incurred.

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

33. Part-disposals

(1) Subject to subparagraphs (2), (3), (4) and (5) where part of an asset is disposed of—

(a) the proportion of the expenditure attributable to the part disposed of is an amount which bears to the expenditure allowable in terms of paragraph 20 in respect of the entire asset the same proportion as the market value of the part disposed of bears to the market value of the entire asset immediately prior to that disposal; and

(b) the market value on valuation date attributable to the part disposed of is an amount which bears to the market value adopted or determined in terms of paragraph 29(4) in respect of the entire asset the same proportion as the market value of the part disposed of bears to the market value of the entire asset immediately prior to that disposal.

(2) Subject to subparagraph (4), where a part of the expenditure allowable in terms of paragraph 20 or the market value adopted or determined in terms of paragraph 29(4) in respect of an asset can be directly attributed to the part of the asset that is disposed of or retained then the apportionment contemplated in subparagraph (1) does not apply in respect of that part of that expenditure or market value as the case may be.

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

(a) the granting of an option by that person in respect of an asset;

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

(c) the improvement or enhancement of immovable property which that person leases from a lessor; or

(d) the replacement of part of that asset in repairing that asset.

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

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

34. Debt substitution

Where a person reduces or discharges a debt owed by that person to a creditor by disposing of an asset to that creditor, that asset must be treated as having been acquired by the creditor at a cost equal to the market value of that asset at the time of that disposal, which cost must be treated as an amount of expenditure actually incurred for the purposes of paragraph 20(1)(a).

[paragraph 34 substituted by section 49 of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

Part VI – Proceeds

35. Proceeds from disposal

(1) Subject to subparagraphs (2), (3), and (4), the proceeds from the disposal of an asset by a person are equal to the amount received by or accrued to, or which is treated as having been received by, or accrued to or in favour of, that person in respect of that disposal, and includes—

(a) the amount by which any debt owed by that person has been reduced or discharged; and

(b) any amount received by or accrued to a lessee from the lessor of property for improvements effected to that property.

(1A) *[subparagraph (1A) deleted by section 78 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]*

(2) The amount of the proceeds from a disposal by way of a value shifting arrangement is determined as the market value of the person's interests to which subparagraph 11(1)(g) applies immediately prior to the disposal less the market value of the person's interests immediately after the disposal, which amount shall be treated as having been received or accrued to that person.

(3) The proceeds from the disposal, during a year of assessment, of an asset by a person, as contemplated in subparagraph (1) must be reduced by—

(a) any amount of the proceeds that must be or was included in the gross income of that person or that must be or was taken into account when determining the taxable income of that person before the inclusion of any taxable capital gain;

(b) any amount of the proceeds that has during that year of assessment been repaid or has become repayable to the person to whom that asset was disposed of; or

(c) any reduction, as the result of the cancellation, termination or variation of an agreement, other than any cancellation or termination of an agreement that results in the asset being reacquired by the person that disposed of it, or any reduction due to the prescription or waiver of a claim or release from an obligation or any other event during that year, of an accrued amount forming part of the proceeds of that disposal.

[item (c) substituted by section 58 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(4) Where during any year of assessment a person has become entitled to any amount which is payable on a date or dates falling after the last day of that year, that amount must be treated as having accrued to that person during that year.

35A. Disposal of certain debt claims

(1) This paragraph applies where—

(a) a person has disposed of an asset during any year of assessment, all the proceeds of which will not accrue to that person in that year;

(b) that person subsequently disposes of any right to claim payment in respect of that disposal; and

(c) that claim includes any amount which has not yet accrued to that person at the time of the disposal of that claim.

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

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

36. Disposal of partnership asset

The proceeds from the disposal of a partner's interest in an asset of the partnership must be treated as having accrued to that partner at the time of that disposal.

37. Assets of trust and company

(1) Where—

(a) an asset contemplated in paragraph 15 which is not used for purposes of carrying on a trade or an asset which, if owned by a natural person, would be a personal-use asset as contemplated in paragraph 53, is owned by a trust or a company any interest in which or any shares of which are held directly or indirectly by a natural person;

(b) there is a decrease in the market value of that asset while held by that trust or company after that person acquired an interest in that trust or company; and

(c) any interest in that trust or that company is thereafter disposed of by a person,

that person must be treated as having disposed of that interest for proceeds equal to the market value of that interest, determined on the date of disposal, as if the market value of that asset had not decreased.

(2) Subparagraph (1) does not apply where more than 50 per cent of the assets of the trust or company consist of assets used wholly and exclusively for trading purposes.

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

(1) Subject to subparagraph (2) and section 9HB, 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 immediately prior to or immediately after that disposal in relation to that person for a consideration which does not reflect an arm's length price—

[words preceding item (a) substituted by section 59(a) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(a) the person who disposed of that asset must be treated as having disposed of that asset for an amount received or accrued equal to the market value of that asset as at the date of that disposal; and

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

[item (b) substituted by section 59(b) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

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

(a) a right contemplated in section 8A;

(b) an asset in the circumstances contemplated in section 10(1)(nE);

(c) a qualifying equity share contemplated in section 8B by an employer, associated institution or any other person by arrangement with the employer, as contemplated in paragraph 1 of the Seventh Schedule, to an employee; or

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

(f) any land from the date on which that land becomes declared land as defined in section 37D(1).

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

(1) A person must, when determining the aggregate capital gain or aggregate capital loss of that person, disregard any capital loss determined in respect of the disposal of an asset to any person—

(a) who was a connected person in relation to that person immediately before that disposal; or

(b) which is immediately after the disposal—

(i) a member of the same group of companies as that person; or

(ii) a trust with a beneficiary which is a member of the same group of companies as that person.

(2) A person's capital loss which is disregarded in terms of subparagraph (1) may be deducted from that person's capital gains determined in respect of disposals of assets during that year or subsequent years to the same person to whom the disposal giving rise to that capital loss was made, if at the time of those subsequent disposals, that person is still a connected person in relation to that person.

(3) For the purposes of subparagraph (1), a connected person in relation to—

(a) a natural person does not include a relative of that person other than a parent, child, stepchild, brother, sister, grandchild or grandparent of that person; or

(b) a fund of an insurer contemplated in section 29A does not include another such fund of that insurer in respect of the disposal of an asset by such fund to another such fund.

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

(a) that right, marketable security or equity instrument is disposed of to that beneficiary—

(i) by virtue of that beneficiary's employment with an employer, directorship of a company or services rendered or to be rendered by that beneficiary as an employee to an employer; or

(ii) as a result of the exercise, cession, release, conversion or exchange by that beneficiary of the right, marketable security or equity instrument contemplated in subitem (i); and

(b) that trust is an associated institution as contemplated in paragraph 1 of the Seventh Schedule in relation to that employer or company.

(5) For the purposes of subparagraph (1), where a company redeems its shares, the holder of those shares must be treated as having disposed of them to that company.

[subparagraph (5) added by section 79 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

39A. Disposal of asset for unaccrued amounts of proceeds

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

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

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

40. Disposal to and from deceased estate

(1) A person who dies before 1 March 2016 must be treated as having disposed of his or her assets, other than—

(a) assets transferred to the surviving spouse of that deceased person as contemplated in section 9HB(2)(a);

[item (a) substituted by section 60(a) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(c) a long-term insurance policy of the deceased which if the proceeds of the policy had been received by or accrued to the deceased, the capital gain or capital loss determined in respect of that disposal would be disregarded in terms of paragraph 55; or

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

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

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

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

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

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

(2) Where an asset is disposed of by a deceased estate to an heir or legatee (other than the surviving spouse of the deceased person as contemplated in section 9HB(2)(a))—

[words preceding item (a) substituted by section 60(b) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(a) the deceased estate must be treated as having disposed of that asset for proceeds equal to the base cost of the deceased estate in respect of that asset; and

(b) the heir or legatee must be treated as having acquired that asset at a cost equal to the base cost of the deceased estate in respect of that asset, which cost must be treated as an amount of expenditure actually incurred for the purposes of paragraph 20(1)(a).

(3) For the purposes of this Schedule, the disposal of an asset by the deceased estate of a natural person shall be treated in the same manner as if that asset had been disposed of by that natural person.

41. Tax payable by heir of a deceased estate

(1) Where a person dies before 1 March 2016 and—

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

(b) the executor of the estate is required to dispose of any asset of the estate for purposes of paying the amount of that tax,

any heir or legatee of the estate, who would have been entitled to that asset contemplated in item (b), had there been no liability for tax, may elect that that asset be distributed to that heir or legatee upon the condition that the amount of tax which exceeds 50 per cent of that net value be paid by him or her within a period of three years after the date that the executor obtained permission to distribute the assets of the estate, as contemplated in section 35(12) of the Administration of Estates Act, 1965 (Act No. 66 of 1965).

(2) Any amount of tax payable by an heir as contemplated in subparagraph (1), becomes a debt due to the state and must be treated as an amount of tax chargeable in terms of this Act which is due by that person.

42. Short-term disposals and acquisitions of identical financial instruments

(1) Where a capital loss is determined in respect of the disposal by a person of a financial instrument, other than a disposal contemplated in section 29B, and within a period beginning 45 days before the date of disposal and ending 45 days after that date, that person or a connected person in relation to that person, subject to subparagraph (3), acquires or has entered into a contract to acquire a financial instrument of the same kind and of the same or equivalent quality—

(a) the person who disposed of the financial instrument must be treated as having disposed thereof for proceeds equal to the base cost thereof; and

(b) the person who acquired the financial instrument of the same kind and of the same or equivalent quality must be treated as having acquired that financial instrument at a cost equal to the total of—

(i) any amount allowable in terms of paragraph 20; and

(ii) the amount of any capital loss which would have arisen in the hands of the person who disposed of the asset, were it not for the operation of item (a),

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

[words following subitem (ii) substituted by section 50 of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(2) For the purposes of subparagraph (1), there must not be taken into account in determining the period of 91 days any days in which the person disposing of the financial instrument—

(a) has an option to sell, is under a contractual obligation to sell or has made (and not closed) a short sale of a financial instrument of the same kind and of the same or equivalent quality;

(b) is the grantor of an option to buy a financial instrument of the same kind and of the same or equivalent quality; or

(c) has otherwise diminished risk of loss in respect of that financial instrument by holding one or more contrary positions with respect to a financial instrument of the same kind and of the same or equivalent quality.

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

(a) a natural person does not include a relative of that person other than a parent, child, stepchild, brother, sister, grandchild or grandparent of that person; or

(b) a fund of an insurer contemplated in section 29A does not include another such fund of that insurer in respect of the disposal of an asset by such fund to another such fund.

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

(a) in respect of which the weighted average method of determining base cost of assets, as contemplated in paragraph 32(4), is used; and

(b) if that asset is, in terms of section 29A, allocated to any policyholder fund of an insurer as defined in that section.

43. Assets disposed of or acquired in foreign currency

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

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

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

(b) the expenditure incurred in respect of that asset into the local currency at the average exchange rate for the year of assessment during which that expenditure was incurred or at the spot rate on the date on which that expenditure was incurred: Provided that the amount of any capital gain or capital loss determined under this subparagraph in respect of an exchange item contemplated in section 24I must be taken into account in terms of this paragraph only to the extent to which it exceeds the amounts determined in respect of that exchange item under section 24I.

[proviso added by section 61(a) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

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

(a) the amount of those proceeds must be treated as being denominated in the currency of the expenditure incurred to acquire that asset; and

(b) the expenditure incurred by a person acquiring that asset must for purposes of sections 9HA and 25 and paragraphs 12, 38 and 40 be treated as being denominated in that currency.

[item (b) substituted by section 61(b) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(6) Where a person has adopted the market value as the valuation date value of any asset contemplated in this paragraph, that market value must be determined in the currency of the expenditure incurred to acquire that asset and for purposes of the application of subparagraph (1A) be translated to the local currency by applying the spot rate on valuation date.

(6A) *[subparagraph (6A) deleted by section 61(b) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]*

(7) For the purposes of this paragraph—

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

"local currency" means—

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

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

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

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

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

43A. Dividends treated as proceeds on disposal of certain shares

(1) For purposes of this paragraph—

[words preceding definitions substituted by section 80(1)(a) of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

"deferral transaction" means a transaction in respect of which the provisions of Part III of Chapter II were applied;

[definition of "deferral transaction" inserted by section 80(1)(b) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of disposals on or after that date]

"exempt dividend" means any dividend or foreign dividend to the extent that the dividend or foreign dividend is—

(a) not subject to any tax under Part VIII of Chapter II; and

(b) exempt from normal tax in terms of section 10(1)(k)(i) or section 10B(2)(a) or (b);

"extraordinary dividend", in relation to—

(a) a preference share, means so much of the amount of any dividend received or accrued in respect of that share as exceeds the amount that would have accrued in respect of that share had it been determined with reference to the consideration for which that share was issued by applying an interest rate of 15 per cent per annum for the period in respect of which that dividend was received or accrued;

[subparagraph (a) substituted by section 80(1)(c) of Act 23 of 2018; effective date 19 July 2017, and by section 62(1)(a) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(b) any other share, means so much of the amount of any dividend received or accrued—

(i) within a period of 18 months prior to the disposal of that share; or

(ii) in respect, by reason or in consequence of that disposal,

as exceeds 15 per cent of the higher of the market value of that share as at the beginning of the period of 18 months and as at the date of disposal of that share:

Provided that a dividend *in specie* that was distributed in terms of a deferral transaction must not be taken into account to the extent to which that distribution was made in terms of an unbundling transaction as defined in section 46(1)(a) or a liquidation distribution as defined in section 47(1)(a);

[proviso added by section 62(1)(b) of Act 34 of 2019; effective date 30 October 2019, applicable in respect of dividends received or accrued on or after that date]

[definition of "extraordinary dividend" amended by section 62(1)(c) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

"preference share" means a preference share as defined in section 8EA(1); and

[definition of "preference share" inserted by section 80(1)(d) of Act 23 of 2018; effective date 19 July 2017, applicable in respect of disposals on or after that date]

"qualifying interest" means an interest held by a company in another company, whether alone or together with any connected persons in relation to that company, that constitutes—

(a) if that other company is not a listed company, at least—

(i) 50 per cent of the equity shares or voting rights in that other company; or

(ii) 20 per cent of the equity shares or voting rights in that other company if no other person (whether alone or together with any connected person in relation to that person) holds the majority of the equity shares or voting rights in that other company; or

(b) if that other company is a listed company, at least 10 per cent of the equity shares or voting rights in that other company.

(2) Subject to subparagraph (3), where a company holds shares in another company and disposes of any of those shares in terms of a transaction that is not a deferral transaction and that company held a qualifying interest in that other company at any time during the period of 18 months prior to that disposal, the amount of any exempt dividend received by or that accrued to that company in respect of the shares disposed of must—

(a) to the extent that the exempt dividend constitutes an extraordinary dividend; and

(b) if that company immediately before that disposal held the shares disposed of as a capital asset (as defined in section 41),

be taken into account as part of the proceeds from the disposal of those shares or, if those shares are treated as having been disposed of in terms of subparagraph (4), as a capital gain in respect of those shares, in the year of assessment in which those shares are disposed of or are treated as having been disposed of or, where that dividend is received or accrues after that year of assessment, the year of assessment in which that dividend is received or accrues: Provided that where a company disposes of shares that are treated as having been disposed of previously by that company in terms of subparagraph (4), the amount of any extraordinary dividend in respect of those shares must be included in the proceeds from that disposal only to the extent to which it has not previously been taken into account in respect of those shares in terms of this subparagraph.

[subparagraph (2) amended by section 80(1)(e) of Act 23 of 2018; effective date 1 January 2019, and substituted by section 62(1)(d) of Act 34 of 2019; effective date 20 February 2019, applicable in respect of shares held by a company in a target company if the effective interest held by that company in the shares of that target company is reduced on or after that date]

(3) Where a company holds shares in another company and disposes of any of those shares in terms of a transaction that is not a deferral transaction within a period of 18 months after having acquired those shares in terms of a deferral transaction, other than an unbundling transaction and—

[words preceding item (a) substituted by section 62(1)(e) of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(a) within a period of 18 months prior to the disposal of those shares by that company an exempt dividend in respect of those shares accrued to or was received by a person that—

(i) disposed of those shares in terms of a deferral transaction; and

(ii) was a connected person in relation to that company at any time within that period or immediately after that disposal,

that dividend must for purposes of this paragraph be treated as a dividend that accrued to or was received by that company in respect of those shares within the period during which that company held those shares; and

(b) if that company acquired those shares (hereinafter referred to as "new shares") in terms of that deferral transaction in return for or by virtue of the holding, by that company, of other shares (hereinafter referred to as "old shares") that were disposed of in terms of that deferral transaction and an exempt dividend in respect of the old shares, other than a dividend consisting of new shares, accrued to or was received by that company within a period of 18 months prior to the disposal of the new shares, that dividend must for purposes of this paragraph be treated as an amount that accrued to or was received by that company as an exempt dividend in respect of the new shares.

[subparagraph (3) added by section 80(1)(f) of Act 23 of 2018; effective date 1 January 2019, applicable in respect of disposals on or after that date]

(4) Where a company holds equity shares in another company (hereinafter referred to as the "target company") and—

(a) the target company issues shares (hereinafter referred to as the "new shares") to a person other than that company; and

(b) the effective interest of that company in the equity shares of the target company is reduced by reason of the new shares issued by the target company,

that company must for purposes of this paragraph be treated as having disposed, immediately after the new shares were issued, of a percentage of those equity shares that is equal to the percentage by which the effective interest of that company in the equity shares of the target company has been reduced by reason of the new shares issued by the target company: Provided that any new shares that are convertible to equity shares must for purposes of this subparagraph be treated as equity shares.

[subparagraph (4) added by section 62(1)(f) of Act 34 of 2019; effective date 20 February 2019, applicable in respect of shares held by a company in a target company if the effective interest held by that company in the shares of that target company is reduced on or after that date]

43B. Base cost of assets of controlled foreign companies

Where the functional currency of a controlled foreign company—

(a) was the currency of a country which—

(i) abandoned its currency; and

(ii) had an official rate of inflation of 100 per cent or more for the foreign tax year preceding the abandonment of the currency; and

(b) the controlled foreign company adopted a new functional currency as a consequence of the abandonment contemplated in subparagraph (a)(i),

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

(A) on the first day of the foreign tax year of the controlled foreign company in which; and

(B) for an amount equal to the market value of the asset on the date on which,

the new currency was adopted by the controlled foreign company.

Part VII – Primary residence exclusion

44. Definitions

In this Part, unless the context otherwise indicates—

"**an interest**" means—

(a) any real or statutory right; or

(b) a share owned directly in a share block company as defined in the Share Blocks Control Act or a share or interest in a similar entity which is not a resident; or

(c) a right of use or occupation,

but excluding—

(i) a right under a mortgage bond; or

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

"**primary residence**" means a residence—

(a) in which a natural person or a special trust holds an interest; and

(b) which that person or a beneficiary of that special trust or a spouse of that person or beneficiary—

(i) ordinarily resides or resided in as his or her main residence; and

(ii) uses or used mainly for domestic purposes;

"**residence**" means any structure, including a boat, caravan or mobile home, which is used as a place of residence by a natural person, together with any appurtenance belonging thereto and enjoyed therewith.

45. General principle

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

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

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

(1A) (a) The Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, that, with effect from a date or dates mentioned in that announcement, the amount of the capital gain or capital loss determined in terms of subparagraph (1)(a) or the amount of the capital gain determined in terms of subparagraph (1)(b) will be altered to the extent mentioned in the announcement.

(b) If the Minister makes an announcement of an alteration contemplated in paragraph (a), that alteration comes into effect on the date or dates determined by the Minister in that announcement and continues to apply for a period of 12 months from that date or those dates subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.

[subparagraph (1A) inserted by section 81 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(2) Where more than one natural person or special trust jointly holds an interest in a primary residence at the same time, the amount to be disregarded in terms of subparagraph (1) must be apportioned in relation to each interest so held.

(3) Subject to paragraph 48, only one residence may be a primary residence of a person or a special trust for any period during which that person or special trust held an interest in more than one residence.

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

(a) was not ordinarily resident in that residence throughout the period commencing on or after the valuation date during which that person or special trust held that interest; or

(b) used that residence or a part thereof for the purposes of carrying on a trade for any portion of the period commencing on or after the valuation date during which that person or special trust held that interest.

46. Size of residential property qualifying for exclusion

Where a primary residence and the land on which it is situated is disposed of by a person, the provisions of paragraph 45 apply in respect of so much of that land, including unconsolidated adjacent land, as—

(a) does not exceed two hectares;

(b) is used mainly for domestic or private purposes together with that residence; and

(c) is disposed of at the same time and to the same person as that residence.

47. Apportionment in respect of periods where not ordinarily resident

Subject to paragraph 48, where—

(a) a natural person or special trust disposes of an interest in a residence which is or was a primary residence; and

(b) that person or a beneficiary of that special trust or a spouse of that person or beneficiary, was not ordinarily resident in that residence throughout the period on or after the valuation date during which that person or special trust held that interest,

then paragraph 45(1)(a) must apply only in respect of the portion of the capital gain or capital loss on disposal of the primary residence that is attributable to any period on or after the valuation date during which that person, beneficiary or spouse was so ordinarily resident.

48. Disposal and acquisition of primary residence

A natural person or a beneficiary of a special trust or a spouse of that person or beneficiary must for purposes of paragraph 47 be treated as having been ordinarily resident in a residence for a continuous period (not exceeding two years), if that natural person, beneficiary or spouse did not reside in that residence during that period for any of the following reasons—

(a) at the time the residence was the primary residence of that natural person or special trust it had been offered for sale and vacated due to the acquisition or intended acquisition of a new primary residence;

(b) that residence was being erected on land acquired for that purpose in order to be used as the primary residence of that natural person or special trust;

(c) the residence had been accidentally rendered uninhabitable; or

(d) the death of that natural person, beneficiary or spouse.

[paragraph 48 substituted by section 45 of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

49. Non-residential use

Subject to paragraph 50—

(a) where a natural person or special trust—

(i) disposes of an interest in a primary residence; or

(ii) disposes of an interest in a residence that was a primary residence for a part of the period on or after the valuation date during which that person or special trust held that interest; and

(b) where that natural person, a beneficiary of that special trust or a spouse of that natural person or beneficiary used the residence referred to in subparagraph (a) or a part thereof for the purposes of carrying on a trade for any portion of the period on or after the valuation date during which that person or special trust held that interest,

[subparagraph (b) substituted by section 46 of Act 20 of 2021; effective date 19 January 2022, date of promulgation of that Act]

then paragraph 45(1)(a) must apply only in respect of the portion of the capital gain or capital loss on disposal of the primary residence that is attributable to any period on or after the valuation date during which that person, beneficiary or spouse used that residence for domestic purposes as well as to the part of that residence used by that person, spouse or beneficiary mainly for purposes other than the carrying on of a trade.

50. Rental periods

A natural person or a beneficiary of a special trust or a spouse of that person or beneficiary must for purposes of paragraph 49 be treated as having used a residence for domestic purposes during any continuous period of absence therefrom (not exceeding five years) while that residence was being let, if—

(a) that person or beneficiary or spouse resided in that residence as a primary residence for a continuous period of at least one year prior to and after any such period;

(b) no other residence was treated as the primary residence of that person or beneficiary of a special trust during any such period; and

(c) that person or beneficiary or spouse was—

(i) temporarily absent from the Republic; or

(ii) employed or engaged in carrying on business in the Republic at a location further than 250 kilometers from that residence.

51. Transfer of residence from company or trust

(1) Where an interest in a residence has been transferred from a company or a trust to a natural person as contemplated in subparagraph (2)—

(a) that company or trust must be deemed to have disposed of that interest for an amount equal to the base cost of that interest on the date of transfer thereof;

(b) that company or trust and that natural person must, for purposes of determining any capital gain or capital loss in respect of the transfer of that interest, be deemed to be one and the same person with respect to—

(i) the date of acquisition of that interest by that company or trust and the amount and date of incurral by that company or trust of any expenditure in respect of that interest allowable in terms of paragraph 20; and

(ii) any valuation of that interest effected by that company or trust as contemplated in paragraph 29(4);

(c) no allowance or deduction allowed to that company or trust in respect of that interest must be recovered or recouped by that company or trust or be included in the income of that company or trust in the year in which the transfer takes place; and

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

(2) Subparagraph (1) applies where—

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

(b) that natural person—

(i) alone or together with his or her spouse directly held all the share capital or members' interest in that company from 11 February 2009 to the date of registration in the deeds registry of that residence in the name of that natural person or his or her spouse or in their names jointly; or

(ii) disposed of that residence to that trust by way of donation, settlement or other disposition or financed all the expenditure, as contemplated in paragraph 20, actually incurred by the trust to acquire and to improve the residence; and

(c) that natural person alone or together with his or her spouse personally and ordinarily resided in that residence and used it mainly for domestic purposes as his or her or their ordinary residence from 11 February 2009 to the date of the registration contemplated in item (b)(i):

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

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

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

(a) the disposal takes place on or before 31 December 2012;

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

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

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

(ii) in the case of a trust making the disposal, steps have been taken to terminate the trust.

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

(3) Where—

(a) an interest in a residence has been acquired by a person as a result of a disposal by a company of that interest to that person as contemplated in subparagraph (1);

(b) that person (together with all other persons holding shares in that company) acquired all the shares in the company subsequent to the date of acquisition by the company of that interest; and

(c) 90 per cent or more of the market value of the assets held by the company during the period commencing on 11 February 2009 and ending on the date of the disposal contemplated in subparagraph (1)(a) is attributable to that interest,

that person must—

(i) disregard the disposal of all shares held by that person in that company for purposes of determining his or her taxable income, assessed loss, aggregate capital gain or aggregate capital loss if that disposal is made in anticipation of or in the course of the liquidation, winding up or deregistration of that company; and

(ii) be deemed to have acquired that interest at a cost equal to the base cost of the shares contemplated in subitem (i) as at the date of the acquisition by the person of those shares plus the cost of any improvements effected in respect of that interest subsequent to that date of acquisition.

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

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

(b) that person and that company must be deemed to be one and the same person with respect to—

(i) the date of acquisition of that interest by that company;

(ii) the amount and date of incurral by that company of any expenditure in respect of that interest allowable in terms of paragraph 20; and

(iii) any valuation of that interest effected by that company as contemplated in paragraph 29(4).

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

(a) the date of acquisition of that interest by that trust;

(b) the amount and date of incurral by that trust of any expenditure in respect of that interest allowable in terms of paragraph 20; and

(c) any valuation of that interest effected by that trust as contemplated in paragraph 29(4).

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

(a) within a period of six months commencing on the date of that disposal—

(i) where that person is a company, that company has taken steps to liquidate, wind up or deregister as contemplated in section 41(4); or

(ii) where that person is a trust, steps have been taken to terminate the trust.

(b) one or more natural persons contemplated in subparagraph (1)(b) acquire the residence contemplated in that subparagraph on or before 31 December 2012.

Part VIII – Other exclusions

52. General principle

Capital gains and capital losses must be disregarded in the circumstances and to the extent set out in this Part when determining the aggregate capital gain or aggregate capital loss of a person.

53. Personal-use assets

(1) A natural person or a special trust must disregard a capital gain or capital loss determined in respect of the disposal of a personal-use asset as contemplated in subparagraph (2).

(2) A personal-use asset is an asset of a natural person or a special trust that is used mainly for purposes other than the carrying on of a trade.

(3) Personal use assets do not include—

(a) a coin made mainly from gold or platinum of which the market value is mainly attributable to the material from which it is minted or cast;

(b) immovable property;

(c) an aircraft, the empty mass of which exceeds 450 kilograms;

(d) a boat exceeding ten metres in length;

(e) a financial instrument;

(f) any fiduciary, usufructuary or other like interest, the value of which decreases over time;

(g) any contract in terms of which a person, in return for payment of a premium, is entitled to policy benefits upon the happening of a certain event and includes a reinsurance policy in respect of such a contract, but excludes any short-term policy contemplated in the Short-term Insurance Act;

(h) any short-term policy contemplated in the Short-term Insurance Act to the extent that it relates to any asset which is not a personal-use asset; and

(i) a right or interest of whatever nature to or in an asset envisaged in items (a) to (h).

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

54. Retirement benefits

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

(a) a lump sum benefit as defined in the Second Schedule; or

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

55. Long-term assurance

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

(a) in respect of a policy, where that person—

(i) is the original beneficial owner or one of the original beneficial owners of the policy;

(ii) is the spouse, nominee, dependant as contemplated in the Pension Funds Act or deceased estate of the original beneficial owner of the relevant policy and no amount was paid or is payable or will become payable, whether directly or indirectly, in respect of any cession of that policy from the beneficial owner of that policy to that spouse, nominee or dependant; or

(iii) is the former spouse of the original beneficial owner and that policy was ceded to that spouse in consequence of a divorce order or, in the case of a union contemplated in paragraph (b) or (c) of the definition of "spouse" in section 1 of this Act, an agreement of division of assets which has been made an order of court;

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

(c) in respect of a policy that was taken out 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 shares 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, disability or illness of that person, the whole or part of—

[words preceding subitem (i) subtituted by section 82 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(i) that person's interest in the partnership concerned; or

(ii) that person's share or similar interest in that company and any claim by that person against that company,

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

(d) in respect of a policy originally taken out on the life of a person, where that policy is provided to that person or dependant by or in consequence of that person's membership of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;

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

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

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

56. Disposal by creditor of debt owed by connected person

(1) Where a creditor disposes of a debt owed by a debtor, who is a connected person in relation to that creditor, that creditor must disregard any capital loss determined in consequence of that disposal.

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

(a) an amount—

(i) which is applied to reduce the expenditure in respect of an asset of the debtor in terms of section 19(3) or paragraph 12A(3); or

(ii) which must be taken into account by the debtor as a capital gain in terms of paragraph 12A(4);

[item (a) substituted by section 63(1) of Act 34 of 2019; effective date 1 January 2018, applicable in respect of years of assessment commencing on or after that date]

(b) an amount which the creditor proves must be or was included in the gross income of any acquirer of that debt;

(c) an amount that must be or was included in the gross income or income of the debtor or taken into account in the determination of the balance of assessed loss of the debtor in terms of section 20(1)(a); or

(d) a capital gain which the creditor proves must be or was included in the determination of the aggregate capital gain or aggregate capital loss of any acquirer of the debt.

57. Disposal of small business assets

(1) For purposes of this paragraph—

"active business asset" means—

(a) an asset which constitutes immovable property, to the extent that it is used for business purposes; or

(b) an asset (other than immovable property) used or held wholly and exclusively for business purposes,

but excludes—

(i) a financial instrument; and

(ii) an asset held in the course of carrying on a business mainly to derive any income in the form of an annuity, rental income, a foreign exchange gain or royalty or any income of a similar nature;

"small business" means a business of which the market value of all its assets, as at the date of the disposal of the asset or interest contemplated in subparagraph (2), does not exceed R10 million.

(2) Subject to subparagraphs (3), (4) and (5), a natural person must, when determining an aggregate capital gain or aggregate capital loss, disregard a capital gain determined in respect of the disposal of—

(a) an active business asset of a small business owned by that natural person as a sole proprietor; or

(b) an interest in each of the active business assets of a business, which qualifies as a small business, owned by a partnership, upon that natural person's withdrawal from that partnership to the extent of his or her interest in that partnership; or

(c) an entire direct interest in a company (which consists of at least 10 per cent of the equity of that company), to the extent that the interest relates to active business assets of the business, which qualifies as a small business, of that company,

if that person at the time of that disposal held for his or her own benefit that active business asset, interest in the partnership, or interest in the company (as the case may be) for a continuous period of at least five years prior to that disposal and was substantially involved in the operations of the business of that small business during that period, and—

(i) has attained the age of 55 years; or

(ii) the disposal is in consequence of ill-health, other infirmity, superannuation or death.

(3) The sum of the amounts to be disregarded by a natural person as contemplated in subparagraph (2) may not exceed R1,8 million during that natural person's lifetime.

(4) A natural person must realise all capital gains qualifying in terms of subparagraph (2) within a period of 24 months commencing on the date of the first disposal contemplated in subparagraph (2).

(5) Where a natural person operates more than one small business either by way of a sole proprietorship, a partnership interest or a direct interest in the equity of a company consisting of at least 10 per cent, then he or she may subject to subparagraphs (4) and (6), include every such small business in the determination of the amount to be disregarded in terms of subparagraph (2).

(6) The provisions of this paragraph do not apply where a person owns more than one business either by way of a sole proprietorship, a partnership interest or a direct interest in the equity of a company consisting of at least 10 per cent, and the total market value of all assets in respect of all those businesses exceeds R10 million.

(7) (a) The Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, that, with effect from a date or dates mentioned in that announcement, the market value of all assets referred to in the definition of "small business" in subparagraph (1), the sum of the amounts referred to in subparagraph (3) or the total market value of all assets referred to in subparagraph (6) will be altered to the extent mentioned in the announcement.

(b) If the Minister makes an announcement of an alteration contemplated in paragraph (a), that alteration comes into effect on the date or dates determined by the Minister in that announcement and continues to apply for a period of 12 months from that date or those dates subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.

[subparagraph (7) added by section 83 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

57A. Disposal of micro business assets

A registered micro business as defined in terms of the Sixth Schedule must disregard any capital gain or capital loss in respect of the disposal by that business of any asset used mainly for business purposes.

58. Exercise of an option

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

59. Compensation for personal injury, illness or defamation

A natural person or a special trust must disregard a capital gain or a capital loss determined in respect of a disposal that resulted in that person or that special trust, as the case may be, receiving compensation for personal injury, illness or defamation of that person or a beneficiary of that special trust.

60. Gambling, games and competitions

(1) A person must disregard a capital gain or capital loss determined in respect of a disposal relating to any form of gambling, game or competition.

(2) Notwithstanding subparagraph (1), a capital gain may not be disregarded—

(a) by any person other than a natural person; or

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

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

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

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

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

62. Donations and bequests to public benefit organisations and exempt persons

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

(a) the government of the Republic in the national, provincial or local sphere, as contemplated in section 10(1)(a);

(b) a public benefit organisation contemplated in paragraph (a) of the definition of "public benefit organisation" in section 30(1) that has been approved by the Commissioner in terms of section 30(3);

(c) a person contemplated in section 10(1)(cA) or (d)(iv);

(d) a person referred to in section 10(1)(cE) or (e); or

(e) a recreational club which is a company, society or other organisation as contemplated in the definition of "recreational club" in section 30A(1) that has been approved by the Commissioner in terms of section 30A.

63. Exempt persons

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

63A. Public benefit organisations

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

(a) that public benefit organisation did not use that asset on or after valuation date in carrying on any business undertaking or trading activity; or

(b) substantially the whole of the use of that asset by that public benefit organisation on and after valuation date was directed at—

(i) a purpose other than carrying on a business undertaking or trading activity; or

(ii) carrying on a business undertaking or trading activity contemplated in section 10(1)(cN)(ii)(aa), (bb) or (cc).

63B. Small business funding entities

(1) A small business funding entity approved by the Commissioner in terms of section 30C must disregard any capital gain or capital loss determined in respect of the disposal of an asset if—

(a) that small business funding entity did not use that asset in carrying on any business undertaking or trading activity; or

(b) substantially the whole of the use of that asset by that small business funding entity was directed at—

(i) a purpose other than carrying on a business undertaking or trading activity; or

(ii) carrying on a business undertaking or trading activity contemplated in section 10(1)(cQ)(ii)(aa), (bb) or (cc).

64. Asset used to produce exempt income

A person must disregard any capital gain or capital loss in respect of the disposal of an asset which is used by that person solely to produce amounts which are exempt from normal tax in terms of—

(a) section 10, other than receipts and accruals contemplated in paragraphs (cN), (cO), (i) and (k) of subsection (1) thereof; or

(b) section 12K.

64A. Awards in terms of the Restitution of Land Rights Act

A person must disregard any capital gain or capital loss in respect of the disposal that resulted in that person receiving—

(a) 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); or

(b) land or right to land by virtue of the measures as contemplated in Chapter 6 of the National Development Plan: Vision 2030 of 11 November 2011 released by the National Planning Commission, Presidency of the Republic of South Africa.

64B. Disposal of equity shares in foreign companies

(1) Subject to subparagraph (4), a person other than a headquarter company must disregard any capital gain or capital loss determined in respect of the disposal of any equity share in any foreign company (other than an interest contemplated in paragraph 2(2)), if—

(a) that person (whether alone or together with any other person forming part of the same group of companies as that person) immediately before that disposal—

(i) held an interest of at least 10 per cent of the equity shares and voting rights in that foreign company; and

(ii) held the interest contemplated in subitem (i) for a period of at least 18 months prior to that disposal, unless—

(aa) that person is a company;

(bb) that interest was acquired by that person from any other company that forms part of the same group of companies as that person; and

(cc) that person and that other company in aggregate held that interest for more than 18 months; and

(b) that interest is disposed of to any person that is not a resident (other than a controlled foreign company or any person that is a connected person in relation to the person disposing of that interest) for an amount that is equal to or exceeds the market value of the interest.

(2) Subject to subparagraph (4), a headquarter company must disregard any capital gain or capital loss determined in respect of the disposal of any equity share in any foreign company (other than an interest contemplated in paragraph 2(2)) if that headquarter company (whether alone or together with any other person forming part of the same group of companies as that headquarter company) immediately before that disposal held at least 10 per cent of the equity shares and voting rights in that foreign company.

(3) Paragraph 8(b) applies in respect of any capital gain determined in respect of any disposal of any equity share in any foreign company on or before 31 December 2012 by a person which is or was disregarded in terms of subparagraphs (1) and (4) in any year of assessment, if—

(a) the foreign company prior to that disposal was a controlled foreign company in relation to that person or in relation to any other company in the same group of companies as that person;

(b) the equity share in that foreign company was disposed of to a connected person in relation to that person either before or after that disposal;

(c) that person—

(i) disposed of that equity share for no consideration or for consideration which does not reflect an arm's length price, other than a distribution contemplated in subitem (ii);

(ii) disposed of that equity share by means of a distribution made unless—

(aa) that distribution was made to a company that forms part of the same group of companies as that person; or

(bb) the full amount of that distribution was included in the income of a holder of shares in that foreign company or would, but for the provisions of section 10B(2)(a) or (b), have been so included; or

(iii) disposed of any consideration where that consideration was received or accrued from the disposal of that equity share (or any amount received in exchange therefor) in terms of any transaction, operation or scheme of which the disposal of the equity share forms part—

(aa) for no consideration or for consideration which does not reflect an arm's length price (other than a distribution contemplated in subsubitem (bb)); or

(bb) by means of a distribution by a company, unless the full amount of that distribution was included in the income of a holder of shares in that company or would, but for the provisions of section 10B(2)(a) or (b), have been so included; and

[sub-subitem (bb) substituted by section 84 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

(d) that foreign company ceased, in terms of any transaction, operation or scheme of which the disposal of the equity share forms part, to be a controlled foreign company in relation to that person or other company in the same group of companies as that person (having regard

solely to any rights contemplated in paragraph (a) of the definition of "participation rights" in section 9D).

(4) A person must disregard any capital gain determined in respect of any foreign return of capital received by or accrued to that person from a "foreign company" as defined in section 9D (other than an interest contemplated in paragraph 2(2)) where that person (whether alone or together with any other person forming part of the same group of companies as that person) holds at least 10 per cent of the total equity shares and voting rights in that company.

(5) The provisions of this paragraph do not apply in respect of any capital gain or capital loss determined in respect of—

(a) the disposal of any equity share in any portfolio contemplated in paragraph (e) of the definition of "company" in section 1; and

(b) any distribution contemplated in subparagraph (4) by any portfolio contemplated in item (a).

(6) This paragraph must not apply in respect of any capital gain or capital loss determined in respect of the disposal of any share in a controlled foreign company to the extent that the value of the assets of that controlled foreign company is attributable to assets directly or indirectly located, issued or registered in the Republic.

[subparagraph (6) added by section 51(1) of Act 23 of 2020; effective date 1 January 2021, applicable in respect of any disposal on or after that date]

64C. Disposal of restricted equity instruments

A person must disregard any capital gain or capital loss determined in respect of the disposal of any restricted equity instrument as contemplated in section 8C(4)(a), (5)(a) or (c).

64D. Land donated in terms of land reform measures

A person must disregard any capital gain or capital loss in respect of the disposal by way of a donation of land or right to land by virtue of the measures as contemplated in Chapter 6 of the National Development Plan: Vision 2030 of 11 November 2011 released by the National Planning Commission, Presidency of the Republic of South Africa.

64E. Disposal by trust in terms of share incentive scheme

Where a capital gain is determined in respect of the disposal of an asset by a trust and a trust beneficiary has a vested right to an amount derived from that capital gain, that trust must disregard so much of that capital gain as is equal to that amount if that amount must in terms of section 8C be—

(a) included in the income of that trust beneficiary as an amount received or accrued in respect of a restricted equity instrument; or

(b) taken into account in determining the gain or loss in the hands of that trust beneficiary in respect of the vesting of a restricted equity instrument.

Part IX – Roll-overs

65. Involuntary disposal

(1) A person may elect that this paragraph applies in respect of the disposal of an asset (other than a financial instrument), where—

(a) that asset is disposed of by way of operation of law, theft or destruction;

(b) proceeds accrue to that person by way of compensation in respect of that disposal;

(c) those proceeds are equal to or exceed the base cost of that asset;

(d) (i) an amount at least equal to the receipts and accruals from that disposal has been or will be expended to acquire one or more asset (hereinafter referred to as the "replacement asset or assets");

(ii) all the replacement assets constitute assets contemplated in section 9(2)(j) or (k);

(iii) the contracts for the acquisition of the replacement asset or assets have all been or will be concluded within 12 months after the date of the disposal of that asset; and

(iv) the replacement asset or assets will all be brought into use within three years of the disposal of that asset:

Provided that the Commissioner may, on application by the taxpayer, decide to extend the period within which the contract must be concluded or asset brought into use by no more than six months if all reasonable steps were taken to conclude those contracts or bring those assets into use; and

(e) that asset is not deemed to have been disposed of and to have been reacquired by that person.

(2) Where a person has elected in terms of subparagraph (1) that this paragraph must apply in respect of the disposal of an asset, any capital gain determined in respect of that disposal must, subject to subparagraphs (4), (5) and (6) be disregarded when determining that person's aggregate capital gain or aggregate capital loss.

(3) Where a person acquires more than one replacement asset as contemplated in subparagraph (1), that person must, in applying subparagraphs (4) and (5), apportion the capital gain derived from the disposal of that asset to each replacement asset in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each of those replacement assets bear to the total amount of those receipts and accruals expended in acquiring all those replacement assets.

(4) Where a replacement asset contemplated in subparagraph (1) constitutes a depreciable asset, the person must treat as a capital gain for a year of assessment, so much of the disregarded capital gain contemplated in subparagraph (3), as bears to the total amount of that disregarded gain apportioned to that replacement asset as contemplated in subparagraph (3) the same ratio as the amount of any deduction or allowance allowed in that year in respect of the replacement asset bears to the total amount of the deduction or allowance (determined with reference to the cost or value of that asset at the time of acquisition thereof) which is allowable for all years of assessment in respect of that replacement asset.

(5) Where a person during any year of assessment disposes of a replacement asset and any portion of the disregarded capital gain which is apportioned to that asset, has not otherwise been treated as a capital gain in terms of this paragraph, that person must treat that portion of disregarded capital gain as a capital gain from the disposal of that replacement asset in that year of assessment.

(6) Where a person fails to conclude a contract or fails to bring any replacement asset into use within the period prescribed in subparagraph (1)(d)(iii) or (iv), subparagraph (2) shall not apply and that person must—

(a) treat the capital gain contemplated in subparagraph (2) as a capital gain on the date on which the relevant period ends;

(b) determine interest at the prescribed rate on that capital gain from the date of that disposal to the date contemplated in item (a); and

(c) treat that interest as a capital gain on the date contemplated in item (a) when determining that person's aggregate capital gain or aggregate capital loss.

(7) Where a replacement asset or assets constitute personal use assets, the provisions of this paragraph shall not apply.

65B. Disposal by recreational club

(1) A recreational club approved in terms of section 30A may elect that this paragraph applies in respect of the disposal of an asset the whole of which was used mainly for purposes of providing social and recreational facilities and amenities for members of that club, where—

(a) proceeds accrue to that club in respect of that disposal;

(b) those proceeds are equal to or exceed the base cost of that asset;

(c) (i) an amount at least equal to the receipts and accruals from that disposal has been or will be expended to acquire one or more replacement assets all of which will be used mainly for such purposes;

(ii) the contracts for the acquisition of the replacement asset or assets have all been or will be concluded within 12 months after the date of the disposal of that asset; and

(iii) the replacement asset or assets will all be brought into use within three years of the disposal of that asset:

Provided that the Commissioner may extend the period within which the contract must be concluded or asset brought into use by no more than six months if all reasonable steps were taken to conclude those contracts or bring those assets into use; and

(d) that asset is not deemed to have been disposed of and to have been reacquired by that club.

(2) Where a club has elected in terms of subparagraph (1) that this paragraph must apply in respect of the disposal of an asset, any capital gain determined in respect of that disposal must, subject to subparagraphs (3), (4) and (5) be disregarded when determining that club's aggregate capital gain or aggregate capital loss.

(3) Where a club acquires more than one replacement asset as contemplated in subparagraph (1), that club must, in applying subparagraphs (4) and (5), apportion the capital gain derived from the disposal of that asset to each replacement asset in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each of those replacement assets bear to the total amount of those receipts and accruals expended in acquiring all those replacement assets.

(4) Where a club during any year of assessment disposes of a replacement asset and any portion of the disregarded capital gain which is apportioned to that asset, has not otherwise been treated as a capital gain in terms of this paragraph, that club must treat that portion of disregarded capital gain as a capital gain from the disposal of that replacement asset in that year of assessment.

(5) Where a club fails to conclude a contract or fails to bring any replacement asset into use within the period prescribed in subparagraph (1)(c)(ii) and (iii), that club must—

(a) treat the capital gain contemplated in subparagraph (2) as a capital gain on the date on which the relevant period ends;

(b) determine interest at the prescribed rate on that capital gain from the date of that disposal to the date contemplated in item (a); and

(c) treat that interest as a capital gain on the date contemplated in item (a) when determining that club's aggregate capital gain or aggregate capital loss.

66. Reinvestment in replacement assets

(1) A person may elect that this paragraph applies in respect of the disposal of an asset, where—

(a) that asset qualified for a deduction or allowance in terms of section 11(e),11D(2), 12B, 12C, 12DA, 12E, 14, 14bis or 37B;

(b) the proceeds received or accrued from that disposal are equal to or exceed the base cost of that asset;

(c) an amount at least equal to the receipts and accruals from that disposal has been or will be expended to acquire one or more assets (hereinafter referred to as the "replacement asset or assets"), all of which will qualify for a capital deduction or allowance in terms of section 11(e),11D(2), 12B, 12C, 12DA, 12E or 37B;

(d) all the replacement assets constitute assets contemplated in section 9(2)(j) or (k);

(e) the contracts for the acquisition of a replacement asset or assets are or will be concluded within 12 months after the asset contemplated in item (a) is disposed of and are all brought into use within three years after that disposal: Provided that the Commissioner may, on application by the taxpayer, decide to extend the period by which the contracts must be concluded or assets brought into use by no more than six months if all reasonable steps were taken to conclude those contracts or bring those assets into use; and

(f) that asset is not deemed to have been disposed of and to have been reacquired by that person.

(2) Where a person has elected in terms of subparagraph (1) that this paragraph must apply in respect of the disposal of an asset, any capital gain determined in respect of that disposal must, subject to subparagraphs (4), (5), (6) and (7), be disregarded when determining that person's aggregate capital gain or aggregate capital loss.

(3) Where a person acquires more than one replacement asset as contemplated in subparagraph (1), that person must, in applying subparagraphs (4), (5) and (6), apportion the capital gain derived from the disposal of that asset to each replacement asset in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each of those replacement assets bear to the total amount of those receipts and accruals expended in acquiring all those replacement assets.

(4) A person must treat as a capital gain for a year of assessment so much of the disregarded capital gain contemplated in subparagraph (2), as bears to the total amount of that disregarded capital gain apportioned to that replacement asset as contemplated in subparagraph (3) the same ratio as the amount of any deduction or allowance allowed in that year in terms of section 11(e),11D(2), 12B, 12C, 12DA, 12E or 37B in respect of the replacement asset bears to the total amount of the deduction or allowance in terms of that section (determined with reference to the cost of value of that asset at the time of acquisition thereof) which is allowable for all years of assessment in respect of that replacement asset.

(5) Where a person during any year of assessment disposes of a replacement asset and any portion of the disregarded capital gain which is apportioned to that asset as contemplated in subparagraph (3), has not been treated as a capital gain in terms of subparagraph (4) or (6), that person must treat that portion of disregarded capital gain as a capital gain from the disposal of that replacement asset in that year of assessment.

(6) Where during any year of assessment a person ceases to use a replacement asset for the purposes of that person's trade and any portion of the disregarded capital gain which is apportioned to that asset as contemplated in subparagraph (3), has not been treated as a capital gain in terms of subparagraph (4) or (5), that person must treat that portion of disregarded capital gain as a capital gain for that year of assessment.

(7) Where a person fails to conclude a contract or to bring any replacement asset into use within the period prescribed in subparagraph (1)(e), subparagraph (2) shall not apply and that person must—

(a) treat the capital gain contemplated in subparagraph (2) as a capital gain on the date that the relevant period ends;

(b) determine interest at the prescribed rate on that capital gain from the date of that disposal to the date contemplated in item (a); and

(c) treat that interest as a capital gain on the date contemplated in item (a) when determining that person's aggregate capital gain or aggregate capital loss.

67. ***

[paragraph 67 repealed by section 85 of Act 23 of 2018; effective date 17 January 2019, date of promulgation of that Act]

67B. Disposal of immovable property by share block company

(1) For the purposes of this paragraph—

"share" means a share as defined in section 1 of the Share Blocks Control Act;

"Share Blocks Control Act" means the Share Blocks Control Act, 1980 (Act No. 59 of 1980).

(2) This paragraph applies where a person who holds a right of use of a part of the immovable property of a share block company, which right is conferred by reason of the ownership of a share by that person in that share block company, acquires ownership of that part of immovable property from that share block company as part of any transaction in terms of which a disposal of that part of immovable property is made by that share block company.

(3) Where a person who owns a share in a share block company acquires ownership of immovable property as part of any transaction in terms of which a disposal is made by that share block company as contemplated in subparagraph (2)—

(a) the share block company must disregard any capital gain or capital loss determined in respect of that disposal; and

(b) that person must—

(i) disregard any capital gain or capital loss determined in respect of any disposal of that share as a result of that disposal; and

(ii) be treated as having—

(aa) acquired that immovable property for an amount equal to the expenditure contemplated in paragraph 20 incurred by the person in acquiring that share;

(bb) incurred the expenditure contemplated in subsubitem (aa) on the same date that the expenditure was incurred by the person in acquiring that share;

(cc) effected improvements to that immovable property for an amount equal to the expenditure contemplated in paragraph 20 incurred by that person in effecting improvements to the part of the immovable property of the share block company in respect of which the person had a right of use as a result of the ownership of that share;

(dd) incurred the expenditure contemplated in subsubitem (cc) on the same date that the expenditure was incurred by the person in effecting the improvements to the part of the immovable property of the share block company in respect of which the person had a right of use as a result of the ownership of that share;

(ee) acquired that immovable property on the date that the share was acquired by the person; and

(ff) used that immovable property in the same manner as the person used the immovable property in respect of which the person had a right of use as a result of the ownership of that share; and

(c) any valuation of that share which was done by that person within the period prescribed by paragraph 29(4) must be deemed to have been done by that person in respect of that immovable property.

67C. Mineral rights conversions and renewals

Notwithstanding paragraph 11, there is no disposal where—

(a) any old order right or OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act wholly or partially continues in force or is wholly or partially converted into a new right pursuant to the same Schedule; or

(b) any prospecting right, mining right, exploration right, production right, mining permit, retention permit or reconnaissance permit as defined in section 1 of the Mineral and Petroleum Resources Development Act is wholly or partially renewed in terms of that Act,

and the continued, converted or renewed right or permit will be treated as one and the same asset as the right or permit before continuation, conversion or renewal for purposes of this Act.

67D. Communications licence conversions

(1) Where existing licences referred to in Chapter 15 of the Electronic Communications Act, 2005 (Act No. 36 of 2005), are converted to new licences in terms of section 93 of that Act, a licensee of an existing licence or licences is deemed to have disposed of the existing—

(a) licence for an amount equal to the base cost of the licence; or

(b) licences for an amount equal to the aggregate of the base cost of the licences,

on the date of the conversion.

(2) The licensee of a new licence contemplated in subparagraph (1)—

(a) is deemed to have acquired the new licence—

(i) in the case where an existing licence is converted to a new licence, at a cost, recognised as such for the purposes of paragraph 20, equal to the expenditure incurred in respect of the existing licence;

(ii) in the case where two or more existing licences are converted to a new licence, at a cost, recognised as such for the purposes of paragraph 20, equal to the aggregate of the expenditure incurred in respect of the existing licences; and

(iii) in the case where an existing licence is converted to two or more new licences, at a cost, recognised as such for the purposes of paragraph 20, that bears to the expenditure incurred in respect of the existing licence the same ratio as the value of that new licence bears to the aggregate value of the new licences,

which cost must be treated as expenditure actually incurred by the licensee in respect of the new licence or licences for the purposes of paragraph 20; and

(b) is deemed to have incurred the cost contemplated in item (a) on the day immediately after the conversion.

Part X – Attribution of capital gains

68. Attribution of capital gain to spouse

(1) Where a person's capital gain or a capital gain that has vested in or is treated as having vested in that person during the year of assessment in which it arose can be attributed wholly or partly to—

(a) any donation, settlement or other disposition; or

(b) any transaction, operation or scheme,

made, entered into or carried out by that person's spouse mainly for purposes of reducing, postponing or avoiding that spouse's liability for any tax, duty or levy which would otherwise have become payable under any Act administered by the Commissioner, so much of the gain as can be so attributed must be disregarded when determining that person's aggregate capital gain or aggregate capital loss and taken into account when determining the aggregate capital gain or aggregate capital loss of that person's spouse.

(2) Where a person's capital gain is derived from—

(a) any trade carried on by that person in partnership or association with that person's spouse or which is in any way connected with any trade carried on by that spouse; or

(b) that person's spouse or any partnership or private company at a time when that spouse was a member of that partnership or the sole, main or one of the principal holders of shares in that company,

so much of that gain as exceeds the amount to which that person would reasonably be entitled having regard to the nature of the relevant trade, the extent of that person's participation therein, the services rendered by that person or any other relevant factor, must be disregarded when determining that person's aggregate capital gain or aggregate capital loss and taken into account when determining the aggregate capital gain or aggregate capital loss of that person's spouse.

69. Attribution of capital gain to parent of minor child

Where a minor child's capital gain or a capital gain that has vested in or is treated as having vested in or that has been used for the benefit of that child during the year of assessment in which it arose can be attributed wholly or partly to any donation, settlement or other disposition—

(a) made by a parent of that child; or

(b) made by another person in return for any donation, settlement or other disposition or some other consideration made or given by a parent of that child in favour directly or indirectly of that person or his or her family,

so much of that gain as can be so attributed must be disregarded when determining that child's aggregate capital gain or aggregate capital loss and must be taken into account in determining the aggregate capital gain or aggregate capital loss of that parent.

70. Attribution of capital gain subject to conditional vesting

Where—

(a) a person has made a donation, settlement or other disposition that is subject to a stipulation or condition imposed by that person or anyone else in terms of which a capital gain or a portion of any capital gain attributable to that donation, settlement or other disposition shall not vest in the beneficiaries of that donation, settlement or other disposition or some of those beneficiaries until the happening of some fixed or contingent event;

(b) a capital gain that is attributable to that donation, settlement or other disposition has arisen during a year of assessment throughout which the person who made that donation, settlement or other disposition has been a resident; and

(c) that capital gain or a portion thereof has not vested during that year in any beneficiary who is a resident,

that capital gain or that portion thereof must be taken into account in determining the aggregate capital gain or aggregate capital loss of the person who made that donation, settlement or other disposition and disregarded when determining the aggregate capital gain or aggregate capital loss of any other person.

71. Attribution of capital gain subject to revocable vesting

Where—

(a) a deed of donation, settlement or other disposition confers a right upon a beneficiary thereof who is a resident to receive a capital gain attributable to that donation, settlement or other disposition or any portion of that gain;

(b) that right may be revoked or conferred upon another by the person who conferred it; and

(c) a capital gain attributable to that donation, settlement or other disposition or a portion of that gain has in terms of that right vested in that beneficiary during a year of assessment throughout which the person who conferred that right has been a resident and has retained the power to revoke that right,

that capital gain or that portion thereof must be disregarded when determining the aggregate capital gain or aggregate capital loss of that beneficiary and be taken into account when determining the aggregate capital gain or aggregate capital loss of the person retaining the power of revocation.

72. Attribution of capital gain and other amounts vesting in person that is not a resident

(1) This paragraph applies where—

(a) a resident has made a donation, settlement or other disposition to any person (other than an entity which is not resident and which is similar to a public benefit organisation contemplated in section 30);

(b) a capital gain (including any amount that would have constituted a capital gain had that person been a resident) attributable to that donation, settlement or other disposition has arisen during a year of assessment and has during that year vested in or is treated as having vested in any person who is not a resident (other than a controlled foreign company, in relation to that resident); and

(c) an amount consisting of or derived, directly or indirectly, from—

(i) that capital gain; or

(ii) the amount that would have constituted a capital gain,

has during that year vested in or is treated as having vested in any person who is not a resident (other than a controlled foreign company, in relation to that resident).

(2) In determining, for purposes of subparagraph (1), whether an amount would have constituted a capital gain had a person been a resident, the provisions of paragraph 64B(1) and (4) must be disregarded in respect of an amount derived by that person, directly or indirectly, from the disposal of an equity share in a foreign company if—

(a) more than 50 per cent of the total participation rights, as defined in section 9D(1), or of the voting rights in that company are directly or indirectly held or are exercisable, as the case may be, by that person whether alone or together with any one or more persons that are connected persons in relation to that person; and

(b) the resident who made the donation, settlement or other disposition or any person that is a connected person in relation to that resident is a connected person in relation to the person who is not a resident; and

(c) to the extent to which that amount is not included in the income of or attributed as a capital gain to—

(i) the resident who made that donation, settlement or other disposition; or

(ii) a resident who is a connected person in relation to the resident referred to in subitem (i).

(3) An amount that is equal to so much of the amount described in item (c) of subparagraph (1) that has vested in or is treated as having vested in the person who is not a resident as consists of or is derived, directly or indirectly, from—

(a) the capital gain must be disregarded when determining the aggregate capital gain or aggregate capital loss of that person; and

(b) the capital gain or the amount that would have constituted a capital gain must be taken into account as a capital gain when determining the aggregate capital gain or aggregate capital loss of the resident who made the donation, settlement or other disposition described in subparagraph (1).

[paragraph 72 substituted by section 86(1) of Act 23 of 2018; effective date 1 March 2019, applicable in respect of amounts vesting on or after that date]

73. Attribution of income and capital gain

(1) Where both an amount of income and a capital gain are derived by reason of or are attributable to a donation, settlement or other disposition, the total amount of that income and gain—

(a) that is deemed in terms of section 7 to be that of a person other than the one to whom it accrues or by whom it is received or for whose benefit it is expended or accumulated; and

(b) that is attributed in terms of this Part to a person other than the one in whom it vests,

shall not exceed the amount of the benefit derived from that donation, settlement or other disposition.

(2) For purposes of this paragraph, the benefit derived from a donation, settlement or other disposition means the amount by which the person to whom that donation, settlement or other disposition was made, has benefited from the fact that it was made for no or an inadequate consideration, including consideration in the form of interest.

Part XI – Company distributions

74. Definitions

For the purposes of this Part, unless the context otherwise dictates—

"**date of distribution**", in relation to any distribution, means—

(a) to the extent that the distribution does not consist of a distribution of an asset *in specie*—

(i) where the company that makes the distribution is a listed company, the date on which the distribution is paid; or

(ii) where the company that makes the distribution is not a listed company, the earlier of the date on which the distribution is paid or becomes due and payable; or

(b) to the extent that the distribution consists of a distribution of an asset *in specie*, the earlier of the date on which the distribution is paid or becomes due and payable.

75. Distributions *in specie* by company

(1) Where a company makes a distribution of an asset *in specie* to a person holding a share in that company—

(a) that company must be treated as having disposed of that asset to that person on the date of distribution for an amount received or accrued equal to the market value of that asset on that date; and

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

76. Returns of capital and foreign returns of capital by way of distributions of cash or assets *in specie*

(1) Subject to subparagraph (2), where a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* (other than a distribution of a share in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to a holder of a share in respect of that share, that holder must where the date of distribution of that cash or asset occurs—

(a) before valuation date, reduce the expenditure contemplated in paragraph 20 actually incurred before valuation date in respect of that share by the amount of that cash or the market value of that asset;

(b) on or after valuation date but before 1 October 2007 and that share is disposed of by the holder of that share on or before 31 March 2012, treat the amount of that cash or the market value of that asset as proceeds when that share is disposed of;

(c) on or after 1 October 2007 but before 1 April 2012, treat the amount of that cash or the market value of that asset as proceeds when that share is partly disposed of in terms of paragraph 76A.

(2) Where a holder of shares uses the weighted average method in respect of shares that are identical assets as contemplated in paragraph 32(3A)(a) and a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* (other than a distribution of a share in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to that holder of shares in respect of those shares on or after valuation date but before 1 October 2007, 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 from the base cost of those shares held when that return of capital or foreign return of capital was received or accrued; and

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

(4) Every—

(a) company that makes a distribution to any other person; and

(b) person that pays a distribution to any other person on behalf of a company,

on or after 1 April 2012 must, by the time of the distribution or payment, notify that other person in writing of the extent to which the distribution or payment constitutes a return of capital.

76A. Part-disposal of shares

(1) Where—

(a) a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* (other than a share distributed in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to a shareholder in respect of a share; and

(b) that return of capital or foreign return of capital is received by or accrues to that shareholder on or after 1 October 2007 and before 1 April 2012,

that shareholder must be deemed to have disposed of part of that share on the date that the return of capital or foreign return of capital is received by or accrues to the shareholder.

(1A) Subject to paragraph 76(2), where—

(a) a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* (other than a share distributed in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to a shareholder in respect of a share;

(b) that return of capital or foreign return of capital is received by or accrues to that shareholder on or after valuation date but before 1 October 2007; and

(c) that share is not disposed of before 1 April 2012,

that return of capital or foreign return of capital must be treated as having been distributed on 1 April 2012.

(2) If paragraph 76(2) applies and the base cost of those shares is a negative amount at the end of 31 March 2012—

(a) that shareholder must be treated as having a capital gain on 31 March 2012 equal to that negative amount; and

(b) the base cost of those shares at the end of 31 March 2012 must be treated as nil.

(3) For purposes of paragraph 33(1) the market value of the part disposed of under this paragraph must be treated as being equal to the amount of the cash or the market value of the asset received or accrued by way of a return of capital or foreign return of capital.

76B. Reduction in base cost of shares as result of distributions

(1) Where—

(a) a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* is received by or accrues to a holder of a share in respect of that share;

(b) that return of capital or foreign return of capital is received by or accrues to the holder of that share on or after 1 April 2012 and prior to the disposal of that share; and

(c) that share constitutes a pre-valuation date asset in relation to the holder of that share,

for purposes of determining the date of acquisition of that share and the expenditure in respect of the cost of acquisition of that share, the holder of that share must be treated as—

(i) having disposed of that share at a time immediately before the return of capital or foreign return of capital is received or accrues for an amount equal to the market value of the share at that time; and

(ii) having immediately reacquired that share at that time at an expenditure equal to that market value—

(aa) less any capital gain that would have been determined had the share been disposed of at market value at that time; and

(bb) increased by any capital loss that would have been determined had the share been disposed of at market value at that time,

which expenditure must be treated as an amount of expenditure actually incurred for the purposes of paragraph 20(1)(a): Provided that the market value of a share listed on a recognised exchange and for which a price was quoted on that exchange is equal to the sum of—

(i) the ruling price of that share at the close of business on the last business day before the accrual of the return of capital or foreign return of capital; and

(ii) the amount of the return of capital or foreign return of capital.

(2) Where—

(a) a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* is received by or accrues to a holder of a share in respect of that share; and

(b) that return of capital or foreign return of capital is received by or accrues to the holder of that share on or after 1 April 2012 and prior to the disposal of that share,

the holder of that share must reduce the expenditure in respect of the share by the amount of that cash or the market value of that asset on the date that the asset or that cash is received by or accrues to the holder of that share.

(3) Where the amount of a return of capital or foreign return of capital contemplated in subparagraph (2) exceeds the expenditure in respect of the share in respect of which that return of capital or foreign return of capital is received or accrues, the amount of the excess must be treated as a capital gain in determining the aggregate capital gain or aggregate capital loss of the holder of that share for the year of assessment in which that return of capital or foreign return of capital is received by or accrues to the holder of that share.

77. Distributions in liquidation or deregistration received by holders of shares

(1) A holder of shares in a company that is being wound up, liquidated or deregistered must be treated as having disposed of all the shares held by that holder in that company at the earlier of—

(a) the date of dissolution or deregistration; or

(b) in the case of a liquidation or winding-up, the date when the liquidator declares in writing that no reasonable grounds exist to believe that the holder of shares in the company (or holders of shares holding the same class of shares) will receive any further distributions in the course of the liquidation or winding-up of that company.

(2) Where—

(a) a return of capital or foreign return of capital by way of a distribution of cash or assets *in specie* is received by or accrues to a holder of shares contemplated in subparagraph (1) in respect of a share that is treated as having been disposed of in terms of that subparagraph; and

(b) that return of capital or foreign return of capital is received by or accrues to that holder after the date contemplated in subparagraph (1)(a) or (b),

the return of capital or foreign return of capital must be treated as a capital gain in determining that holder's aggregate capital gain or aggregate capital loss for that year of assessment.

Part XII – Trusts, trust beneficiaries and insolvent estates

80. Capital gain attributed to beneficiary

(1) Subject to paragraphs 68, 69 and 71, where a trust vests an asset in a beneficiary of that trust (other than any person contemplated in paragraph 62(a) to (e) or a person who acquires that asset as an equity instrument as contemplated in section 8C(1)) who is a resident, and determines a capital gain in respect of that disposal or, if that trust is not a resident, would have determined a capital gain in respect of that disposal had it been a resident—

(a) that capital gain must be disregarded for the purpose of calculating the aggregate capital gain or aggregate capital loss of the trust; and

(b) that capital gain or the amount that would have been determined as a capital gain must be taken into account as a capital gain for the purpose of calculating the aggregate capital gain or aggregate capital loss of the beneficiary to whom that asset was so disposed of.

(2) Subject to paragraphs 64E, 68, 69 and 71, where a trust determines a capital gain in respect of the disposal of an asset in a year of assessment during which a beneficiary of that trust (other than any person contemplated in paragraph 62(a) to (e)) who is a resident has a vested right or acquires a vested right (including a right created by the exercise of a discretion) to an amount derived from that capital gain but not to the asset disposed of, an amount that is equal to so much of the amount to which that beneficiary of that trust is entitled in terms of that right—

(a) must be disregarded for the purpose of calculating the aggregate capital gain or aggregate capital loss of the trust; and

(b) must be taken into account as a capital gain for the purpose of calculating the aggregate capital gain or aggregate capital loss of that beneficiary.

[subparagraph (2) substituted by section 52(a) of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(2A) (a) Subject to paragraphs 64E, 68, 69 and 71, this subparagraph applies where—

(i) a beneficiary who is a resident (other than any person contemplated in paragraph 62(a) to (e)) derives an amount through vesting during a year of assessment from a trust that is not a resident; and

(ii) that amount was derived directly or indirectly from that trust or another trust which is not a resident in respect of the disposal of an asset during the same year of assessment and that amount would have constituted a capital gain had the trust that disposed of the asset been a resident.

(b) Where item (a) applies, the amount derived by the beneficiary must be taken into account as a capital gain for the purpose of calculating that beneficiary's aggregate capital gain or aggregate capital loss for that year of assessment.

[subparagraph (2A) inserted by section 52(b) of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(3) Where during any year of assessment any resident acquires a vested right to any amount representing capital of any trust which is not a resident, and—

(a) that capital consists of or is derived, directly or indirectly, from an amount—

(i) determined as a capital gain of that trust; or

(ii) which would have been determined as a capital gain of that trust had that trust been a resident,

in any previous year of assessment during which that resident had a contingent right to that capital; and

(b) that capital gain or the amount that would have been determined as a capital gain has not been subject to tax in the Republic in terms of the provisions of this Act,

that amount must be taken into account as a capital gain when determining the aggregate capital gain or aggregate capital loss of that resident in respect of the year of assessment in which that resident acquired that vested right.

(4) In determining, for purposes of subparagraph (1), (2) or (3), whether an amount would have constituted a capital gain had the trust been a resident, the provisions of paragraph 64B(1) and (4) must be disregarded in respect of an amount derived by that trust, directly or indirectly, from the disposal or in respect of an equity share in a foreign company if—

[words preceding item (a) substituted by section 64 of Act 34 of 2019; effective date 15 January 2020, date of promulgation of that Act]

(a) more than 50 per cent of the total participation rights, as defined in section 9D(1), or of the voting rights in that company are directly or indirectly held or are exercisable, as the case may be, by that trust whether alone or together with any one or more persons that are connected persons in relation to that trust; and

(b) to the extent to which that amount is not derived from an amount that must be included in the income of or attributed to—

(i) the resident to whom an amount is attributed in terms of subparagraph (1), (2) or (3); or

(ii) a resident who is a connected person in relation to the resident referred to in subitem (i).

[paragraph 80 substituted by section 87(1) of Act 23 of 2018; effective date 1 March 2019, applicable in respect of disposals on or after that date]

81. Base cost of interest in discretionary trust

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

82. Death of beneficiary of special trust

Where a beneficiary of a special trust dies, that trust must continue to be treated as a special trust for the purposes of this Schedule until the earlier of the disposal of all assets held by that trust or two years after the date of death of that beneficiary.

83. Insolvent estate of person

(1) For the purposes of this Schedule, the disposal of an asset by the insolvent estate of a person shall be treated in the same manner as if that asset had been disposed of by that person.

(2) No person whose estate has been voluntarily or compulsorily sequestrated may carry forward any assessed capital loss incurred prior to the date of sequestration.

Part XIV – Miscellaneous

97. Transactions during transitional period

(1) For purposes of this paragraph "transitional period" means the period from 23 February 2000 until and including the day before the valuation date.

(2) Subject to subparagraph (3), where a person—

(a) acquired an asset during the transitional period by means of a non-arm's length transaction, that person shall for purposes of paragraph 30 be treated as having acquired that asset—

(i) at the time when the person who disposed of that asset acquired that asset; and

(ii) at a cost equal to the base cost of that asset in the hands of the person who disposed of it; or

(b) acquired an asset during the transitional period directly or indirectly from a person who was a connected person in relation to that person at—

(i) the time of that acquisition; or

(ii) any time during the period from the date of that acquisition up to a subsequent disposal of that asset by that person within three years of that acquisition,

that person shall for purposes of paragraph 30 be treated as having acquired that asset—

(aa) at the time when that connected person acquired that asset, or is treated as having acquired that asset in terms of this paragraph; and

(bb) at a cost equal to the base cost of that asset in the hands of that connected person, or an amount which is treated as the base cost of that asset in the hands of that connected person in terms of this paragraph; or

(c) reacquired an asset within a period of ninety days after its disposal during the transitional period—

(i) by means of a non-arm's length transaction; or

(ii) directly or indirectly to a connected person in relation to that person,

that person shall for the purposes of paragraph 30 be treated as having reacquired that asset —

(aa) at the time when that person originally acquired that asset prior to that disposal; and

(bb) at a cost equal to the base cost of that asset at the time of that disposal; or

(d) acquired an asset within a period of ninety days after the disposal, during the transitional period, of a substantially similar asset that was disposed of—

(i) by means of a non-arm's length transaction; or

(ii) directly or indirectly to a connected person in relation to that person,

in order to replace the asset so disposed of, that person shall for the purposes of paragraph 30 be treated as having acquired that asset—

(aa) at the time when that person acquired the substantially similar asset; and

(bb) at a cost equal to the base cost of that substantially similar asset at the time of that disposal.

(3) The provisions of this paragraph do not apply to any disposal of an asset by a fund contemplated in section 29A(4) to any other such fund in terms of section 29A(6) or (7).

Ninth Schedule (Section 30)

Public benefit activities

Part I

1. Welfare and humanitarian

(a) The care or counseling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.

(b) The care or counseling of poor and needy persons where more than 90 per cent of those persons to whom the care or counseling are provided are over the age of 60.

(c) The care or counseling of, or the provision of education programmes relating to, physically or mentally abused and traumatized persons.

(d) The provision of disaster relief.

(e) The rescue or care of persons in distress.

(f) The provision of poverty relief.

(g) Rehabilitative care or counseling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.

(h) The rehabilitation, care or counseling of persons addicted to a dependence-forming substance or the provision of preventative and education programmes regarding addiction to dependence-forming substances.

(i) Conflict resolution, the promotion of reconciliation, mutual respect and tolerance between the various peoples of South Africa.

(j) The promotion or advocacy of human rights and democracy.

(k) The protection of the safety of the general public.

(l) The promotion or protection of family stability.

(m) The provision of legal services for poor and needy persons.

(n) The provision of facilities for the protection and care of children under school-going age of poor and needy parents.

(o) The promotion or protection of the rights and interests of, and the care of, asylum seekers and refugees.

(p) Community development for poor and needy persons and anti-poverty initiatives, including—

(i) the promotion of community-based projects relating to self-help, empowerment, capacity building, skills development or anti-poverty;

(ii) the provision of training, support or assistance to community-based projects contemplated in item (i); or

(iii) the provision of training, support or assistance to emerging micro enterprises to improve capacity to start and manage businesses, which may include the granting of loans on such conditions as may be prescribed by the Minister by way of regulation.

(q) The promotion of access to media and a free press.

2. Health care

(a) The provision of health care services to poor and needy persons.

(b) The care or counseling of terminally ill persons or persons with a severe physical or mental disability, and the counseling of their families in this regard.

(c) The prevention of HIV infection, the provision of preventative and education programmes relating to HIV/AIDS.

(d) The care, counseling or treatment of persons afflicted with HIV/AIDS, including the care or counseling of their families and dependants in this regard.

(e) The provision of blood transfusion, organ donor or similar services.

(f) The provision of primary health care education, sex education or family planning.

3. Land and housing

(a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income is equal to or less than R15 000 or any greater amount determined by the Minister of Finance by notice in the *Gazette* after consultation with the Minister of Housing.

(b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph (a).

(c) The provision of residential care for retired persons, where—

(i) more than 90 per cent of the persons to whom the residential care is provided are over the age of 60 and nursing services are provided by the organisation carrying on such activity; and

(ii) residential care for retired persons who are poor and needy is actively provided by that organisation without full recovery of cost.

(d) Building and equipping of—

(i) clinics or crèches; or

(ii) community centres, sport facilities or other facilities of a similar nature,

for the benefit of the poor and needy.

(e) The promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes.

(f) Granting of loans for purposes of subparagraph (a) or (b), and the provision of security or guarantees in respect of such loans, subject to such conditions as may be prescribed by the Minister by way of regulation.

(g) The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or occupiers, to use or occupy land or housing.

(h) The provision of training, support or assistance to emerging farmers in order to improve capacity to start and manage agricultural operations.

4. Education and development

(a) The provision of education by a "school" as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).

(b) The provision of "higher education" by a "higher education institution" as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).

(c) "Adult education and training", as defined in the Adult Education and Training Act, 2000, (Act No. 52 of 2000), including literacy and numeracy education.

(d) "Continuing education and training" provided by a "private college" as defined in the Continuing Education and Training Colleges Act, 2006 (Act No. 16 of 2006), which is registered in terms of that Act.

[subparagraph (d) substituted by section 53 of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(e) Training for unemployed persons with the purpose of enabling them to obtain employment.

(f) The training or education of persons with a severe physical or mental disability.

(g) The provision of bridging courses to enable educationally disadvantaged persons to enter a higher education institution as envisaged in subparagraph (b).

(h) The provision of educare or early childhood development services for pre-school children.

(i) Training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government.

(j) The provision of school buildings or equipment for public schools and educational institutions engaged in public benefit activities contemplated in subparagraphs (a) to (h).

(k) Career guidance and counseling services provided to persons attending any school or higher education institution as envisaged in subparagraphs (a) and (b).

(l) The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10(1)(cA)(i), carrying on activities envisaged in subparagraphs (a) to (g).

(m) Programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole school development, safety and security at schools, pre-schools or educational institutions as envisaged in subparagraphs (a) to (h).

(n) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.

(o) The provision of scholarships, bursaries, awards and loans for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.

(p) The provision or promotion of educational programmes with respect to financial services and products, carried on under the auspices of a public entity listed under Schedule 3A of the Public Finance Management Act.

(q) The provision, to the general public, of education and training programmes and courses that are administered and accredited by entities contemplated in paragraph (r);

(r) The administration, provision and publication of qualification and certification services by industry organisations recognised by an industry specific organisation and its qualifications accredited by the Quality Council for Trades and Occupations established in 2010 in terms of the Skills Development Act, 1998 (Act No. 97 of 1998).

5. Religion, belief or philosophy

(a) The promotion or practice of religion which encompasses acts of worship, witness, teaching and community service based on a belief in a deity.

(b) The promotion and/or practice of a belief.

(c) The promotion of, or engaging in, philosophical activities.

6. Cultural

(a) The advancement, promotion or preservation of the arts, culture or customs.

(b) The promotion, establishment, protection, preservation or maintenance of areas, collections or buildings of historical or cultural interest, national monuments, national heritage sites, museums, including art galleries, archives and libraries.

(c) The provision of youth leadership or development programmes.

7. Conservation, environment and animal welfare

(a) Engaging in the conservation, rehabilitation or protection of the natural environment, including flora, fauna or the biosphere.

(b) The care of animals, including the rehabilitation, or prevention of the ill-treatment of animals.

(c) The promotion of, and education and training programmes relating to, environmental awareness, greening, clean-up or sustainable development projects.

(d) The establishment and management of a transfrontier area, involving two or more countries, which —

(i) is or will fall under a unified or coordinated system of management without compromising national sovereignty; and

(ii) has been established with the explicit purpose of supporting the conservation of biological diversity, job creation, free movement of animals and tourists across the international boundaries within the peace park, and the building of peace and understanding between the nations concerned.

8. Research and consumer rights

(a) Research including agricultural, economic, educational, industrial, medical, political, social, scientific and technological research.

(b) The protection and promotion of consumer rights and the improvement of control and quality with regard to products or services.

9. Sport

The administration, development, co-ordination or promotion of sport or recreation in which the participants take part on a non-professional basis as a pastime.

10. Providing of funds, assets or other resources

The provision of—

(a) funds, assets, services or other resources by way of donation;

(b) assets or other resources by way of sale for a consideration not exceeding the direct cost to the organisation providing the assets or resources;

(c) funds by way of loan at no charge; or

(d) assets by way of lease for an annual consideration not exceeding the direct cost to the organisation providing the asset divided by the total useful life of the asset,

to any—

(i) public benefit organisation which has been approved in terms of section 30;

(ii) institution, board or body contemplated in section 10(1)(cA)(i), which conducts one or more public benefit activities in this part (other than this paragraph);

(iii) association of persons carrying on one or more public benefit activity contemplated in this part (other than this paragraph), in the Republic; or

(iv) department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a).

11. General

(a) The provision of support services to, or promotion of the common interests of public benefit organisations contemplated in section 30 or institutions, boards or bodies contemplated in section 10(1)(cA)(i), which conduct one or more public benefit activities contemplated in this part.

(b) The bid to host or hosting of any international event approved by the Minister for purposes of this paragraph, having regard to—

(i) the foreign participation in that event; and

(ii) the economic impact that event may have on the country as a whole.

(c) The promotion, monitoring or reporting of development assistance for the poor and needy.

(d) The provision of funds to an organisation—

(i) which is incorporated, formed or established in any country other than the Republic;

(ii) which is exempt from tax on income in that other country;

(iii) the sole or principal object of which is the carrying on of one or more activities that would qualify as public benefit activities listed in Part I of this Schedule if carried on in the Republic; and

(iv) that carries on each of its activities—

(aa) in a non-profit manner;

(bb) with altruistic or philanthropic intent;

(cc) in a manner which does not directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation other than by way of reasonable remuneration; and

(dd) for the benefit of, or is widely accessible to the general public of that country including any sector thereof (other than small and exclusive groups).

Part II

1. Welfare and humanitarian

(a) The care or counseling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.

(b) The care or counseling of poor and needy persons where more than 90 per cent of those persons to whom the care or counseling are provided are over the age of 60.

(c) The care or counseling of, or the provision of education programmes relating to, physically or mentally abused and traumatised persons.

(d) The provision of disaster relief.

(e) The rescue or care of persons in distress.

(f) The provision of poverty relief.

(g) Rehabilitative care or counseling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.

(h) The rehabilitation, care or counseling of persons addicted to a dependence-forming substance or the provision of preventative and education programmes regarding addiction to dependence-forming substances.

(i) Conflict resolution, the promotion of reconciliation, mutual respect and tolerance between the various peoples of South Africa.

(j) The promotion or advocacy of human rights and democracy.

(k) The protection of the safety of the general public.

(l) The promotion or protection of family stability.

(m) The provision of legal services for poor and needy persons.

(n) The provision of facilities for the protection and care of children under school-going age of poor and needy parents.

(o) The promotion or protection of the rights and interests of, and the care of, asylum seekers and refugees.

(p) Community development for poor and needy persons and anti-poverty initiatives, including—

(i) the promotion of community-based projects relating to self-help, empowerment, capacity building, skills development or anti-poverty;

(ii) the provision of training, support or assistance to community-based projects contemplated in item (i); or

(iii) the provision of training, support or assistance to emerging micro enterprises to improve capacity to start and manage businesses, which may include the granting of loans on such conditions as may be prescribed by the Minister by way of regulation.

(q) The promotion of access to media and a free press.

2. Health care

(a) The provision of health care services to poor and needy persons.

(b) The care or counseling of terminally ill persons or persons with a severe physical or mental disability, and the counseling of their families in this regard.

(c) The prevention of HIV infection, the provision of preventative and education programmes relating to HIV/AIDS.

(d) The care, counseling or treatment of persons afflicted with HIV/AIDS, including the care or counseling of their families and dependants in this regard.

(e) The provision of blood transfusion, organ donor or similar services.

(f) The provision of primary health care education, sex education or family planning.

3. Education and development

(a) The provision of education by a "school" as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).

(b) The provision of "higher education" by a "higher education institution" as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).

(c) "Adult education and training", as defined in the Adult Education and Training Act, 2000 (Act No. 52 of 2000), including literacy and numeracy education.

[subparagraph (c) substituted by section 54(a) of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(d) "Continuing education and training" provided by a "private college" as defined in the Continuing Education and Training Colleges Act, 2006 (Act No. 16 of 2006), which is registered in terms of that Act.

[subparagraph (d) substituted by section 54(b) of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(e) Training for unemployed persons with the purpose of enabling them to obtain employment.

(f) The training or education of persons with a severe physical or mental disability.

(g) The provision of bridging courses to enable educationally disadvantaged persons to enter a higher education institution as envisaged in subparagraph (b).

(h) The provision of educare or early childhood development services for pre-school children.

(i) The provision of school buildings or equipment for public schools and educational institutions engaged in public benefit activities contemplated in subparagraphs (a) to (h).

(j) Programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole school development, safety and security at schools, pre-schools or educational institutions as envisaged in subparagraphs (a) to (h).

(k) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.

(l) Training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government.

(m) Career guidance and counseling services provided to persons attending any school or higher education institution as envisaged in subparagraphs (a) and (b).

(n) The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10(1)(cA)(i), carrying on activities envisaged in subparagraphs (a) to (g).

(o) The provision of scholarships, bursaries, awards and loans for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.

(p) The provision or promotion of educational programmes with respect to financial services and products, carried on under the auspices of a public entity listed under Schedule 3A of the Public Finance Management Act.

4. Conservation, environment and animal welfare

(a) Engaging in the conservation, rehabilitation or protection of the natural environment, including flora, fauna or the biosphere.

(b) The care of animals, including the rehabilitation or prevention of the ill-treatment of animals.

(c) The promotion of, and education and training programmes relating to, environmental awareness, greening, clean-up or sustainable development projects.

(d) The establishment and management of a transfrontier area, involving two or more countries, which —

(i) is or will fall under a unified or coordinated system of management without compromising national sovereignty; and

(ii) has been established with the explicit purpose of supporting the conservation of biological diversity, job creation, free movement of animals and tourists across the international boundaries of the peace park, and the building of peace and understanding between the nations concerned.

5. Land and housing

(a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income is equal to or less than R15 000 or any greater amount determined by the Minister of Finance by notice in the *Gazette* after consultation with the Minister of Housing.

(b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph (a).

(c) Building and equipping of clinics or crèches for the benefit of the poor and needy.

(d) The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or occupiers, to use or occupy land or housing.

(e) The promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes.

Tenth Schedule

Oil and gas activities

1. Definitions

For the purposes of this Schedule, unless the context otherwise indicates—

"**exploration**" means the acquisition, processing and analysis of geological and geophysical data or the undertaking of activities in verifying the presence or absence of hydrocarbons (up to and including the appraisal phase) conducted for the purpose of determining whether a reservoir is economically feasible to develop;

"**gas**" means any subsoil combustible gas, consisting primarily of hydrocarbons, other than hydrocarbons converted from bituminous shales or other stratified deposits of solid hydrocarbons;

"**oil**" means any subsoil combustible liquid consisting primarily of hydrocarbons, other than hydrocarbons converted from bituminous shales or other stratified deposits of solid hydrocarbons;

"**oil and gas company**" means any company that—

(i) holds any oil and gas right; or

(ii) engages in exploration or post-exploration in terms of any oil and gas right;

"**oil and gas income**" means the receipts and accruals derived by an oil and gas company from—

(a) exploration in terms of any oil and gas right;

(b) post-exploration in respect of any oil and gas right; or

(c) the leasing or disposal of any oil and gas right;

"**oil and gas right**" means—

(a) any reconnaissance permit, technical co-operation permit, exploration right, or production right as defined in section 1 of the Mineral and Petroleum Resources Development Act or any interest therein;

(b) any exploration right acquired by virtue of a conversion contemplated in item 4 of Schedule II to the Mineral and Petroleum Resources Development Act or any interest therein; or

(c) any production right acquired by virtue of a conversion contemplated in item 5 of Schedule II to the Mineral and Petroleum Resources Development Act or any interest therein;

"**post-exploration**" means any activity carried out after the completion of the appraisal phase, including —

(a) the separation of oil and gas condensates;

(b) the drying of gas; and

(c) the removal of non-hydrocarbon constituents,

to the extent that these processes are preliminary to refining;

2. Rate

The rate of tax on taxable income attributable to oil and gas income of any oil and gas company must not exceed 28 cents on each rand of taxable income.

3. Withholding taxes

(1) The rate of dividends tax contemplated in section 64E that is paid by an oil and gas company on the amount of any dividend derived from oil and gas income must not exceed zero per cent of the amount of that dividend.

(2) Notwithstanding Part IVB of Chapter II, the rate of withholding tax on interest contemplated in that Part may not exceed zero per cent of the amount of any interest that is paid by an oil and gas company in respect of loans applied to fund expenditure contemplated in paragraph 5(2).

4. Foreign currency gains or losses

(1) Currency gains or losses of an oil and gas company during any year of assessment (regardless of whether those gains or losses are realised or unrealised) must be determined solely with reference to—

(a) the functional currency of that company; and

(b) the translation method used by that company for purposes of financial reporting.

(2) Any amount received by or accrued to, or expenditure incurred by, an oil and gas company during any year of assessment in any currency other than that of the Republic must be—

(a) determined in the functional currency of that company; and

(b) translated to the currency of the Republic by applying the average exchange rate for that year.

5. Deductions from income derived from oil and gas activities

(1) For purposes of determining the taxable income of an oil and gas company during any year of assessment, there must be allowed as deductions from the oil and gas income of that company all expenditure and losses actually incurred (other than any expenditure or loss actually incurred in

respect of the acquisition of any oil and gas right, except as allowed in paragraph 7(3)) in that year in respect of exploration or post-exploration.

(2) In addition to any other deductions (as contemplated in subparagraph (1) other than any expenditure or loss actually incurred in respect of the acquisition of any oil and gas right) allowable in terms of this paragraph, for purposes of determining the taxable income of an oil and gas company during any year of assessment, there must be allowed as deductions from the oil and gas income of that company derived in that year of assessment—

(a) 100 per cent of all expenditure of a capital nature actually incurred in that year of assessment in respect of exploration in terms of an oil and gas right; and

(b) 50 per cent of all expenditure of a capital nature actually incurred in that year of assessment in respect of post-exploration in respect of an oil and gas right.

(2A) For the purposes of determining the taxable income of an oil and gas company during the first year of assessment of that oil and gas company commencing on or after 2 November 2006, there will be brought forward and allowed as a deduction from the oil and gas income of that oil and gas company the amount determined in terms of section 36(7E) in respect of the immediately preceding year of assessment.

(3) For purposes of determining the taxable income of an oil and gas company during any year of assessment, any assessed losses (as defined in section 20) in respect of exploration or production may only be set off against—

(a) the oil and gas income of that company; and

(b) income from the refining of gas derived in respect of any oil and gas right held by that company,

to the extent that those assessed losses do not exceed that income.

(4) To the extent that any assessed losses remain after the set-off contemplated in subparagraph (3), an amount equal to 10 per cent of those remaining assessed losses may be set off against any other income derived by that company.

(5) To the extent that any assessed loss remains after the set-offs contemplated in subparagraphs (3) and (4), those losses may be carried forward to the succeeding year of assessment of that oil and gas company.

6. Exploration and post-exploration expenses

If a company holds an oil and gas right contemplated in paragraph (a) or (b) of the definition of "oil and gas right" during any year of assessment—

(a) that company is deemed to be carrying on a trade in respect of that oil and gas right; and

(b) expenditure and losses incurred by that company in respect of that oil and gas right are deemed to be incurred in the production of income of that company.

7. Disposal of oil and gas right

(1) If an oil and gas company disposes of any oil and gas right to another company, that oil and gas company and that other company may (instead of any other provision of this Act) agree in writing that rollover treatment as contemplated in subparagraph (2) or participation treatment as contemplated in subparagraph (3) applies in respect of that right.

(2) If an oil and gas company disposes of any oil and gas right to another company pursuant to an agreement that rollover treatment as contemplated in subparagraph (1) applies, and the market value of that oil and gas right is equal to or exceeds—

(a) in the case that right is held as a capital asset, the base cost of that right on the date of that disposal; or

(b) in the case that right is held as trading stock, the amount taken into account in respect of that right in terms of section 11(a) or 22(1) or (2),

that company is deemed to have disposed of that right for an amount equal to the amount contemplated in items (a) or (b), as the case may be, and that other company is deemed to have acquired that right—

(i) where that right is so disposed of as a capital asset, for a cost equal to any expenditure in respect of that right incurred by that company that is allowable in terms of paragraph 20 of the Eighth Schedule and to have incurred such cost at the date of incurral by that company of such expenditure, which cost must, where that right is acquired as—

(A) a capital asset, be treated as an expenditure actually incurred by that company in respect of that right for the purposes of paragraph 20 of the Eighth Schedule; or

[subitem (A) substituted by section 55 of Act 23 of 2020; effective date 20 January 2021, date of promulgation of that Act]

(B) trading stock, be treated as the amount to be taken into account by that company in respect of that right for the purposes of section 11(a) or 22(1) or (2); or

(ii) where that right is so disposed of as trading stock and that right is acquired as trading stock, for a cost equal to the amount referred to in item (b), which cost must be treated as the amount to be taken into account by that company in respect of that right for purposes of section 11(a) or 22(1) or (2).

(3) (a) If an oil and gas company disposes of any oil and gas right to another company pursuant to an agreement that participation treatment as contemplated in subparagraph (1) applies and —

(i) that right is held as a capital asset; and

(ii) the market value of that right exceeds the base cost of that right on the date of that disposal,

any gain derived by that company in respect of the amount contemplated in subitem (ii) is deemed to be an amount of gross income and that other company that acquired that right may deduct from its oil and gas income as contemplated in paragraph 5(1) (but not including 5(2)) an amount equal to the amount deemed to be gross income of the company that disposed of that right.

(b) If an oil and gas company disposes of any oil and gas right to another company pursuant to an agreement that participation treatment as contemplated in subparagraph (1) applies and —

(i) that right is held as trading stock; and

(ii) the market value of that right exceeds the amount taken into account in respect of that right in terms of section 11(a) or 22,

that other company that acquired that right may deduct from its oil and gas income as contemplated in paragraph 5(1) (but not including 5(2)) an amount equal to the amount deemed to be gross income of the company that disposed of that right less the applicable deduction allowable as contemplated in section 11(a) or 22, as the case may be, in respect of that right.

8. Fiscal stability

(1) (a) The Minister may enter into a binding agreement with any oil and gas company in respect of an oil and gas right held by that company, and that agreement so entered into must guarantee that the provisions of this Schedule (as at the date on which the agreement was concluded) apply in respect of that right as long as the right is held by the oil and gas company.

(b) Notwithstanding subparagraph (a), the Minister may enter into a binding agreement with any company in anticipation of an oil and gas right to be acquired by that company, and that agreement must guarantee that the provisions of this Schedule (as at the date on which the oil and gas right is granted) apply in respect of that right as long as that right is held by the oil and gas company: Provided that this binding agreement has no force and effect if the oil and gas right is not granted within one year after the agreement is concluded.

(c) If an oil and gas company jointly holds with another oil and gas company an exploration right, as defined in section 1 of the Mineral and Petroleum Resources Development Act, and any one of those oil and gas companies has concluded an agreement as contemplated in subparagraph (1) in respect of that right, all of the fiscal stability rights in terms of that agreement relating to that exploration right apply in respect of both of those companies.

(2) (a) In the case of a disposal of an exploration right, as defined in section 1 of the Mineral and Petroleum Resources Development Act, an oil and gas company that has concluded an agreement as contemplated in subparagraph (1) in respect of that right may, as part of that disposal, assign all of its fiscal stability rights in terms of that agreement relating to the exploration right disposed of to any other oil and gas company.

(b) In the case of a disposal of a production right, as defined in section 1 of the Mineral and Petroleum Resources Development Act, an oil and gas company that has concluded an agreement as contemplated in subparagraph (1) in respect of that right disposed of may, as part of that disposal, assign all its fiscal stability rights in terms of that agreement relating to the production right disposed of to another company if that other company is a company within the same group of companies as the oil and gas company transferring the fiscal stability right at the time the agreement is concluded.

(3) If an oil and gas company holding a participating interest in an oil and gas right has concluded an agreement contemplated in subparagraph (1), the terms and conditions of that agreement will apply to all participating interests subsequently held by that company in that oil and gas right.

(4) An oil and gas company that has concluded an agreement contemplated in subparagraph (1) in respect of an oil and gas right may at any time unilaterally terminate the agreement in respect of that oil and gas right so held with effect from the commencement of the year of assessment immediately following the notification date of the termination.

(5) The portion of taxable income and profits of an oil and gas company derived from all the oil and gas rights governed by the version of the Schedule applicable to an oil and gas right covered by a binding agreement referred to in subparagraph (1), must be determined in terms of that version of the Schedule.

(6) If the State fails to comply with the terms of the agreement contemplated in subparagraph (1) and that failure has a material adverse economic impact on the taxation of income or profits of the oil and gas company that is party to that agreement, that oil and gas company is entitled to compensation for the loss of market value caused by that failure (and interest at the prescribed rate calculated on the compensation from the date of non-compliance) or to an alternative remedy that otherwise eliminates the full impact of that failure.

(7) For purposes of this paragraph—

(a) an "oil and gas right" means any—

(i) exploration right or production right as defined in section 1 of the Mineral and Petroleum Resources Development Act or any right or interest therein;

(ii) exploration right acquired by virtue of a conversion contemplated in item 4 of Schedule II to the Mineral and Petroleum Resources Development Act or any interest therein; or

(iii) production right acquired by virtue of a conversion contemplated in item 5 of Schedule II to the Mineral and Petroleum Resources Development Act or any interest therein; and

(b) an exploration right, a renewal of that exploration right and an initial production right converted from any exploration right or renewal thereof held by a company will all be deemed to be one and the same oil and gas right in the hands of that company to the extent that those rights relate to the same geographical area.

Eleventh Schedule (Section 12P)

Government grants exempt from normal tax

1. Agro-Processing Support Scheme received or accrued from the Department of Trade, Industry and Competition;
2. Aquaculture Development and Enhancement Programme received or accrued from the Department of Trade, Industry and Competition;
3. Automotive Production and Development Programme received or accrued from the International Trade Administration Commission of South Africa;
4. Automotive Investment Scheme received or accrued from the Department of Trade, Industry and Competition;
5. Black Business Supplier Development Programme received or accrued from the Department of Small Business Development;
6. Black Industrialists Scheme received or accrued from the Department of Trade, Industry and Competition;
7. Business Process Services received or accrued from the Department of Trade, Industry and Competition;
8. Business Viability Programme received or accrued from the Department of Small Business Development;
9. Capital Projects Feasibility Programme received or accrued from the Department of Trade, Industry and Competition;
10. Capital Restructuring Grant received or accrued from the Department of Human Settlements;
11. Clothing and Textiles Competitiveness Programme received or accrued from the Industrial Development Corporation;
12. Cluster Development Programme received or accrued from the Department of Trade, Industry and Competition;
13. Comprehensive Agricultural Support Programme received or accrued from the Department of Agriculture;
14. Co-operative Incentive Scheme received or accrued from the Department of Small Business Development;
15. Critical Infrastructure Programme received or accrued from the Department of Trade, Industry and Competition;

16. Eastern Cape Jobs Stimulus Fund received or accrued from the Department of Economic Development, Environmental Affairs and Tourism of the Eastern Cape;
17. Enterprise Incubation Programme received or accrued from the Department of Small Business Development;
18. Enterprise Investment Programme received or accrued from the Department of Trade, Industry and Competition;
19. Equity Fund received or accrued from the Department of Science and Technology;
20. Export Marketing and Investment Assistance received or accrued from the Department of Trade, Industry and Competition;
21. Film Production Incentive received or accrued from the Department of Trade, Industry and Competition;
22. Food Fortification Grant received or accrued from the Department of Health;
23. Green Technology Incentive Programme received or accrued from the Department of Tourism;
24. Idea Development Fund received or accrued from the Department of Science and Technology;
25. Incubation Support Programme received or accrued from the Department of Trade, Industry and Competition;
26. Industrial Development Zone Programme received or accrued from the Department of Trade, Industry and Competition;
27. Industry Matching Fund received or accrued from the Department of Science and Technology;
28. Integrated National Electrification Programme Grant: Non-grid electrification service providers received or accrued from the Department of Energy;
29. Integrated National Electrification Programme: Electricity connection to households received or accrued from the Department of Energy;
30. Interest Make-Up Programme received or accrued from the Department of Trade, Industry and Competition;
31. Jobs Fund received or accrued from the National Treasury;
32. Manufacturing Competitiveness Enhancement Programme received or accrued from the Department of Trade, Industry and Competition;
33. Sector Specific Assistance Scheme received or accrued from the Department of Trade, Industry and Competition;
34. Shared Economic Infrastructure Facility received or accrued from the Department of Small Business Development;
35. Small Enterprise Manufacturing Support Programme received or accrued from the Department of Small Business Development;
36. Small, Medium Enterprise Development Programme received or accrued from the Department of Trade, Industry and Competition;
37. Small/Medium Manufacturing Development Programme received or accrued from the Department of Trade, Industry and Competition;
38. South African Research Chairs Initiative received or accrued from the Department of Science and Technology;
39. Strategic Partnership Programme received or accrued from the Department of Trade, Industry and Competition;

40. Support Programme for Industrial Innovation received or accrued from the Department of Trade, Industry and Competition;

41. Taxi Recapitalisation Programme received or accrued from the Department of Transport;

42. Technology Development Fund received or accrued from the Department of Science and Technology;

43. Technology and Human Resources for Industry Programme received or accrued from the Department of Trade, Industry and Competition;

44. The Blended Finance Facility received or accrued from the Department of Small Business Development;

45. The COVID-19 Emergency Fund received or accrued from the Department of Small Business Development;

46. The Small Business and Innovation Fund received or accrued from the Department of Small Business Development;

47. Township and Rural Entrepreneurship Programme (TREP) received or accrued from the Department of Small Business Development;

48. Transfers to the South African National Taxi Council received or accrued from the Department of Transport;

49. Transfers to the University of Pretoria, University of KwaZulu-Natal and University of Stellenbosch received or accrued from the Department of Transport;

50. Youth Technology Innovation Fund received or accrued from the Department of Science and Technology.

[Eleventh Schedule substituted by section 56(1) of Act 23 of 2020, and by section 47(1) of Act 20 of 2021; effective date in respect of any grant the date on which that grant was awarded to the recipient thereof, applicable in respect of any amount received or accrued in respect of that grant on or after that date]