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REPUBLIC OF SOUTH AFRICA

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**EXCHANGE CONTROL  
AMNESTY AND AMENDMENT OF  
TAXATION LAWS ACT**

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REPUBLIEK VAN SUID-AFRIKA

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**WET OP  
DEVIESEBEHEERAMNESTIE EN  
WYSIGING VAN  
BELASTINGWETTE**

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**No 12 , 2003**

### Special rules for donors to discretionary trust

4. (1) A person who is a donor (or the deceased estate of a donor) in relation to a discretionary trust which is not a resident, may elect that any foreign asset contemplated in subsection (2), which was held by that discretionary trust on 28 February 2003, must be deemed to be held by that person. 5
- (2) Subsection (1) applies in respect of a foreign asset of a discretionary trust which—
- (a) was acquired by that discretionary trust by way of a donation made by the person contemplated in subsection (1);
  - (b) has been wholly or partly derived from any unauthorised asset or from any amount not declared by that donor to the Commissioner as required by the Estate Duty Act, 1955, or the Income Tax Act, 1962; and 10
  - (c) has not at the time of that election vested in any beneficiary of that discretionary trust.
- (3) Where a person has made an election as contemplated in subsection (1) in relation to a foreign asset— 15
- (a) that person must be deemed to have held that foreign asset—
    - (i) for purposes of this Chapter, from the date that the discretionary trust acquired that foreign asset; and
    - (ii) for the purposes of the Income Tax Act, 1962, from the first day of the last year of assessment ending on or before 28 February 2003, 20
      - until that foreign asset is disposed of by that discretionary trust to any other person, in which case that person shall be deemed to have disposed of that foreign asset for consideration equal to its market value on the date of disposal; and
  - (b) the provisions of sections 7(5), 7(8) and 25B of the Income Tax Act, 1962, and paragraphs 70, 72 and 80 of the Eighth Schedule to that Act, shall not apply in respect of any income, expenditure or capital gain relating to that foreign asset, while it is so deemed to be held by that person. 25
- (4) In order to make the election contemplated in subsection (1), the person must submit the founding document of the discretionary trust as at 28 February 2003 with the application in terms of section 5.

*Part G**Miscellaneous***Limitation for purposes of Income Tax Act**

**28.** (1) For purposes of section 22 of the Income Tax Act, 1962, the value or cost of any foreign asset on 28 February 2003 in respect of which approval for amnesty was granted in terms of section 9, may not exceed the value in foreign currency of that foreign asset as disclosed for purposes of the determination of the exchange control amnesty levy. 10

(2) For purposes of the Eighth Schedule to the Income Tax Act, 1962, the base cost of any foreign asset in respect of which approval for amnesty was granted in terms of section 9, may not exceed the sum of the value in foreign currency of that foreign asset on 28 February 2003 as disclosed for purposes of the determination of the exchange control amnesty levy and any expenditure allowable in terms of paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, as is incurred after that date. 15

(3) The aggregate of deductions and allowance in terms of the Income Tax Act, 1962, in respect of an allowance asset, as defined in section 41 of that Act, for all years of assessment ending on or after 28 February 2003, shall not exceed the sum of the value in foreign currency of that foreign asset as disclosed for purposes of the determination of the exchange control amnesty levy and the cost of any additions and improvements after 28 February 2003. 20