

DRAFT INTERPRETATION NOTE

DATE:

ACT : INCOME TAX ACT 58 OF 1962
SECTION : SECTION 8(4)(a) and 8(4)(k)(iv)
SUBJECT : RECOUPMENT OF AMOUNTS DEDUCTED OR SET OFF WHEN AN ASSET COMMENCES TO BE HELD AS TRADING STOCK WHICH WAS PREVIOUSLY NOT SO HELD

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Preamble

In this Note unless the context indicates otherwise –

- “**CGT**” means capital gains tax, being the portion of normal tax attributable to the inclusion in taxable income of a taxable capital gain;
- “**Eighth Schedule**” means the Eighth Schedule to the Act;
- “**paragraph**” means a paragraph of the Eighth Schedule;
- “**taxpayer**” means a “taxpayer” as defined in section 151 of the Tax Administration Act 28 of 2011;
- “**section**” means a section of the Act;
- “**the Act**” means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

The guide and interpretation note referred to in this Note are available on the SARS website at www.sars.gov.za. Unless indicated otherwise, the latest issue of these documents should be consulted.

1. Purpose

This Note provides guidance on the interpretation and application of section 8(4)(k)(iv) that applies when any asset on which an allowance or deduction under a provision referred to in section 8(4)(a) has been granted, commences to be held as trading stock.

The *Comprehensive Guide to Capital Gains Tax* may be referred to for a comprehensive discussion of the capital gains tax implications when an allowance asset commences to be held as trading stock.¹

2. Background

The Act provides for various deductions and allowances which reduce the tax value of certain assets. The subsequent disposal of such an asset for an amount in excess of the tax value will normally result in a taxable recoupment of the difference. Section 8(4)(a) is a general recoupment provision and provides that an amount that previously has been allowed as a deduction or set off under sections 11 to 20, 24D, 24F, 24G, 24I, 24J, 27(2)(b) and 37B(2) must be included in a taxpayer’s gross income if it has been recovered or recouped during the year of assessment.² The effect of section 8(4)(a) is that whenever a taxpayer has claimed a deduction or allowance under the specified sections and the amount is subsequently recovered or recouped it must be included in the taxpayer’s gross income.

Section 8(4)(a) is limited in its application to amounts that have been recovered or recouped when an asset is disposed of or where an expense is otherwise recovered³. There are, however, events which do not constitute a disposal and therefore do not result in the recovery or recoupment of an amount despite a deduction or an allowance being previously granted. Section 8(4)(k) provides for a deemed disposal under certain circumstances that are not considered to be a disposal. Before its amendment, the

¹ www.sars.gov.za/legal-counsel/legal-counsel-publications/find-a-guide/capital-gains-tax-cgt/

² See section 8(4)(a) for the provisions excluded from inclusion in income.

³ An example is where a refund for expenditure incurred is received.

deemed disposal under section 8(4)(k) only applied where during any year of assessment any person has –

- donated any asset;⁴
- in the case of a company, transferred in whatever manner or form any assets to another holder of a share in that company;⁵ or
- disposed of any asset to a person who is a connected person in relation to that person.⁶

An asset on which an allowance or deduction was allowed and that asset subsequently commenced to be held as trading stock, for example, where a taxpayer changed its intention with regard to the use or the purpose of the asset, was therefore not included under section 8(4)(k), meaning that the allowance or deduction allowed was not recouped in that year of assessment or any subsequent year of assessment.

Paragraph 12(2)(c) provides for a deemed disposal for CGT purposes when an asset, whether an allowance or non-allowance asset, held otherwise than as trading stock commences to be held as trading stock. In order to provide for a similar deemed disposal rule for income tax purposes, section 8(4)(k)⁷ was amended by the insertion of subparagraph (iv) that provides for the deemed disposal and reacquisition when a taxpayer commenced to hold any allowance asset as trading stock (see **4.6** and **4.4**).

3. The law

The relevant sections of the Act are quoted in the **Annexure**.

4. Interpretation and application of the law

4.1 Introduction

Section 8(4)(a) is limited in its application to amounts that have been recovered or recouped when an asset is disposed of or where an expense is otherwise recovered. There is, however, no disposal of an asset when a taxpayer changes its intention from holding an asset on capital account to trading stock. A deemed disposal is triggered under section 8(4)(k)(iv) which applies when –

- an asset;
- is commenced;
- to be held as trading stock which was previously not held as trading stock.

When this provision applies that asset is deemed to have been disposed of for an amount equal to its market value at the date of that commencement. The purpose of the deemed disposal is to recover or recoup the allowances or deductions previously granted on that asset.

The requirements for the application of section 8(4)(k)(iv) are discussed below.

⁴ Section 8(4)(k)(i).

⁵ Section 8(4)(k)(ii).

⁶ Section 8(4)(k)(iii).

⁷ See Taxation Laws Amendment Act 34 of 2019 and applies to an asset that commenced to be held as trading stock on or after 15 January 2020.

4.2 Meaning of “asset” for the purposes of section 8(4)(k)(iv)

The word “asset” is not defined in the Act. Legally an asset can be movable or immovable and corporeal or incorporeal or any right in these assets.

An “asset” for purposes of section 8(4)(a) is, however, limited to an allowance asset. An allowance asset is also known as a “depreciable asset” which is defined in the Act to mean –

“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;”⁸

Section 8(4)(k)(iv) thus applies to an allowance asset capable of being held by the taxpayer as trading stock (see 4.4). An asset which is a non-allowance asset therefore does not fall within the ambit of section 8(4)(k)(iv).

4.3. “Commenced”

A taxpayer may for various reasons decide during a year of assessment to no longer hold an allowance asset as a capital asset and instead to commence to hold the asset as trading stock.

It is a factual question whether a change of intention and use occurred during the year of assessment. The word “commence” is not defined in the Act and the *Lexico Dictionaries* define it as to –

“begin”⁹

Applying the ordinary meaning of the word “commence” or “commenced” (past tense) would require the taxpayer to take or have taken the decision during a year of assessment to hold an asset as trading stock which was previously not held as trading stock. Whether such a decision has been taken is a factual enquiry and must be based on the objective facts pertaining to the asset in question and taxpayer concerned.

Various factors can be considered in determining the exact time the taxpayer commenced to hold an asset as trading stock, amongst others, the nature of the asset, the nature of the taxpayer’s trade or business, the internal policies and procedures of the taxpayer’s business.

4.4 Trading stock

The definition of trading stock is very wide and non-exhaustive. Basically, it is anything that is acquired or manufactured for the purpose of sale or which will be incorporated in another asset which will be sold. In *De Beers Holdings (Pty) Ltd v CIR*¹⁰ it was held that trading stock refers to things acquired with the intention to dispose for income.

⁸ Definition of an “allowance asset” in section 1(1).

⁹ www.lexico.com/definition/commence [Accessed 18 January 2022].

¹⁰ 1986 (1) SA 8 (A), 47 SATC 229.

Paragraphs (a)(i) and (ii) of the definition of trading stock read as follows:¹¹

- “(i) everything 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 Eighth 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;”

The above paragraphs of the definition of trading stock are relevant in determining whether an asset is held as trading stock for purposes of section 8(4)(k)(iv). This is a factual enquiry and will depend on the particular facts of a case.

As soon as it has been established that the requirements of section 8(4)(k)(iv) are met, section 22(3)(a)(ii) applies automatically. Section 22(3)(a) establishes the cost price of trading stock. Trading stock may be acquired through different means, for example, purchased, manufactured, inherited, transferred etc. The cost price incurred for trading stock that falls under paragraph (a)(i) of the definition of trading stock is determined under section 22(3)(a)(i). The “cost price” of an asset held by a taxpayer otherwise than as trading stock, that commenced to be held as trading stock during that year of assessment is determined under section 22(3)(a)(ii) and is deemed to be the market value of that asset as determined under paragraph 12(1) (see **Example 2**).

Section 22 aims to match the cost of trading stock to the income from the sale thereof. The section thus requires that trading stock that is held and not disposed of at the end of the year of assessment has to be accounted for as closing stock in that year and opening stock in the immediately subsequent year of assessment.

4.4.1 Opening stock

Section 22(2) determines the amount to be included in opening stock in the determination of taxable income derived by any person during a year of assessment from carrying on a trade (other than farming).

The amount to be taken into account in respect of the value of opening stock must be –

- if that trading stock formed part of the closing stock held and not disposed of at the end of the immediately preceding year of assessment, the value of that trading stock at the end of the preceding year;¹² or

¹¹ Definition of “trading stock” in section 1(1).

¹² Section 22(2)(a).

- if that trading stock did not form part of closing stock at the end of the immediately preceding year of assessment, it is the cost price incurred.¹³ However, if a person commenced to hold any asset as trading stock which was previously not held as trading stock, section 22(3)(a)(ii) deems the market value at the date it became trading stock to be its cost.

4.4.2 Closing stock

Section 22(1) provides for a person carrying on a trade to include in income the value of trading stock held and not disposed of by him at the end of the year of assessment. The value of the closing stock to be included in income is –

- the cost price to the taxpayer; *less*
- any amount by which the value of the trading stock has reduced due to damage, deterioration, change in fashion, decrease in the market value, or for any other reason satisfactory to the Commissioner.¹⁴

The value of closing stock must be included in gross income¹⁵ and may not exceed its cost price.¹⁶ If a taxpayer commenced to hold an asset as trading stock which was previously not held as trading stock and that asset forms part of closing stock, the value of that item of closing stock must be determined under section 22(1)(a).

4.5 Meaning of recovered or recouped

The words “recovered” and “recouped” are not defined in either the Act or in section 8 but have been considered in a number of court cases. In ITC 1634 *Wunsh J* held as follows:¹⁷

“To recoup is to recover or get back what has been expended or lost or to compensate.”

In ITC 1678 the court held that –¹⁸

“I am by no means certain, however, that it is either helpful, advisable, or even reliable to lay down rules to test whether there has been a recoupment. On the contrary, the question is one of hard fact, to be determined on the circumstances of each case, and in doing so the court will have regard to each and every relevant feature.”

Juta Law describes the words “recovered” or “recouped” as follows:¹⁹

“The words “recovered or recouped” are not terms of art, but must take their ordinary everyday meaning. The Oxford English Dictionary defined the word “recover” as “to get back again into one’s own hands or possession; to regain possession of (something lost or taken away)”. The word “recoup” is defined as “to make up for, compensate for, make good” and the word “recoupment” as “the act of recovering or recompensing; the act of being recouped for a loss or expense”.”

¹³ Section 22(2)(b).

¹⁴ Section 22(1)(a).

¹⁵ Section 22(1)(a)(i).

¹⁶ Proviso (i) to section 22(1)(a).

¹⁷ ITC 1634 (1997) 60 SATC 235 (T) at 242. See also *C: SARS v Pinestone Properties CC*, 63 SATC 421 (2001).

¹⁸ ITC 1678 (1999) 62 SATC 288 (N) at 292.

¹⁹ *D Davis et al Juta’s Tax Library* [online] (Jutastat e-publications: 21 May 2021) in Commentary on Income Tax – section 8(4)(a).

In *Omnia Fertiliser Ltd v C:SARS*²⁰ the court held that to recover or recoup means to return to the taxpayer's pocket something which has previously been an expense.

Having regard to the above principles, it can be concluded that "recovered" or "recouped" means all amounts as referred to under section 8(4)(a) which have been allowed as a deduction and have been regained, compensated for or repossessed must be included in a taxpayer's income. A recoupment under section 8(4)(a) is a factual and not a legal question. Each case must be considered and decided on its own merits.

Only amounts that were granted as a deduction or set off as provided for under the Act are required to be included in the income of the taxpayer as a recoupment. The onus is on SARS to prove the fact that an amount previously allowed to be deducted has been recovered or recouped by the taxpayer.²¹ There are certain exclusions when an amount recovered or recouped is not required to be included in the income of the taxpayer (see 5).

4.6 Interaction between section 8(4)(k)(iv) and section 8(4)(a)

Before section 8(4)(k)(iv) came into effect on 15 January 2020 the deductions and allowances granted on an asset were not recouped in the year of assessment when the asset commenced to be held as trading stock as no deemed disposal was triggered for normal tax purposes. The deductions and allowances granted before the asset commenced to be held as trading stock could only be recouped once the asset has been disposed of as trading stock. The recoupment of the allowances claimed was therefore deferred or never triggered.

Example 1 – An allowance asset commences to be held as trading stock before 15 January 2020

Facts:

Company X purchased a machine for R100 000 on 1 January 2016 and for the next three years of assessment claimed capital allowances totalling R60 000. On 31 December 2018, Company X ceased to hold the machine as a capital asset and commenced to hold it as trading stock. The market value of the machine on 31 December 2018 was R110 000. Company X's year of assessment ends on 31 December and at this date the machine comprised trading stock held and not disposed of.

The tax treatment was as follows:

	R
Tax cost of machine	100 000
Less: Capital allowances claimed	(60 000)
Tax value/base cost	<u>40 000</u>

²⁰ 65 SATC 159, 2003 (SCA).

²¹ *Commissioner for Inland Revenue v Butcher Bros (Pty) Ltd* 145 AD 301, 13 SATC 21 and *C: SARS v Pinestone Properties CC*, 63 SATC 421.

CGT

	R
Proceeds [paragraph 12(2)(c)]	110 000
Less: Tax value/base cost	(40 000)
Capital gain	<u>70 000</u>

A deemed disposal is triggered under paragraph 12(2)(c) on 31 December 2018, the date on which Company X commenced to hold the machine as trading stock. Paragraph 12(1) deems the machine to be disposed of for an amount received or accrued equal to the market value of R110 000. The capital gain of R70 000 is under paragraph 8 taken into account to determine the net capital gain of Company X.

Income tax

	R
Opening stock (2018 year of assessment)	(110 000)
Closing stock (2018 year of assessment)	110 000
Opening stock (2019 year of assessment)	(110 000)

Company X is allowed to claim a deduction of R110 000 for the cost of acquisition of the machine to be included in trading stock. Since the machine was held and not disposed of at the end of the year of assessment it must be taken into account when determining the value of closing stock at 31 December 2018. The value of opening stock on 1 January 2019 will be the closing stock value of the trading stock at 31 December 2019 (see 4.4).

Capital gain

The allowances of R60 000 granted to Company X before the asset commenced to be held as trading stock will only be recouped once the asset has been sold.

The *Explanatory Memorandum on the Taxation Laws Amendment Bill, 2019* provides the basis for the insertion of section 8(4)(k)(iv) as follows:²²

“Currently, paragraph 12(2)(c) of the Eighth Schedule to the Act triggers a deemed disposal for capital gains tax purposes when an asset which was not held as trading stock commences to be held as trading stock. However, there is no similar deemed disposal and reacquisition rules in the recoupment provisions in section 8(4)(k) of the Act for allowance assets to trigger a recoupment of previous allowances.”

Section 8(4)(k) only deems the asset to be sold at market value and does not regulate the recoupment or the amount thereof. The latter is regulated under section 8(4)(a).

The Supreme Court of Appeal in *C:SARS v Kluh Investments (Pty) Ltd*²³ explained the meaning of the word “deemed” with reference to what was held in *Chotabhai v Minister of Justice and Registrar of Asiatics* 1911 AD 13 at 59 –

“. . . when it is said that a thing is to be deemed to be something, it is not meant to say that it is that which it is deemed to be. It is rather an admission that it is not that which it is deemed to be, and notwithstanding it is not that particular thing, nevertheless, for the purposes of the Act, it is deemed to be that thing.”

²² Sub-clause (d) of Clause 6 of the *Explanatory Memorandum on the Taxation Laws Amendment Bill, 2019*.

²³ 2016 (4) SA 580 (SCA) at paragraph 15.

After 15 January 2020 both, capital gains tax and income tax implications arise as a consequence of the deemed disposal when a taxpayer commences to hold an asset as trading stock which was previously not held as trading stock. The tax implications are as follows:

- The disposal is deemed to occur for CGT purposes immediately before the day the deemed disposal is triggered.²⁴
- The taxpayer is deemed to have disposed of the asset for an amount received or accrued equal to the market value of the asset at the time of the event and on the same day thereafter to have immediately reacquired the asset at an expenditure equal to its market value (see 4.7).²⁵
- A recoupment of amounts previously granted as a deduction is triggered under section 8(4)(k)(iv) read with section 8(4)(a).

Example 2 – An allowance asset commenced to be held as trading stock on or after 15 January 2020

Facts:

Company X purchased a machine for R100 000 on 1 March 2016 and for the next four years claimed as a deduction capital allowances totalling R80 000. On 16 January 2020, Company X ceased to hold the machine as a capital asset and commenced to hold it as trading stock. The market value of the machine on 16 January 2020 was R110 000. Company X year of assessment ends on 31 January and at this date the machine comprised trading stock held and not disposed of.

Result:

	R
Cost of machine	100 000
Less: Capital allowances	<u>(80 000)</u>
Tax value/ base cost	<u>20 000</u>

Recoupment

Deemed proceeds [section 8(4)(k)]	110 000
Less: Tax value	<u>(20 000)</u>
Profit on disposal of machine	<u>90 000</u>

The profit on the disposal of the machine of R90 000 comprises a recoupment of capital allowances of R80 000 under section 8(4)(k)(iv) and a capital gain of R10 000. The recoupment is limited to the capital allowances claimed as a deduction of R80 000.

CGT²⁶

	R
Deemed consideration [paragraph 12(1)]	110 000
Less: Recoupment under section [8(4)(k)(iv)]	<u>(80 000)</u>
Proceeds under paragraph 35	30 000
Less: Base cost	<u>(20 000)</u>
Capital gain	<u>10 000</u>

²⁴ Paragraph 13(1)(g).

²⁵ Section 8(4)(k).

²⁶ See the *Comprehensive Guide to Capital Gains Tax*, for discussion of the mechanics of CGT.

Trading stock

Opening stock (2020 year of assessment)	(110 000)
Closing stock (2020 year of assessment)	110 000
Opening stock (2021 year of assessment)	(110 000)

The machine is deemed to be disposed of for proceeds equal to its market value of R110 000 on 16 January 2020.²⁷ The machine constituted trading stock, after it was transferred to the sales division. Section 22(3)(a)(ii) deems Company X to have reacquired the machine as trading stock at its market value of R110 000 and as it did not for comprise trading stock held at the immediately preceding year of assessment it is included in opening stock in the 2020 year of assessment under section 22(2)(b). As the machine comprised trading stock held and not disposed of it is included in closing stock in the 2020 year of assessment and opening stock in the 2021 year of assessment. Company X must include in income the allowances claimed of R80 000 in the 2020 year of assessment during which the machine commenced to be held as trading stock.²⁸

4.7 “Market value”

For purposes of recovery or recoupment under section 8(4)(a) (see 4.1), a taxpayer is deemed under section 8(4)(k)(iv) to have disposed of the asset for an amount equal to its market value on the date the asset commenced to be held as trading stock. The term “market value” is generally accepted as the price which could be obtained between a willing buyer and a willing seller dealing at arm’s length in an open market. The phrase “acting at arm’s length” was considered in *Hicklin v SIR* where Trollip JA stated the following:²⁹

“For ‘dealing at arms’ length’ is a useful and often easily determinable premise from which to start the inquiry. It connotes that each party is independent of the other and, in so dealing, will strive to get the utmost possible advantage out of the transaction for himself. ... Hence, in an at arms’ length agreement the rights and obligations it creates are more likely to be regarded as normal than abnormal”

The principle to be drawn from the above is that for a transaction to be considered to have been concluded at “market value”, the parties to the transaction must have acted in a manner to achieve the utmost possible benefit from the transaction. The above principle therefore applies to section 8(4)(k)(iv) where an asset which was previously not used as trading stock, is commenced to be held as trading stock.

The taxpayer bears the onus to prove the market value of an asset.

²⁷ Section 8(4)(k).

²⁸ Section 8(4)(k)(iv) read with section 8(4)(a).

²⁹ [1980] 1 All SA 301 (A) at 311-312.

5. Exclusions

Certain amounts that have been recovered or recouped are excluded from inclusion in the income of the taxpayer and these circumstances arise when the amount is –

- included in the income of such taxpayer under paragraph (jA) of the definition of “gross income”;³⁰
- applied to reduce any cost or expenditure incurred by such taxpayer under section 19;³¹ or
- previously taken into account as an amount that is deemed to have been recovered or recouped under section 19(4), (5) or (6).³²

Only the exclusion under paragraph (jA) of the definition of “gross income” is relevant for purposes of section 8(4)(k)(iv). Paragraph (i) of the proviso to section 8(4)(a) excludes from recoupment any amount included in gross income under paragraph (jA). This exclusion ensures that when the assets are sold, the amount received or accrued on disposal is subject to tax only once.³³ Section 8(4)(k)(iv) therefore does not apply to an asset previously not held as trading stock that was 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. The effect of the exclusion from recoupment under section 8(4)(a) is to prevent the recoupment of the allowances and deductions being included in income when the asset is sold as the proceeds from its disposal is required to be included in gross income under paragraph (jA).

Example 3 – Excluded from recoupment paragraph (jA) assets

Facts:

Company X carries on the trade of manufacturing motor vehicles which it sells to motor vehicle dealers. Some of the motor vehicles manufactured are used by Company X’s sales personal in the ordinary course of its trade. It is the policy of Company X to dispose of the motor vehicles used by its sales personal after a year’s use. Company X claimed as a deduction in the year of assessment the cost incurred to manufacture these vehicles.

Result:

All the motor vehicles manufactured by Company X comprise trading stock under paragraph (a)(ii) of the definition of “trading stock” irrespective of the fact that some of the vehicles were used by it in the ordinary course of its trade before disposal. The proceeds from the disposal of the motor vehicles used in the ordinary course of its trade will constitute gross income under paragraph (jA) when these vehicles are disposed of. Therefore, the expenditure incurred to manufacture these vehicles which has been claimed as a deduction would be excluded from recoupment under proviso (i) to section 8(4)(a).

³⁰ Section 8(4)(a)(i).

³¹ Section 8(4)(a)(ii).

³² Section 8(4)(a)(iii).

³³ See Interpretation Note 11 “Trading Stock: Assets not used as Trading Stock”.

6. Conclusion

Section 8(4)(a) provides for the recoupment of all amounts granted as deduction or set off under certain provisions of the Act when an asset is disposed of or where an expense is otherwise recovered. There is, however, no disposal of an asset when a taxpayer changes its intention from holding an asset on capital account to trading stock. Section 8(4)(k)(i)-(iii), however, provide for a deemed disposal of the asset under certain circumstances.

With effect from 15 January 2020 section 8(4)(k) was amended by the insertion of subparagraph (iv) to make provision for the recoupment of amounts previously granted as a deduction where any person commenced to hold an allowance asset as trading stock which was previously not held as trading stock. The purpose of the amendment is to recoup the allowances in the year of assessment when the asset is commenced to be held as trading stock. Section 8(4)(k)(iv) only applies to the amounts stipulated under section 8(4)(a).

Amounts under any of the sections listed in section 8(4)(a) that have subsequently been recovered or recouped shall not be included in the taxpayer's income and includes any such amount so recovered or recouped which has been –

- included in gross income under paragraph (jA) of the definition of “gross income”;³⁴
- applied to reduce any cost or expenditure incurred by such taxpayer under a concession or compromise in respect of a debt;³⁵ or
- previously taken into account as an amount that is deemed to have been recovered recouped under section 19(4), (5) or (6).³⁶

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³⁴ Section 8(4)(a)(i).

³⁵ Section 8(4)(a)(ii) read with section 19.

³⁶ Section 8(4)(a)(iii).

Annexure – The law**Section 1(1) – Definition of “trading stock”**

“trading stock”—

(a) includes—

- (i) everything 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 Eighth 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) does not include—

- (i) a foreign currency option contract; or
- (ii) a forward exchange contract,

as defined in section 24I(1);

Section 8(4)(a)

(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) or (6).

Section 8(4)(k)

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

- (i)
- (ii)
- (iii)

- (iv) commenced to hold any asset as trading stock which was previously not held as trading stock,

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 or disposal.

Section 22(3)(a)

(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)
- (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)

The Eighth Schedule – Paragraph 12(2)(c)

(2) Subparagraph (1) applies, in the case of—

- (a)
- (b)
- (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;

The Eighth Schedule – Paragraph 35(3)(a)

(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;