

(5 January 2023 – to date)

[This is the **current** version and applies as from **5 January 2023**, i.e. the date of promulgation of the Tax Administration Laws Amendment Act 16 of 2022 – **to date**]

ESTATE DUTY ACT 45 OF 1955

(Gazette No. 5494, Notice No. 1247, dated 17 June 1955. Commencement date: **1 April 1955**)

As amended by:

*Finance Act 59 of 1956 – Government Notice 1067 in Government Gazette 5700, dated 19 June 1956.
Commencement date: 19 June 1956.*

Estate Duty Amendment Act 59 of 1957 – Government Notice 924 in Government Gazette 5893, dated 26 June 1957. Commencement date: 1 April 1957 (unless otherwise indicated).

Estate Duty Amendment Act 65 of 1960 – Government Notice 767 in Government Gazette 6462, dated 1 June 1960. Commencement date: 1 June 1960 (unless otherwise indicated).

Revenue Laws Amendment Act 71 of 1961 – Government Notice 195 in Government Gazette 31, dated 5 July 1961. Commencement date of Part III: 1 April 1961.

*Finance Act 77 of 1962 – Government Notice 1036 in Government Gazette 280, dated 29 June 1962.
Commencement date: 29 June 1962.*

Revenue Laws Amendment Act 77 of 1964 – Government Notice 968 in Government Gazette 839, dated 1 July 1964. Commencement date: 1 July 1964 (unless otherwise indicated).

Revenue Laws Amendment Act 81 of 1965 – Government Notice 958 in Government Gazette 1163, dated 30 June 1965. Commencement date: 30 June 1965 (unless otherwise indicated).

Revenue Laws Amendment Act 56 of 1966 – Government Notice 1713 in Government Gazette 1577, dated 28 October 1966. Commencement date: 28 October 1966 (unless otherwise indicated).

Revenue Laws Amendment Act 94 of 1967 – Government Notice 945 in Government Gazette 1777, dated 28 June 1967. Commencement date: 28 June 1967 (unless otherwise indicated).

Estate Duty Amendment Act 75 of 1968 – Government Notice 1162 in Government Gazette 2119, dated 5 July 1968. Commencement date of section 1: 27 March 1968.

Prepared by:

Revenue Laws Amendment Act 92 of 1971 – Government Notice 1227 in Government Gazette 3208, dated 16 July 1971. Commencement date: 16 July 1971 (unless otherwise indicated).

Revenue Laws Amendment Act 89 of 1972 – Government Notice 1124 in Government Gazette 3592, dated 28 June 1972. Commencement date: 28 June 1972 (unless otherwise indicated).

Revenue Laws Amendment Act 70 of 1975 – Government Notice 1375 in Government Gazette 4798, dated 23 July 1975. Commencement date: 23 July 1975 (unless otherwise indicated).

Revenue Laws Amendment Act 104 of 1976 – Government Notice 1155 in Government Gazette 5201, dated 9 July 1976. Commencement date: 9 July 1976 (unless otherwise indicated).

Revenue Laws Amendment Act 114 of 1977 – Government Notice 1356 in Government Gazette 5666, dated 29 July 1977. Commencement date: 29 July 1977 (unless otherwise indicated).

Revenue Laws Amendment Act 95 of 1978 – Government Notice 1304 in Government Gazette 6077, dated 23 June 1978. Commencement date: 23 June 1978 (unless otherwise indicated).

Revenue Laws Amendment Act 102 of 1979 – Government Notice 1530 in Government Gazette 6567, dated 13 July 1979. Commencement date: 13 July 1979 (unless otherwise indicated).

Revenue Laws Amendment Act 106 of 1980 – Government Notice 1529 in Government Gazette 7154, dated 1 August 1980. Commencement date: 1 August 1980 (unless otherwise indicated).

Revenue Laws Amendment Act 99 of 1981 – Government Notice 2342 in Government Gazette 7879, dated 6 November 1981. Commencement date: 6 November 1981 (unless otherwise indicated).

Revenue Laws Amendment Act 92 of 1983 – Government Notice 1519 in Government Gazette 8805, dated 13 July 1983. Commencement date: 13 July 1983 (unless otherwise indicated).

Revenue Laws Amendment Act 81 of 1985 – Government Notice 1619 in Government Gazette 9851, dated 24 July 1985. Commencement date: 24 July 1985 (unless otherwise indicated).

Revenue Laws Amendment Act 71 of 1986 – Government Notice 1420 in Government Gazette 10332, dated 4 July 1986. Commencement date: 4 July 1986 (unless otherwise indicated).

Transfer of Powers and Duties of the State President Act 97 of 1986 – Government Notice 1909 in Government Gazette 10438, dated 12 September 1986. Commencement date: 3 October 1986 [Proc. No. 185, Gazette No. 10475, dated 3 October 1986]

Taxation Laws Amendment Act 86 of 1987 – Government Notice 2299 in Government Gazette 10978, dated 14 October 1987. Commencement date: 14 October 1987 (unless otherwise indicated).

Taxation Laws Amendment Act 87 of 1988 – Government Notice 1392 in Government Gazette 11409, dated 13 July 1988. Commencement date: 13 July 1988 (unless otherwise indicated).

Taxation Laws Amendment Act 136 of 1991 – Government Notice 1662 in Government Gazette 13412, dated 17 July 1991. Commencement date: 17 July 1991.

Taxation Laws Amendment Act 97 of 1993 – Government Notice 1193 in Government Gazette 14936, dated 9 July 1993. Commencement date: 9 July 1993 (unless otherwise indicated).

Revenue Laws Amendment Act 140 of 1993 – Government Notice 1859 in Government Gazette 15167, dated 13 October 1993. Commencement date: 13 October 1993 (unless otherwise indicated).

Taxation Laws Amendment Act 20 of 1994 – Government Notice 2009 in Government Gazette 16104, dated 25 November 1994. Commencement date: 25 November 1994 (unless otherwise indicated).

Taxation Laws Amendment Act 37 of 1995 – Government Notice 1052 in Government Gazette 16546, dated 19 July 1995. Commencement date: 19 July 1995.

Taxation Laws Amendment Act 37 of 1996 – Government Notice 1102 in Government Gazette 17311, dated 3 July 1996. Commencement date: 3 July 1996 (unless otherwise indicated).

Revenue Laws Amendment Act 46 of 1996 – Government Notice 1586 in Government Gazette 17463, dated 30 September 1996. Commencement date: 30 September 1996.

Abolition of Restrictions on the Jurisdiction of Courts Act 88 of 1996 – Government Notice 1888 in Government Gazette 17599, dated 22 November 1996. Commencement date: 22 November 1996.

Taxation Laws Amendment Act 27 of 1997 – Government Notice 916 in Government Gazette 18113, dated 4 July 1997. Commencement date: 4 July 1997.

South African Revenue Service Act 34 of 1997 – Government Notice 1165 in Government Gazette 18257, dated 5 September 1997. Commencement date: 1 October 1997 [Proc. No. R67, Gazette No. 18338, dated 1 October 1997].

Taxation Laws Amendment Act 30 of 1998 – Government Notice 884 in Government Gazette 19013, dated 29 June 1998. Commencement date: 29 June 1998 (unless otherwise indicated).

Revenue Laws Amendment Act 53 of 1999 – Government Notice 1404 in Government Gazette 20656, dated 24 November 1999. Commencement date: 24 November 1999.

Taxation Laws Amendment Act 30 of 2000 – Government Notice 744 in Government Gazette 21390, dated 19 July 2000. Commencement date: 19 July 2000 (unless otherwise indicated).

Revenue Laws Amendment Act 59 of 2000 – Government Notice 1320 in Government Gazette 21848, dated 6 December 2000. Commencement date: 1 January 2001.

Taxation Laws Amendment Act 5 of 2001 – Government Notice 550 in Government Gazette 22389, dated 20 June 2001. Commencement date: 20 June 2001 (unless otherwise indicated).

Revenue Laws Amendment Act 19 of 2001 – Government Notice 709 in Government Gazette 22532, dated 27 July 2001. Commencement date: 27 July 2001.

Second Revenue Laws Amendment Act 60 of 2001 – Government Notice 1333 in Government Gazette 22923, dated 12 December 2001. Commencement date: 12 December 2001 (unless otherwise indicated).

Taxation Laws Amendment Act 30 of 2002 – Government Notice 1047 in Government Gazette 23709, dated 5 August 2002. Commencement date: 5 August 2002 (unless otherwise indicated).

Revenue Laws Amendment Act 74 of 2002 – Government Notice 1581 in Government Gazette 24181, dated 13 December 2002. Commencement date: 13 December 2002 (unless otherwise indicated).

Revenue Laws Amendment Act 45 of 2003 – Government Notice 1844 in Government Gazette 25864, dated 22 December 2003. Commencement date: 22 December 2003.

Revenue Laws Amendment Act 31 of 2005 – Government Notice 102 in Government Gazette 28450, dated 1 February 2006. Commencement date: 1 February 2006 (unless otherwise indicated).

Revenue Laws Second Amendment Act 32 of 2005 – Government Notice 103 in Government Gazette 28451, dated 1 February 2006. Commencement date: 1 February 2006.

Small Business Tax Amnesty and Amendment of Taxation Laws Act 9 of 2006 – Government Notice 749 in Government Gazette 29068, dated 25 July 2006. Commencement date of section 17: 1 March 2006.

Revenue Laws Amendment Act 20 of 2006 – Government Notice 110 in Government Gazette 29603, dated 7 February 2007. Commencement date: 7 February 2007.

Revenue Laws Second Amendment Act 21 of 2006 – Government Notice 111 in Government Gazette 29604, dated 7 February 2007. Commencement date: 7 February 2007.

Taxation Laws Amendment Act 8 of 2007 – Government Notice 707 in Government Gazette 30157, dated 8 August 2007. Commencement date of section 1: 1 March 2007.

Revenue Laws Amendment Act 60 of 2008 – Government Notice 14 in Government Gazette 31781, dated 8 January 2009. Commencement date of section 2: 1 January 2009.

Revenue Laws Second Amendment Act 61 of 2008 – Government Notice 15 in Government Gazette 31782, dated 8 January 2009. Commencement date of section 1: 1 January 2009.

Taxation Laws Second Amendment Act 18 of 2009 – Government Notice 945 in Government Gazette 32611, dated 30 September 2009. Commencement date: 30 September 2009.

Taxation Laws Amendment Act 17 of 2009 – Government Notice 944 in Government Gazette 32610, dated 30 September 2009. Commencement date of section 5: 1 January 2010.

Taxation Laws Amendment Act 7 of 2010 – Government Notice 1024 in Government Gazette 33726, dated 2 November 2010. Commencement date of section 4: 1 January 2010.

Tax Administration Act 28 of 2011 – Government Notice 591 in Government Gazette 35491, dated 4 July 2012. Commencement date: 1 October 2012 (unless otherwise indicated) [Proc. No. 51, Gazette No. 35687, dated 14 September 2012].

Taxation Laws Amendment Act 31 of 2013 – Government Notice 1001 in Government Gazette 37158, dated 12 December 2013. Commencement date: 12 December 2013 (unless otherwise indicated).

Taxation Laws Amendment Act 25 of 2015 – Government Notice 22 in Government Gazette 39588 dated 8 January 2016. Commencement date of section 2(1): 1 January 2016.

Taxation Laws Amendment Act 15 of 2016 - Government Notice 40 in Government Gazette 40562 dated 19 January 2017. Commencement date: 19 January 2017 (unless otherwise indicated)

Tax Administration Laws Amendment Act 13 of 2017 – Government Notice 1450 in Government Gazette 41341, dated 18 December 2017. Commencement date: 18 December 2017.

Taxation Laws Amendment Act 17 of 2017 - Government Notice 1451 in Government Gazette 41342 dated 18 December 2017. Commencement date: 18 December 2017.

Rates and Monetary Amounts and Amendment of Revenue Laws Act 21 of 2018 – Government Notice 18 in Government Gazette 42171 dated 17 January 2019. Commencement date of section 1: 1 March 2018

Taxation Laws Amendment Act 34 of 2019 – Government Notice 21 in Government Gazette 42951 dated 15 January 2020. Commencement date: 15 January 2020, unless otherwise indicated

Taxation Laws Amendment Act 23 of 2020 - Government Notice 25 in Government Gazette 44083 dated 20 January 2021. The amendment to the Estate Duty Act by this Act is deemed to have come into operation on 30 October 2019.

Tax Administration Laws Amendment Act 24 of 2020 - Government Notice 22 in Government Gazette 44080 dated 20 January 2021. Commencement date: 20 January 2021.

Tax Laws Amendment Act 20 of 2021 - Government Notice 770 in Government Gazette 45787 dated 19 January 2022. Commencement date: 19 January 2022.

Tax Administration Laws Amendment Act 21 of 2021 - Government Notice 771 in Government Gazette 45788 dated 19 January 2022. Commencement date: 19 January 2022.

Tax Administration Laws Amendment Act 16 of 2022 - Government Notice 1542 in Government Gazette 47827 dated 5 January 2023. Commencement date: 5 January 2023 – unless otherwise indicated.

*(English text signed by the Governor-General)
(Assented to 15th June, 1955)*

ACT

Note:

The Act has been amended by section 15 of Act 77 of 1964 by –

- (a) the substitution for the words "Commissioner" and "Commissioner's", wherever they are used to denote the head of the Department of Inland Revenue, of the words "Secretary" and "Secretary's" respectively;*
- (b) the substitution for the word "Governor-General" wherever it occurs of the words "State President"; and*
- (c) the substitution for the expression "the Union" wherever it occurs of the expression "the Republic".*

Note:

The Act has been amended by section 14(1) of Act 106 of 1980 with effect from 1 April 1980 by the substitution for the words "Secretary" and "Secretary's", wherever they are used with reference to the Secretary as defined in section 1(1) of the Act immediately prior to the amendment of that section by section 9 of Act 106 of 1980, of the words "Commissioner" or "Commissioner's".

To impose an estate duty upon the estates of deceased persons, to repeal the Death Duties Act, 1922, and to provide for matters incidental thereto.

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First Schedule. RATES OF ESTATE DUTY.

Second Schedule. LAWS REPEALED.

1. Definitions

(1) In this Act and in any regulations made thereunder, unless the context otherwise indicates -

"administration and distribution account"

(Definition of "administration and distribution account" deleted by section 3(a) of Act 92 of 1971)

"child", in relation to any person, includes any person adopted by him –

(a) under any 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

(Definition of "child" inserted by section 7(a) of Act 77 of 1964)

(Definition of "child" amended by section 5 of Act 86 of 1987)

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

(Definition of "close corporation" inserted by section 6(a) of Act 97 of 1993)

"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;

(Definition of "Commissioner" deleted by section 7(b) of Act 77 of 1964)

(Definition of "Commissioner" inserted by section 9(1)(a) of Act 106 of 1980 with effect from 1 April 1980)

(Definition of "Commissioner" substituted by section 34 of Act 34 of 1997)

(Definition of "Commissioner" substituted by section 271 of Act 28 of 2011)

"company" includes any association incorporated or registered under any law in force in the Republic and any association which, although not so incorporated or registered, carries on business or has an office or place of business or maintains a share transfer register in the Republic;

"domestic policy" means any life policy as defined in section 1 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), issued anywhere upon an application made or presented to a representative of an insurer (or to any person on behalf of such a representative) at any place in the Republic, excluding a life policy which has been made payable at a place outside the Republic at the request of the owner,

but including any life policy issued outside the Republic which has subsequently been made payable in the Republic at the request of the owner;

(Definition of "domestic policy" inserted by section 6 of Act 30 of 2000)

"duty" means estate duty payable under this Act;

(Definition of "duty" amended by section 1(1)(a) of Act 65 of 1960 with effect from 1 April 1960)

(Definition of "duty" substituted by section 3(b) of Act 92 of 1971)

"executor" means any person to whom letters of administration or of executorship have been granted by a Master in respect of the estate of a deceased person under any law relating to the administration of estates, or whose appointment as assumed executor of such an estate has been endorsed by a Master under such law, or who liquidates or distributes such an estate in pursuance of a direction of a Master, and includes a person acting or authorized to act under letters of administration or of executorship granted outside the Republic but signed and sealed by a Master for use within the Republic and, in any case where the estate is not required to be administered under the supervision of the Master, the person administering the estate;

(Definition of "executor" substituted by section 3(c) of Act 92 of 1971)

"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;

(Definition of "fair market value" inserted by section 1(a) of Act 59 of 1957)

(Definition of "fair market value" amended by section 1(1)(b) of Act 65 of 1960)

(Definition of "fair market value" amended by section 7(1) of Act 87 of 1988 with effect from 16 March 1988)

(Definition of "fair market value" substituted by section 1(1)(a) of Act 32 of 2005)

"family company", in relation to a deceased person, means any company (other than a company whose shares are quoted on a recognized stock exchange) which at any relevant time was controlled or capable of being controlled directly or indirectly, whether through a majority of the shares thereof or any other interest therein or in any other manner whatsoever, by the deceased or by the deceased and one or more of his relatives;

(Definition of "family company" inserted by section 7(c) of Act 77 of 1964)

(Definition of "family company" deleted by section 6(b) of Act 97 of 1993)

(Definition of "family company" inserted by section 2(1) of Act 97 of 1993 with effect from 9 July 1993)

“liquidation and distribution account” means the account required to be rendered by an executor to a Master in accordance with section 35 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), or where the provisions of section 68 of the Administration of Estates Act, 1913 (Act No. 24 of 1913), apply, the account required to be rendered by an executor to a Master in accordance with the last-mentioned section;

(Definition of “liquidation and distribution account” inserted by section 3(d) of Act 92 of 1971)

“Master” in relation to any matter, property or estate, means the Master or Assistant Master of the High Court appointed under the Administration of Estates Act, 1965, who has jurisdiction in respect of that matter, property or estate;

(Definition of “Master” amended by section 3(e) of Act 92 of 1971)

(Definition of “Master” amended by section 5 of Act 27 of 1997)

“relative”, in relation to any person, means the spouse of such person or anybody related to him or his 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 sub-section and any other person, such child shall be deemed to be related to its adoptive parent in the first degree of consanguinity;

(Definition of “relative” inserted by section 7(d) of Act 77 of 1964)

“Secretary”

(Definition of “Secretary” inserted by section 7(d) of Act 77 of 1964)

(Definition of “Secretary” deleted by section 9(1)(b) of Act 106 of 1980 with effect from 1 April 1980)

“South African Revenue Service” means the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997;

(Definition of “South African Revenue Service” inserted by section 34 of Act 34 of 1997)

“spouse”, in relation to any deceased person, includes a person who at the time of death of such deceased person was 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 the Commissioner is satisfied is intended to be permanent:

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 without community of property.

(Definition of “spouse” inserted by section 1 of Act 59 of 2000 with effect from 27 April 1994)

(Definition of “spouse” amended by section 3 of Act 5 of 2001)

"stocks or shares" in relation to any company means any part of the share capital or members' interest of that company and includes any debenture, debenture stock or any other like form of marketable security.

(Definition of "stocks or shares" substituted by section 6(c) of Act 97 of 1993)

"Tax Administration Act", means the Tax Administration Act, 2011.

(Definition of "Tax Administration Act" inserted by section 271 of Act 28 of 2011)

(Section 1 renumbered to 1(1) by section 1(b) of Act 59 of 1957)

(Section 1 renumbered to 1(1) by section 271 of Act 28 of 2011)

- (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.

(Section 1(2) added by section 1(b) of Act 59 of 1957)

(Section 1(2) amended by section 1(1)(c) of Act 65 of 1960)

(Section 1(2) amended by section 3(g) of Act 92 of 1971)

(Section 1(2) amended by section 8 of Act 88 of 1996)

(Section 1(2) deleted by section 1(1)(b) of Act 32 of 2005)

(Section 1(2) inserted by section 271 of Act 28 of 2011)

2. Levy of estate duty

- (1) There shall be charged, levied and collected in respect of the estate of every person who dies on or after the first day of April, 1955, a duty to be known as an estate duty.

- (2) Estate duty shall be charged upon the dutiable amount of the estate calculated in accordance with the provisions of this Act, and shall be levied at the rate set out in the First Schedule.

(Section 2(2) amended by section 8(1) of Act 87 of 1988 with effect from 16 March 1988)

3. What constitutes an estate

- (1) For the purposes of this Act the estate of any person shall consist of all property of that person as at the date of his death and of all property which in accordance with this Act is deemed to be property of that person at that date.

- (2) "Property" means any right in or to property, movable or immovable, corporeal or incorporeal, and includes -

- (a) any fiduciary, usufructuary or other like interest in property (including a right to an annuity charged upon property) held by the deceased immediately prior to his death;

- (b) any right to an annuity (other than a right to an annuity charged upon any property) enjoyed by the deceased immediately prior to his death which accrued to some other person on the death of the deceased,

(bA)

(Section 3(2)(bA) inserted by section 2(1) of Act 25 of 2015 and comes into operation on 1 January 2016 and applies in respect of the estate of a person who dies on or after that date in respect of contributions made on or after 1 March 2015.)

(Section 3(2)(bA) substituted by section 1(1) of Act 17 of 2017, which amendment is deemed to have come into operation on 1 March 2016)

(Section 3(2)(bA) substituted by section 1(1) of Act 34 of 2019, which amendment is deemed to have come into operation on 30 October 2019)

*(Section 3(2)(bA) deleted by section 1(1)(a) of Act 23 of 2020, and is deemed to have come into operation on **30 October 2019** and applies in respect of - (a) the estate of a person who dies on or after that date; and (b) any contributions made on or after 1 March 2016)*

but does not include -

- (c) in the case of a deceased who was not ordinarily resident in the Republic at the date of his death, any right in immovable property situate outside the Republic;

(Section 3(2)(c) substituted by section 2(a) of Act 65 of 1960)

- (d) any right in movable property physically situate outside the Republic if the deceased was not ordinarily resident in the Republic at the date of his death;

(Section 3(2)(d) amended by section 2(b) of Act 65 of 1960)

- (e) any debt not recoverable or right of action not enforceable in the Courts of the Republic if the deceased was not ordinarily resident in the Republic at the date of his death;

(Section 3(2)(e) substituted by section 2(c) of Act 65 of 1960)

- (f) any goodwill, licence, patent, design, trade mark, copyright or other similar right not registered or enforceable in the Republic or attaching to any trade, business or profession in the Republic if the deceased was not ordinarily resident in the Republic at the date of his death;

(Section 3(2)(f) amended by section 2(d) of Act 65 of 1960)

- (g) in the case of a deceased who was not ordinarily resident in the Republic at the date of his death

—

- (i) any stocks or shares held by him in a body corporate which is not a company; and

- (ii) any stocks or shares held by him in a company, provided any transfer whereby any change of ownership in such stocks or shares is recorded is not required to be registered in the Republic;

(Section 3(2)(g) substituted by section 2(e) of Act 65 of 1960)

- (h) any rights to any income produced by or proceeds derived from any property referred to in paragraph (e), (f) or (g).
- (i) so much of any benefit which is due and payable by, or in consequence of membership or past membership of, any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as defined in the Income Tax Act, 1962 (Act No. 58 of 1962), on or as a result of the death of the deceased.

(Section 3(2)(i) added by section 2(1)(a) of Act 60 of 2008)

(3) Property which is deemed to be property of the deceased includes-

- (a) so much of any amount due and recoverable under any policy of insurance which is a 'domestic policy', upon the life of the deceased as exceeds the aggregate amount of any premiums or consideration proved to the satisfaction of the Commissioner to have been paid by any person who is entitled to the amount due under the policy, together with interest at six per cent per annum calculated upon such premiums or consideration from the date of payment to the date of death: Provided that the foregoing provisions of this paragraph shall not apply in respect of any amount due and recoverable under a policy of insurance, if –

- (i) the amount due under such policy is recoverable by the surviving spouse or child of the deceased under a duly registered ante-nuptial or post-nuptial contract; or

- (iA) the Commissioner is satisfied that the policy was taken out or acquired by a person who on the date of death of the deceased was a partner of the deceased, or held any share or like interest in a company in which the deceased on that date held any share or like interest, for the purpose of enabling that person to acquire the whole or part of-

- (aa) the deceased's interest in the partnership concerned; or

- (bb) the deceased's share or like interest in that company and any claim by the deceased against that company,

and that no premium on the policy was paid or borne by the deceased; or

(Section 3(3)(a)(iA) inserted by section 2(1)(a) of Act 92 of 1983 with effect from 1 July 1983)

(Section 3(3)(a)(iA) substituted by section 4(1)(a) of Act 81 of 1985 with effect from 1 January 1985)

- (ii) except where the provisions of paragraph (i) or (iA) of this proviso apply, the Commissioner is satisfied and remains satisfied that such policy was not effected by or at the instance of

the deceased, that no premium on such policy was paid or borne by the deceased, that no amount due or recoverable under such policy has been or will be paid into the estate of the deceased and that no such amount has been or will be paid to, or utilized for the benefit of, any relative of the deceased or any person who was wholly or partly dependent for his maintenance upon the deceased or any company which was at any time a family company in relation to the deceased;

(Section 3(3)(a)(ii) amended by section 2(1)(b) of Act 92 of 1983 with effect from 1 July 1983)

(Section 3(3)(a) amended by section 2(1)(a) of Act 81 of 1965)

(Section 3(3)(a) substituted by section 4(a) of Act 92 of 1971 with effect from 1 April 1971)

(Section 3(3)(a) amended by section 7 of Act 30 of 2000)

(a)*bis*

*(Section 3(3)(a)*bis* inserted by section 2(1)(b) of Act 81 of 1965 with effect from 24 March 1965)*

*(Section 3(3)(a)*bis* substituted by section 3(1) of Act 102 of 1979 with effect from 1 April 1979)*

*(Section 3(3)(a)*bis* substituted by section 10(1) of Act 106 of 1980 with effect from 1 April 1979)*

*(Section 3(3)(a)*bis* substituted by section 2(1)(c) of Act 92 of 1983 with effect from 1 July 1983)*

*(Section 3(3)(a)*bis* amended by section 6 of Act 27 of 1997)*

*(Section 3(3)(a)*bis* substituted by section 13 of Act 30 of 1998)*

*(Section 3(3)(a)*bis* deleted by section 2(1)(b) of Act 60 of 2008)*

(b) any property donated by the deceased in terms of a donation which was exempt from donations tax under section 56(1)(c) or (d) of the Income Tax Act, 1962 (Act No. 58 of 1962), if that property is not otherwise included as property of the deceased for purposes of this Act;

(Section 3(3)(b) substituted by section 5(1) of Act 31 of 2005 with effect from 8 November 2005)

(c)

(Section 3(3)(c) amended by section 8 of Act 77 of 1964)

(Section 3(3)(c) amended by section 3 of Act 89 of 1972 with effect from 1 April 1971)

(Section 3(3)(c) amended by section 4(1)(b) of Act 81 of 1985 with effect from 1 November 1984)

(Section 3(3)(c) deleted by section 9(1)(a) of Act 87 of 1988 with effect from 16 March 1988)

(cA) the amount of any claim acquired by the estate of the deceased under section 3 of the Matrimonial Property Act, 1984, against the deceased's spouse or the estate of his deceased spouse, in respect of any accrual contemplated in that section;

(Section 3(3)(cA) inserted by section 4(1)(c) of Act 81 of 1985 with effect from 1 November 1984)

(cB)

(Section 3(3)(cB) inserted by section 9(1)(b) of Act 87 of 1988 with effect from 16 March 1988)

(Section 3(3)(cB) deleted by section 7(a) of Act 97 of 1993)

- (d) property (being property not otherwise chargeable under this Act or the full value of which is not otherwise required to be taken into account in the determination of the dutiable amount of the estate) of which the deceased was immediately prior to his death competent to dispose for his own benefit or for the benefit of his estate.

(Section 3(3)(d) substituted by section 2(f) of Act 65 of 1960)

- (e) so much of the amount of any contribution made by the deceased in consequence of membership or past membership of any pension fund, provident fund, or retirement annuity fund, as was allowed as a deduction in terms of paragraph 5 of the Second Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), to determine the taxable portion of the lump sum benefit that is deemed to have accrued to the deceased immediately prior to his or her death.

(Section 3(3)(e) added by section 1(1)(b) of Act 23 of 2020, and is deemed to have come into operation on 30 October 2019 and applies in respect of - (a) the estate of a person who dies on or after that date; and (b) any contributions made on or after 1 March 2016)

- (4)

(Section 3(4) amended by section 8(c) of Act 77 of 1964)

(Section 3(4) amended by section 4(b) of Act 92 of 1971 with effect from 1 April 1971)

(Section 3(4) substituted by section 9(1)(c) of Act 87 of 1988 with effect from 16 March 1988)

(Section 3(4) deleted by section 7(b) of Act 97 of 1993)

- (5) For purposes of paragraph (d) of sub-section (3) –

- (a) the term 'property' shall be deemed to include the profits of any property;
- (b) a person shall be deemed to have been competent to dispose of any property –
- (i) if he had such power as would have enabled him, if he were *sui iuris*, to appropriate or dispose of such property as he saw fit whether exercisable by will, power of appointment or in any other manner;
- (ii) if under any deed of donation, settlement, trust or other disposition made by him he retained the power to revoke or vary the provisions thereof relating to such property;
- (c) the power to appropriate, dispose, revoke or vary contemplated in paragraph (b) shall be deemed to exist if the deceased could have obtained such power directly or indirectly by the exercise, either with or without notice, of power exercisable by him or with his consent;
- (d) the expression 'property of which the deceased was immediately prior to his death competent to dispose' shall not include the share of a spouse of a deceased in any property held in community of property between the deceased and such spouse immediately prior to his death.

(Section 3(5) inserted by section 2(g) of Act 65 of 1960)

4. Net value of an estate

(Heading substituted by section 5(1)(a) of Act 92 of 1971 with effect from 1 April 1971)

The net value of any estate shall be determined by making the following deductions from the total value of all property included therein in accordance with section 3, that is to say -

(Words preceding paragraph (a) substituted by section 5(1)(a) of Act 92 of 1971 with effect from 1 April 1971)

- (a) so much of the funeral, tombstone and death-bed expenses of the deceased which the Commissioner considers to be fair and reasonable;

(Section 4(a) substituted by section 8(1)(a) of Act 97 of 1993)

- (b) all debts due by the deceased to persons ordinarily resident within the Republic (other than any debt which constitutes a claim by such a person to property donated by the deceased in terms of a donation which was exempt from donations tax under section 56(1)(c) or (d) of the Income Tax Act, 1962 (Act No. 58 of 1962)), which it is proved to the satisfaction of the Commissioner have been discharged from property included in the estate;

(Section 4(b) substituted by section 6(1)(a) of Act 31 of 2005 with effect from 8 November 2005)

- (c) all costs which have been allowed by the Master in the administration and liquidation of the estate, other than expenses incurred in the management and control of any income accruing to the estate after the date of death;

- (d) all expenditure incurred in carrying out the requirements of the Master or the Commissioner in pursuance of the provisions of this Act;

- (e) the amount included in the total value of all property of the deceased as representing the value of any right in or to property situate outside the Republic acquired by the deceased –

- (i) before he became ordinarily resident in the Republic for the first time; or

- (ii) after he became ordinarily resident in the Republic for the first time, by –

- (aa) 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

- (bb) inheritance from a person who at the date of his death was not ordinarily resident in the Republic; or

(Section 4(e)(ii) substituted by section 1(1)(a) of Act 104 of 1976 with effect from 1 April 1976)

- (iii) out of the profits and proceeds of any such property proved to the satisfaction of the Commissioner to have been acquired out of such profits or proceeds;

(Section 4(e) substituted by section 3 of Act 65 of 1960)

- (f) any debts due by the deceased to persons ordinarily resident outside the Republic (other than any debt which constitutes a claim by such a person to property donated by the deceased in terms of a donation which was exempt from donations tax under section 56(1)(c) or (d) of the Income Tax Act, 1962 (Act No. 58 of 1962)), which have been discharged from property included in the estate to the extent that the amount of such debts is proved to the satisfaction of the Commissioner to exceed the value of any assets of the deceased outside the Republic and not so included;

(Section 4(f) substituted by section 6(1)(b) of Act 31 of 2005 with effect from 8 November 2005)

- (g) the value of any interest included as property of the deceased under paragraph (a) of sub-section (2) of section three where such interest was held by the deceased by virtue of a donation to him by the person to whom the right of enjoyment of the property in which the deceased held the interest, accrues or, where the interest consists of a right to an annuity charged upon property, by the person who is the owner of that property;

- (h) the value of any property included in the estate which has not been allowed as a deduction under any other provision of this section which accrues or accrued to--

(Words preceding subparagraph (i) substituted by section 4(1)(a) of Act 30 of 2002)

(Words preceding subparagraph (i) substituted by section 5(1) of Act 74 of 2002 with effect from 5 August 2002)

- (i) any public benefit organisation which is exempt from tax in terms of section 10(1)(cN) of the Income Tax Act, 1962 (Act No. 58 of 1962); or

(Section 4(h)(i) substituted by section 8(1)(b) of Act 97 of 1993 with effect from 20 July 1993)

(Section 4(h)(i) substituted by section 8(1)(a) of Act 30 of 2000 with effect from 15 July 2001)

- (iA) any institution, board or body, which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act, 1962 (Act No. 58 of 1962), which has as its sole or principal object the carrying on of any public benefit activity contemplated in section 30 of that Act; or

(Section 4(h)(iA) inserted by section 4(1)(b) of Act 30 of 2002 with effect from 15 July 2001)

- (ii)

(Section 4(h)(ii) deleted by section 8(1)(b) of Act 30 of 2000 with effect from 15 July 2001)

- (iii) the State or any 'municipality' as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962); or

(Section 4(h)(iii) substituted by section 2 of Act 20 of 2006)

- (iv)

(Section 4(h)(iv) amended by section 3(1) of Act 20 of 1994 with effect from 20 July 1993)

(Section 4(h)(iv) amended by section 7(a) of Act 27 of 1997)

(Section 4(h)(iv) deleted by section 8(1)(b) of Act 30 of 2000 with effect from 15 July 2001)

(v)

(Section 4(h)(v) added by section 3(1) of Act 20 of 1994 with effect from 20 July 1993)

(Section 4(h)(v) deleted by section 7(b) of Act 27 of 1997)

(Section 4(h) amended by section 9(a) of Act 71 of 1961)

(Section 4(h) amended by section 3(1)(a) of Act 81 of 1965)

(Section 4(h) substituted by section 6(1)(a) of Act 86 of 1987 with effect from 1 November 1987)

(Section 4(h) substituted by section 10(1)(a) of Act 87 of 1988 and applies in respect of the estate of any person who died on or after 1 March 1982)

(i) the amount by which the value of any property included in the estate has been enhanced by any improvements made to the property concerned -

(i) at the expense of the person to whom such property accrues on the death of the deceased;
and

(ii) during the lifetime of the deceased and with his consent;

(j) the amount by which the value of any fiduciary, usufructuary or other like interest which ceased upon the death of the deceased has been enhanced by any improvements made to the property concerned -

(i) at the expense of the person to whom the benefit arising by reason of the cessation of such interest upon the death of the deceased, accrues; and

(ii) during the lifetime of the deceased and with his consent;

(k)

(Section 4(k) substituted by section 9(1)(a) of Act 77 of 1964 with effect from 16 March 1964)

(Section 4(k) substituted by section 3(1)(b) of Act 81 of 1965 with effect from 24 March 1965)

(Section 4(k) substituted by section 2(1)(a) of Act 94 of 1967 with effect from 23 March 1967)

(Section 4(k) substituted by section 2(1)(a) of Act 70 of 1975 with effect from 27 March 1975)

(Section 4(k) amended by section 4(1)(a) of Act 102 of 1979 with effect from 1 April 1979)

(Section 4(k) amended by section 11(1)(a) of Act 106 of 1980 with effect from 1 April 1980)

(Section 4(k) deleted by section 10(1)(b) of Act 87 of 1988 with effect from 16 March 1988)

(l)

(Section 4(l) added by section 2 of Act 59 of 1957)

(Section 4(l) substituted by section 9(b) of Act 71 of 1961)

(Section 4(l) substituted by section 9(1)(a) of Act 77 of 1964 with effect from 16 March 1964)

(Section 4(l) substituted by section 3(1)(c) of Act 81 of 1965 with effect from 1 February 1965)

(Section 4(l) substituted by section 2(1)(b) of Act 94 of 1967 with effect from 23 March 1967)

(Section 4(l) substituted by section 5(1)(b) of Act 92 of 1971 with effect from 1 April 1971)

(Section 4(l) substituted by section 2(1)(b) of Act 70 of 1975 with effect from 27 March 1975)

(Section 4(l) substituted by section 1(1)(b) of Act 104 of 1976 with effect from 1 April 1976)

(Section 4(k) amended by section 4(1)(b) of Act 102 of 1979 with effect from 1 April 1979)

(Section 4(l) amended by section 11(1)(b) of Act 106 of 1980 with effect from 1 April 1980)

(Section 4(l) amended by section 3(1) of Act 99 of 1981 with effect from 1 April 1980)

(Section 4(l) deleted by section 10(1)(c) of Act 87 of 1988 with effect from 16 March 1988)

- (lA) the amount of any claim against the estate acquired under section 3 of the Matrimonial Property Act, 1984 (Act No. 88 of 1984), by the surviving spouse of the deceased or by the estate of his deceased spouse, in respect of an accrual contemplated in that section;

(Section 4(lA) inserted by section 5(1)(a) of Act 81 of 1985 with effect from 1 November 1984)

- (m) the value of any usufructuary or other like interest in property and of any right to an annuity charged upon property, included as property of the deceased under section 3(2)(a), if such interest or right was created by a predeceased spouse of the deceased and -

- (i) the property over which the deceased enjoyed such interest or right formed part of the estate of such predeceased spouse; and

- (ii) no deduction in respect of the value of such interest or right was allowable in the determination of the net value of the estate of the predeceased spouse under the provisions of paragraph (q) of this section;

(Section 4(m)(ii) substituted by section 14 of Act 30 of 1998)

(Section 4(m) added by section 2 of Act 59 of 1957)

(Section 4(m) substituted by section 6(1)(b) of Act 86 of 1987 with effect from 1 November 1987)

(Section 4(m) substituted by section 10(1)(d) of Act 87 of 1988 with effect from 16 March 1988)

- (n)

(Section 4(n) added by section 2 of Act 59 of 1957)

(Section 4(n) deleted by section 10(1)(e) of Act 87 of 1988 with effect from 16 March 1988)

- (o) any amount included in the estate in respect of –

- (i) the value of books, pictures, statuary or other objects of art; or

- (ii) so much of the value of any shares in a body corporate as is attributable to such body's ownership of books, pictures, statuary or other objects of art;

if such books, pictures, statuary or other objects of art have been lent under a notarial deed to the government of the Republic in the national, provincial or local sphere for a period of not less than thirty years, and the deceased died during such period;

(Section 4(o) added by section 9(c) of Act 71 of 1961)

(Section 4(o) amended by section 10(1)(f) of Act 87 of 1988 with effect from 16 March 1988)

(Section 4(o) amended by section 3 of Act 31 of 2013)

- (p) so much of the value of any property deemed to be property of the deceased by virtue of the provisions of section 3(3) as has not been deducted under any of the other provisions of this section and as the Commissioner is satisfied has been taken into account under the provisions of section 5(1)(f)*bis* in the determination of the value of any company shares or a member's interest in a close corporation included as property in the estate;

(Section 4(p) added by section 9(1)(b) of Act 77 of 1964)

(Section 4(p) substituted by section 8(1)(c) of Act 97 of 1993)

- (q) so much of the value of any property included in the estate which has not been allowed as a deduction under the foregoing provisions of this section, as accrues to the surviving spouse of the deceased: Provided that-

- (i) the deduction allowable under the provisions of this paragraph shall be reduced by so much of any amount as the surviving spouse is required in terms of the will of the deceased to dispose of to any other person or trust;

- (ii) no deduction shall be allowed under the provisions of this paragraph in respect of any property which accrues to a trust established by the deceased for the benefit of the surviving spouse, if the trustee of such trust has a discretion to allocate such property or any income therefrom to any person other than the surviving *[sic]* spouse.

(Section 4(q) added by section 5(1)(b) of Act 81 of 1985 with effect from 1 November 1984)

(Section 4(q) substituted by section 6(1)(c) of Act 86 of 1987 with effect from 1 November 1987)

4A. Dutiable amount of an estate

- (1) Subject to subsections (2) and (3), the dutiable amount of the estate of any person shall be determined by deducting from the net value of that estate, as determined in accordance with section 4, an amount of R3,5 million.
- (2) Where a person was the spouse at the time of death of one or more previously deceased persons, the dutiable amount of the estate of that person shall be determined by deducting from the net value of that estate, as determined in accordance with section 4, an amount equal to the amount specified in subsection (1)-

- (a) multiplied by two; and
 - (b) reduced by the amount deducted from the net value of the estate of any one of the previously deceased persons in accordance with this section.
- (3) Where a person was one of the spouses at the time of death of a previously deceased person, the dutiable amount of the estate of that person shall be determined by deducting from the net value of that estate, as determined in accordance with section 4, an amount equal to the sum of-
- (a) the amount specified in subsection (1); and
 - (b) the amount specified in subsection (1) divided by the number of spouses, reduced by an amount which is determined by dividing the amount deducted, in accordance with this section, from the net value of the estate of the previously deceased person by the number of spouses of that previously deceased person.

(Section 4A(3)(b) substituted by section 4(1)(a) of Act 7 of 2010 with effect from 1 January 2010)

- (4) The amount contemplated in subsection (2)(b) or (3)(b) shall not exceed the amount specified in subsection (1).
- (5) Subsections (2) and (3) shall not apply unless the executor of the estate of that person submits, at the time and in the manner and form prescribed by the Commissioner, to the Commissioner a copy of a return submitted to the Commissioner in terms of section 7 or other relevant material that the Commissioner may regard as reasonable in respect of the estate of the previously deceased person.

(Section 4A(5) substituted by section 2 of Act 15 of 2016)

- (6) Where a person and his or her spouse die simultaneously, the person of whom the net value of the estate, determined in accordance with section 4, is the smallest must be deemed for the purposes of this section to have died immediately prior to his or her spouse.

(Section 4A(6) added by section 4(1)(b) of Act 7 of 2010 with effect from 1 January 2010)

(Section 4A inserted by section 6(1) of Act 92 of 1971 with effect from 1 April 1971)

(Section 4A amended by section 3(1) of Act 95 of 1978 with effect from 1 April 1978)

(Section 4A amended by section 5 of Act 102 of 1979 with effect from 1 April 1979)

(Section 4A amended by section 12(1) of Act 106 of 1980 with effect from 1 April 1980)

(Section 4A amended by section 4(1) of Act 99 of 1981 with effect from 1 April 1981)

(Section 4A amended by section 6(1) of Act 81 of 1985 with effect from 1 November 1984)

(Section 4A amended by section 2(1) of Act 71 of 1986 with effect from 1 April 1986)

(Section 4A substituted by section 11(1) of Act 87 of 1988 with effect from 16 March 1988)

(Section 4A amended by section 5 of Act 30 of 2002 with effect from 1 March 2002)

(Section 4A amended by section 17 of Act 9 of 2006 with effect from 1 March 2006)

(Section 4A amended by section 1 of Act 8 of 2007 with effect from 1 March 2007)

(Section 4A substituted by section 5 of Act 17 of 2009 with effect from 1 January 2010)

(Section 4A amended by section 4 of Act 7 of 2010 with effect from 1 January 2010)

5. Determination of value of property

(Heading substituted by section 12(a) of Act 60 of 2001 with effect from 27 July 2001)

- (1) The value of any property for the purposes of the inclusion thereof in the estate of any person in terms of section 3 or the deduction thereof in terms of section 4 determined as at the date of death of that person, shall be-

(Words preceding paragraph (a) substituted by section 1(a) of Act 19 of 2001)

- (a) in the case of property, other than such property as is referred to in paragraph (f)*bis* or the proviso to paragraph (g), disposed of by a purchase and sale which in the opinion of the Commissioner is a *bona fide* purchase and sale in the course of the liquidation of the estate of the deceased, the price realized by such sale;

(Section 5(1)(a) amended by section 4(a) of Act 65 of 1960)

- (b) in the case of any such fiduciary, usufructuary or other like interest in property as is referred to in paragraph (a) of section 3(2), an amount determined by capitalizing at twelve per cent the annual value of the right of enjoyment of the property in which the deceased held any such fiduciary, usufructuary or other like interest, to the extent to which the person who upon the cessation of the said interest of the deceased in consequence of the death of the deceased becomes entitled to any right of enjoyment of such property of whatever nature, over the expectation of life of such person, or if such right of enjoyment is to be held for a lesser period than the life of such person, over such lesser period: Provided that in any case in which it is proved to the satisfaction of the Commissioner that such person paid any consideration for the right of ownership in the property whereby he became entitled to the right of enjoyment of the property upon the death of the deceased, the value shall be so much of the value so arrived at as exceeds the amount of such consideration together with interest thereon calculated at six per cent per annum from the date of payment of such consideration to the date of death of the deceased: Provided further that where upon the cessation of the interest of the deceased in any property, there accrues to the holder of the bare dominium therein, the full ownership in that property, the value of the advantage or benefit so accruing by reason of the cessation of the interest held by the deceased, shall not exceed the difference between the fair market value of that property as at the date of such cessation and the value of the bare dominium as at the date when such bare dominium was first acquired under the disposition creating the said interest held by the deceased: Provided further that if upon the cessation of the interest held by the deceased it is not possible to ascertain until some future date the person or some or all of the persons who will become entitled to the right of enjoyment of the property, the value shall be determined by capitalizing at twelve per cent over a period of fifty years the annual value of the right of enjoyment of the property in which such interest was held, unless the Commissioner and the executor agree that, having regard to the

circumstances of the case, it would be reasonable to adopt a lesser period than fifty years, in which event such lesser period, as agreed, may be adopted accordingly;

(Second proviso added to section 5(1)(b) by section 3(a) of Act 59 of 1957 with effect from 26 June 1957)

(Third proviso added to section 5(1)(b) by section 4(b) of Act 65 of 1960)

(Section 5(1)(b) substituted by section 7(1)(a) of Act 114 of 1977 with effect from 1 April 1977)

- (c) in the case of any right to any annuity referred to in paragraph (a) of subsection (2) of section three, an amount equal to the value of the annuity capitalized at twelve per cent—

(Worde preceding section 5(1)(c)(i) substituted by section 1(a) of Act 21 of 2021)

- (i) in the case where the said right accrues to some other person on the death of the deceased, over the expectation of life of the person to whom the said right accrues on the death of the deceased, or if it is to be held for a lesser period than the life of such person, over such lesser period;

- (ii) in the case where the said right does not so accrue to some other person, over the expectation of life of the person who on the death of the deceased is the owner of the property upon which such annuity was charged;

(Section 5(1)(c) amended by section 7(1)(b) of Act 114 of 1977 with effect from 1 April 1977)

- (d) in the case of any right to any annuity referred to in paragraph (b) of subsection (2) of section three, an amount equal to the value of the annuity capitalized at twelve per cent, over the expectation of life of the person to whom the right to such annuity accrues on the death of the deceased, or if it is to be held for a lesser period than the life of such person, over such lesser period;

(Section 5(1)(d) amended by section 7(1)(c) of Act 114 of 1977 with effect from 1 April 1977)

(Section 5(1)(d) substituted by section 1(b) of Act 21 of 2021)

(Section 5(1)(d) substituted by section 2 of Act 16 of 2022)

- (d)*bis* in the case of any annuity to which the provisions of section 3(3)(a) apply, an amount equal to the value of the annuity capitalized at twelve per cent over the expectation of life of the annuitant, or if the annuity is payable for a lesser period than the life of the annuitant, over such lesser period:

*(Words in section 5(1)(d)*bis* preceding the proviso substituted by section 2 of Act 20 of 2021)*

Provided that if within five years after the death of the deceased the annuity ceases to be payable because of the death of the annuitant within that period or, where the annuitant is the widow of the deceased, because of her remarriage within that period, the value of the annuity shall be deemed to be an amount equal to the lesser of –

- (i) the aggregate of the amounts which accrued to the annuitant in respect of the annuity and any amounts which accrued to him or his estate upon or as a result of the termination of the annuity; or

- (ii) the said capitalized value of the annuity;

(Section 5(1)(d)bis inserted by section 4(1) of Act 81 of 1965 with effect from 24 March 1965)

(Section 5(1)(d)bis substituted by section 2(1) of Act 56 of 1966 with effect from 24 March 1965)

(Section 5(1)(d)bis amended by section 7(1)(d) of Act 114 of 1977 with effect from 1 April 1977)

- (e) in the case of any property referred to in section 3(3)(b), an amount determined in the manner prescribed in section 62 of the Income Tax Act, 1962 (Act No. 58 of 1962);

(Section 5(1)(e) substituted by section 10 of Act 77 of 1964)

(Section 5(1)(e) substituted by section 12(1)(a) of Act 87 of 1988 with effect from 16 March 1988)

(Section 5(1)(e) substituted by section 9(a) of Act 97 of 1993)

- (f) 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 -

(Words preceding subparagraph (i) substituted by section 1(b) of Act 19 of 2001)

- (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;

(Section 5(1)(f)(i) substituted by section 1(c) of Act 21 of 2021)

- (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

(Section 5(1)(f)(ii) substituted by section 1(c) of Act 21 of 2021)

- (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;

(Section 5(1)(f)(iii) substituted by section 1(c) of Act 21 of 2021)

(Section 5(1)(f) amended by section 7(1)(e) of Act 114 of 1977 with effect from 1 April 1977)

- (f)bis in the case of shares in any company not quoted on any stock exchange, the value of such shares in the hands of the deceased at the date of his death, subject to the following provisions, namely

—

(Words preceding subparagraph (i) substituted by section 1(c) of Act 19 of 2001)

- (i) no regard shall be had to any provision in the memorandum and articles of association, founding statement, association agreement or rules of the company, as the case may be,

restricting the transferability of shares therein, but it shall be assumed that such shares were freely transferable;

(Section 5(1)(f)bis(i) substituted by section 9(b) of Act 97 of 1993)

- (ii) no regard shall be had to any provision in the memorandum and articles of association, founding statement, association agreement or rules of the company, as the case may be, whereby or whereunder the value of the shares of the deceased or any other member is to be determined;

(Section 5(1)(f)bis(ii) substituted by section 9(b) of Act 97 of 1993)

- (iii) if upon a winding-up of the company the deceased would have been entitled to share in the assets of the company to a greater extent *pro rata* to shareholding or membership than other shareholders or members, no lesser value shall be placed on the shares held by the deceased than the amount to which he would have been so entitled if the company had been in course of winding-up and the said amount had been determined as at the date of his death;

(Section 5(1)(f)bis(iii) substituted by section 9(b) of Act 97 of 1993)

- (iv) no regard shall be had to any provision or arrangement resulting in any variation in the rights attaching to any shares through or on account of the death of the deceased;

(Section 5(1)(bis)(iv) substituted by section 10(b) of Act 71 of 1961)

- (v) there shall be taken into account any power of control exercisable by the deceased and the company whereunder he was entitled or empowered to vary or cancel any rights attaching to any class of shares therein, including by way of redemption of preference shares, if, by the exercise of such power he could have conferred upon himself any benefit or advantage in respect of the assets or profits of the company;

- (vi)

(Section 5(1)(bis)(vi) deleted by section 10(c) of Act 71 of 1961)

(Section 5(1)(f)bis added by section 4(c) of Act 65 of 1960)

(Section 5(1)(f)(bis) amended by section 10(a) of Act 71 of 1961)

- (f) *ter* in the case of any property referred to in paragraph (d) of subsection (3) of section three which consists only of profits, an amount determined by capitalizing at twelve per cent, such amount as the Commissioner may consider reasonable as representing the annual value of such profits over the expectation of life of the deceased immediately prior to the date of his or her death, and in the case of any other property referred to in the said paragraph the amount remaining after deducting from the fair market value of that property as at the date of death of the deceased the expenses and liabilities which the deceased would have had to bear or assume if he or she had at that date exercised his or her power of disposition;

(Section 5(1)(f)ter added by section 4(c) of Act 65 of 1960)

(Section 5(1)(f)ter amended by section 7(1)(f) of Act 114 of 1977 with effect from 1 April 1977)

(Section 5(1)(f)ter) substituted by section 1(d) of Act 21 of 2021)

- (g) in the case of any other property, the fair market value of such property as at the date of death of the deceased person:

(Words preceding the proviso substituted by section 1(d) of Act 19 of 2001)

Provided that in any case in which, as a result of conditions imposed by any person whomsoever, the value of any property could or would be reduced for any reason at or after the moment of death, the value of such property shall, unless the Commissioner otherwise directs, be determined as though those conditions had not been imposed.

(Proviso to section 5(1)(g) substituted by section 4(d) of Act 65 of 1960)

- (1A) Where any company referred to in paragraph (f)bis of subsection (1) 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 in terms of that subsection the value of any shares in such company, be determined in the manner prescribed in the definition of 'fair market value' in section 1.

(Section 5(1A) inserted by section 7(1) of Act 81 of 1985 with effect from 1 April 1982)

- (2) For the purposes of paragraphs (b) and (f) of subsection (1) and for purposes of determining the value of any deduction contemplated in section 4, the annual value of the right of enjoyment of a property means an amount equal to twelve per cent upon the fair market value of the full ownership of the property which is subject to any fiduciary, usufructuary or other like interest: Provided that 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 twelve per cent on such value of the property, the Commissioner may fix such sum as representing the annual yield as may be reasonable, and the sum so fixed shall be deemed to be the annual value of the right of enjoyment of such property: Provided further that 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 thereof shall for the purposes of paragraph (b) of sub-section (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 of death of the deceased.

(Section 5(2) amended by section 7(1)(g) of Act 114 of 1977 with effect from 1 April 1977)

(Section 5(2) amended by section 2 of Act 136 of 1991)

(Section 5(2) amended by section 1(e) of Act 19 of 2001)

(Section 5(2) amended by section 12(b) of Act 60 of 2001 with effect from 27 July 2001)

(1st proviso of section 5(2) substituted by section 1(e) of Act 21 of 2021)

- (3) Where for the purposes of sub-section (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) Whenever the value of any property included in the estate of a deceased is reduced as a result of the continuance after the death of that person of any right (other than a fiduciary, usufructuary or other like interest) to the use or occupation of property for no consideration or for a consideration which in the opinion of the Commissioner is not an adequate consideration, the value of such property shall for the purposes of subsection (1) be determined as though the said right had not been granted.

(Section 5(4) added by section 3(b) of Act 59 of 1957)

(Section 5(4) substituted by section 12(1)(b) of Act 87 of 1988 with effect from 16 March 1988)

- (5) For the purposes of subsection (1)(f)bis, the term 'shares' includes any members' interests or any class of shares, stock, debenture stock, debentures or right to purchase members' interests or to subscribe for or purchase shares, stocks or debentures, and the term 'company' includes any company or close corporation incorporated in the Republic or elsewhere.

(Section 5(5) added by section 4(e) of Act 65 of 1960)

(Section 5(5) amended by section 10(d) of Act 71 of 1961)

(Section 5(5) substituted by section 9(c) of Act 97 of 1993)

6. Administration of Act

- (1) The Commissioner shall be responsible for the administration of this Act.
- (2) The powers conferred and the duties imposed upon the Commissioner by this Act may be exercised or performed by the Commissioner or by any SARS official under the control, direction or supervision of the Commissioner.

(Section 6(2) substituted by section 271 of Act 28 of 2011)

- (3) 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.

(Section 6(3) substituted by section 271 of Act 28 of 2011)

7. Rendering of returns

- (1) Every executor or, if he or she is called upon by the Commissioner to do so, any person having the control of or any interest in any property included in the estate, shall submit to the Commissioner a return disclosing the amount claimed by the person submitting the return to represent the dutiable amount of the estate together with full particulars regarding-

(Words preceding paragraph (a) substituted by section 271 of Act 28 of 2011)

- (a) the property of the deceased as at the date of his death;
- (b) property which, in accordance with sub-section (3) of section three, is deemed to be property of the deceased as at that date;
- (c) any deduction claimed in terms of section four.

(2)

(Section 7(2) deleted by section 271 of Act 28 of 2011)

8.

(Section 8 amended by section 4 of Act 59 of 1957)

(Section 8 amended by section 12(a) of Act 77 of 1962)

(Section 8 amended by section 2 of Act 32 of 2005)

(Section 8 repealed by section 271 of Act 28 of 2011)

8A.

(Section 8bis inserted by section 13 of Act 77 of 1962)

(Section 8bis amended by section 5 of Act 81 of 1965)

(Section 8A substituted for section 8bis by section 7 of Act 46 of 1996)

(Section 8A amended by section 15 of Act 30 of 1998)

(Section 8A amended by section 13 of Act 60 of 2001)

(Section 8A amended by section 10 of Act 45 of 2003)

(Section 8A repealed by section 271 of Act 28 of 2011)

8B.

(Section 8B added by section 7 of Act 46 of 1996)

(Section 8B repealed by section 271 of Act 28 of 2011)

8C.

(Section 8C added by section 7 of Act 46 of 1996)

(Section 8C repealed by section 271 of Act 28 of 2011)

8D.

(Section 8D added by section 7 of Act 46 of 1996)

(Section 8D amended by section 9 of Act 30 of 2000)

(Section 8D repealed by section 271 of Act 28 of 2011)

8E.

(Section 8E added by section 7 of Act 46 of 1996)

(Section 8E amended by section 16 of Act 30 of 1998)

(Section 8E repealed by section 271 of Act 28 of 2011)

9. Assessment of duty by Commissioner

- (1) The Commissioner shall assess the duty payable under this Act and shall in respect of every estate liable for the duty issue a notice of assessment to the executor or, if there is no executor, to any person liable for the duty.

- (1A) If the Commissioner, prior to the issue of a notice of assessment in terms of subsection (1)-

- (a) is dissatisfied with any value at which any property is shown in any return; or
- (b) is of the opinion that the amount claimed to represent the dutiable amount as disclosed in any return, does not represent the correct dutiable amount,

the Commissioner shall adjust such value or amount and determine the dutiable amount upon which such assessment shall be raised accordingly.

(Section 9(1A) inserted by section 271 of Act 28 of 2011)

- (2)

(Section 9(2) deleted by section 271 of Act 28 of 2011)

- (3) A notice of assessment shall be issued in respect of each return submitted in respect of any estate in which liability for duty, other than in respect of additional property contemplated in subsection (4)(c), is disclosed, due regard being had in the calculation of the duty to any duty chargeable on any previous returns submitted in respect of the same estate.

(Section 9(3) substituted by section 1(1)(a) of Act 61 of 2008)

- (4)

- (a) Unless a notice of assessment has already been issued, a notice of assessment shall be deemed to have been issued in terms of section 9(3) in respect of the estate of every person-
 - (i) if the value of the estate does not exceed the amount determined by the Minister by notice in the *Gazette* contemplated in section 18(3) of the Administration of Estates Act, 1965 (Act No. 66 of 1965), on the date on which a death notice is given to a Master in terms of section 7 of that Act; or
 - (ii) in every other case, on the date on which the estate has become distributable in terms of section 35(12) of the Administration of Estates Act, 1965 (Act No. 66 of 1965).
- (b) If additional property is found in respect of an estate within five years from the date contemplated in subparagraph (i) or (ii) and a supplementary liquidation and distribution account is required in terms of section 35 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), paragraph (a)

shall not apply and a notice of assessment shall be deemed to have been issued in terms of section 9(3) in respect of the estate on the date on which the supplementary liquidation and distribution account has become distributable in terms of section 35(12) of the Administration of Estates Act, 1965.

- (c) If additional property is found in respect of an estate more than five years after the date contemplated in subparagraph (i) or (ii) and a liquidation and distribution account is required in terms of section 35 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), the additional property shall be subject to an estate duty as if that property were the sole property of the estate of the deceased and as if the death of the deceased occurred on the date on which the additional property was reflected in the supplementary liquidation and distribution account.

(Section 9(4) added by section 1(1)(b) of Act 61 of 2008)

- (5) An assessment contemplated in subsection (4)(a) and (b) is deemed to be an assessment by way of self-assessment.

(Section 9(5) inserted by section 271 of Act 28 of 2011)

9A.

(Section 9A inserted by section 7 of Act 86 of 1987)

(Section 9A amended by section 14 of Act 60 of 2001 with effect from 1 April 2003)

(Section 9A amended by section 3 of Act 18 of 2009)

(Section 9A repealed by section 271 of Act 28 of 2011)

9B.

(Section 9B inserted by section 6 of Act 30 of 2002)

(Section 9B repealed by section 271 of Act 28 of 2011)

9C. Payment of duty

The duty payable under this Act shall be paid on such date as may be prescribed in the notice of assessment issued in terms of section 9(3).

(Section 9C inserted by section 1 of Act 13 of 2017)

10. Payment of interest

- (1) If any duty remains unpaid at the expiration of a period of thirty days from the date for payment prescribed in terms of section 9C, there shall be payable, in addition to the unpaid duty, interest at the rate of six per cent per annum on the amount of unpaid duty calculated from the date of the expiration of the said period to the date of payment: Provided that, where the assessment of duty is delayed beyond a period of twelve months from the date of death, interest at the rate of six per cent per annum shall be payable as from a date twelve months after the date of death on the difference (if any) between the duty

assessed and any deposit (if any) made on account of the duty payable within the said period of twelve months.

(Section 10(1) substituted by section 2(a) of Act 13 of 2017, pending its substitution by section 271 of Act 28 of 2011, read with paragraph 18 of Schedule 1 to that Act and section 3 of Act 21 of 2012 (commencement date of both Acts still to be proclaimed))

(Section 10(1) substituted by section 1 of Act 24 of 2020, with effect from 20 January 2021, and repealed by section 33(1) of Act 16 of 2022, deemed to have come into operation on 20 January 2021))

(Section 10(1) substituted by section 32(1)(a) of Act 16 of 2022, deemed to have come into operation on 18 December 2017)

(2) Whenever the Commissioner is satisfied that the delay in the payment of duty within the period of thirty days from the date for payment prescribed in terms of section 9C, or within the period of twelve months from the date of death, as the case may be, has not been occasioned either by the executor or by any person liable for the duty, the Commissioner may allow an extension of time within which the duty may be paid without interest if, before the expiration of the said period of thirty days or the said period of twelve months, as the case may be or such further period as the Commissioner may allow—

(a) a deposit on account of the duty payable is made of an amount which, in the opinion of the Commissioner, is reasonable, regard being had to the amount of the duty payable; and

(b) application is made in writing to the Commissioner for such extension of time.

(Section 10(2) substituted by section 2(b) of Act 13 of 2017)

(Section 10(2) substituted by section 32(1)(b) of Act 16 of 2022, deemed to have come into operation on 18 December 2017)

11. Person liable for duty

The person liable for the duty shall be -

(a) where duty is levied on property of the deceased which falls under sub-section (2) of section three -

(i) as to any property referred to in paragraph (a) or (b) of that sub-section, the person to whom any advantage accrues by the death of the deceased;

(ii) as to any other property, the executor;

(b) where duty is levied on property which, in accordance with sub-section (3) of section three, is deemed to be property of the deceased -

(i) as to property referred to in paragraph (a) of that sub-section, the executor: Provided that where the amount due under the policy is recoverable by any person other than the

executor, the person liable for the duty shall be the person entitled to recover the amount due under the policy;

(iA)

(Section 11(b)(iA) added by section 3(1) of Act 56 of 1966 with effect from 24 March 1965)

(Section 11(b)(iA) deleted by section 3 of Act 15 of 2016. Deemed to have come into operation on 1 January 2009 and applies in respect of the estate of a person who dies on or after that date.)

(ii) as to any property referred to in paragraph (b) of that subsection, the donee;

(Section 11(b)(ii) substituted by section 13(1) of Act 87 of 1988 with effect from 16 March 1988)

(Section 11(b)(ii) substituted by section 3 of Act 37 of 1995)

(iii) as to any property referred to in paragraph (cA) or (d) of that subsection, the executor.

(Section 11(b)(iii) substituted by section 3 of Act 37 of 1995)

12. Duty payable by executor

Notwithstanding anything to the contrary contained in section 11, any duty payable under this Act shall be payable by and recoverable from the executor of the estate subject to the duty, to the extent contemplated in Chapters 10 and 11 of the Tax Administration Act.

(Section 12 amended by section 4 of Act 18 of 2009)

(Section 12 substituted by section 271 of Act 28 of 2011)

12A.

(Section 12A inserted by section 1 of Act 21 of 2006)

(Section 12A repealed by section 271 of Act 28 of 2011)

12B.

(Section 12B inserted by section 1 of Act 21 of 2006)

(Section 12B repealed by section 271 of Act 28 of 2011)

13. Right of recovery by executor

- (1) Every executor who is required to pay duty in respect of any property referred to in paragraph (a)(i), or in the proviso to paragraph (b)(i), or in paragraph (b)(ii), of section 11, shall be entitled to recover from the person liable therefor the duty attributable to such property.

(Section 13(1) substituted by section 7(1)(a) of Act 92 of 1971 with effect from 1 April 1971)

(Section 13(1) substituted by section 3 of Act 20 of 2021)

- (2) The duty attributable to any such property shall be a sum which bears to the full duty payable in respect of the estate (before the deduction in accordance with the provisions of section 16 of any amount in respect of transfer duty or donations tax) the same ratio as that portion of the net value of the estate (as determined under section 4) which is attributable to the inclusion in the estate of the value of the said

property, bears to the net value of the estate as so determined, reduced, in any case in which there is, in accordance with the said section 16, deducted from the duty payable in respect of the estate, any amount of transfer duty or donations tax paid in respect of any property included in the estate which has accrued to the person liable for the duty attributable to that property, by the amount of the transfer duty or donations tax so paid.

(Section 13(2) substituted by section 7(1)(b) of Act 92 of 1971 with effect from 1 April 1971)

- (3) Whenever duty is in terms of section 11(b)(i) payable by more than one person on the value of any property referred to in section 3(3)(a), the amount of duty payable by each such person shall be such proportion of the total duty attributable to the total value of the said property, as bears to the said total duty the same ratio as so much of the amount which such person is entitled to recover under any policy as is included in the estate under section 3(3)(a), bears to the total value of the said property.

(Section 13(3) substituted by section 14(1) of Act 87 of 1988 with effect from 16 March 1988)

14. Right to mortgage property

To provide for the payment of any duty, the person liable therefor may, with the consent of the Master, borrow any moneys or mortgage any property in respect of which the liability for duty arises, notwithstanding *[sic]* any provision to the contrary contained in any deed or testamentary disposition or in any law.

15. Recovery of duty paid in certain cases

Any person who has disposed of property in respect of which a liability for duty in accordance with subparagraph (ii) of paragraph (b) of section eleven, thereafter arises, without having received full consideration therefor, may recover from the person to whom he has disposed of such property the amount of duty payable by him in respect thereof.

16. Deduction of transfer duty and donations tax

There shall be deducted from any duty payable under this Act -

- (a) any transfer duty which is proved to the satisfaction of the Commissioner to have been paid in respect of the acquisition from the deceased or his estate of any property included in the estate for the purposes of the assessment of duty, by any person liable for the duty attributable to that property;

(Section 16(a) amended by section 5(a) of Act 65 of 1960)

- (b)

(Section 16(b) amended by section 5(b) of Act 65 of 1960)

(Section 16(b) amended by section 11 of Act 77 of 1964)

(Section 16(b) deleted by section 15(1) of Act 87 of 1988 with effect from 16 March 1988)

- (c) without in any way modifying or adding to the rights of any person under an agreement entered into by the Government of the Republic with the Government of any other country or territory relating to the prevention of or relief from double taxation in respect of estate duty, any amount of any death duties proved to the satisfaction of the Commissioner to have been paid to any other State in respect of any property situate outside the Republic and included in the estate of any person who at the date of his death was ordinarily resident in the Republic: Provided that the deduction under this paragraph shall not exceed the duty imposed on such property by this Act.

(Section 16(c) added by section 5(c) of Act 65 of 1960)

17. No account to be filed by Master before duty is paid or secured

The Master shall not file any liquidation and distribution account in his office or grant a discharge to any executor until he is satisfied that the duty payable under this Act has been paid or secured to the satisfaction of the Commissioner or that the Commissioner consents to the discharge.

(Section 17 amended by section 8 of Act 92 of 1971)

18. No property to be delivered by executor before duty provided for

Before delivering or transferring any property of the deceased to any heir or legatee the executor shall satisfy the Commissioner that due provision has been made for the payment of any duty payable under this Act.

19.

(Section 19 repealed by section 5 of Act 18 of 2009)

20. Expenditure incurred by executor

Every executor who is required to incur any expenditure in respect of any property which falls under paragraph (a) or (b) of sub-section (2) or under sub-section (3) of section three, shall be entitled to recover such expenditure from the person liable, in accordance with section eleven, for the duty payable in respect of such property.

21.

(Section 21 repealed by section 8 of Act 81 of 1985)

22.

(Section 22 repealed by section 8 of Act 81 of 1985)

23.

(Section 23 amended by section 6 of Act 81 of 1965)
(Section 23 substituted by section 10 of Act 30 of 2000)

(Section 23 repealed by section 271 of Act 28 of 2011)

23bis.....

(Section 23bis inserted by section 14 of Act 77 of 1962)

(Section 23bis repealed by section 271 of Act 28 of 2011)

24.

(Section 24 amended by section 17 of Act 59 of 1956)

(Section 24 amended by section 5 of Act 59 of 1957)

(Section 24 amended by section 11 of Act 71 of 1961)

(Section 24 substituted by section 15 of Act 77 of 1962)

(Section 24 amended by section 12 of Act 77 of 1964)

(Section 24 amended by section 2 of Act 104 of 1976)

(Section 24 amended by section 8 of Act 86 of 1987)

(Section 24 amended by section 10 of Act 97 of 1993)

(Section 24 amended by section 8 of Act 27 of 1997)

(Section 24 amended by section 9 of Act 53 of 1999)

(Section 24 substituted by section 15 of Act 60 of 2001 with effect from 1 April 2003 as amended by section 68 of Act 30 of 2002 with effect from 1 April 2003)

(Section 24 amended by section 11 of Act 45 of 2003)

(Section 24 repealed by section 271 of Act 28 of 2011)

25.

(Section 25 amended by section 16 of Act 77 of 1962)

(Section 25 substituted by section 9 of Act 86 of 1987)

(Section 25 amended by section 11 of Act 97 of 1993)

(Section 25 repealed by section 271 of Act 28 of 2011)

25A.

(Section 25A inserted by section 16 of Act 60 of 2001 with effect from 7 November 2001)

(Section 25A amended by section 7 of Act 30 of 2002)

(Section 25A repealed by section 271 of Act 28 of 2011)

26. 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 estate duty in respect of the same property or to the rendering of reciprocal assistance in the administration of, and in the collection of estate duty under the laws relating to estate duty in force in the Republic and in such other country.

(Section 26(1) substituted by section 9(a) of Act 27 of 1997)

- (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.

(Section 26(2) amended by section 13 of Act 77 of 1964)

(Section 26(2) substituted by section 9(a) of Act 27 of 1997)

- (3)

(Section 26(3) amended by section 5 of Act 99 of 1981)

(Section 26(3) deleted by section 9(b) of Act 27 of 1997)

- (4)

(Section 26(4) deleted by section 9(b) of Act 27 of 1997)

- (5)

(Section 26(5) amended by section 5 of Act 99 of 1981)

(Section 26(5) deleted by section 9(b) of Act 27 of 1997)

- 27.**

(Section 27 amended by section 10 of Act 27 of 1997)

(Section 27 repealed by section 271 of Act 28 of 2011)

28. Offences

(Heading of section 28 substituted by section 271 of Act 28 of 2011)

- (1)

(Section 28(1) amended by section 7(a) of Act 81 of 1965)

(Section 28(1) amended by section 11(a) of Act 30 of 2000)

(Section 28(1) deleted by section 271 of Act 28 of 2011)

- (2) Any person who -

- (a)

(Section 28(2)(a) deleted by section 9 of Act 81 of 1985)

- (b)

(Section 28(2)(b) deleted by section 271 of Act 28 of 2011)

- (b)*bis*

*(Section 28(2)(b)*bis* inserted by section 17 of Act 77 of 1962)*

*(Section 28(2)(b)*bis* substituted by section 8 of Act 46 of 1996)*

*(Section 28(2)(b)*bis* deleted by section 271 of Act 28 of 2011)*

- (c) fails to comply with any reasonable requirement of the Commissioner or Master made for the purpose of carrying out any provision of this Act; or
- (d) obstructs or hinders the Commissioner or Master in carrying out any provision of this Act,

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

(Section 28(2) amended by section 7(b) of Act 81 of 1965)

(Section 28(2) amended by section 12 of Act 97 of 1993)

(Section 28(2) amended by section 11(b) of Act 30 of 2000)

28A.

(Section 28A inserted by section 17 of Act 30 of 1998 with effect from 11 March 1998)

(Section 28A repealed by section 271 of Act 28 of 2011)

29. Regulations

The Minister of Finance may make regulations for the better carrying out of the objects and purposes of this Act, including regulations as to the valuation of annuities or of fiduciary, usufructuary or other limited interests in property and the hearing of an appeal under section 24.

(Section 29 substituted by section 4 of Act 89 of 1972)

(Section 29 substituted by section 3 of Act 92 of 1983)

(Section 29 amended by section 46 of Act 97 of 1986)

30.

(Section 30 repealed by section 271 of Act 28 of 2011)

31. Repeal of laws

- (1) The laws set out in the Second Schedule are hereby repealed to the extent set out in the third column of the said Schedule: Provided that the said laws shall continue to apply in relation to the estate of any person who died before the first day of April, 1955.
- (2) Any agreement entered into and any proclamation issued under section thirty-six *bis* of the Death Duties Act, 1922 (Act No. 29 of 1922), and in force at the date of commencement of this Act, shall be deemed to have been entered into or issued also under section twenty-six of this Act.

32. Short title and date of commencement

This Act shall be called the Estate Duty Act, 1955, and shall be deemed to have come into operation on the first day of April, 1955.

First Schedule
RATE OF ESTATE DUTY

(1) The rate of estate duty shall be—

(a)

(i) 20 per cent of the dutiable amount of the estate as does not exceed R30 million; and

(ii) 25 per cent of the dutiable amount of the estate as exceeds R30 million; or
(Paragraph (1)(a) of the First Schedule substituted by section 1(1) of Act 21 of 2018)

(b) a percentage of the dutiable amount of the estate as the Minister of Finance may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), with effect from a date mentioned in that announcement:

(Words preceding the proviso of the First Schedule substituted by section 4(a) of Act 15 of 2016 and numbered as paragraph (1))

Provided that where duty becomes payable upon the value of any movable or immovable property or on a value determined by reference to the value of any movable or immovable property, and duty has, upon the death of any person (hereinafter referred to as the first-dying person), who died within ten years prior to the death of the deceased, become payable upon the value of that movable or immovable property or upon a value determined by reference to the value of that movable or immovable property (or any movable or immovable property for which the Commissioner is satisfied that that movable or immovable property has been substituted), the duty attributable to the value of that movable or immovable property or, as the case may be, the value determined by reference to the value of that movable or immovable property, but not exceeding (in either case) an amount equal to the value on which duty has become payable on the death of the first-dying person, shall be reduced by a percentage according to the following scale-

if the deceased dies within two years of the death of the first-dying person	100 per cent
if the deceased dies more than two years, but not more than four years after the death of the first-dying person	80 per cent
if the deceased dies more than four years, but not more than six years after the death of the first-dying person	60 per cent
if the deceased dies more than six years, but not more than eight years after the death of the first-dying person	40 per cent
if the deceased dies more than eight years, but not more than ten years after the death of the first-dying person	20 per cent

subject to a maximum reduction equal to so much of the duty previously payable upon the death of the first-dying person as is attributable to the value of that movable or immovable property or, as the case may be, to an amount equal to the value determined by reference to the value of that movable or immovable property, and as is proved to the satisfaction of the Commissioner to have been borne by the deceased.

- (2) If the Minister of Finance makes an announcement contemplated in subparagraph 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.

(Paragraph (2) added after the proviso of the First Schedule by section 4(b) of Act 15 of 2016)

(First Schedule amended by section 6 of Act 59 of 1957)

(First Schedule amended by section 12 of Act 71 of 1961)

(First Schedule amended by section 14 of Act 77 of 1964 with effect from 16 March 1964)

(First Schedule substituted by section 8 of Act 81 of 1965)

(First Schedule amended by section 1 of Act 75 of 1968 with effect from 27 March 1968)

(First Schedule substituted by section 9 of Act 92 of 1971 with effect from 1 April 1971)

(First Schedule amended by section 13(1) of Act 106 of 1980 with effect from 1 April 1980)

(First Schedule amended by section 3(1) of Act 71 of 1986 with effect from 1 April 1986)

(First Schedule amended by section 16 of Act 87 of 1988 with effect from 16 March 1988)

(First Schedule amended by section 11 of Act 37 of 1996 with effect from 14 March 1996)

(First Schedule amended by section 4 of Act 5 of 2001 with effect from 1 October 2001)

Second Schedule
LAWS REPEALED

Number and Year of Law.	Title.	Extent of Repeal.
Act No. 29 of 1922	Death Duties Act, 1922	The whole.
Act No. 31 of 1925	Death Duties Act, 1922, Amendment Act, 1925	The whole.
Act No. 34 of 1930	Financial Adjustments Act, 1930	Section ten
Act No. 64 of 1934	Finance Act, 1934	Section ten
Act No. 33 of 1939	Finance Act, 1939	Section twelve
Act No. 23 of 1942	Death Duties Amendment Act, 1942	The whole.
Act No. 33 of 1944	Death Duties Amendment Act, 1944	The whole.
Act No. 46 of 1945	Finance Act, 1945	Sections sixteen and seventeen
Act No. 60 of 1951	Death Duties Amendment Act, 1951	The whole.
Act No. 33 of 1954	Death Duties Amendment Act, 1954	The whole.