

9H. Change of residence, ceasing to be controlled foreign company or becoming headquarter company.—(1) For the purposes of this section—

“asset” means an asset as defined in paragraph 1 of the Eighth Schedule; and

“market value”, in relation to an asset, means the price which could be obtained upon a sale of that asset between a willing buyer and a willing seller dealing at arm’s length in an open market.

(2) Subject to subsection (4), where a person (other than a company) that is a resident ceases during any year of assessment of that person to be a resident—

(a)

that person must be treated as having—

(i)

disposed of each of that person’s assets to a person that is a resident on the date immediately before the day on which that person so ceases to be a resident for an amount received or accrued equal to the market value of the asset on that date; and

[Sub-para. (i) substituted by s. 14 (1) (a) of Act No. 25 of 2015 deemed to have come into operation on 5 June, 2015 and applicable in respect of (a) (i) any person that ceases to be a resident; or (ii) any controlled foreign company that ceases to be a controlled foreign company in relation to a resident, on or after that date; and (b) any person that becomes a headquarter company during years of assessment commencing on or after that date.]

Wording of Sections

(ii)

reacquired each of those assets on the day on which that person so ceases to be a resident at an expenditure equal to the market value contemplated in subparagraph (i);

(b)

that year of assessment must be deemed to have ended on the date immediately before the day on which that person so ceases to be a resident; and

(c)

the next succeeding year of assessment of that person must be deemed to have commenced on the day on which that person so ceases to be a resident.

(3) (a) Where a company that is a resident ceases during any year of assessment of that company to be a resident or where a company that is a resident becomes a headquarter company in respect of a year of assessment, that company must be treated as having—

(i)

disposed of each of that company’s assets to a person that is a resident on the date immediately before the day on which that company so ceased to be a resident or became a headquarter company; and

(ii)

reacquired each of those assets on the day on which that company so ceased to be a resident or became a headquarter company, for an amount equal to the market value of each of those assets.

[Para. (a) substituted by s. 14 (1) (b) of Act No. 25 of 2015 deemed to have come into operation on 5 June, 2015 and applicable in respect of (a) (i) any person that ceases to be a resident; or (ii) any controlled foreign company that ceases to be a controlled foreign company in relation to a resident, on or after that date; and (b) any person that becomes a headquarter company during years of assessment commencing on or after that date.]

Wording of Sections

(b) Where a controlled foreign company ceases, otherwise than by way of becoming a resident, to be a controlled foreign company during any foreign tax year of that controlled foreign company, that controlled foreign company must be treated as having—

(i)

disposed of each of the assets of that controlled foreign company, to a person that is a resident, on the date immediately before the day on which that controlled foreign company so ceased to be a controlled foreign company; and

(ii)

reacquired each of the assets disposed of as contemplated in subparagraph (i) on the day on which that controlled foreign company so ceased to be a controlled foreign company, for an amount equal to the market value of each of those assets.

[Para. (b) substituted by s. 14 (1) (b) of Act No. 25 of 2015 deemed to have come into operation on 5 June, 2015 and applicable in respect of (a) (i) any person that ceases to be a resident; or (ii) any controlled foreign company that ceases to be a controlled foreign company in relation to a resident, on or after that date; and (b) any person that becomes a headquarter company during years of assessment commencing on or after that date.]

Wording of Sections

(c) Where a company that is a resident ceases to be a resident or becomes a headquarter company during any year of assessment of that company as contemplated in paragraph (a)—

(i) that year of assessment must be deemed to have ended on the date immediately before the day on which that company so ceased to be a resident or became a headquarter company;

(ii) the next succeeding year of assessment of that company must be deemed to have commenced on the day on which that company so ceased to be a resident or became a headquarter company; and

(iii) that company must, on the date immediately before the day on which the company so ceased to be a resident or became a headquarter company and for the purposes of section 64EA (b), be deemed to have declared and paid a dividend that consists solely of a distribution of an asset in specie—

(aa) the amount of which must be deemed to be equal to the sum of the market values of all the shares in that company on that date less the sum of the contributed tax capital of all the classes of shares in the company as at that date; and

(bb) to the person or persons holding shares in that company in accordance with the effective interest of that person or those persons in the shares in the company as at that date.

[Para. (c) amended by s. 21 (a) of Act No. 15 of 2016 (Editorial Note: as amended by s. 99 (1) (a) of Act No. 17 of 2017).]

Wording of Sections

(d) Where a controlled foreign company ceases to be a controlled foreign company during any foreign tax year of that controlled foreign company as contemplated in paragraph (b)—

(i) that foreign tax year must be deemed to have ended on the date immediately before the day on which that controlled foreign company so ceased to be a controlled foreign company; and

(ii) the next succeeding foreign tax year of that controlled foreign company must be deemed to have commenced on the day on which that controlled foreign company so ceased to be a controlled foreign company.

[Para. (d) amended by s. 21 (b) of Act No. 15 of 2016 (Editorial Note: as amended by s. 99 (1) (b) of Act No. 17 of 2017).]

Wording of Sections

(e) Where a company ceases to be a resident as contemplated in paragraph (a), the amount of any capital gain disregarded in terms of paragraph 64B of the Eighth Schedule that was determined in respect of a disposal of an equity share by that company within three years immediately preceding the date on which that company ceases to be a resident, must be deemed, in respect of the year of assessment of that company ending as contemplated in paragraph (c), to be an amount of net capital gain derived by that company from that capital gain.

[Para. (e) added by s. 14 (1) (c) of Act No. 25 of 2015 deemed to have come into operation on 5 June, 2015 and applicable in respect of (a) (i) any person that ceases to be a resident; or (ii)

any controlled foreign company that ceases to be a controlled foreign company in relation to a resident, on or after that date; and (b) any person that becomes a headquarter company during years of assessment commencing on or after that date.]

(f) Where a company ceases to be a resident as contemplated in paragraph (a), the amount of any foreign dividend that was exempt from normal tax only in terms of section 10B (2) (a) within the three years immediately preceding the date on which that company ceases to be a resident, must be deemed to be a foreign dividend received by or accrued to that company in respect of the year of assessment of that company ending as contemplated in paragraph (c) that is not exempt in terms of section 10B (2).

[Para. (f) added by s. 14 (1) (c) of Act No. 25 of 2015 deemed to have come into operation on 5 June, 2015 and applicable in respect of (a) (i) any person that ceases to be a resident; or (ii) any controlled foreign company that ceases to be a controlled foreign company in relation to a resident, on or after that date; and (b) any person that becomes a headquarter company during years of assessment commencing on or after that date.]

(3A) Any person that is a holder of at least 10 per cent of the equity shares and voting rights in shares in a company must, where that company is a resident that ceases to be a resident and where section 64FA applies to the dividend in specie as referred to in subsection (3) (c) (iii) in respect of that company, be treated as having—

(i) disposed of each of those shares to a person that is a resident on the date immediately before the day on which that company so ceased to be a resident; and

(ii) reacquired each of those shares on the day on which that company so ceased to be a resident, for an amount equal to the market value of each of those shares.

[Sub-s. (3A) inserted by s. 7 (1) of Act No. 23 of 2020 with effect from 1 January, 2021 and applicable in respect of a holder of shares in a company that ceases to be a resident on or after that date.]

(4) Subsections (2) and (3) do not apply in respect of an asset of a person where that asset constitutes—

(a) immovable property situated in the Republic that is held by that person;

(b)

.....
[Para. (b) deleted by s. 21 (1) of Act No. 31 of 2013 with effect from the date of promulgation of that Act, 12 December, 2013 and applicable in respect of any person that (a) ceases to be a resident; (b) becomes a headquarter company; or (c) ceases to be a controlled foreign company, on or after that date (Editorial Note: effective date in s. 21 (2) of Act No. 31 of 2013 as substituted by s. 147 (1) of Act No. 25 of 2015).]

Wording of Sections

(c) any asset which is, after the person ceases to be a resident or a controlled foreign company as contemplated in subsection (2) or (3), effectively connected to a permanent establishment of that person in the Republic;

[Para. (c) substituted by s. 8 of Act No. 17 of 2023.]

Wording of Sections

(d) any qualifying equity share contemplated in section 8B that was granted to that person less than five years before the date on which that person ceases to be a resident as contemplated in subsection (2) or (3);

(e) any equity instrument contemplated in section 8C that had not yet vested as contemplated in that section at the time that the person ceases to be a resident as contemplated in subsection (2) or (3);

[Para. (e) substituted by s. 8 (a) of Act No. 42 of 2024.]

Wording of Sections

(f)

any right of that person to acquire any marketable security contemplated in section 8A; or
[Para. (f) substituted by s. 8 (a) of Act No. 42 of 2024.]

Wording of Sections

(g)

any amount representing the value of the interest in any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund.

[Para. (g) added by s. 8 (b) of Act No. 42 of 2024.]

(5) If—

(a)

a person disposes of an equity share in a foreign company that is a controlled foreign company;

(b)

the capital gain or capital loss determined in respect of a disposal contemplated in paragraph

(a) is wholly or partly disregarded in terms of paragraph 64B of the Eighth Schedule; and

[Para. (b) substituted by s. 11 (1) of Act No. 20 of 2021 deemed to have come into operation on 1 January, 2021 and applicable in respect of disposals on or after that date.]

Wording of Sections

(c)

as a direct or indirect result of a disposal contemplated in paragraph (a), a foreign company ceases to be a controlled foreign company,

subsection (3) must not apply to any foreign company contemplated in paragraph (c).

(6) This section must not apply in respect of any company that ceases to be a controlled foreign company as a result of—

(a)

an amalgamation transaction as defined in section 44 (1) to which section 44 applies; or

(b)

a liquidation distribution as defined in section 47 (1) to which section 47 applies.

[Sub-s. (6) substituted by s. 13 (1) (a) of Act No. 43 of 2014 deemed to have come into operation on 1 January, 2013 and applicable in respect of years of assessment commencing on or after that date.]

Wording of Sections

(7) For the purposes of subsections (2) and (3), the market value of any asset must be determined in the currency of expenditure incurred to acquire that asset.

[S. 9H inserted by s. 26 (1) of Act No. 24 of 2011, amended by s. 16 (1) of Act No. 22 of 2012 deemed to have come into operation on 1 April, 2012 and substituted by s. 17 (1) of Act No. 22 of 2012 deemed to have come into operation on 8 May, 2012 and applicable in respect of any person that ceases to be a resident, becomes a headquarter company, or ceases to be a controlled foreign company, on or after that date (Editorial Note: effective date in s. 17 (2) (c) of Act No. 22 of 2012 as substituted by s. 193 (1) of Act No. 31 of 2013). Sub-s. (7) added by s. 13 (1) (b) of Act No. 43 of 2014 with effect from 1 January, 2015.]

Wording of Sections