SUMMARY OF COMMENTS ON FIRST DRAFT OF THE CAPITAL GAINS TAX BILL RELEASED ON 12 DECEMBER 2000 AND SARS AND THE NATIONAL TREASURY’S RESPONSE THERETO

PRINCIPAL ACT

Section	Issue	Raised by	Resolution
1 (Defs)	Full definitions should be inserted in the Principal Act & cross-referenced to Eighth Schedule. The definitions of "aggregate capital gain" and the other terms to be inserted in section 1 should refer to specific provisions of the Eighth Schedule in terms of which they are to be determined. This will obviate the need to repeat those definitions in paragraph 1 of that Schedule.	SAICA E. Mazansky	Partially accepted. The purpose of having the definitions in both section 1 and the Eighth Schedule are the following: • Section (1) – it facilitates references to the relevant concepts throughout the Income Tax Act in order to effect the consequential amendments to the Bill. • Eighth Schedule – the fact that the concepts are also defined in the Eighth Schedule makes the Schedule much more accessible for the reader as everything is contained in the Schedule.
"special trust"	This definition should be in the Principal Act.	SAICA	Accepted. Definition moved to the Principal Act.
	Should a trust for minor children or the elderly not qualify as a special trust?	HRK Gibson	The trustee would be able to vest a capital gain in a minor or an elderly person. Any trust gain vesting in a minor or an elderly person in the year in which it arises will be taxed in the hands of that minor, that minor's parent or the elderly person involved, who will benefit from the lower inclusion rate applicable to natural persons. This result will also follow in the case of a non-vesting trust gain that is attributable to a donation, settlement or other disposition by a natural person and that is attributed to that person in terms of the Eighth Schedule. There is therefore, no need to extend the definition of "special trust" to minors or elderly persons who are not physically or mentally disabled.

	Should a trust for disabled persons, whose ability to maintain themselves economically varies from time to time, not qualify as a special trust?		A trustee can vest a capital gain that arises in any year in which the trust does not qualify as a special trust in a beneficiary, in which case that gain will be taxed only in the hands of that beneficiary. That beneficiary will enjoy the benefit of the lower inclusion rate applicable to natural persons. The inclusion rate applicable to natural persons will also be applied in respect of a non-vesting trust gain that is attributed to a settlor who is a natural person.
'connected persons"	This definition should be amended in relation to a trust. It is too wide. Very often, the trust creator or estate planner is an income beneficiary, but may not be a capital beneficiary. The 'term' beneficiary should be qualified to include only a capital beneficiary.	SAICA; AHI; Grant Thornton, Kessel Feinstein (G. Shev)	Accepted. A more limited connected party rule has now been inserted in clauses 38 and 42 which regulates the disregarding of capital losses in respect of disposals to relatives, controlled companies and trusts. This will have a more focused and limited impact.
	Does the inclusion of gains at the level of taxable income not result in distortions?	Ernst & Young	No. doing it otherwise by, for example, bringing it in at the level of gross income would have unintended consequences such as making all general deductions and exemptions applicable to capital gains.
5(10) Averaging	Averaging desirable where realisation is one of gain that has accrued over many years pushes taxpayers into a higher bracket.	SAICA; Grant Ekermans; Fullinput Tax Services	With the exception of Italy, no country in the world that has a capital gains tax system, levies the tax on the accrual basis – all levy CGT on the realisation basis. In other words, a CGT liability only crystallises when the taxpayer sells an asset. There is a benefit to the taxpayer as a result of not paying the tax on accrued capital gains, or postponing this payment until the capital gain is realised. This benefit arises because instead of paying money to the fiscus for CGT on accrued capital gains, the taxpayer is able to invest the funds and enjoy the returns therefrom. For example, if a taxpayer holds an asset for three years, in a pure accruals tax system, a tax would be due each year on the capital growth of

			the asset. Instead, the tax is only due when the asset is sold after three years. If the taxpayer were to invest the CGT he should have paid each year, he would be able to enjoy the returns from that investment. The value of the tax deferral would depend on the after tax real return from the investment made by the taxpayer and the length of time over which that benefit (tax-free interest) is compounded.
	Inclusion of one-off capital gains in calculation of average rate to be applied to retirement lump sums will distort average rate so capital gains should be excluded from the average rate calculation.	SAICA; Grant Thornton, Kessel Feinstein (G. Shev); Grant Ekerman; Fullinput Tax Services	A capital gain will be excluded from taxable income in determining the average rate that should be applied to the taxable portion of lump sum benefits received from pension and provident funds in that person's year of retirement. The provisions of S 5(10) have been amended accordingly.
	Averaging should be applied especially for lower income groups. SITE taxpayers have not been catered for. They will be pushed into a higher bracket leading to an under-recovery of tax.	AHI; SACOB The Banking Council	Gains on key assets held by individuals (virtually all their personal non-investment property and a R1 million gain on their homes) are exempt from tax subject to very generous limits. In addition each year the first R10 000 of gains on other assets are exempt from tax and three-quarters of gains above that amount are also not liable to tax because of the low inclusion rate. What is left after all these exclusions, is added to a taxpayer's taxable income. The normal rate scales applies to that taxable income. The SA rate structure for individuals is a progressive rate scale. Even if the capital gain does push a taxpayer in a higher bracket, the higher rate will only apply to that part of the capital gain that falls above the threshold for the higher bracket. Salaries, etc that formed part of the taxable income before the addition of the taxable capital gain are, therefore, unaffected. For example, the lowest rate (18%) applies to income up to R38 000. If a taxpayer derives R38 001 income in a year, he is said to be in the 26% bracket. But actually, only the last R1 will be taxed at 26%. The other R38 000 will be taxed at 18%. If he earned R1 million in the year, his first R38 000 will still be

			taxed at 18%, the next R17 000 at 26%, the next R25 000 at 32%, and so on. Only income above a rate threshold is taxed at the higher rate. Consider a taxpayer with R55 001 of ordinary salary income each year. The taxpayer is in the 32% tax bracket because the 32% rate will apply to his income in excess of R55 000. When the progressive rate scale ranging from 18% to 32% is applied to his income, his total tax liability will be R11 260. He will then be entitled to a standard tax reduction (known as a rebate) of R4 140, for a total tax liability of R7 120. In other words, he will pay just over 13% of his total income as tax even though the rate of his last Rand of income was 32%. What happens in the year that this taxpayer derives his ordinary salary of R55 001 plus an additional R20 000 capital gain on the sale of some shares. To begin with, R10 000 of the gain on the shares is ignored for tax purposes. Three quarters of the remaining gain is also exempt from tax. Thus of the R20 000 capital gain, only R2, 500 will be subject to tax. The taxpayer's taxable income for the year will therefore be R57 501 and the normal progressive rate scale will be applied to that taxable income. The tax liability on a taxable income of R57 501 before the standard tax reduction would be R12 060. After his standard rebate, his liability is reduced to R7 920, or less than 14% of his taxable income. The capital gain in this example did not raise the taxpayer into a higher tax bracket.
quat	The rebate for foreign CGT paid where there is also SA CGT payable should not be restricted to assets situated outside SA (clause 2). It is not unlikely that the disposal of an asset situated in SA may be subject to CGT both	SAICA; Grant Thornton, Kessel Feinstein (G. Shev) PWC	Foreign tax will under certain circumstances be allowed as a credit. However, the provisions of the Act only permit a rebate for foreign tax paid if the asset is situated outside SA. International tax principles provide the source country with the primary taxing rights over the gains from the disposal of assets. The source country is the country in which the assets are situated. Where a person is liable to both SA tax and foreign tax in respect of a capital gain realised on an asset situated in SA, under SA's tax treaties and international tax principles, it is the responsibility of the foreign tax jurisdiction to provide a tax credit for the SA

	in SA and a foreign country.		tax levied on the gain.
; 8(5)	Deemed recoupments should not be subject to CGT, e.g. for leases	Phillip Haupt	Accepted. The necessary amendment has been made to paragraph 34.
)B	The qualifying period should be reduced from five years to one year or should be shortened. It should be extended to private companies, unlisted shares.	W.B.Cronje; SAVCA; LOA; Arthur Andersen	The reduction of the safe haven qualifying period to 1 year would make it relatively easy to convert speculative gains into capital gains. The section was introduced to increase certainty on the taxation of shares held for some years on the JSE and thereby increase liquidity of the Stock Exchange. Extending the concession to unlisted shares would not meet this objective and would provide the opportunity for speculative assets to be acquired by companies to convert speculative profits into capital gains. The National Treasury and SARS will, however, look at methods to clarify the distinction between capital and ordinary income for the sale of financial instruments.
)D	(2A)(d): The phrase "currency in which it conducts its transactions" is unclear.	AHI	Accepted. The provision has been reworded.
	Some provision similar to the designated country provisions in section 9D should be introduced.	Ernst & Young	Accepted. The existing country list will be adjusted to take CGT into account.
	When a foreign entity becomes a CFE it is not clear how the base cost of its assets should be determined. As in the case of a person becoming resident in SA, the base cost of a capital asset of a controlled foreign entity	Old Mutual PWC	The rule is now clarified. On valuation date and thereafter on the date when the entity becomes a CFE, the assets of the CFE must be valued on the time apportionment base cost basis.

	(CFE) should be its market value on it becoming a CFE.		
D(2A)(d)	Definition of resident company requires a technical amendment.	E. Mazansky	The redrafted section 9D(2A) addresses this problem.
	Assets in a CFE may have been acquired before the CFE was acquired by a SA resident or otherwise became a CFE? This would mean that the capital gains imputed to the resident would be overstated.		It is proposed that the valuation date for assets held by a CFE on 1 October 2001 be that date and in the case of a foreign entity qualifying as a CFE only after 1 October 2001 the date from which it so qualifies. However, in both cases, excluding listed shares and holdings in unit trusts, it is proposed that the taxpayer will not have the option to value on valuation date, but only the time-based apportionment method will be applied to calculate the gain or loss. The reason therefor being that it would be administratively difficult to dispute or challenge the values of offshore assets.
	Certain gains of CFE's should be excluded on the same basis that certain receipts of foreign income and dividends are excluded.	Deloitte & Touche	The same principles, which apply to income of a revenue nature, will apply to capital gains. Gains made by a CFE will be imputed into the hands of a resident subject to the same exclusions / exemptions that apply to normal revenue income. Thus the same designated country exemption will also apply in the case of gains of CFE's. In essence, the system is designed so that business income, including capital gains, generated in acceptably taxed jurisdictions are exempt. Gains will only be imputed and taxed as they arise where – • There is no proper business establishment; • There is a proper business establishment, but the asset is the subject of a diversionary transaction; or • There is a proper business establishment and the passive income of the CFE together with gains on assets producing passive income, exceed 5% of the total income.
D(b)(iii)	Item (bb) of subparagraph (9)(b)(iii) refers to various businesses that correspond to the types of income referred	E. Mazansky	Not accepted. Licensing has been omitted following comment on international precedence.

	to in the opening words of the subparagraph. One exception relates to royalties – list of businesses include rental business but not licensing business.		
9E	Do the CGT rules take precedence over the foreign dividend rules or vice versa? Under section 9E a taxable dividend may arise upon the disposal by a SA resident of shares in a foreign company. Prima facie, the gain on the disposal will also be subject to CGT. Presumably, the intention is that the capital gain will be reduced by the amount of the taxable dividend.	SAICA; Grant Thornton, Kessel Feinstein (G. Shev) PWC	A distinction should be drawn between a capital gain determined where a CFE disposes of an asset and the case where a resident shareholder disposes of the resident's interest in the CFE. A deemed foreign dividend will only arise where an interest in a CFE is disposed of and the proceeds represent undistributed profits of the CFE which are available for distribution to the resident. The deemed foreign dividend provisions were introduced as an anti-avoidance measure. The CGT will take over this anti-avoidance role over time and take preference over the deemed foreign dividend provisions. Therefore, the amount of deemed foreign dividends will be reduced by the amount taken into account in determining a taxable capital gain in respect of the disposal of shares in a CFE. There are a number of situations which could arise: • If the gain was attributed to the SA shareholder of the CFE and taxed in his or her hands, it would be exempt from tax on foreign dividends. (S 9E(7)(e)(i)). • If the gain was attributed to the SA shareholder and taxed in his or her hands and the CFE was subsequently sold, the amount subject to CGT will be exempt from tax on foreign dividends. CGT, therefore, takes preference (paragraph (v) of the proviso to paragraph (b) to the definition of foreign dividend in S 9E(1). • If the gain as part of a business operation and taxed in a listed country at a statutory rate of 27%, the amount will not be included in foreign dividends subject to tax. (S 9E(7)(d)) It is, therefore, clear that provision has been made for relief from taxation of

			foreign dividends on these amounts and there is therefore not a remittance penalty for these amounts.
	S 9D is sufficient to bring most artificially diverted income into the net. Foreign dividends should therefore be exempted if participation exemption is adopted by SA.	W.B. Cronje	Not accepted. Double taxation of capital gains has been avoided by the introduction of a further exclusion in section 9E.
	Inclusion of gains of CFE's is harsher than the UK dispensation. Should consider exclusion similar to that of UK.	Grant Thornton, Kessel Feinstein (G. Shev)	While it is so that the UK does not tax the gains of CFE's, this is not the international practice. Countries such as the USA, Canada and Australia all tax the gains of CFE's.
S 10	Specifically exempt proceeds of endowment policies from tax.	Phillip Haupt	This is not a CGT issue. It is a normal income tax issue which will be considered.
S 22	The provisions of section 22 will have to be amended to provide for the interaction with the provisions of the Eighth Schedule where items on capital account are converted to trading stock and vice versa.	SAICA	Agreed in principle. The necessary amendment will be made to regulate conversions from: • Trading stock to non-trading stock - assets ceasing to be held as trading stock will have a closing value equal to market value; and • non-trading stock to trading stock - assets commencing to be held as trading stock will have an opening value equal to market value.
S 24J	The CGT base value for all financial instruments subject to S24J interest calculation ought to be the S24J adjusted initial amount as at 1 April: This implies: (1) On introduction the base	A. Berkowitz	All references to 1 April will now be 1 October. The Act will be amended to provide that the base cost of an instrument as defined in S24J will be the adjusted initial amount of the instrument on 1 October 2001.

	cost will be the S24J initial amount at that point. This value already exists in our systems and is already being used for tax calculations; (2) In the future the asset will have its original cost increased by the S24J accrual, and thus on disposal, the capital gain will be calculated from that value; (3) On disposal the entire difference between the original cost and the selling price is thus accurately split between S24J income and capital gains; (4) As something is either capital or revenue, the above ensures that this principle is accurately applied, and there cannot be any overlap; Unless this issues directly addressed in the wording of the Act, it would appear that the base value of these assets will be determined by the		

	market value approach, which may be perfectly acceptable for equities, but not so for instruments subject to S24J.		
S 26A	The non-deductibility of capital losses against income cannot be defended on any grounds as the income tax system is based on an ability to pay. Capital losses should be allowed to be set off against the current year's income.	SACOB; Grant Ekermans	The principle that capital losses may not be set off against taxable income is followed internationally (e.g. In the UK; Canada; Australia and the USA). This measure is necessary because capital gains are taxed on a realisation basis rather than on an accrual basis. In the absence of this provision taxpayers could manipulate the timing of the realisation of losses and gains, leading to an unacceptable loss of revenue. Capital gains will be taxed ultimately on the accrual basis. A further reason is the fact that only a portion of a capital gain is taxed at a lower rate than normal income. Lastly, the rule also serves as a mechanism to protect the existing tax base.
S 29A	The formula should be revised to provide for the taxation of capital gains in the hands of the various policyholder funds.	SAICA; Old Mutual; LOA; Swiss Re Life and Health	The formula will be adjusted to eliminate double taxation of amounts transferred from policyholder funds to the corporate funds and to allow for a greater portion of selling and administrative expenses to be deductible, as capital gains will now be taxed in policyholder funds.
	CGT will impose a higher effective tax rate than if the gains were taxed in the hands of individuals or ordinary companies.	Swiss Re Life & Health	Not accepted. The tax rates applicable to policyholder funds are fixed at a rate which is representative of all policyholders of the funds.
	It is our understanding that capital gains may not be set off against assessed losses in the policyholder funds. This will compound the tax paid in respect of these funds.	Swiss Re Life & Health	The same principle applies to all taxpayers due to the difference in tax rates at which normal income and capital gains are taxed. See explanation under S26A above.

	The trustee principle does not provide for the annual exclusion of R10 000. Lower the rate as a substitute for the exclusion.	During discussions with the PCOF	The average rate of 30% remains appropriate. A further reduction will lead to a greater differential between the 42% maximum marginal rate and the 30% rate for the IPF, which will lead to greater distortions in the taxation of investment products. See also notes under paragraph 5.
	Areas of uncertainty are: • The movement of assets between the different tax funds as contemplated in S 29A(8) is not dealt with in the Bill. • The movement of assets as a consequence of the circumstances envisaged in S29A(6); and • The movement of assets in accordance with S 29A(7). The IFP rate must be reduced as a result of recent changes in rate structure.	Old Mutual	Any transfer of an asset between the four funds of an insurer will be deemed to be a disposal of that asset by the transferor fund. See explanation above.
	Amounts subject to income tax on transfer between funds should be excluded from CGT in corporate fund. The "value of liabilities" should include a provision for CGT on unrealised gains.	Phillip Haupt; LOA	The adjustment to the formula will result in relief being granted in the policyholder funds. After consultation with the Financial Services Board, it is clear that no specific provision should be made for CGT on unrealised gains.
; 64	Interaction of CGT,	Kevin McManus; E.	Although CGT and estate duty are in no way conceptually linked, it is proposed

	Donations tax & Estate Duty: Estate duty should be repealed or CGT should be allowed as a deduction. Donations tax should be abolished. In view of the variety and disparity of SA income tax rates which, in turn, determines the different CGT rates, it will be difficult to determine a single donations tax rate that is fair and will not open the door to tax planning. What will be the revised rate of donations tax? Proper link should be established between CGT & Estate Duty. If, at a person's death, he or she is deemed to have disposed of his/her assets to his estate at market value, that transaction will, it seems, be subject to CGT. The estate will however, be liable for estate duty in respect of the same assets. This double taxation is unacceptable.	Mazansky; Grant Thornton, Kessel Feinstein(G. Shev); SACOB; PWC; SAICA; Agri SA; AHI; The Banking Council SAICA; Deloitte & Touche; AHI; PWC	that the liquidity concerns arising from the imposition of both taxes at the time of death be addressed as follows: • By a reduction in the estate duty rate to 20%. • The CGT payable will also be allowed as a reduction in determining the dutiable value of the estate. This is so because CGT is a debt due by the estate which will be borne by the estate. • An increase in the annual exclusion to R50 000 in the year death occurs. • Provision has been made that where a deceased estate is experiencing liquidity problems, for the heir to take over the debt and pay off the tax over three years. The combined impact of CGT with other taxes does not create the full double impact as suggested. The current multiple system of taxation is designed to target different forms of wealth. The CGT is designed to tax accrued gains. The Estate, Donations and other taxes are designed to target accumulated wealth.

S 70A	The reporting requirements are onerous.	SAICA; Grant Thornton, Kessel Feinstein(G. Shev)	The information required is essential for SARS and taxpayers alike to ensure proper compliance with the Eighth Schedule. After discussion with the industry the Bill has been amended to exclude the provision of certain items of information and to introduce new methods of reporting, such as the weighted average price for shares, which should reduce the compliance burden.
	Certain information required is not in the possession of unit trusts.	SAICA	The reporting requirements will be amended where necessary. Unit trusts will be required to only disclose information on costs and proceeds which are at their disposal.
	A standard template is needed for annual reporting purposes. Will separate IT3B's be required or can they be combined?	Standard Bank; Snyman;	It can be on the same document but specified separately.
	Property Unit Trusts have been excluded.	SAICA	Section 70A will be amended accordingly.
	Unit Trust companies cannot begin making Systems changes until the draft legislation is finalised, which makes 1 April 2001 an unattainable target date. Making systems changes post the implementation date for CGT is undesirable in view of the vast volume of historic transactions that mount up on over two and a half million accounts. Insufficient time allowed for industry to amend their	Association of Unit Trusts. SAICA; AHI; The Banking Council	It was announced by the Minister of Finance in his Budget Speech that the implementation date for the introduction of CGT was extended to 1 October 2001. The reason being to allow organisations sufficient time to get their systems in place.

	systems. A dispensation is necessary for persons who cannot comply with the sections as their systems cannot be changed in time.	SACOB	The implementation date has been extended to 1 October 2001 to cater for this situation.
	At paragraph 7, information of unit trust transactions concluded outside of a unit trust management company should be addressed.	SAICA	During discussions with the industry it was agreed that in these cases the unit holder would be responsible for providing the missing information.
	Unit holders should be given a copy of the information given to SARS.	SAICA	Accepted. But this is a matter between the management companies and unit holders. The wording of S 70A is consistent with that of S70 (Duty of companies to furnish returns) which also does not enforce disclosure to parties other than SARS.
	Management companies with older client databases may have difficulty providing certain fields of data for their return of information.	Association of Unit Trusts	This point relates to the date of implementation – see below.
	We assume that the "date of acquisition" referred to in section 70A(1)(b) is only relevant to purchases on or after the "valuation date" (1 April 2001). We request that the requirement for management companies to supply transaction dates post the introduction of CGT be	Association of Unit Trusts	Accepted. The Bill has been amended to provide that dates of acquisition need not be supplied. The Unit Trusts may also report using the weighted average rule of units which will reduce the compliance burden.

	dispensed with in view of the added archiving costs this will add to systems administration. A weighted average will be systematically updated and carried forward year after year. If each transaction and its date have to be available for ready retrieval, this in many ways would negate the simplicity of carrying forward a weighted average.		
	Unit trust management companies will report all gains and losses. The capital or revenue nature of the gain or loss is for the taxpayer and SARS to determine, (s 70A(1)(d) refers).	Association of Unit Trusts	Accepted. The wording will be amended to remove the reference to *capital* profits and losses.
	Despite being exempt from CGT retirement funds still have to comply with s 73A. The following problems are envisaged: - Upgrades required to Existing administrative systems. - The obtaining of the Information necessary to calculate a capital gain.	The Institute of Retirement Funds; Standard Bank	Retirement funds have to comply with the requirements although their gross income is exempt in terms of section 10(1)(d).

	- The potential loss of information when assets are transferred from one owner or asset manager to another. - Retention of records of improvements and Distinction between improvements and repairs. - Difficulties in calculating the base cost of assets. The election by the fund of the first in first out or weighted average basis for disposal of shares is binding on all similar share disposals and may be problematic where funds change asset managers.		
'0B	Stockbrokers may not know the purchase and selling prices.	SAICA	The information will have to be obtained from clients.
	There is not sufficient time for LISP's to change their systems so that it will not be possible for them to provide SARS or their clients with the required information.	Liberty	The implementation of the Act has been delayed to 1 October 2001, to allow for changes to systems.
	Management companies in many cases hold LISP accounts in the name of the	Galaxy; Citadel	This is noted and has been discussed with the industry. A solution is being sought to this practical problem.

	retirement funds and insurers whose units are being managed. The management company and the LISP both have the obligation to report which is a duplication and the information of the Manco will be meaningless.		
	By requesting asset managers to supply details of capital gains and loses, they are being asked to determine whether gains or losses are on capital account. They should rather be asked to supply a list of all share transactions and the capital/revenue determination should be left to SARS.	E. Mazansky	Accepted. The reference to "capital" gains or losses has been removed.
	Must gain or loss be reported on each disposal or will reporting of aggregate gain or loss be sufficient?	Citadel	The gains and losses can be aggregated for the year.
	Certain events for e.g. Change of residence, may not be known to the person required to report. There should be no liability for failure in these circumstances.	Citadel; LISPA	It is accepted that in certain circumstances the person reporting will not be aware of changes in client's circumstances. No liability for failure to report in these circumstances will arise.

	The responsibility for furnishing the required information should rest on the taxpayer and not the administrator.	Centaur Asset Management (Pty) Ltd	The responsibility does rest on the taxpayer. However, SARS requires the information from the administrator to verify taxpayer disclosures.
	Subparagraph (a)(i) should read "…in respect of whom financial instruments have been so disposed of".	Ernst &Young	The wording has been changed and refers to a financial instrument as defined in the Eighth Schedule.
	The meaning of financial instrument is not clear – with regard to an insurance company who manages assets in-house.	Momentum	The concept is defined in the Eighth Schedule.
	The reporting requirements are onerous.	SAICA; Grant Thornton Kessel Feinstein (G. Shev).	The information required is essential for SARS and taxpayers alike to ensure proper compliance with the Eighth Schedule.
	It is assumed that this section is intended to cover both pure administration agreements (where the investors exercise the investment decisions themselves) and portfolio management agreements (where the investor outsources the investment decisions to another person).	LISPA	This is correct.
S 73A	All taxpayers are now required to retain more records.	SAICA	It is only in respect of a gain which will be subject to tax and the same principle already applies for Income Tax purposes.

	A CGT asset register should be introduced as in Australia.	SAICA; The Banking Council	The Australian system has not been implemented as yet. We will monitor the experience once implemented.
§ 103	There should be a grace period during which existing trusts could modify, terminate or transfer their assets to beneficiaries without fiscal disadvantage.	HRK Gibson	Not accepted. The changes to the anti-avoidance provisions and the trust provisions are not that significant to warrant a period of grace which could open up possible avenues for abuse. Trusts are being permitted to transfer a primary residence to the settlor without a fiscal disadvantage.
§ 107	Provision should be made for prescribed forms for different types of fixed property. The Council is prepared to assist with the forms and training of SARS officers.	SA Council for Valuators	The matter will no longer be dealt with by way of regulations. The matter will now be addressed in Part V dealing with base cost of an asset.
	IT is imperative that the Regulations be published timeously.	SACOB	It has been decided to incorporate the valuation rules in the Eighth Schedule and no regulations will be published. See above.
	The valuation of fixed property should be limited to registered valuers and associated valuers as they have the qualifications and experience to be unbiased and objective. Appraisers appointed by the Minister of Justice do not have qualifications and experience and should not be authorised to do valuations. The company is prepared to assist	The Appraisal Corporation	The onus is on the taxpayer to submit an acceptable valuation. However, the taxpayer is at liberty to obtain the assistance of a professional person. The taxpayer is required to obtain the valuation (which must be countersigned to prove its authenticity) within two years and hold in his possession until required by the Revenue Service except: • If the market value of the asset exceeds R10 million; or • If the asset is an intangible asset with a market value in excess of R1 million. Proof of valuation in a form prescribed by the Commissioner must be submitted with the first income tax return submitted after the expiry of the two-year period from 1 October 2001.

	in drawing up guidelines.		
S 111B	Should be inserted as 111A as there is no 111A.	SAICA	Accepted. The necessary amendment has been made.
Para 19 (4th Schedule)	Returns should identify the existing basic amount, excluding capital gains. Paragraph 19 should be amended accordingly.	Grant Thornton, Kessel Feinstein(G. Shev)	Paragraph 19(1)(d)(i) and (ii) have been amended – see paragraph 41 of the draft Bill.

EIGHTH SCHEDULE

Para #	Issue	Raised by	Resolution
Para 1 "asset"	Why is SA currency excluded from the definition of asset; should be the same as used in the VAT Act.	Frikkie Strauss; SACOB	SA currency is excluded because if it were not, all transactions in SA currency would have to be treated as barter transactions.
	Foreign currency should be excluded from definition of asset or distributions from foreign entities or accounts will trigger capital gains.	E. Mazansky	Recommendation not accepted: the Eighth Schedule applies to disposals of assets. A distribution from a CFE or foreign bank account will be a disposal of a right to a distribution by the taxpayer. The base cost of a cash account in a bank will equal the proceeds of distribution. Accordingly, there will be no capital gain on disposal of the right. Dividends received do not form part of proceeds to be taken into account in determining a capital gain or loss.
"active business asset"	The reference to "interest" in the definition should be to "interest as defined in section 24J".	SACOB	The definition has been reworded.
"business asset and "active	Definitions should be restricted to paragraphs 44 and 55.	E. Mazansky	The definition of "business asset" will be deleted. With regard to the definition of "active business asset", the recommendation is not accepted as the definition will automatically only apply to the paragraphs in

ɔusiness ısset"			which the term is used.
'financial nstrument"	Should this definition not include a portfolio of a collective investment scheme? This definition is bound to cause problems because of the number of specific inclusions. A simpler and more efficient definition would be as follows: 'includes any 'security' as defined in the Stock Exchanges Control Act, 1985, any 'financial instrument' as defined in the Financial markets Control Act, 1989, or any similar instrument'. Some non-standard instruments may be omitted. Wording should be changed to include 'any forward purchase arrangement or any financial arrangement based on or determined by the time value of money, cash flow or an exchange or transfer of an	Ernst & Young AHI; The Banking Council Adv. David Mitchell	The wording of the definition has been extended to include instruments as described by commentators. No reference was made to definitions in other Acts, in order to simplify the interpretation of this definition.

	asset'. These transactions should not escape s 24J or CGT. The phrase 'any other right or contractual obligation' appears to apply only to an index, thus excluding any derivative deriving its value from an underlying share *per se*. Wording must be tightened		
'spouse"	The exclusion of heterosexual co-habitation appears to be discriminatory.	Liberty; Shrand Ekermans; PWC	Accepted. The Bill has been amended to resolve this issue.
	The definition of "spouse" appears unconstitutional.	Ernst & Young	Accepted. The Bill has been amended to refer to "a permanent marital like relationship".
	Two female partners in a permanent business undertaking constitute spouses.	PWC	Not accepted. Permanent same sex relationships only apply to marital like relationships.
'ara 2	Paragraphs 2(1)(b)(i) & (2)(2) are difficult to enforce. It should rather exempt non-residents in respect of fixed property situated in Rep or ensure that proper mechanisms exist for collection of tax and policing of system.	Grant Thornton (G. Shev); E. Mazansky	It is the international norm for the source country to have the right to tax the disposal of immovable property situated within its borders. This is consistent with South African tax treaties and the OECD model tax treaty. It is SARS's intention to introduce measures to collect the tax on property transactions of non-residents.
	2(1)(b)(ii) What happens where a trade ceases, assets	SAICA; Grant Thornton; G. Shev	When the permanent establishment ceases trade the assets will in terms of paragraph 12(2) (b) be treated as having been disposed of at market value an

	are held in a dormant situation and then a CGT event occurs?		will thereafter not be subject to tax as they will not fall within the ambit of paragraph 2.
	2(2): When is the 80% value to be determined? It is proposed that the 80% be changed to 90% to maintain consistency with other legislative provisions. A non-resident investing in listed property unit trusts or property loan stock company shares will be subject to CGT on sale. There is already difficulty in collecting CGT when a non-resident sells immovable property or an interest therein, those difficulties are compounded where a non-resident might buy or sell listed property, loan stock units or property unit trusts. Therefore paragraph (2)(2) should exclude any interest which represents an instrument listed on a recognised exchange. If necessary the exemption can be limited to people owning less than 10% as is done in	SAICA E. Mazansky	The other provisions in which a figure of 90% is used normally deal with shareholdings and not assets of a company. The percentage of 80% in these circumstances seem appropriate. The 80% is to be determined at the time of disposal. A requirement that there must be a 20% interest in the company or other entity before paragraph (2)(2) operates will address this problem.

	paragraph 62.		
	This paragraph appears to be reasonably easy to circumvent simply by holding sufficient investment assets in the company. To avoid this, a lower % than 80% may be called for.	LISPA	The wording has been changed to provide that the holding must be 80% of net value of the assets of the company which make it more difficult to circumvent the provisions.
	Transitional rules are necessary to ensure gains made prior to the valuation date are not subjected to tax.	SACOB; Venfin Ltd & Remgro Limited	The proposal has been accepted and a transitional rule has been inserted in paragraph 2.
	The tax should apply only to assets acquired after the implementation date to reduce the impact on the economy.	Venfin Ltd & Remgro Ltd.	Restructuring the tax to assets acquired after the implementation date causes severe economic lock-in of investments.
	It is uncertain whether market value or book value must be used. Application of this paragraph should be clarified.	SACOB; Deloitte & Touche	The paragraph has been amended and now requires that there must be a 20% interest in the property owning company and that it is market value that must be used.
	(2)(1)(d)(i): The effect of the wording is that if a non-resident invested 1% in a foreign company which has 100% subsidiaries, one of which holds 100% of a SA or foreign company whose assets consist of 80% of SA	Ernst & Young	The paragraph has been amended and now requires that there must be a 20% interest in the property owning company.

	fixed property, he or she will have to declare the gain when the 1% shareholding is sold.		
	(2)(2): An amendment is required to prevent companies from reorganising outside the threshold.	Fullinput Tax Services	Accepted. The necessary amendment will be made to address the problem identified.
	If a non-resident's interest in a PE is through a company, does the disposal of non-listed shares trigger CGT? A disposal of listed shares by a non-resident is exempt. The implications for attracting investment to SA must be considered.	The Banking Council; SAICA	The non-resident's interest in a permanent establishment held through a company would not be subject to CGT in the hands of the non-resident. The company would, however, be subject to CGT as it carries on a permanent establishment in SA.
'ara 3	This paragraph should be amended to make it clear that the tax is imposed on an accrual basis.	SACOB	Paragraph 3 must be read in conjunction with paragraph 34 which embodies the principle that the proceeds from the disposal of an asset consist of the amounts that have been received by or that have accrued to the person who disposed of that asset.
'aras 3,4,& '2	22(2)(b): The use of the words "due and payable" gives rise to interpretation problems (what if the amount is outstanding on loan account), seems unjustified and lacks symmetry.	Ernst & Young	Restrictions are necessary to prevent taxpayers from entering into arrangements under which they would incur expenses that are not yet due and payable to inflate base cost. This rule seeks to achieve the same objective and provide the same safeguards as sections 23F and 23H. See also the explanation under paragraph 22.
'ara 5	Natural person's exclusion of R10 000 is too small and should be increased to	SAICA; AHI; SACOB; Deloitte & Touche; Shrand	These proposals are not accepted for the following reasons: - The broad exclusions for personal use assets and collectibles already reduce potential liability significantly.

	no less than R25 000. The Katz Commission proposes R15 000. AHI proposes R50 000 and it should be allowed to all taxpayers. Lai King suggests R50 000 and Deloitte's; Shrand Ekermans and CapTax all suggest R25 000.	Ekermans; Captax	- The higher the threshold the more taxpayers would be unable to recognise capital losses. - Higher threshold will encourage taxpayers to engage in wash sale arrangements [sale and repurchase in a short period to exploit the threshold] - The primary residence exclusion of R1 million - Only 25% of capital gains are subject to tax.
	This relief should also be given to individual policyholder funds of long term insurers.	LOA	The proposal will be difficult to entertain for the following reasons: • The policyholder may have other gains as well during a year against which he/she may offset the annual exclusion. Allowing the annual exclusion for the policyholder in his/her personal capacity, plus a form of benefit in the insurer will grant a double benefit to policyholders. • Losses of less than R10 000 suffered by policyholders in the fund would also have to be excluded. • If we allow a complete look-through approach to accommodate all the circumstances of the individual (policyholder) the debate of the rate at which the IPF is taxed will also have to be reopened.
	Persons below the income tax threshold are brought into the net.	Greenbelt Action Group	The annual exclusion applies on top of the income tax threshold. Taxable capital gains are now part of taxable income.
	The filing of CGT particulars where the CGT liability for a tax year is below the threshold should be avoided. The exclusion should be extended to all taxpayers.	PWC	This is an operational issue, which is currently being investigated by the systems development division, which will make recommendations with a view to minimising cost. The reason for the exclusion is to reduce the necessity for SITE taxpayers to file returns. Companies and trusts have to submit returns annually.
Paras 5,6,& 7	The wording needs to be made clear that the annual	Ernst & Young	Operation of the annual exclusion will be explained in the Explanatory Memorandum.

	exclusion can be both positive and negative.		
Para 7	Sub-paragraph (b) should be deleted as the annual exclusion is analogous to an exemption, for e.g. The R3000 annual interest exemption. It is wrong that a person can only claim a loss to be offset against future capital gains if that loss exceeds the annual exclusion. It would be similar to saying that a person can only claim a s11(a) interest deduction to the extent that it exceeds the S10 interest exemption. The provision flouts normal tax principles.	LISPA	The exclusion of the loss mirrors the exclusion of gains and was introduced to reduce administration particularly where persons are not required to render income tax returns.
Para 8	Carry forward only of losses is unfair if taxpayer never has a subsequent gain; often losses relate to previous gains so carryback of losses should also be allowed.	Fullinput Tax services	Carry-back system is not appropriate in a realisation basis environment where the taxpayer can selectively realise losses and defer recognition of accrued gains. Carry back of losses is more likely to be found in tax systems where capital gains are subject to 100% inclusion rate.
Para 10	The higher inclusion rate of companies penalises persons who have family investment companies.	Gavin Brown	Not accepted. It is a feature of the separate treatment of companies.

	Trusts should be treated as natural persons (25%) otherwise a moratorium should be granted to allow transfer of assets without duty. As the inclusion rate is intended to compensate for inflation, the same rate of 25% should be used for all taxpayers. As the lower rate does not truly compensate for inflation SACOB supports taper relief.	AHI; The Banking Council; SACOB	The proposed system will allow trustees to attribute capital gains to individual beneficiaries or settlors and avoid totally the trust inclusion rate. The inclusion rate is partly to offset the effects of inflation and, in the case of individuals, to mitigate the effects of bunching on a progressive rate scale. International norms show companies are subject to higher tax rates on short-term gains. Taper relief would have a lock-in effect. In a constant inflation environment the nominal effect of inflation diminishes over a period of time rather than increases. In making its decision to utilise a preferential rate, the National Treasury also took into account concerns about inflation and bunching of income within a single year. As previously stated, a gain on the sale of capital assets includes a significant inflationary element. The sale of capital assets often has the further effect of triggering high levels of gain within a single year, even though the gain on the asset may have accumulated over multiple years. These points bear some force. However, these arguments are not without counter-argument. All forms of income contain some inflationary element, and the Income Tax Act contains no concession. Capital gain assets additionally have the benefit of deferral. Unlike wages which are taxed annually, the tax on capital gains does not arise as the gains annually accrue; the tax on these gains arise only upon disposal. International studies illustrate this benefit of deferral ultimately outweighs the detrimental inflationary and bunching effect.
	Set rates for retirement funds and compulsory purchase	TMA Investment; Old Mutual; SAICA	Not necessary as retirement funds are not affected by this Bill, they are exempt in terms of section 10(1)(d) and paragraph 51.

	annuities. Set zero rate for untaxed Policyholder fund.		 Accepted. The necessary amendment will be made.
Para 11	The deemed disposal of assets donated is harsh as it appears that CGT will apply in addition to donations tax.	SAICA	The treatment of asset transfers for income tax purposes is quite distinct from the treatment for donations tax purposes. The donations tax applies to the value of a donation, whether the asset in question has risen in value or fallen in value. The capital gains provisions, by way of contrast, measure changes in the economic position of the donor. It recognises both gains and losses, providing relief for the former, unlike a donations tax. It also imposes no tax on the base cost of the asset, again, unlike a donations tax. The same tax consequences follow whether a person disposes of an asset and donates the proceeds or donates the asset directly to the donee. It is clear that anyone who gifts an asset directly has the option of first selling it and then donating the proceeds. It follows that the person who donates an asset directly realises the same benefit as the person who disposes of the asset first and gifts the proceeds. They should both be treated the same way for tax purposes.
	Donors and donees should have the option not to be taxed but the donee would take over the base cost of the donor.	Deloitte & Touche	Not accepted. The rule is aimed at ensuring that the position is the same where a person sold the asset, realised the gain and distributed the cash.
	In the case of an asset donated, the donee should be regarded as having acquired the asset at the market value used in determining the CGT due by the donor. This will result in the donee becoming	SAICA	In terms of paragraph 37 of the Eighth Schedule the donee is treated as having acquired the asset at market value and the gain the donee will be taxed on is the difference between that market value and the proceeds on disposal.

	liable to CGT on the difference between the market value of the asset received and the proceeds finally realised therefor.		
	Rebalancing transaction in WRAP funds should not be treated as disposals.	Citadel	In a wrap fund arrangement, the wrap fund acts as an agent for an investor. The property is that of the investor at all times. In a rebalancing arrangement, the wrap fund manager sells and/or buys shares on behalf of the investor. The investor has actually disposed of shares – the manager's actions are actions of agent on behalf of the actual owner. There is no reason for non-recognition of a transaction simply because the investor authorised an agent to deal with shares on his or her own behalf rather than dealing with them directly.
	In terms of 11(1)(a) it is unclear whether a change in the class of beneficiary of a discretionary trust is a disposal. If so this could lead to liquidity problems. In terms of paragraph 11(1)(b), repudiation of an inheritance is a CGT event. An heir who does not repudiate would only pay CGT on disposal. The issue arises whether an expatriate would be liable for CGT on the residence of his home country on exit. Other anomalies cited – would lead	The Banking Council	The change in a class of beneficiary does not per se result in a disposal but if it results in the vesting of an asset in a beneficiary there will be a disposal. It will also be a disposal when the change in the class of beneficiaries results in a reduction in the value of the interest of the one class of beneficiaries and an increase in the value of the interest of another class of beneficiary. Repudiation of an inheritance will be a CGT event if the person has a right to the inheritance and donation tax is payable on the repudiation. An expatriate who has become a resident as defined would be subject to CGT on his residence in his home country to the extent that there has been an increase in the market value of that residence. Depending on the circumstances he may comply with the requirements for the R1 million primary residence exclusion.

	to administrative difficulties.		
	11(1)(e) requires consideration as the distribution is already subject to STC	SAICA; PWC	Dividends distributed to shareholders do not constitute proceeds in terms of paragraph 34(4)(a) of the Eighth Schedule.
	Provision should be made for joint ownership.	SACOB	Ordinary principles applying to disposals and acquisitions will apply to joint ownership in the same manner as other transactions.
	Where an asset has become of negligible value, the taxpayer should be able to claim the latent loss.	Deloitte & Touche	Taxpayers holding assets of no value can dispose of the assets to recognise capital loss.
	The disposal of an interest in an asset or anyone else acquiring it should be a part-disposal. This is UK law.	Deloitte & Touche	The proposed SA law operates on a different basis to the UK law and the issue of part disposals from combined assets will not arise.
	Paragraph 11(1)(f): Although the CGT guidelines published earlier referred to special provisions for share incentive schemes, the only special provision we have been able to identity is the reference to sec 8A in par 22 (1) of the Eighth Schedule. The CGT provisions will have a major impact on employee share incentive schemes. In most instances, options are granted to employees for no	AHI; Fullinput; LISPA	In terms of the Income Tax Act at present the ordinary gains that employees' make by participating in share incentive schemes are taxed. The proposals in the Eighth Schedule are that any amounts the employees have to pay for the shares are included in the base cost of the shares together with any amounts that have been subject to tax and where applicable, the valuation day value of the option. There is, therefore, no double taxation. The granting of an option by a company to acquire a share in that company is not treated as a disposal - Paragraph 11(2)(b). there will, therefore, not be double taxation. The request is that after the employee has become the owner of the shares with the right to freely dispose of the shares, a further concession be allowed if he or she retains the shares for a longer period. A further concession does not appear justified. Firstly, the employee is in the

	consideration. This is regarded as a disposal (paragraph 11 (1)(f))		same position as any other person who has purchased or can decide to purchase shares. If a capital gain or loss arises in respect of shares held or acquired there are tax consequences. Secondly, if the employer believes it is in the best interest of the company and employees that the shares should be held for a longer period, this condition can be built into the share incentive scheme.
	Furthermore, shares are usually acquired by the Share Trust, either at the par value when issued by the Company to the Trust, or at a value which is lower than the value at which the shares are sold to the employees. This results in double taxation.	AHI; Fullinput; LISPA	The proceeds to the share trust on disposal of shares to an employee will be reflected in the base cost of the shares of the employee. Therefore, a transaction between a share trust and an employee will not result in double taxation. The issue of shares to a company by that company is not a disposal in terms of paragraph 11(2)(b).
	It is assumed that in paragraph 11(1)(f) the asset being disposed of is the option itself and not the asset to which the option relates. If this were not the case, this subparagraph would be problematic, for e.g. Where a person grants an option to purchase a farm but the option is subsequently not exercised.	AHI; Fullinput; LISPA	This is correct. The option is a separate asset to the asset to which the option relates.
	The reference to "creation' is obscure and should the word "diminution" not be added.	Ernst & Young	Illustrations will be provided in the Explanatory Memorandum but examples of where the word "creation" is relevant is the creation of a restraint of trade or a lease. The word “diminution” will be added to the section.

	It is difficult to see how the "creation" of an asset can automatically be viewed as a disposal.		
	A CGT event should not arise where a donor decides to substitute one beneficiary for another, e.g. a former spouse for a spouse. The term 'beneficiary' will need to be clearly defined as this could refer to a class of individuals.	The Banking Council	There will be no disposal where potential beneficiaries under a discretionary trust are changed.
11(2)(a)	Provision should be expanded to exempt transfers of asset when new security is provided or creditor no longer requires security.	E. Mazansky	Accepted. Provision will be amended to prevent the problem.
	In 11(2)(c) the reference should be to a 'unit trust' and not a 'trust'.		Accepted. The necessary amendment has been made.
	In 11(2)(d) the assumption that the exclusion will not apply if borrowing is done via the creation or transfer of a financial instrument should be clarified.		The transfer of an instrument should be distinguished from the borrowing of money. The borrowing of money is not tantamount to a disposal and does not trigger a CGT event.
Para 12	Application of rule onerous because of the difficulty of establishing market value of part retained. Better to defer	Grant Thornton (G. Shev); Ernie Lai King; Deloitte & Touche.	Not accepted. The deferral of the recognition of the proceeds until they exceed the base cost would result in an unacceptable deferral of the taxation of gains and losses.

	recognition of proceeds until they exceed base costs. Provision should be reworded to clarify it. The disposal of a small part of an asset should not be taxed but the base cost of the asset should be reduced.		
12(1)	The ratio used in the formula is incorrect	E. Mazansky	Recommendation accepted: amendment to the provision will be made
	Applying paragraph 12(1) of the First Schedule to the Income Tax Act may not create an assessed loss for income tax purposes, which can result in deductions from income not having occurred at the time of the realisation (sale) e.g. Farms (including fixed improvements). We propose, as a minimum requirement, that the particular deductions, not having been permitted (from income), should be deductible from the proceeds of the sale of land as base costs for purposes of CGT.	Agri SA	These costs will form part of the base cost of the farm to the extent that they have not been allowed for income tax purposes.
Para 13	Exchange control regulations applicable to immigrants should be reviewed.	SAICA; Venfin & Remgro; SACOB; Grant	The original proposal in respect of emigration was that all the assets were deemed to be disposed of on emigration. This proposal has been modified to exclude assets, such as South African fixed property, that would be subject to

	It is suggested that emigration should not be viewed as a disposal as it would discourage immigrants from bringing all their assets onshore, or from declaring these assets. Recognition of gain on emigration will restrict movement, discourage foreign nationals from living here. Emigrants should be entitled to some relief, e.g. treating it as a disposal only upon actual realisation.	Grant Thornton (G.Shev); Ernie Lai King; PWC.	CGT regardless of residence, as SA retains its taxing rights in respect of such assets even though they are owned by non-residents. The assets of persons who become residents of SA are treated as being disposed of and reacquired at market value on the date they became resident. This ensures that immigrants need only account for gains and losses that accrue after they become resident in the Republic. This treatment is consistent with that in respect of emigration and contrasts with that of jurisdictions such as the USA where gains are based on the original cost of the asset. In view of the wide exclusions for personal use assets, primary residence, and the modifications set out above, further concessions in this regard are not supported. Fixed property in South Africa will only be taxed when the emigrant actually sells the property.
	Wording of paragraph 13(5) not entirely clear. The wording of subparagraphs (5) and (6) can be simplified.	Ernie Lai King; Deloitte & Touche	Accepted. The paragraph has been reworded.
	The provisions should be extended to confer the same concession upon CFE's held by non-residents before they become resident in SA.	SAICA	Accepted. The necessary amendment has been made.
	Cash flow problems will result when assets change from capital assets into personal use assets and from trading stock into capital assets, and vice versa.	PWC	The change of use of assets is similar to what has been done with trading stock and its impact on cash flow is expected to be small, particularly as the tax is only levied after the year-end.

	Is the granting of an option the disposal of the option or the underlying asset?	During discussions with PCOF	It is the disposal of the option and not the underlying asset. The base cost of the option is the amount of expenditure incurred in granting the option. Paragraph 23(2).
13(2)	Who is a 'resident'?	Shrand & Ekermans Inc	The terms "resident" is defined in section 1 of the Income Tax Act 58 of 1962
13(2)(b)	How will the tax be collected from an unregistered non-resident? Example of numerous problems provided by PWC.	Shrand & Ekermans Inc, PWC	Suitable mechanisms will be introduced to collect the tax on property transactions of non-residents and reliance is also based on voluntary compliance.
	Exit charges give rise to anomalies in respect of persons working on 4-5 year contracts. A CGT event would arise on exit but a corresponding liability would not arise in the home country (unlikely to obtain credit in terms of DTA). These persons will be discouraged from investing in SA assets.	The Banking Council	While it is so that a credit will not be allowed as a CGT event may not have been triggered in the country to which he is moving, it may possibly be that the country to which he is moving will allow an increased base on immigration to that country.
Para 13(3)	Subparagraph (3) caters for the situation where a person converts trading stock into a capital asset by a change of intention. It is inconsistent to treat the event as a disposal and a reacquisition for a consideration equal to the amount included in that person's income under	E. Mazansky	When trading stock ceases to be trading stock and becomes a capital asset, it will in terms of the proposed amendment to section 22(3) be treated as having been disposed of at market value. The effect of paragraph 12(3) of the Eighth Schedule is to treat it as an acquisition at market value.

	section 22(8). The asset in question will in these circumstances not leave the possession and ownership of that person as is required for the operation of S 22(8).		

Para 14(1)	Is a sale subject to contingency, condition or refundable deposit, a realisation point? A deposit should be excluded from 1(a).	SAICA	After consideration, it has been decided that the provisions should be relaxed to allow capital losses of forfeited deposits in more circumstances. The circumstances in which forfeited deposits will be allowed are:
			• The deposit was made on an asset intended for use solely in carrying on a business;
			• The following personal use assets:
			  • A coin of which the value is mainly attributable to the gold or platinum from which it is minted or cast;
			  • Immovable property other than a primary residence;
			  • Financial instruments (investments); and
			  • Any rights to or interest in these assets.
			The reason for the decision to exclude other personal use assets is that the reduction in value of such other assets is normally as a result of personal use or consumption of the asset which should not be taken into account for CGT purposes.

	The paragraph (1)(a) requires a change in ownership therefore the word "abandonment" is inappropriate. Contrast this with (d) which deals with incorporeal assets and does not require change of ownership.	Ernst & Young	Abandonment can result in a change of ownership.

	In terms of Paragraph 14(1)(a)(i) tax may become payable on the sale of fixed property before the transfer of the property has taken place. It is contrary to the normal practice followed by SARS, in developing tax legislation, which is to ensure that tax becomes payable once the taxpayer is in possession of the funds to pay the tax.		It cannot be agreed that existing tax policy is to delay liability to taxation until the person is in possession of the funds to pay the tax. Income tax is imposed on receipt or accrual whichever occurs first. CGT operates on the same basis and it is only payable after accrual took place, when the third provisional tax payment is made or the tax return is submitted, at which time funds should be available to pay the tax.
	The provisions of subparagraph 1(a)(v) regarding the time of disposal of an asset in consequence of the granting of an option seem to suggest, in the case of the granting of an option to acquire a building, e.g. In a lease, that the date of the ultimate disposal of that building upon the exercise of that option is the date of the granting of that option. This is surely not intended. An employee who exercises an option to acquire shares in	Fullinput Tax Services	An option is an asset for CGT purposes and although it could in terms of general principles be regarded as a part disposal of the underlying asset, it is treated as having a base cost equal to the cost of creating it. On granting of the option the amount subject to tax is the amount paid to the grantor for the granting of the option and not the purchase price of the underlying asset. On the exercise of the option (which is a separate transaction/ disposal) the proceeds from the disposal of the underlying asset will be subject to tax in the hands of the seller and brought into base cost in the hands of the purchaser. An employee who exercises an option to acquire a share in his employer company will be subject to tax in terms of section 8A on the gain made and in

	the employer company would in terms of item (vii) of subparagraph (1)(a) appear to have disposed of that option in return for consideration equal to the market value of those shares, thereby triggering a CGT liability. A deferral mechanism similar to S 8A should be introduced in this regard if it is the intention to tax such gains. In most cases an option is granted on one date and exercised on another. Is it intended that the granting of an option and the exercise thereof shall be treated as two separate CGT events.	 SAICA	the appropriate circumstances can make use of the deferral mechanism in that section. As the gain is included in the "gross income" of the employer it is excluded from the CGT provisions. Any gain made on the subsequent sale of shares would be subject to CGT and no deferral mechanism is necessary. The two events are separate events for CGT purposes.
	The time of disposal rules in subparagraph (c) could take away some of the advantages of time apportionment base cost method as any delay in payment will increase the taxable portion.	Deloitte & Touche	Accepted. It is agreed that the application of the time of disposal rule can in certain circumstances have unintended consequences and care should be taken in deciding which method of determining valuation day value is chosen.
	It is not clear how damage to an asset can be a disposal.	Deloitte & Touche.	Damage to assets have been excluded from paragraph 13(c).
	Paragraph 3 should possibly	SACOB	The definition of "disposal" in paragraph 1 of the Eighth Schedule clearly

	provide for a charge to CGT in respect of proceeds derived from a disposal deemed to have taken place in terms of paragraph 14.		extends to all acts and events that are treated as (deemed) disposals for purposes of the Eighth Schedule. It is therefore unnecessary to amend paragraph 3 and 4.
	The timing rules are comprehensive and intricate and it is a matter for serious concern that one tax act will have two sets of timing rules, considering the large body of legal precedent supporting the existing income tax rules.	PWC	The existing income tax timing rules concern the timing of receipt and accrual and similarly the predominant timing rules for CGT are also receipt and accruals as can be seen from paragraphs 3 and 4. The timing rules in paragraph 13 are of importance for the transitional rules and where no proceeds accrue.
	There is no relief measures for cash flow mismatches.	PWC; Media 24	Not accepted. Capital gains are only taxed in the year following the disposal and the taxation will be treated on the same basis as ordinary income tax.
	There is uncertainty as to how subsequent year adjustments and cancellations are to be dealt with.	PWC	The operation of paragraphs 3 and 4, in years subsequent to the disposal of an assets as they relate to cancellations and adjustments will be explained in the Explanatory Memorandum.
	Liquidity problems will arise unless tax payment is deferred until the actual disposal takes place.	The Banking Council	The CGT is imposed on the receipt or accrual of gains on the same basis as income tax. The tax is only payable in the year following accrual when a third provisional payment is made or on assessment.
	The time of disposal of an asset in terms of a conditional agreement is the earlier of the date the condition is satisfied or the accrual or receipt of the first payment of disposal	PWC	The proposed Bill has been amended and provides that the time of disposal of a conditional agreement is the date on which the condition is satisfied.

	proceeds. This will result in an adverse cash flow implications for the disposer in the case of installment sale and deferred payment agreements. Provision, should be made for the deferral of the CGT liability (some form of debtors allowance).		
Para 14(2)	This paragraph is difficult to follow, as it seems that only one person is being referred to. A disposal and acquisition should take place simultaneously. Consider adding proviso to paragraphs 11 or 13.	Adv. DJ Mitchell	Accepted. The necessary amendment will be made.
Para 15	This must be reconsidered as it does not address changes in partnership profit sharing ratios.	Grant Thornton (G. Shev)	Paragraph 15 of the Eighth Schedule provides that the proceeds from the disposal of an asset of a partnership shall be treated as having accrued to each partner at the time that the disposal takes place. This is merely to provide certainty as to when the gains and losses accrue. The Income Tax Act does not presently have comprehensive rules prescribing how the income of taxable partners or partnerships must be determined. There are provisions which were introduced to prevent abuse which occurred as a result of the use of limited partnerships and provisions dealing with submissions of returns and issuing of assessments. These rules also apply to capital gains and losses. The core rules of the Eighth Schedule which apply to all persons will also apply to partners on the same basis. While it is accepted that the tax practice applicable to partners needs to be

			reviewed, the deficiencies currently exist in the present Income Tax provisions. The view is held that these deficiencies must first be addressed from a revenue point of view and the rules regarding capital gains and losses then changed to mirror these revised rules.
	The charge should be limited to disposals of partnership assets to persons other than partners and not tax changes due to admission of partners.	Deloitte & Touche	The admission of partners results in the creation of a new partnership. In terms of the applicable common law principles there is therefore a disposal and acquisition. CGT consequences flow from applicable common law principles.
Para 16	Couples married in COP are better off than couples married out of COP.	Shrand & Ekermans Inc	The rules regarding the treatment of spouses follow the Common Law rules and mirror the income tax treatment of such spouses.
Para 17	Clarification is required on when the 50-year period should be determined.	SAICA	Accepted. The necessary amendment will be made.
	Subparagraphs (c) and (d) should be worded the same as the exclusions in paragraph 42.	SACOB; PWC	Accepted. The necessary amendments will be made.
	The assets in subparagraphs (c) and (d) are wasting assets and should rather be written down. It is not clear why a capital loss in respect of the assets listed in sub paragraph (c) to (d) should be disregarded, but the capital gain in respect of those assets be taxable. If a capital loss is not	Deloitte & Touche AHI; PWC	Concerns have been expressed as to why CGT is levied on the gains on certain personal use assets while losses are limited. In order to understand the reason for this treatment, it is necessary to start with the theoretically correct treatment of the taxation of personal assets. In theory, there is no reason why gains on all personal assets should not be taxed. The appreciation in the value of personal assets gives rise to income just as the appreciation of any other kind of asset does. A complicating factor is that the value of personal assets tends to decrease as a result of their consumption. Effectively then, what should be done is that the value of the asset should be reduced by that portion attributable to the personal use. Any gain above this reduced value should be taxed and any loss below the reduced value allowed.

	allowable, the capital gain should not be taxable. Allow the losses but only allowed to set it off against a similar asset.	During discussions with PCOF	As can be imagined, this treatment would result in a major compliance burden on taxpayers and SARS if it were to be applied to every personal asset. It is for this reason that the gains or losses on the bulk of personal assets are excluded from CGT. However, certain personal assets are likely to show significant gains and cannot be excluded from the system without causing equally significant distortions. It is conceptually possible to apply the treatment described above to these personal assets but it is possible to simplify the system further by dividing the assets into two categories. Those are assets that are more likely to show a loss as a result of market forces and assets which are more likely to show a loss as a result of personal use. As far as the first category is concerned, rather than calculate the exact split between losses due to consumption and those due to market forces, the losses are permitted and only gains above the original cost are taxed. As far as the second category is concerned, rather than calculate the exact split between losses due to consumption and those due to market forces, the losses as a whole are disregarded and only gains above the original cost are taxed. While this may prejudice the taxpayer in some cases, it may be to the advantage of the taxpayer in others. The decision as to which personal assets should be subject to CGT and which assets should fall into the two categories above, is one that must be made bearing in mind available resources, the amount of revenue foregone, and the distortions introduced by excluding assets. In view of the above, further concessions with regard to loss limitations are not supported.
Para 18	If gains in respect of intangible assets are taxed,	AHI; The Banking Council	These assets are often subject to manipulation for tax purposes as experience has taught us. Taxpayers have overstated the allocation of costs to these assets

	losses should be allowed. The proposals of SARS can be supported by anti-avoidance measures and the proposal is not supported. The extreme measures proposed in the paragraph are not supported as other are available to counter any abuse. No feasible reason for disregarding loses in respect of assets specified in paragraphs 17 & 18. The denial of a deduction on an asset, which is producing profits, is unacceptable.	 Deloitte & Touche SACOB; Ernie Lai King; PWC Ernst & Young	when acquiring a business in order to minimise recoupments in the hands of the seller and, in many cases, to maximise deductions in the hands of the buyer. Abuse by overstating the valuation of trademarks was the rationale for the amendment of S 11(gA) in 1999. These abuses were and are extremely difficult to counter given the wide ranges of values possible for an intangible property depending on the assumptions and methods used to value the property. As a result, it is likely that neither the original cost nor the valuation of an intangible property acquired before valuation date may be relied upon with any degree of confidence. A limitation on the losses on disposal of such intangibles was therefore proposed. As the taxability of the proceeds on the disposal of the intangible property in the hands of the seller will limit the attractiveness of the overstatement of the value of intangible property, this limitation does not apply to intangible property acquired after valuation date. The application of this limitation has been restricted to cases where the intangible property was acquired together with a business, as this was the area where the abuse described earlier was most frequently encountered. Lastly, what should be borne in mind is that where the intangible property is valued in excess of cost and is sold after valuation date for less than the valuation date value, the taxpayer will not suffer an economic loss as the valuation date value would not have been an actual expense incurred by the taxpayer.
	Definition of designated intangible assets is uncertain.	Spoor and Fisher	Recommendation for amendment partially accepted.
	Pre-acquisition intangibles. Limit to pre-acquisitions that occurred as part of a whole business acquisition.	During discussions with PCOF	Accepted.
Para 19	Losses on forfeiture of deposits should be allowed.	AHI; The Banking Council	The redrafted paragraph 17 allows loss on the forfeiture of deposits which is used wholly or exclusively for business purposes and certain personal use assets

	is of the view that the normal anti-avoidance provisions and operation of law is sufficient to prevent manipulation in this context.		on which the capital gains are taxable.
Para 20	We object to the requirement that for the exemption to apply, the returned securities must be registered in the name of the lender. In practice the same securities may be lent again or even disposed of without it being registered in the name of the lender. The requirement of registration creates an unnecessary administrative burden which serves no legal purpose. We suggest that the expression 'and registered in the name of that lender' be deleted in sub par (a) and (b). Allow shares returned to be registered in the name of the lender or its nominee. The paragraph unintentionally requires both legs of a securities lending arrangement to be	AHI Old Mutual Adv Mitchell	This paragraph has been reworded and the requirement of registration has been substituted with a return of security. This aspect will be effectively addressed when the STRATE system is fully operational.

	completed. Should read 'has been returned or is to be returned…'		
Para 21	While the objective of this provision is clear, it could have very harsh consequences for hedging transactions involving financial instruments, especially in volatile markets. Hedging rules ought to be provided to alleviate the consequences for genuine hedging transactions. The definition of straddle assets is too wide, and will lead to unintended consequences: a unit in a unit trust portfolio falls with the definition (it is a financial instrument as defined in the Eighth Schedule). If a holder sells his units before a year-end, and repurchases units after year-end, within the 90-day period, because of changes in market conditions, this paragraph will apply. The 90-day period is far too	AHI; The Banking Council	This paragraph has been deleted.

	long for a volatile market.		
	Clarification should be given on practical implications of accounting.	Old Mutual	This paragraph has been deleted.
	Definition of a 'straddle asset' is too narrow. It does not cover transactions not linked to an index. Should be amended to include all kinds of financial instruments, unit trust units, life policies, hard assets, antiques and all other assets that are suitable for repurchase.	Adv Mitchell	This paragraph has been deleted.
	• It is assumed that it is not necessary for a unit portfolio or portfolio administrator to take straddle transactions into account in its reporting. • The provision does not appear to fulfil its purpose, because it can be circumvented by merely not making any disposals giving rise to a capital gain within the first 45 days of the tax year. • It is unfair to allow losses		This paragraph has been deleted.

	to be carried forward to the immediately succeeding year. Where losses are capped to the value of any gains in the same year, any excess loss should be allowed in the same year of assessment or alternatively carried forward indefinitely. • It is unclear whether a straddle transaction would include the equity itself, or only derivative instruments based on the equity (paragraph 21(3)).		
	In paragraph 21(3) consider deleting the word "rate" and replacing with the words "interest rate and exchange rate".	The Banking Council	This paragraph has been deleted.
Para 22	(1)(a) Should also refer to other assets included in the taxpayer's income under subparagraph (*i*) of gross income'.	SAICA	Accepted. The necessary amendment has been made.
	In terms of the Bill, fee purchases would be treated as disposals giving rise to a CGT event. These ongoing	LISPA	Fee purchases could only qualify as part of base cost if the expenditure is directly related to the acquisition or disposal of the asset. The repurchases to pay fees will be subject to CGT as the LISP is dealing as agent for the client.

	fees do not appear to qualify in terms of paragraph 22(1)(b) as expenditure directly related to the acquisition or disposal of the asset. Repurchase in order to pay administration and other service fees due in respect of an investment should not be treated as a disposal for the purposes of CGT.		
	(1)(c)(viii) – if an option is acquired from a 3rd party, the cost of acquiring that option will not be included in base cost in terms of this paragraph. It is suggested that the word 'granting' be changed to acquisition. The cost of an option should be included in the base cost of the asset acquired when the option is exercised.	Jerry Cerney; BA Laing; SACOB Deloitte & Touche	Accepted. The necessary amendment has been made. Accepted. The necessary amendment has been made.
	It is submitted that the base cost of the assets should include the non-capital costs incurred relating to the holding of assets in question that were not allowed for normal tax purposes. Further	SAICA; AHI; W.B. Cronje; Ernie Lai King; Grant Thornton(G. Shev); E. Mazansky; Ernst & Young	The proposal has been made that recurring costs, such as repairs and interests, should be included in the base cost of an asset. This proposal should be split into two parts, the first dealing with personal assets and the second with business assets. As far as the personal assets are concerned, the primary reason for acquiring such assets is for their personal use and enjoyment. Just as that use and

	provision to be added "such further costs as are in the opinion of the Commissioner similar to the other costs". In paragraph 22(2)(d) and (e), raising fees, interest and repairs and maintenance should be added to base cost.	The Banking Council	enjoyment is not taxed in the Republic so the expenditure incurred in respect of that use and enjoyment is not deductible. This treatment also preserves neutrality between purchasing and hiring an asset. Some jurisdictions, such as the Netherlands, tax the use or enjoyment or "imputed rental" of certain classes of property and permit deductions against this imputed income. On the other hand, one particular class of personal asset, shares, is not acquired for its use and enjoyment but rather for its recurring income and growth potential. Although these shares must be held primarily for their recurring income in order to be classified as capital assets, consideration is being given to permitting a fraction of the interest incurred to acquire such assets to be added to base cost. As far as business assets are concerned, most recurring costs should be deductible for income tax purposes. A proposed amendment has been introduced permitting the addition of recurring costs to base costs under certain circumstances where this may not be possible. For example, a manufacturer purchases land to erect a new factory and pays interest on the purchase price and rates. These expenses are not allowed as a deduction as the property is not yet in use. Due to a downturn in the market, the property is sold. The interest and rates should be allowed as part of the base cost. In terms of paragraph 23(1)(f) the expenditure will be allowed for assets used wholly and exclusively for business purposes. In the case of shares and units in a unit trust, one-third of the interest will be allowed.
	Can the costs of assets created inhouse be included in its base cost?	Spoor and Fisher	Explanations will be added to Explanatory Memorandum to the Bill to make it clear that taxpayers can include the cost of assets created in-house in the base cost of those assets if they were not otherwise deducted.
	Valuation costs as at valuation date.	Frikkie Strauss	Recommendation accepted - a subparagraph will be added to 22(1)(c) to make it clear that valuation cost at valuation date can be added to the cost base.
	(2)(b) Amounts that are not due and payable are excluded	Liberty	Provision has already been made in 'capital gain' and 'capital loss' for the deduction of this expenditure.

	from base cost and provision should be made to deduct these amounts in later year when they do become due and payable.		
	In paragraph 22(2)(b) there is no provision that permits any such amount, that is in fact paid subsequent to such year of assessment, to be recognised in the calculation of a capital gain or loss. It is recommended that a provision to this effect be introduced.	LISPA	In terms of paragraph 4(b)(ii) these amounts are brought into account in subsequent years when they are paid or become payable.
	The treatment of foreign exchange gains and losses must be clarified.	SACOB	Currency conversion rules are set out in paragraph 43.
	The reference to input tax should be deleted for clarity.	SACOB	Accepted. The necessary amendment has been made to clarify the position.
	The requirement that expenditure must be due and payable in subparagraph 22 (2)(b) is not supported. (2)(b) & (2)(c) the principles regarding the time of recognition of an amount for the purposes of CGT should be the same as far as base	SACOB; Deloitte & Touche; PWC Ernie Lai King	The current proposals have been criticised on the basis that the requirement for the deduction in the capital gains system is that an expense must be due and payable while under the main Act a taxpayer need only be unconditionally liable for an expense to deduct it. However, it should be noted that the unconditionally liable test has been considerably modified in order to counter tax avoidance schemes over the years. If a comparison is drawn with the requirements for deducting an expense in respect of, for example, trading stock it is apparent that the expenses may not be deducted before: • The trading stock has been received, or sold, and

	cost and proceeds are concerned.		• The consideration for the sale of the trading stock has been received. Furthermore, section 23H of the Act now provides that where expenses were incurred in respect of goods, services or other benefits, the deduction of the expenses will be limited to the goods supplied, services rendered or other benefits to which the person become entitled. The requirement that the expenditure must be "due and payable" is very similar to the present position in the Income Tax Act, because of the anti-avoidance rules introduced. Under the circumstances a relaxation in this regard is not supported.
	Wrap funds: – is the base cost the buy price, can management fees, investor's initial fees and service fees be included in the cost base? Why are they not treated the same as a fund of funds? Can liquidation where investors are forced to a new fund be an involuntary disposal and exempt from CGT	Investec; Standard Bank	In a wrap fund arrangement, the wrap fund acts as an agent for an investor. The property is that of the investor at all times. In a rebalancing arrangement, the wrap fund manager sells and/or buys shares on behalf of the investor. The investor, therefore, has actually disposed of shares – the manager's actions are actions of an agent on behalf of the actual owner. There is no reason for non-recognition of a transaction simply because the investor authorised an agent to deal with shares on his or her own behalf rather than dealing with them directly. Only costs directly related to the acquisition or disposal of the asset will be allowed as a deduction. LISP's are not treated the same as fund of funds which are separate unit trusts acting as principal whereas a lisp fund is acting as agent for the unit holder. The base cost is the price at which the unit trust management company will repurchase the units (i.e. the lower price).
	The example illustrates the problem. The person was granted an option in 1998 to purchase a building no later than 2007 and no consideration was paid for the option. At valuation date	Deloitte & Touche	Accepted. The necessary amendment will be made.

	the option and building can be valued and the movement in the value of the building will effect both values. The value of the option will have increased if the value of the building has increased and the value of the building will be reduced due to the option. If a consideration had been paid for the granting of the option it would have been include in base cost by subparagraph 22(1)(b)(vii) and added to the amount paid for the building when the option was exercised. In order to achieve the same result the market value of the option on valuation date should be added to base cost.		
	Paragraph 22(1)(c) should provide for the situation where the vendor of a plant agrees to improve the plant but this only takes place after the sale date.	Ernst & Young	The provisions of paragraph 23(1)(d) would permit the inclusion of such expenditure in the base cost of that asset.
	The cost of installation of plant and machinery, including the cost of	Ernst & Young	Accepted. An amendment has been made (paragraph 23(1)(c)(viii)).

	foundations should be added to the base cost of those assets.		
	Paragraph 22(2): if an uninsured asset is damaged by e.g. a fire the cost of repair should be allowed as base cost.	Ernst & Young	It is always a question of fact whether an act amounts to a repair or an improvement of an asset.
	Base cost of interests in CFE's should be increased by amounts imputed to the shareholder and reduced by exempt dividends received from the CFE.	Old Mutual	The proposal is accepted. Specific provisions were introduced to increase the base cost of an interest in a CFE with amount imputed reduced by the distribution of those amounts.
	VALUATIONS: Who is qualified to value? Guidelines for form of valuation should be set out in law or regulations. Minimum standards and requirements for valuation should be promulgated. Organised agriculture should be involved in drawing up the guidelines. Different forms should be prepared for different types of property. The legislation must make it	Ben Booysen; Jerry Margolius; Agri SA SA Council for Valuers SAICA	It is proposed that valuations be done by taxpayers, or by any person having expertise in a specific field. It should, however, be noted that the onus remains with the taxpayer who would be responsible for and must be able to justify the valuation so determined. Valuations must be performed within a period of two years after the date of implementation of CGT. The valuation in respect of intangible assets (market value in excess of R1 million) and high value assets (market value in excess of R10 million) must be submitted to SARS together with the taxpayer's annual return immediately after the expiry of the two-year period. Valuations must be submitted together with the tax return in respect of the tax year in which the gain or loss arising from a disposal is declared excluding the intangible assets and high value assets above which were not disposed off within the two-year period. SARS has prepared a form which must be completed at the time the valuation is

	clear at what point the taxpayer must elect the market-value or time-apportionment value for assets held at valuation date. If taxpayers have two years within which to submit the valuation, can the asset be valued at any date during that period.		performed. These forms will be made available to taxpayers at all branch offices and will also be available on the SARS Web site. Forms not completed within the two year period as well as forms which are not fully completed will result in the valuation being rejected. All documents pertaining to valuations must be retained by the taxpayer for a period of 4 years after an asset is disposed of. Should a taxpayer not be able to verify how a value was determined, the use of the market value will not be permitted. In terms of paragraph 23, the cost of performing a valuation is allowed as part of the base cost of the asset. SARS is currently developing the framework for auditing the valuations. In terms of the current proposal, the majority of the valuations will only be submitted once a CGT event occurs. It is, however, planned that audits will be performed on a risk basis.
	Calculations are complicated by the fact that they will have to be done on at least a monthly basis when instruments are sold to recover fees, and in some cases on a daily basis where portfolios are re-balanced on a daily basis. Much of the data required for the calculation is simply not available. Units are often acquired over	LISPA	The issue for Lisps concerns their responsibility to furnish a return providing information on gains and losses of investors. After discussions it was decided to provide for weighted average base cost based on the market value of the units on valuation day and the cost of subsequent purchases for reporting purposes. Investors can still choose the method of valuation. They are allowed in terms of paragraph 32 to elect a method, but once they have chosen a method it must always be applied in respect of that class of financial asset.

	a period of time, at different prices. The method of calculation of the base cost of units acquired over a period of time, after the valuation date, should be clarified. The preferred method of calculation would be to calculate a weighted average purchase price in respect of such units.		
	It is assumed that "the expenditure contemplated in paragraph 22" includes the expenditure in paragraph 22(1)(a), in other words, the historical purchase costs and any related expenditure.	LISPA	The assumption made is correct.
	The Bill does not indicate what method must be used to calculate the base cost of shares i.e. FIFO or weighted average. Shares in pools – what basis of accounting.	Galaxy Deloitte & Touche	The following methods are acceptable; specific identifications, first in first out (FIFO) and weighted average. SARS must be notified of the method adopted.
	It is not clear whether donations tax, if paid by the donor, will be a realisation cost forming part of the donor's base cost or, if paid by the donee, be an	PWC	Subparagraphs (1)(ix) and (x) has been introduced to allow donations tax paid by the donor or donee as a base cost. The amount of the donations tax allowable is in effect the donations tax payable on the gain.

	acquisition cost forming part of the donee's base cost.		
ara 23(2)	Should the references to (3) and (6) not include (4) and (5)?	Ernst & Young	The paragraph has been substantially redrafted.
ara 23(3)	It is not clear what the objective of this sub paragraph is. The limitation of a capital loss in this manner is unacceptable.	AHI; The Banking Council	This provision is intended to limit losses arising from excessive valuations on valuation date.
ara 23(4), 5) & (6)	The time limit for valuations may have passed when events trigger (4) and there is a conflict between the ' shall' in (4) and the 'may' in (6).		This paragraph has been substantially redrafted.
	The wording "where a person has adopted the market value of an asset" in subparagraph (5) is confusing, as it appears that subparagraph (5) will only be applicable if subpara (4) is applicable. Subparagraph (2) and (5) cannot be applicable simultaneously, as subparagraph (2) is only applicable where the disposal proceeds exceed the para 22 expenditure while subparagraph (5) is	LISPA	This paragraph has been substantially redrafted.

	applicable where the disposal proceeds are lower than paragraph 22 expenditure. It is difficult to see how paragraph 22(5) can be applicable if the person has elected in terms of subparagraph (2)(a). It is assumed that subparagraph (5) is intended to apply once subparagraph (4) has become applicable.		
Para 23(8)	SARS should publish a list of all financial instruments listed on the JSE.	Shrand Ekermans	SARS will publish a list of all financial instruments listed on the JSE on valuation date calculated in the manner required by paragraph 29.
Para 23(8)(a) & (b)	23(8)(a): Unit trusts are not listed on a stock exchange and the method of valuation contemplated in the above paragraph does not apply. A similar method of valuation should apply but it must be kept in mind that a dividend is paid on 31 March and the prices will be inflated by the dividend. This paragraph should probably be extended to include unit trust prices, which are independently	Galaxy LISPA	**Listed shares:** • **Units in unit trusts:** In the case of units in a SA unit trust, it is the average repurchase price (the lower price) which is published at the close of business for the five trading days prior to the valuation date. In the case of foreign unit trusts the value will be the closing repurchase price on the last trading day before CGT is introduced. • **Foreign shares:** The market value of these shares will be determined at the average of the buy and sell price on the last trading day before CGT is introduced. • **Local shares** The market value to be placed on local shares will be the average of the buy and sell price of the shares over the five trading days preceding the introduction of CGT. SARS will publish a list of the market values to be applied in respect of shares listed on the Johannesburg Securities Exchange.

	valued and published on a daily basis. 23(8)(b): It is not clear how foreign based long term insurance policies are to be dealt with. Surrender value not satisfactory reflection of value of policy as at valuation date. Valuations of immovable property should be reserved for registered valuers. Suggests death value be used instead of surrender value. Time apportionment base cost should not be available in respect of listed shares. The proposed valuation basis for listed shares can result in distortions if there are unusual transactions around valuation date. No guidance given as to what constitutes acceptable proof of market value.	Grant Thornton (G. Shev) SA Institute of Valuers; Mr Andrew; PWC. Ernie Lai King Professor Morris Shrand Ekermans	• **Controlling interests:** The point is made that valuing controlling interests in listed companies strictly in terms of listed share prices quoted on Stock Exchanges may not give the correct result, as such interests may carry a premium. The proposal is partly accepted. The proposed Bill has been amended to permit a premium on valuation where a controlling interest (more than 50% holding) in listed companies is disposed of as a controlling interest. • **Non-listed shares:** No specific rules are laid down for valuing shares in non-listed companies. Market value will, however, be the guiding principle. It is envisaged that such valuations will be performed by the taxpayer together with the auditor of the company. SARS currently must perform audits on such valuations for Estate Duty purposes. It is envisaged that these resources would be expanded to cover CGT as well. • **Intangible assets:** As stated above, those taxpayers wishing to submit valuations in respect of intangible assets will have to submit these valuations to SARS within the prescribed period of two years. There are a number of methods which can be utilised for determining the market value of those assets. SARS will not prescribe which method must be used, but the onus to prove that the method used by the taxpayer reflects the market value rests on the taxpayer. It is envisaged that taxpayers would use persons suitably qualified to determine the market value of these assets. • **Usufructs and fiduciary rights:** It is the intention to develop similar rules to those contained in the Estate Duty Act or donations tax provisions for the purposes of the Eighth Schedule

	Clarify whether the quoted price is buy, sell or most recently traded price. 23(10): In the case of financial instruments, this paragraph renders administration and compliance unnecessary complex, without any concomitant benefit. Using an average purchase price would be much better bearing in mind that over the past years, many investors have invested R50 per month (or less) into unit trusts. To treat every R600 per annum purchase as a separate asset does not make sense.	Old Mutual LISPA	• **Insurance policies:** The Bill as it is currently drafted provides that the surrender value will be regarded as the market value for CGT purposes. The concern is that the surrender value does not truly reflect the market value. The market value would generally be higher than the surrender value. Discussions were be held with the Insurance industry to determine a fair method of determining the market value of policies. Paragraph 31(1)(b), therefore, now provides that the value will be the greater of the surrender value or the fair market value. These rules would only really apply in the case of second-hand policies, where the policy was acquired prior to valuation date. • **Farming property:** Land Bank value will be allowed but it must then be used for all purposes i.e. valuation date and on donation or death. • **Foreign based long term insurers:** The Bill provides that any amount received by or accrued to a person in respect of any foreign long-term policy will constitute "gross income". In terms of section 10B the amount included in gross income which represents contributions made by the person to the insurer will be exempt. The effect is that the gain will be subject to income tax at a 100 per cent inclusion rate and at the normal rates. • **Time apportionment base cost for listed shares:** The reason why time apportionment base cost is proposed for shares is to provide for persons whose share values are lower than cost on valuation day and which may later rise. • **Rules for market value:** Paragraphs 29 and 31 provide rules for the determination of market value.

	Valuation basis is suitable for minority interest in listed entities. Does not provide for enhanced value attached to controlling interest. Could be treated as a separate asset. Add transaction costs to value of listed shares to be consistent with the valuation of units in a unit trust. Market Value of listed shares should strictly include an allowance for transaction costs of at least 0,25%. The purchase price of a unit in a unit trust should be used for purposes of determining the valuation date value of that unit.	Old Mutual Old Mutual; Adv Mitchell Association of Unit Trusts	Accepted in principle that the valuation of a controlling interest in a controlled company requires a departure from the prescribed rules. A departure from the securities exchange listed values will be allowed if the controlling interest exceeds 50% of the equity and the interest is sold as such. Imputed transaction cost should in principle not form part of the market value of an asset. In the case of unit trusts, repurchase price should be used for the claiming of the market value to determine the valuation date value of those units. Not accepted. The repurchase price of a unit in a unit trust which does not include any imputed transaction cost is the appropriate price in determining the market value of that unit as at the valuation date. The price at which the unit management company will repurchase units from investors (the lower price) will be the market value.
3(8)(c)	Recommended definition of market value.	South African Institute of Valuers	Recommendation not accepted – proposed definition is appropriate for valuers' internal purposes but is inconsistent with longstanding and settled judicial doctrines and concepts.
ara 23(9) & 10)	Paragraph 23(1) does not permit paragraph 22 costs incurred prior to the valuation date in the base	LISPA	There appears to have been a misunderstanding of these provisions. The costs incurred prior to the valuation date would be taken into account in the valuation date value and to this would be added expenditure incurred after that date. The redrafted provisions endeavour to clarify the position.

	cost of an asset. Paragraph 23(9) and (10) appear to recognise such expenses incurred prior to the valuation date. The provisions are therefore inconsistent.		
Para 24	A schedule of the average prices of shares on the JSE should be prepared and gazetted for use by taxpayers for CGT to avoid differences occurring.	SAICA	A list will be published in respect of shares listed on the JSE. In the case of a South African Securities Exchange, a period of 5 days will be used and in the case of an International Stock Exchange, a period of only 1day will be used.
	We object to the averaging value of shares. In any event, in our view an average of the 'last price quoted' 'over a five trading day period will not achieve a result much different to the closing price on the valuation date.	AHI; TMA Investments	This provision was introduced to minimise the possibility of any manipulation of the listed price of thinly traded securities.
	Should only use price of unit in Unit Trust on day before valuation date for the sake of simplicity – opportunity for price manipulation negligible. Many foreign schemes also do not price daily. It is suggested that base cost past valuation date	Association of Unit Trusts	No. It has been decided to use the 5-day average for all listed financial assets and units in unit trusts in South Africa to counter possible price manipulation and to use the last price quoted before valuation day for foreign shares and units.

	be determined using a weighted average.		
	Either cost or market value should be used in relation to shares.	T. Grant	Time apportionment base cost is available to provide the necessary relief.
	No option to apply time apportionment for investors in assets other than property. Do not take into account original cost where valuation and sale is below cost.	TMA Investment	The approach of not allowing time-apportionment base cost to taxpayers would be harsh when the market value on valuation date is less than cost.
	The 5 day rule in paragraph 24 may not be appropriate in all cases and an alternative basis should be approved.	Deloitte & Touche	An alternative basis has been used for listed foreign financial instruments. They will be valued at the last price quoted on the day before valuation date.
	If it is decided to include unit trusts in terms of paragraph 23(8), it should be excluded from paragraph 24 as averaging is not necessary in this case. It would be impossible for an investor to influence the valuation date pricing of a unit trust.	LISPA	Not accepted. The 5-day rule for valuation of SA Unit Trusts will be used to discourage possible manipulation of prices.
Para 25	Clarity should be given as to whether proceeds include VAT.	SACOB; Ernie Lai King; Deloitte & Touche	Accepted. The necessary amendment has been made to paragraph 34(4)(b).
Para 25(1)(a)	This has adverse consequences for any compromise with creditors in	AHI; The Banking Council	The reduction of a debt in terms of a compromise with creditors will impact on the CGT position of the company to the extent to which that debt has been taken into account in determining the base cost of an asset disposed of by that

	terms of the Companies Act. It defeats the object of a compromise!		company. The base cost of the asset will be reduced by the benefit of that compromise in terms of paragraph 23(4)(c). This will increase the company's aggregate capital gain or decrease its aggregate capital loss for the year in which that benefit accrues. These rules are, however, similar to the current rules in terms of which compromise benefits can be treated as recoupments of expenditure previously allowed as deductions or can result in the reduction of an assessed loss.
Para 26	Intra-group transactions of companies should be rolled-over.	SACOB; Deloitte & Touche	This matter will be dealt with later in the year.
	Clarification is required as to how the market value of an asset is determined at the date of disposal.	SAICA	This is not a new principle, it is an established concept. The price agreed upon between a willing buyer and a willing seller dealing at arms length is a principle that has been used for donations tax purposes over a period of many years.
	Define a "non-arms length" transaction.	SAICA; Grant Thornton (G. Shev); SACOB; Deloitte & Touche.	Not accepted. It is a recognised concept. Also it is used in other sections of the Act such as sections 31 and 103. The courts have laid down guidelines. It is also an undefined concept used in Canada and Australia that have brought about recognised guidelines.
	The way in which par 26(a) is worded provides a benefit to the disposer if he receives a value in excess of the market value of the asset.	AHI; SAICA; Grant Thornton, Kessel Feinstein (G. Shev)	Market value is the guiding principle in other jurisdictions as well. The benefit to the person disposing of an asset for a consideration in excess of its value will be offset by the fact that the corresponding acquisition of that asset will be treated as an acquisition at market value.
	Contradicts paragraph 54 - should not apply to spouses. Add a subparagraph to the rollover provisions. Paragraph 29 (Disposal to and from deceased estate) must be co-ordinated with	Momentum; D.E.Black	Accepted. The necessary amendment has been made to clarify the position. Accepted. The necessary amendment will be made.

	paragraph 54 (transfer of assets between spouses). All transactions with connected persons at non-arm's length should be accounted for on the basis of an independently determined market value		The proposed rule uses market value as the guiding principle.
	Not all connected person transactions should be brought within the anti – avoidance provisions as there are many transactions at full value between such parties.	SACOB; Deloitte & Touche	Not accepted. Disposals between connected persons are treated as disposals at market value. The connected person rule does not, therefore, penalise the parties to the transaction, but merely achieves the result that would in any case follow where persons are dealing with each other as independent persons each of which is seeking to achieve the maximum commercial benefit. Similar rules usually govern dispositions to discretionary trusts in other jurisdictions as well, e.g. the UK. Various forms of the clogged loss rule are also applied in other jurisdictions in respect of transactions between connected persons. Not accepted. Disposals between connected persons are treated as disposals at market value. The connected person rule does not, therefore, penalise the parties to the transaction, but merely achieves the result that would in any case follow where persons are dealing with each other as independent persons each of which is seeking to achieve the maximum commercial benefit. Similar rules usually govern dispositions to discretionary trusts in other jurisdictions as well, e.g. the UK. Various forms of the clogged loss rule are also applied in other jurisdictions in respect of transactions between connected persons.
	In terms of clause 1(7), a person who disposes of an asset to a trust and who "may on or after such disposal be appointed as a beneficiary of	PWC	The need for an anti-avoidance rule is more acute in the case of a discretionary trust than in the case of a company, as trustees of discretionary trusts are usually empowered to benefit discretionary beneficiaries without applying arm's length criteria. A discretionary trust is usually used as a means of benefiting persons by means of disposals for no consideration or below market

	the trust" is deemed to be a connected person in relation to the trust. Why should this not also apply to a person who disposes of an asset to a company and the person may become a shareholder in the company?		value. Companies, in contrast, usually operate within a regulatory framework embodying non-arm's length criteria. Shareholders of a company cannot, for example, merely be appointed as in the case with beneficiaries of a trust.
Para 27	The disallowance of losses between connected persons is harsh as not all transactions are for the purpose of tax avoidance. Paragraph 31 seeks to mitigate the effects of the paragraph but will not be of assistance in all cases. This paragraph is unnecessary as paragraph 26 and the general anti-avoidance provisions provide sufficient protection for the fiscus. Paragraph 27 can be circumvented by merely making two disposals to the connected person.	Liberty; AHI; The Banking Council; Ernst & Young; Shrand Ekermans; SAICA; Grant Thornton (G.Shev); Ernie Lai King; PWC; LISPA LISPA	Paragraph 27 is aimed at ring-fencing a capital loss arising from the disposal of an asset to a connected person by allowing it to be set off only against capital gains from subsequent disposals to the same person made at the time when they are still connected persons. These losses are referred to as clogged losses. This rule prevents a person from engaging in tax avoidance by, firstly, selecting an asset the market value of which has declined below its cost rather than one showing a gain and, secondly, by timing its transfer to a connected person so as to show a loss in a tax year in which a gain is to be realised on another asset, or, alternatively, by transferring an asset now expected to sell at a loss but which is expected to show a large gain in the future. This would, in the absence of an anti-avoidance provision, have the effect of freeing the loss for use against other gains while creating the possibility of eventually realising the expected gain in a friendly entity. The potential impact of the proposed clogged losses rule will be reduced by restricting its ambit to disposal of assets to relatives, certain companies and certain trusts.
	It should be easy to ensure that paragraph 27 does not apply in respect of a loss from a disposal to a	E. Mazansky	The wording of paragraph 38 has been changed to address this problem.

	connected person by first selling a part of an asset whose market value is lower than its cost to a connected person followed by a subsequent sale of the remainder. The full loss should then be claimable.		
	Why only a set off against subsequent gains? What about set off against subsequent gains or gains in the same year of assessment in respect of disposals to the same connected person? Surely that should be allowable?	Alan Huth	The wording of paragraph 38 has been changed to address this problem.
	All transactions with connected persons at non-arm's length should be accounted for on the basis of an independently determined market value.	LISPA	The proposed rule uses market value as the guiding principle.
Para 28	The wording in the heading: "or for no consideration" and the wording in the text: "for a consideration not measurable in money" should be the same.	SAICA	The contents of this paragraph have been merged with paragraph 37.
	How is the market value of an asset to be determined	Grant Thornton (G. Shev)	The fact that the consideration given in return for an asset is not measurable in money does not imply that the market value of that asset cannot be determined.

	where consideration is not measurable in money?		
Para 29	Reconsider as the wording results in bequests to spouses receiving no roll-over relief from CGT even though they are currently exempt from estate duty.	SAICA; PWC; Media 24	Accepted. Amendments have been effected to paragraphs 41 and 66.
	Query as to treatment of distribution from an estate.	Frikkie Strauss	Explanations will be added to the Explanatory Memorandum to explain that gain and loss is recognised when a person disposes of assets on death (to achieve equivalent treatment with the person who sells just before death to leave cash to his or her heirs) and the law then treats the heir as if that person had inherited directly, without the asset passing into and then out of the estate.
	It is inequitable for the assets in a deceased estate to be passed on to the heirs, legatees or trustees at the base cost to the deceased estate. This will eliminate capital gains and losses in the deceased estate while held and administered therein. In practice there is often a delay between the actual date of death and a Lisp being advised of the death. It is possible that during that	SAICA; Deloitte & Touche; AHI; PWC LISPA	The proposed treatment puts heirs, legatees and trustees in the position they would have been had the deceased donated those assets to them on the date of death. The treatment of capital gains in the hands of heirs and legatees mirrors that afforded to normal income accruing in an estate in terms of section 25. The gains and losses at date of transfer are unrealised and may never eventuate. The suggestion that the assets be revalued and taxed in the estate at date of transfer could lead to liquidity problems in the estate. It would also cause an additional administrative burden for SARS and the executor. Most estates are wound up within a year and so the majority of heirs should be unaffected by fluctuations in market value between the date of death and date of transfer. The concern that Lisps have is that they are required to report on gains or losses of investors and the returns will not be accurate because they have not been supplied with the relevant information timeously. This is acceptable and no action will be taken against them for incorrect information in these circumstances.

	period, certain events regarded as disposals may take place, particularly if the assets consist of wrap fund investments. To whom would any resulting capital gains or losses accrue or are they to be disregarded? In addition the market value of assets transferred to an heir may differ substantially from the market value of such assets at the date of death.		
	Problem in case of Wrap funds – delay between date of death and LISP being advised thereof – disposals might be effected in intermediate period. Will gains or losses accrue to deceased estate or must they be disregarded?	Citadel	
	It is not uncommon for an heir or legatee, in order to preserve one or more assets in an estate, to accept a liability or debt of the estate. Provision should be made in such a case, for the pro rata	AHI; The Banking Council	A liability or debt of the deceased will be relevant for CGT purposes only to the extent to which it was taken into account in the deceased's hands as part of the base cost of an asset treated as having been disposed of at market value by the deceased to the deceased estate. That liability cannot be taken into account again in the beneficiary's hands, as this would amount to double-counting. A beneficiary to whom that asset is distributed and who accepts the relevant liability of the estate in respect of that asset cannot therefore add the amount of

	increase in the base cost of the assets received, or if the liability or debt is in respect of a specific asset, the base cost of that asset.		that liability to the base cost of that asset in that beneficiary's hands, namely, its market value as at the date of the deceased's death.
	The stated intention to reduce estate duty will be cold comfort for the vast majority of people who would not have been liable for estate duty in the first place (mainly because of exempt transfers to spouses and the R1m rebate). In practice many ordinary people with R10 001 gain in their investment portfolios will now be drawn into the "estate tax" net. The imposition of CGT on death will have a negative impact on farmers, small businesses and estate administration (delay in winding up). Even the USA doesn't impose CGT on death.	PWC	The reason why it was decided to impose CGT at death is because it has conceptual merit and it resolves the difficulties inherent in attempting to determine the original cost over several generations. Relief has been provided for by: • Reducing the estate duty rate from 25% to 20%; • Increasing the annual exclusion at death to R50 000; and • Providing a once in a lifetime relief for small business farmers etc of up to R500 000 which can be used at retirement or death.
	Is CGT deductible from the dutiable estate as a winding-up expense or from estate	PWC	It is an expense of winding up the estate. It is a debt due by the estate – section 4 deduction.

	duty? How will a capital loss be treated – as a deduction from the value of the estate or will a rebate be calculated as a set-off against estate duty? Cognisance should be taken of the fact that agricultural land is currently included in estates at either market value or values determined by the Land Bank. It is proposed that this option should also be available in the case of deceased estates for purposes of CGT.	 Agri SA	 Capital losses are ringfenced and are only allowed as a deduction from capital gains. The reason being that: • Capital gains and losses are only brought to account on realisation which can result in manipulation of the accrual date; • Only 25% of a natural person's capital gain or loss is taxed as opposed to the 100% inclusion rate for other income. CGT payable by the deceased will be allowed as a deduction from the estate's assets. Land Bank value will be allowed at the death of a farmer if the farmer chose the Land Bank value on valuation date or inherited or was donated a farm at Land Bank value.
Para 29(2)	The underlined words should be added to cater for distributions to trusts "where an asset is disposed of or distributed by…"	Ernst & Young	The wording of paragraph 29(2) already covers the situation. The transfer of ownership upon the distribution of an asset constitutes a disposal of an asset in terms of paragraph 29(1).
Para 30	It is inequitable that the taxpayer in South Africa be taxed on the depreciation of the Rand in relation to other currencies. It is submitted more equitable to deduct the base cost in the foreign currency and then convert the capital gain at the ruling	SAICA; Grant Thornton (G. Shev); PWC	The accrual and incurral (due and payable) events are taking place on two different dates and exchange rates applicable to the two different dates apply. South African taxpayers are taxed on the increase in South African wealth. To exclude gains in times of depreciating currency would artificially encourage investment offshore. The converse would be true in times of appreciating currency. The treatment proposed by commentators is not neutral between domestic and offshore investment.

	exchange rate on the date on which the proceeds accrue in the taxpayer's favour. This is currently used in S 9D. The reasoning behind the paragraph is not understood.	 Ernst & Young	 The reasoning is to treat the sale of an asset on the same basis as trading stock.
	There is no apparent reason why the date for determining an exchange rate should not be the same for the proceeds and an expense. The date should be the accrual date in respect of the proceeds and the date of incurral in respect of an expense.	AHI	The second part of the statement contradicts the first.
	This paragraph should probably also provide for the currency conversion of the valuation date value of pre-existing foreign assets.	LISPA	Paragraph 43(4) provides that where market value has been chosen the currency must be converted at the ruling exchange rate on valuation date.
	The treatment of foreign exchange gains and losses must be clarified.	SACOB	Currency conversion rules are provided for in clauses 13, 15 and 16 and in paragraph 43.
'ara 31	The anti-avoidance measure should also deal with gains.	Deloitte & Touche	As the annual exclusion is not large, it is not necessary to deal with gains in the anti-avoidance provisions of paragraph 42.
	Provisions should not apply to listed securities.	Old Mutual	The rule is not to disallow the loss but to postpone the crystallisation of the loss and is specifically targeted at all financial instruments.
	The reference to person in (a) could refer to the first or second person or both.	Ernst & Young	Accepted. The necessary amendment will be made to clarify the position.

	This paragraph, as currently worded, could have unintended consequences. If a person disposes of shares and realises a capital loss, and reinvests the proceeds from the realisation in other shares (a substantially similar asset) within 90 days, the provisions of this paragraph will apply. Even more bizarre if a person disposes of shares at a loss, and within 90 days his brother (a connected person) acquires other shares (a substantially similar asset) the provisions of this paragraph will apply.	AHI; SAICA	Accepted. The necessary amendment has been made to limit the "connected persons" to relatives and entities controlled by that person.
	It is not clear what happens if these provisions overlap with the straddle asset provisions in par 21.	LISPA	The straddle provisions have been deleted.
Para 33 "an interest"	Definition should include trusts.	SAICA	Not accepted. An interest in a primary residence should not include the interest held by a trust (excluding a special trust) in a primary residence.
	Some foreign entities that are similar to share block companies do not issue shares. The words "or interest" should be added after the words "or a share".	E. Mazansky	Accepted. The necessary amendment will be made.

'primary residence"	What about a residence used partly for business? The request is that the exclusion be extended to residences owned by trusts. The exclusion should extend to a trust which owns a residence in which a widow(er) of the deceased stays, if on the death of that person the house is to be sold and the proceeds to be distributed to heirs.	SAICA; Pieter Pretorius; Jennifer Rooseveld; AHI Deloitte & Touche; Ben Milner's Tax Counselling Services.	This paragraph must be read with paragraph 50. It would depend on the period that it was used for business purposes and the portion of the house that was so used. The reason why the primary residence exclusion has been limited to situations where the residence is owned by an individual, is to limit the avoidance of other taxes such as transfer duty and estate duty. A concession, which allows for the fiscal-free transfer of primary residences from companies to its shareholders if they are natural persons and from a trust to a settlor has been incorporated. In the case of special trusts, they will continue to enjoy the benefit of the primary residence exclusion until the residence is disposed of or up to one year, whichever is the earlier in terms of paragraph 78.
	How does CGT apply to a property acquired prior to the valuation date?	Kevin Lee Son	Only a capital gain accruing after the valuation date is subject to CGT.
	Why is a primary residence held by an inter vivos trust not recognised?	SAICA; Grant Thornton; G.Shev.; Deloitte & Touche	The suggestion would be an unacceptable departure from the basic principle governing the primary residence exclusion.
	Should a person have a trust which owns the shares in the company that owns the principal residence that he and or his spouse occupy, then the company and the trust should be able to claim the R1million exemption. If an exemption is not	Alan Huth	A concession is being granted and it cannot be open-ended. It has specific parameters before it will apply.

	included in the legislation, then such persons will have to dismantle the structure, take transfer of the residence into their own names and thereby put the residence at risk from his creditors. This discourages business, is detrimental to the economy and is against the rights of persons who may have such structures in place.		
Para 34	The provision that anything in excess of R1million will be subject to CGT is inequitable as interest on personal mortgage bonds are not deductible and also this will encourage taxpayers to sell their homes when the gain nears R 1 million. No apparent compelling reason for this limitation.	SAICA; Grant Thornton (G. Shev); Kevin McManus.	This limit was imposed in the interest of equity. The transaction cost will discourage the selling arrangement when a potential gain nears R1million.
	It will discourage property investment by locals and foreigners.	Media 24; the Banking Council	The R1million limit was introduced for equity purposes and is designed to exclude the majority of gains on disposal of residences.
	It is proposed that the exclusion for primary residences be increased. SACOB proposes R5	SACOB; Greenbelt Action Group	

	million. By limiting the exclusion of the first R1 million of the gain, one is effectively saying that the surplus gain is a wealth tax. As CGT is not a wealth tax, one has to be consistent in application.	 CapTax	
	It is presumed that paragraph 34(1) provides that the deceased person will be treated as a natural person for the purposes of this paragraph.	LISPA	Accepted. The necessary amendment has been made to accommodate estates and special trusts where the beneficiary dies.
	Provision should be made for increase of limit in line with inflation.	E. Mazansky; the Banking Council; Professor Morris	The limit will be increased periodically to ensure that it remains consistent with equity norms, revenue needs and the general price levels.
	Where the taxpayer has more than one residence, how is the election of primary residence to be made?	SAICA	The decision as to whether a residence is a primary residence is a question of fact and depends on whether that residence was used as the main residence of the person disposing of it, the extend to which and the period during which it was so used.
	How are customary and polygamous marriages dealt with?	SAICA	The principles governing the primary residence exclusion apply in respect of all marriages. A definition of 'spouse' will be introduced which includes a person who is a partner in a marriage recognised in terms of the law of SA. Furthermore, the Recognition of Customary Marriages Act, 1998 recognises customary marriages.
Para 35	There is no provision for the method of apportionment of areas or the base cost or values.	SAICA; SACOB	It is not possible to lay down rigid guidelines for the apportionment of base cost, area and value as this will depend on the facts of each case.

	The misunderstanding is that any property over 2 hectares is out of the exemption. Unfair to limit the exemption where none of the property is used for commercial purposes. Limitation is harsh and arbitrary.	Puregas/Hidden; Pat Hewartson; S. van Bavel; Grant Thornton (G. Shev)	The perception that the exclusion will not apply in respect of property over 2 hectares is erroneous. It only limits the area that will qualify for the exclusion to 2 hectares. The issue will be addressed in the Explanatory Memorandum. This limitation is being imposed for practical reasons as well as for the purposes of equity and should cover the majority of disposals of primary residences.
	Apportionment of proceeds from sale of a farm should be based on replacement cost of residence on farm as at valuation date in relation to market value of farm as at that date. Non deductible cost of housing for employees should be added to base cost or treated on same basis as suggested above in respect of primary residence.	Agri SA	The methodology of how the residence will be valued has still to be finalised.
	A taxpayer who subdivides his residential property and sells the subdivided land separately from the land plus the residence situated thereon, at a different time and to a different purchaser will have to pay CGT on the gain on the land. This is a deterrent which could limit	SAICA	The principle is that only the residence and the property used for residential purposes should qualify for the exclusion. If the land separate from that land is disposed of, there is no reason why the exclusion should apply.

	the amount of land being made available for new housing in established suburbs.		
	It is proposed that the apportionment of the proceeds of a sale for purposes of CGT be based on the separated values (i.e. replacement costs in respect of residences in relation to the market values of farms as such) at the valuation date. The same apportionment procedure should be available on the date of sale for purposes of determining the capital gains component of a house to be excluded.	Agri SA	While the principle of valuation is accepted the methodology of how the residence will be valued has still to be finalised.
Paras 36-38	There is some confusion over the various time periods that apply to the primary residence provisions.	Frikkie Strauss; Deloitte & Touche	Amendments have been made to the draft Bill to clarify these points.
Para 36	CGT should not be imposed on residence not occupied by person if that person owns only one residence.	Shane Ramsay	Not accepted. The principle on which this concession is based is that the owner is ordinarily resident in the residence. Generous concessions have been made for temporary absences.
Para 37	Should also include the instance where the taxpayer moves out of his normal residence in order to	SAICA	Accepted. The necessary amendment has been made.

	renovate or improve with a view to moving back later.		
	The two-year period is unreasonable, the Commissioner should have the power to extend the period.	SAICA; Grant Thornton; G. Shev	Not accepted. International experience has been taken into account in determining the period.
	Why should the absence be continuous? Should provision not be made for other circumstances?	Deloitte & Touche	The requirement is that the owner be ordinarily resident in the home and the provisions of paragraph 44 give certainty to the person who is continuously absent from the residence. The 5-year rule will cover many of the other circumstances.
	The provision dealing with the apportionment of the gain with reference to the portion of the holding period during which a person was ordinarily resident in a residence should be spelt out more clearly as was done in paragraph 23(9)(b).	E. Mazansky	The operation of the rule will be explained in the Explanatory Memorandum.
Para 38	It is requested that the period a person may be absent from his primary residence should be extended in certain circumstances.	Ernst & Young	Not accepted. The 5-year period is sufficient to cover the majority of the cases.
	In terms of the apportionment for periods of absence from the primary residence, it seems that a taxpayer is worse off if he or she does not hire out the	PWC; Grant Thornton (G. Shev)	Rental period effectively excludes apportionment due to use of residence for trading purposes. The person only has to be ordinarily resident in the residence. If he or she can show this even where he or she is absent he or she can still enjoy the exclusion.

	residence while absent. This apparent inconsistency needs to be addressed. The exclusion does not Provide for where absence From the residence is solely for reason of a temporary employment or an international assignment abroad. This is inequitable and out of line with CGT legislation of other jurisdictions. The UK CGT legislation for instance, has a concession to the effect that as long as the taxpayer is absent during a period of employment and all the duties are carried on outside the UK, the period of absence (unlimited) is disregarded. The UK also has a deemed 36 month period of ownership that qualifies for 'relief' regardless of how the property is used in that time.		Not accepted. The 5-year period is sufficient to cover the majority of cases.
Para 39	What does the portion of the primary residence used for "non-residential use" include? What about home offices,	SAICA; SACOB	All the areas that are not mainly used for residential purposes will fall outside the exclusion. The Eighth Schedule only covers capital gains and losses derived after the valuation date

	occasional letting of a granny flat and the taking in of a paying boarder?		
	All periods of use of the residence and not only periods after the valuation date must be taken into account, A *de minimus* rule of 10% should apply to non-residential use. Grant Thornton, Kessel Feinstein say that de minimus rule might be inappropriate. There should be a *de minimus* exclusion from the paragraph where the part of the residence used for trade does not exceed 10% of the whole in order to obviate administrative difficulties and problems of compliance.	SACOB; Grant Thornton; G. Shev; Deloitte & Touche E. Mazansky	The gain for CGT purposes is determined from the valuation date. It is therefore correct to take only the use of the asset after that date into account. Regarding the *de minimus* rule, the suggested treatment will be inconsistent with income tax treatment in respect of domestic premises also used for trading purposes where expenditure is claimed even if the area is less than 10%.
Para 40	Where a Company or CC disposes of a primary residence, an exemption should be granted on the capital dividend awarded by the Co' or CC upon liquidation or de-registration. If a primary residence owned by a Company or CC is	SAICA	Accepted. The necessary amendment has been proposed for section 64B. If an interest in a company is converted to a shareblock, the interest would qualify as "an interest" for purposes of paragraph 44.

	converted into a share block Company, then it appears that the primary residence will qualify for the exemption.		
	Where a residence is owned by a taxpayer for a dependent relative, the home should be recognised as the primary residence of the dependent relative. The argument is that it will not reduce the base of the tax.	SAICA	The suggestion would be an unacceptable departure from the basic principle governing the primary residence exclusion. The concession is based on the principle that the owner is ordinarily resident in the residence.
	Relief should be granted to an heir who inherits a deceased's primary residence, and chooses to dispose thereof or occupy it as their own residence.	SAICA; SACOB	Not accepted. Does not comply with the requirement regarding primary residence. The heir will inherit the property at market value and should not make a gain if he or she disposes of it soon after it is inherited.
	The concessions in respect of Transfer duty should be extended to exclude from STC any gains in the company on the transfer of the property. This provisions should be reworded to provide that where the 20% rule and the time apportionment base cost applies, this paragraph shall not apply.	SAICA; Grant Thornton (G. Shev)	Amendments will be effected to section 64B. This concession is allowed subject to conditions which limit possibilities for abuse.
	It is not clear whether an	Momentum	It is not a personal use asset but the capital gain made on it can, if it complies

	insurance policy is a personal use asset.		with paragraph 55 be disregarded. The circumstances in which the payment in respect of the long-term policy will qualify for the exemption are set out in the paragraph. Effectively, if the policy has not been purchased, it will qualify for the exclusion.
	Two years should be allowed to effect transfer, failing which SARS should be given the discretion to extend the period.	Shrand Ekermans	A generous concession is being given and a shorter period is necessary to ensure control. The period will extend from the time the Act is promulgated until 30 September 2002 which is sufficient time to effect the acquisition.
Para 42	Is it intended and accepted that there can be an apportionment in respect of an asset used partly for trade and partly for private purposes as is suggested by the wording of this paragraph.	E. Mazansky	Yes. An apportionment can be made.
	The definition of "personal use assets" confines such assets to those of a natural person or special trust. What about assets held in trust on the death of the deceased for his minor children. It is unfair and contrary to the philosophy of exempting personal use assets, that if the testamentary trust should dispose of the asset prior to it being distributed to its heirs, it should now be subject to CGT. The exclusion should extend	E. Mazansky	The requirements of the paragraph are that the asset must be held by a natural person and personal use assets held by a trust would not be disregarded subject to what is said below. Where a natural person has a vested interest in an asset held in a trust, the asset is treated as an asset of the beneficiary and not the trustee. The treatment of the assets described in the representations cannot be determined unless all the facts are examined.

	to assets held by a Testamentary trust if they were assets of the deceased during his or her lifetime.		
	The definition of "asset" seeks to exclude SA currency other than coins made mainly from a precious metal. It is submitted that all coins should be exempt as it would be grossly unfair to discriminate against collectors of coins while exempting other works of art and personal belongings. If an exemption is not possible then the items should be more definitive. It is suggested that coins minted before 1960 and proof coins minted by the Mint of the country of origin be excluded.	The SA Numismatic Society	Coins made from certain precious metals is one of the categories of personal use assets excluded from this category as the view was held that they are similar to other excluded assets such as financial assets (shares and bonds) and immovable property. The reason being that these assets do not diminish in value as a result of private use or consumption and are readily saleable as are financial assets. After consideration, this view is retained, but a proposal to simplify the matter will be considered, namely, to restrict the taxation to coins made mainly from gold or platinum.
Para 43	The terms "a life insurance Benefit" and "a lump sum in Respect of an endowment Policy" should be defined. There is no definition of endowment policy in the Act or Long-term Insurance Act. The term "sinking fund policy" in the Insurance Act	SAICA Old Mutual; Deidre Briesch	Accepted. Reference is made to a long-term policy as used in section 29A which covers both a life policy and endowment policy.

	would prevent confusion. There should be no distinction between life insurance / endowment policies held by the original beneficial owner and such policies that have been ceded outright to a beneficial owner. In both instances CGT will be levied on the assets held in the policyholder fund in respect of the policy. There is therefore no basis for only disregarding capital gains or losses in the hands of the original beneficial owner and not in the hands of any subsequent owner, as provided for in paragraph 43.	 LISPA	 The Bill has been amended to permit nominees or dependents of the original beneficial owner to enjoy the exclusion provided no amount was paid or is payable directly or indirectly for the cession of the policy.
	It would appear that proceeds of a life policy taken out on the life of a deceased as owner which are payable to his estate do not qualify for exemption. The exclusion should include the situation where the recipient is the original owner.	The Banking Council	Accepted. The Bill has been amended to extend the concession to the deceased estate.
	In terms of the legislation,	SAICA; Phillip	The preferential tax treatment afforded to insurance policies is intended to

	second hand policies are taxed twice, firstly in the hands of the insurance company and again in the hands of the owner. It is submitted that this is inequitable and results in economic double taxation. The proposal is that credit should be given for the tax already borne by the insurer. CGT should not be imposed in respect of 2nd hand policies to address some other perceived avoidance. Inequitable results where used for legitimate purposes. Might cause significant withdrawals from the long term insurance industry and will result in loss of various benefits.	Haupt; Old Mutual; LOA Kevin McManus Michael Stowe LOA; UBS Warburg Securities SA	encourage long term savings. Second hand policies do not necessarily comply with this objective. These policies also contain a speculative element (difference between death value and purchase price) which would otherwise escape taxation. Proposals are not accepted for the following reasons: • Firstly, the individual policyholder fund is taxed at 30% while the maximum marginal rate for individuals is 42%. When the four-fund approach and the trustee principle were agreed to, it was agreed to as a package. One of the principles was that an average rate of 30% would apply as the maximum marginal tax rates of many policyholders could fall in the lower tax brackets, i.e. below 42%. The lower rate was also allowed as persons would be locked into the investment for a minimum period of 5 years. By allowing people to exit the investment instrument, this longer term investment objective is broken. • Secondly, who are the people who can afford to buy policies in the secondary market? The large majority of these people are high income earners paying tax at 42%. Why should they be granted an option to enter an investment instrument of this nature on a short term basis and enjoy the low preferential tax rate of 30%, i.e. 12 percentage points lower than what would have been paid in the case of any other investment. Levying CGT on second-hand policies closes this gap to a large extent. • Thirdly, these policies are normally purchased at a discount and then sold or held until maturity. This discount applies both to returns that had accumulated up to the date of purchase and future returns. As far as returns up to the date of purchase is concerned the discount compensates the purchaser for the delay in payment. This discount is effectively interest income and should be taxed in full. As a general rule second hand policies will not be excluded. However, in certain limited circumstances gains will not be taxed. See paragraph 55 for a list of these policies.

	May be unconstitutional to discriminate between original owners of policies and other owners.	Phillip Haupt	The view is held that this discrimination is justifiable as they do not meet the objectives of the concession.
	A policy on the life of a member of a retirement fund which is owned by that fund and later ceded to that member should be excluded from the rule as far as that member is concerned. Deferred compensation payments should also be excluded from the dispensation applying in respect of 2nd hand policies.	Institute of Retirement Funds; SAICA	Accepted. The necessary amendment has been made. Accepted. The necessary amendment has been made in respect of certain policies taken out on the life of an employee, director, partner or fellow shareholder.
	Is the intention not to differentiate between SA and other policies. Foreign insurers – Treatment of policies with foreign insurers is unclear.	SAICA SAICA; Grant Thornton; G. Shev	Yes. The proceeds of foreign policies will be taxed in full as normal revenue. premiums paid will be aggregated and exempted at the time when the proceeds are paid out.
	The wording of the exclusion should be clarified to ensure that all classes of long-term policies such as disability policies, health policies sinking fund policies etc are excluded.	Old Mutual; Deidre Briesch	Accepted. The necessary amendment has been made to paragraph 55.

Para 44	It is proposed that the gross asset value be apportioned according to profit sharing percentage as most professional practices have many partners and the gross asset value of the partnership will invariably exceed R5 million.	SAICA	Not accepted. This concession is intended to assist small businesses with a net asset value of R5 million or less.
	The request is that the retirement relief for small businesses be increased to R5 million and that some of the requirements regarding periods the assets are held be relaxed. The extended gain should be increased to R5million and the 18 month period for disposal extended to 24 months.	SACOB Ernie Lai King	Not accepted. It is intended for small businesses where the owners do not or cannot make provision for retirement via a formal retirement savings instrument. The period has been extended to 24 months.
	The 10% holding of the equity of a company qualifying as a business should be reconsidered.	SAICA	The 10% requirement was based on the maximum number of members which may participate in a close corporation.
	The term "gross asset value" should be defined.	SAICA	Accepted. The rule now refers to the market value of all the assets at the date of disposal of that interest/asset. See amendments to paragraph 56.
	It is accepted that the value of a primary residence on a farm will be excluded from gross asset value for	Agri SA	Accepted - to be excluded from gross asset value for all small businesses. Asset to be excluded from gross asset e.g.. Primary residence, life assurance and retirement and insurance benefit.

	purposes of relief.		
	There appears to be uncertainty and confusion over the concept of substantially different small businesses.	Frikkie Strauss	The concept of substantially different business has been removed.
	The definition of business assets should be relaxed to include shares in a subsidiary property company.	Deloitte & Touche	It would result in unnecessary complexity and moreover an active business asset does not include immovable property generating passive income.
	There ought to be a total exemption from CGT on the disposal of small business assets.	The Banking Council	In order to provide for an exclusion it is necessary to define what a small business is and the R5 million asset value limit is intended to do this.
	Disposals of assets within a group of companies should be exempt as the transaction is not at arm's length and is effectively back to back with no economic value added.	Captax	The rules for group transfers will be introduced later in the year.
	Subparagraph 2(ii) should also cover superannuation as there might be circumstances where a person below the age of 55 has become too old to be involved in the specific business, e.g. In the sporting or modeling field.	E. Mazansky	Accepted. The necessary amendment has been made.
	The relevance of the requirement in subparagraph (5) that all the affected	Fullinput Tax Services	The concept has been removed.

	businesses be substantially different in nature is questioned. It will only result in uncertainty and disputes between taxpayers and SARS.		
	Many persons operate businesses through Co's, CC's and trusts therefore provision should be made to disregard a portion of any capital gain made by such entities from the disposal of "small business". To only make provision for such exemption for natural persons is discriminatory as extensive use has been made of these entities for decades for sound commercial reasons and is encouraged by numerous statutory and common laws.	Alan Huth	The concession is intended for small businesses and extending this concession to members of a group of companies would complicate the operation of the concession.
	To ensure equity between owned property and rented property, the size of the business should exclude the small business premises investment in the gross assets qualification of R5 million.	CapTax	Not accepted. The criteria for the concession is based on assets owned by the entity as CGT is tax on the disposal of assets.
Para 45	A claim for illness, injury or	Deloitte & Touche	The claim for compensation would be an asset as defined for CGT purposes

	defamation does not constitute a disposal and another formulation is required.		while the receipt or accrual of that compensation would constitute a discharge or termination of that asset thereby falling within a disposal as defined in paragraph 11(1).
	It is assumed that this refers to the disposal of a right to the compensation and that any asset bought with the compensation will be subject to CGT.	LISPA	The assumption is correct.
Para 46	The provision refers specifically to the SA. What happens when a person wins prize money abroad? Paragraph 46 is superfluous. Prize money can, in terms of the present scheme of the Act, never be subject to CGT. A person who wins a prize does not in this regard dispose of any asset other than cash for purposes of CGT. The specific exclusion could also give rise to the argument that a capital payment not involving a disposal, e.g.. An ex gratia payment to a person not forming part of "gross income", is subject to CGT.	SAICA; Grant Thornton; G. Shev; Deloitte & Touche E. Mazansky	Gambling in SA is subject to different forms of taxation which is paid to the Government. Foreign gambling does not bear this tax and it is, therefore, correct that the foreign winnings of SA residents should be subject to tax in SA. The ticket or right that the successful winner of the prize holds is an asset which has value equal to the value of the prize. When the ticket is exchanged for the prize there is a disposal by the ticket holder.

	It seems strange that a person in receipt of a fortuitous capital gain, e.g., the National Lottery, should not be subject to CGT. Such a person can easily afford to pay CGT and it would be warranted as such person would not have done anything productive to improve the economy of the country by his activity. The tax could possibly be deducted at source as a withholding tax and paid over to SARS by the payer of the gain. Subject to a minimum gain which should be exempt for admin reasons (say R10 000) all such gains should be subject to CGT. To my knowledge taxes are levied in other countries on such gains, e.g.. USA.	Alan Huth	The gains are excluded for a number of reasons: • If capital gains were taxed it would have meant that all losses would have had to be allowed as capital losses. The difficulty of having to verify whether losses had been made would be difficult for both taxpayers and SARS. • Gambling in SA is subject to VAT and in the case of a lottery, a portion of the winnings are used to finance government approved activities. The profits of companies and casinos, which carry on gambling, are subject to income tax. Taxes are, therefore, imposed on gambling but not at the point of winnings.
Para 47	Why is there a reference to a "capital gain" and not a "capital loss" as well?	SAICA; Fullinput; Ben Milner's Tax Counselling Services	Recommendation accepted: provision will be amended to give effect to the recommendation and exclude capital gains and losses in these circumstances.
	If the terms of a transaction include a specific date for or rate of conversion of a currency, that date or rate, as	AHI	The draft Bill in paragraph 43 prescribes at what rate and at what date this currency conversion must be determined.

	the case may be, should be used for CGT purposes.		
	The restriction to personalised travel allowances is too restrictive. It should apply to all forex transactions to encourage investment.	The Banking Council	No. if this restriction was limited it would encourage investment in foreign countries as opposed to investments in SA and undermine neutrality between domestic and offshore investment.
Para 48	Request for clarification of the operation of section.	Frikkie Strauss	The Explanatory Memorandum will provide clarification.
	It is assumed that the intention is to place these kinds of insurance proceeds outside of the CGT net. However, it is not correct to see this as a disposal of an interest in the policy as the person just exercises a right to proceeds in terms of the policy without disposing of the policy.	LISPA	The loss, destruction or damage to an asset can constitute a disposal or partial disposal of the asset. If the taxpayer suffering from the loss is insured, the taxpayer may receive compensation in consequence of the involuntary disposal. A capital gain or capital loss may arise in respect of the disposal if the compensation received as a consequence of the disposal exceeds or is less than the base cost of the asset. Where the compensation is received as a consequence of an insurance policy, the compensation will also trigger a disposal of the insured’s rights against the insurer under the insurance policy. This paragraph prevents a double counting of the compensation receipts in respect of the underlying insured asset and the rights under the insurance policy.
Para 49	Property unit trusts are subject to the same restrictions on distributions of capital gains as are unit trusts and accordingly should be treated the same way for capital gains tax purposes.	Ass of property Unit Trust	Proposal accepted and paragraph 61 has been amended to incorporate the proposal.
	Closed investment trusts should be treated the same as	AHI; SAICA	Unit trusts differ from investment trusts and the tax treatment cannot be the same.

	other similar entities like unit trusts.		A unit trust is a different investment vehicle which is regulated in terms of the Unit Trust Control Act. A unit trust scheme is therefore conceptually totally different to a company and is effectively an arrangement which allows groups of individuals to pool their resources into a unit trust for investment purposes. These assets are, therefore, held in trust on behalf of the unit holders. Such a trust is subject to strict limitations and borrowing is, for example, prohibited. Furthermore, a unit trust may not exceed certain investment levels in the companies in which they invest. Interests in closely held companies are limited to 5% per company and in widely traded companies to 10% per company. If this issue is conceded, similar rules to those contained in the Unit Trust Control Act would have to be built into the proposed Eighth Schedule to the Income Tax Act. This would effectively mean that SARS would have to fulfil the role of a regulator, which is unacceptable.
	Why have property unit trusts been excluded?	SAICA; AHI	Accepted. The necessary amendments have been made.
	This paragraph should probably be expanded to also include retirement funds and untaxed policyholder funds of life insurance companies.	LISPA	Retirement funds are excluded in terms of paragraph 63 and untaxed policyholder funds are excluded in terms of paragraph 10.
	Employee share incentive trusts should also be exempt.	Ernie Lai King	Not accepted. These trusts are conceptually different from unit trust funds.
Para 50	Donations to charitable organisations which do not qualify for a S 18A deduction should not be subject to CGT. The exclusion of donations to public benefit organisations is restrictive. The list of organiations that	SAICA Legal Resources	Accepted. The necessary amendment has been made to paragraph 62.

	may obtain section 18A status is very limited. Donations to approved PBO's should be encouraged, as it would contribute to the sustainability of the non-profit sector.	Centre (Cape Town)	
Para 51	It is proposed that the exemption in this paragraph be extended to assets used by exempt organisations even if they are not used to produce income. The statutory references appear incorrect.	HRK Gibson; Fullinput Tax Services Deloitte & Touche; Fullinput Tax Services	Accepted. This paragraph will now be split into two paragraphs: • The one part will exempt all persons from capital gains tax where all that person's receipts and accruals are exempt for normal income tax purposes. • The second part will exempt gains arising from the disposal of certain assets which generate exempt income.
	The exclusion from paragraph receipts and accruals under S 10(1)(i)(iA) will bring certain gains by unit trusts into the CGT net.	Fullinput Tax Services.	Accepted. The necessary amendments have been made.
Para 52	The rollover rules should provide relief where a shareholder receives shares in one company in exchange for another.	SAICA	The necessary provisions may be inserted at a later stage after further consideration.
	The reason for imposing interest should be clarified.	SACOB	This obviates the need for the reopening of the assessment and compensates for the deferral of CGT as a result of non-compliance with the requirement regarding the period within which the asset needs to be replaced.
	The provision as it is drafted provides relief for both business and personal use	Deloitte & Touche	There should be no difference in principle between assets used for purposes of trade and other assets in this regard.

	assets but some of the wording is not appropriate for personal use assets. Difficulties will be experienced with the interpretation of the words "similar" and "substantially the whole". Perhaps the principle should be that to the extent that the proceeds are expended on replacement assets the relief should be allowed.		
	• Lack of relief for share for share exchanges extremely harsh.	E. Mazansky	Consideration will be given to this issue during the year.
	• Provision should be made for relief where an amalgamation of unit trust funds take place with resultant substitution of investor's units in fund.	Association of Unit Trusts	Consideration will be given to this issue during the year.
	• Exemption proposed for forced disposals in index tracker funds where there is no change in index exposure.	UBS Warburg Securities (South Africa)	The position is conceptually the same as in the case of LISPs. See above.
	• Paragraph 52(4)(b)	Ernie Lai King	The time of disposal rules have been changed and the effect is that the rules will

	interest should be calculated only from the date that proceeds were received or accrued. • Determination of interest is inequitable as proceeds will presumably yield income during that period which will be subject to income tax.	 Grant Thornton Kessel Feinstein (G. Shev)	apply only from the date of receipt of the proceeds. This does not address the loss to the fiscus as a result of the deferral of the capital gain.
Para 53	The gain on the disposal of manufacturing assets to buy new assets should be deferred until cash is realised and not for a 5 year period only. The relief should also apply in respect of index tracking trust.	SAICA; Grant Thornton (G. Shev); PWC CorpCapital	This would result in the accumulation of gains with potential cash flow problems in the eventual taxation of those gains.
	Roll-over should also apply to investments in fixed property. The restrictive number of assets which qualify for relief is discriminatory and cannot be justified. The spreading of the gain will discourage the modernisation of plant in SA.	Old Mutual Deloitte & Touche	Not accepted. This concession is targeted to encourage and assist specific types of infrastructural improvements specifically the modernisation of plant in SA.
	It is impractical for a person to have placed an order for a	Ernst & Young	Accepted. The necessary amendment has been made and the period extended to a year after disposal of the asset.

	new machine as required by (1)(c) if the machine was destroyed on the last day of the year. Paragraph 53(3) should contain a reference to (1)(c). The preamble to the paragraph should contain a reference to paragraph 52.		Accepted. The necessary amendment will be made. Accepted. The necessary changes will be made.
	The taxation of the roll-over gain should be the same as for gains in paragraph 52.	SACOB	The taxation of the roll-over gain in paragraph 64 which is involuntarily not the same as the taxation of the gain in paragraph 65 which is a planned disposal. The taxation of the gain in terms of paragraph 65 is designed to match the write-off of the new asset acquired to replace the old asset. There should be a matching of deductions and accruals and little effect on the purchaser.
Para 52 & 53	Where a destroyed manufacturing plant is to be replaced, it could be argued that either paragraph 52 or 53 is applicable. The taxpayer will be worse off if SARS insists on applying paragraph 53. Paragraph 53 should therefore be made subject to paragraph 52.	E. Mazansky	It is clear from the revised wording of these paragraphs that paragraph 52 takes precedence in these circumstances.
	The word "situated" in paragraphs 52(2) and 53(2) narrows the ambit of the exclusion too much, e.g. Where a contract for the replacement of the asset has been placed with an offshore	Fullinput Tax Services	Further consideration will be given to this aspect.

	company within the required period but the asset is not yet in the Republic.		
	The time periods in subparagraph 52(3) and (4) are too restrictive, e.g. Where a company cannot replace the asset before resolving the dispute with the insurer. Open ended period should be considered, provided the Commissioner is of the opinion that the delay is reasonable. There should also be a provision for extension of the period in paragraph 53(1)(c) for conclusion of contract as is the case in respect of paragraph 52(1)(d)(ii).	Fullinput Tax Services	The time of disposal in both these circumstances has been extended in paragraph 13 which should resolve the problem.
Para 54	The provision should cater for the situation where assets are transferred from one spouse to another in pursuance of a court order or settlement of divorce.	SAICA; SACOB; Deloitte & Touche	Accepted. The necessary amendment has been made.
Para 55	The reason why the company to which the assets are being transferred must not have other assets is not clear.	SACOB	This paragraph has been removed.
	There is inconsistency	Deloitte and Touche	This paragraph has been removed.

	between the Co's assumption of the transferor's base cost and his market value base cost in the equity share capital.		
	The 10% is restrictive and should be 5%.	Ernst & Young	This paragraph has been removed.
Para 59	The relevance of the phrase "of a public character is questioned.	Fullinput Tax Services	The reason why donations to foreign entities of a public character is excluded is not to tax gains made by foreign charitable organisations attributable to donations by residents.
Para 56 to 59	Where income as well as a capital gain arise by reason of or in consequence of a donation, settlement or other disposition, there should be rules regarding the manner in which S7 is to be applied in conjunction with the CGT attribution rules.	E. Mazansky	Accepted. Section 7 has been amended to include a subsection (11) which deals with the low or interest free loans to persons.
Para 60	The words "share" in Paragraph (b) of the definition "pre-acquisition profits and reserves" should be deleted.	E. Mazansky	This provision has been rewritten.
	Some of the definitions are difficult to understand as presently worded.	Grant Thornton, Kessel Feinstein (G. Shev)	This provision has been rewritten.
Para 61	It is impossible to require that a pre-acquisition dividend be deducted from the base cost of shares on receipt or accrual of that dividend as that can only be done on the sale of those	E. Mazansky	This provision has been rewritten.

	shares.		
	Application could become an administrative nightmare unless detailed records are maintained.	Grant Thornton, Kessel Feinstein (G. Shev)	This provision has been rewritten.
	Deduction can only take place on sale of shares and not on receipt or accrual of dividend.	E. Mazansky	This provision has been rewritten.
	Part IX also applies to unit trust schemes. If intended, this should be spelt out explicitly. Unit trusts will have to supply details of such dividends.	Adv. Mitchell	This provision has been rewritten.
'ara 62	Method of treating scrip dividends has not been addressed.	Grant Thornton, Kessel Feinstein (G. Shev)	This provision has been rewritten.
'ara ,1,62,63,65 ınd 66(2)	Insert the word "dividend" after the word "pre-valuation date" where thy appear in paragraphs 61 and 62 as "pre-valuation date dividend" is a defined term. The phrase "in relation to a shareholder" should be inserted after the words "connected person" in paragraph 62(b). The words "profits or	E. Mazansky E. Mazansky E. Mazansky	This provision has been rewritten.

	reserves" should be inserted after the word "pre-acquisition" wherever the latter appears in paragraph 63. How is base cost to be Determined for purposes of application of paragraph 65 if time-apportionment base cost is adopted? The method requires the inclusion of a portion of the proceeds on disposal. The word "dividend" should be inserted after the term "pre-acquisition" in the words following item (b) of paragraph 66(2).	 Fullinput Tax Services E. Mazansky	
Para 64	Should refer to payments to Shareholders and not reduction in share capital to conform with sections 85 and 90 of the Companies Act.	SAICA	This provision has been rewritten.
	Should there not be a reference to the companies Act in the paragraph.	Ernst & Young	This provision has been rewritten.
	Should reductions, redemption of share capital not be treated as part disposal rather than a reduction of	Deloitte & Touche	This provision has been rewritten.

	base cost.		
	Where a capital reduction is effected by a share buy-back in terms of the Companies Act, the provisions of this paragraph has unintended and unfair consequences e.g. company A buys back 10% of its shares, and funds the purchase through its share premium account. The shareholders who sold their shares to the company, will be taxed on the full gain (if any). There is no reason why the remaining shareholders should reduce the base cost of their shares. They have not received any benefit.	AHI	This provision has been rewritten.
Para 66	Double taxation will occur in respect of a capital gain made by a company as the gain will be taxed in the hands of the company and again in the hands of the shareholder when the gain is distributed on liquidation or deregistration. To avoid double taxation some provision should be	Alan Huth	This provision has been rewritten.

	made to exempt the dividends from CGT if it arises from a capital gain that has already been taxed in the company.		
	The liquidators may not provide the certificate that the company is valueless and alternative methods may be necessary.	Deloitte & Touche	This provision has been rewritten.
	Why do these provisions not apply on disposal of the shares.	Ernst & Young	This provision has been rewritten.
	When a company is used for short-term projects, property holdings and joint ventures by a small number of investors, seeking mainly the protection of limited liability and a well-established legal environment, or for other non-tax commercial reasons, the CGT becomes extremely onerous when the project is wound up and profits are distributed, as compared with a partnership or sole trader where CGT appears to be applicable only at level. There seems to be merit in at least exempting the	PWC; Alan Huth	This provision has been rewritten.

	distribution out of the gain from CGT if the company is wound up and the gain has been subject to CGT (and a similar exemption needs to be considered for trusts).		
Para 67	How will paragraphs 11,21,25 29,58 and 69 apply to distributions made by trusts?	HRK Gibson	This provision has been rewritten.
	What is the effect of this on Trusts set up for the disposal of retirement fund death benefits?	Institute of Retirement Funds	This provision has been rewritten.
	An interest in net income of a trust can be interpreted to mean a vested interest in every asset.	Momentum	This provision has been rewritten.
Para 69	Is there an identity between the beneficiary and the interest which is reduced in subparagraph (1)?	Ernst & Young	This provision has been rewritten.
Para 70	The rule in subparagraph (c) regarding the utilisation of an assessed capital loss incurred prior to sequestration should be applied whether or not the order of sequestration is set aside**.**	Grant Thornton Kessel Feinstein (G. Shev)	This provision mirrors the present treatment of assessed losses in terms of section 20.
Para 72	The phrase “in relation to that person” should be inserted	E. Mazansky	Accepted. The necessary amendment has been made.

	after the words "connected person" where they appear in subparagraph (2)(b), (c)(ii) and (d)(ii).		
	A person who disposes of an asset during the transitional period from 23 February to the valuation date should be entitled to elect the market value of that asset as at the valuation date.	Grant Thornton Kessel Feinstein (G. Shev)	Accepted. The necessary amendment has been made.

MISCELLANEOUS

Transfer Duty/ Stamp Duty	Should there not be a stamp duty equivalent to the transfer duty exemption envisaged in clause 20? This would cater for cases where a company owns shares in a share block company in respect of a primary residence.	E. Mazansky	Accepted. The Stamp Duty Act has been amended.
	If Paragraph 40 is to be implemented in its proposed form, then the proposed amendment to S9 should provide: • For the exemption from transfer duty to be extended to a transfer of	Alan Huth	Accepted if the residence is transferred to the settlor.

	a primary residence from a trust; and • For (16)(b) to be extended to provide that the equity could have been held by a trust (of which that natural person or his or her spouse was either a vested or discretionary beneficiary) from 1 April to date of acquisition.		Not accepted.
	The transfer duty exemption should be extended to trusts.	Professor Morris; The Banking Council; PWC; AHI	Accepted. The necessary amendment has been made.
	The transfer of residences from companies in order to obtain the primary residence exemption is an unnecessary expense.	Alan Huth	Not accepted. The costs have been minimised by the transfer duty exemption.
S60 of the Income Tax Act 113 of 1993	The present unbundling provisions are too restrictive. The proposed CGT exemption in respect of corporate actions should therefore be extended beyond the unbundling provisions.	Kevin McManus	The rules for these transfers will be introduced at a later stage.
S39 of the Taxation Laws	The proposed cap of R50million excludes a huge proportion of private	E. Mazansky	The rules for these transfers will be introduced at a later stage.

Amendment Act	companies from taking the steps which their larger counterpart can take. Access to section 39 should be made universal. S39 should be available even if the sole or main purpose of the rationalisation is to minimise the double taxation resulting from the introduction of CGT. The proposed new subparagraph (6)(bA) of section 39 should contain a reference to the definition of the term "base cost" in the Eighth Schedule.	 E. Mazansky Grant Thornton, Kessel Feinstein (G. Shev)	
	The proposed new subparagraph (6)(bA) of section 39 of the Taxation Laws Amendment Act 1994 should contain a reference to the definition of the term 'base cost' in the Eighth Schedule.	Grant Thornton Kessel Feinstein (G. Shev)	The rules for these transfers will be introduced at a later stage.