

LEARNING UNIT 6:



CAPITAL GAINS TAX



LEARNING OUTCOMES

After studying learning unit ("LU") 6, you should be able to achieve the following outcomes:

- Determine and reflect on the scope of CGT and the persons who are liable for CGT.
- Be able to differentiate and apply the different applications of CGT for residents and non-residents.
- Identify assets and disposal events and determine proceeds and base cost, including the base cost of assets acquired before valuation date
- Determine and critique a taxpayer's taxable capital gain or assessed capital loss for the year of assessment, understanding the impact how and which capital gains and losses should be disregarded, rolled over, attributed or limited and taking the tax entity (for example a trust) into account.
- Evaluate the CGT consequences at the death of an individual in the calculation of the person's normal income tax.
- Conclude on the CGT consequences on immigration and emigration of an individual.
- Conclude on the different CGT anti-avoidance rules.
- Redetermine a person's taxable capital gain or assessed capital loss if certain events occurred in previous years of assessment.
- Determine and assess the amount of the capital gain to be included in the taxable income of the taxpayer or the capital loss to be carried forward to the following year of assessment.

STUDY PROGRAMME AND TIME FRAME



A total of 14.6 hours of your study time is allocated to LU 6.

Your time should be divided between two aspects:

- **Obtaining the required knowledge**
This entails working through this LU **and** the textbooks (SAICA Student Handbook and SILKE), underlining, making summaries and familiarising yourself with capital gains tax, including the determination of taxable capital gains and assessed capital losses.
- **Application of knowledge**
This entails the completion of the examples and integrated activities included in this LU. Please note that the integrated activities will not only cover LU 6 but will also integrate your knowledge obtained during your undergraduate studies and in LU 1 to 5. It will provide you with an opportunity to revise your prior knowledge, identify areas for further study and will test your decision making and integrated thinking skills. Included in these activities you will find prior year assessment questions which should provide you with an opportunity to evaluate whether your knowledge is on the desired level and if you have met the outcomes and assessment criteria set at the start of this LU.

The following time allocation is recommended:

Capital gains tax		Minutes
	Learning outcomes and assessment criteria	5
6.1	Background	10
6.2	Beancounter scenario	5
6.3	Content of learning unit	5
6.4	Important law amendments	10
6.5	Additional notes to this learning unit	
6.5.1	Part I and II of the Eighth Schedule (par 1 – 10) (including Activity 6.1 (20 minutes))	50
6.5.2	Part III of the Eighth Schedule – disposal of assets (par 11 – 14) (including Activity 6.2 (15 minutes))	110
6.5.3	Part IV of the Eighth Schedule – limitation of losses (par 15, 53 and 56)	30
6.5.4	Part V of the Eighth Schedule – base cost (par 20 – 34) (including Activities 6.3 and 6.4 (20 minutes))	70
6.5.5	Part VI of the Eighth Schedule – proceeds (par 35 – 43A) (including Activity 6.5 (30 minutes))	45
6.5.6	Part VII of the Eighth Schedule – primary residence exclusion (par 44 – 50) (including Activity 6.6 (25 minutes))	60
6.5.7	Part VIII of the Eighth Schedule – other exclusions (par 52 – 64B)	30
6.5.8	Part IX of the Eighth Schedule – roll-overs (par 65 – 66), s 9HB	30
6.5.9	Parts dealt with in later LU's	
6.6	Outcomes of the Beancounter scenario – discussion activity	15
6.7	Summary of LU 6	5
6.8	Integrated activities 6.7 to 6.12	394
	Total (14.6 hours)	874



Note that there is a lot of work to master in the allocated time, however you have covered all facets of capital gains tax in your undergraduate studies. The level of detail in which you covered the paragraphs of the Eighth Schedule might have differed, as well as the depth of the application of the knowledge obtained to practical scenarios. During your studies this year, we will stretch your decision making- and critical thinking skills with the types of questions, as well as the integration of your knowledge of the various tax topics. To facilitate this process, the time in this LU will be allocated to additional notes and activities to deepen your understanding of difficult concepts. Where necessary, you will have to refresh your memory regarding sections and paragraphs you already covered in your prior studies **in your own time.**

6.1 BACKGROUND



The first thing to remember is that capital gains tax is not a separate tax and reference to "capital gains tax (CGT)" in textbooks and notes (also in these notes) is for practical purposes only. CGT should be understood in the context of the Eighth Schedule to the Income Tax Act.

A taxable capital gain will first be determined in terms of the rules of the Eighth Schedule to the Income Tax Act. It will be included in the calculation of normal tax of a person through section 26A. A taxable capital gain is taxed and an assessed capital loss ring-fenced. Ring-fencing means that losses are limited to the capital gains. The balance of the capital loss will be carried forward to the following year of assessment to be set off against the aggregate capital gain of that year of assessment. Thus, an **assessed capital loss** will **not** be included in the calculation of taxable income of a person.

CGT became effective from 1 October 2001 and deals with the disposal of assets on or after the **valuation date** (the value of an asset on 1 October 2001), irrespective of whether the asset had been acquired before or after this date. The **date of disposal** (and not the date of acquisition) will thus determine whether the proceeds on the disposal of the relevant asset are subject to CGT. If an asset was disposed of on or after 1 October 2001, only such portion of the capital gain or capital loss that relates to the period of holding the asset after this date will be taken into account for CGT purposes. This effectively means that the portion relating to the holding period before the valuation date will be ignored in calculating the capital gain or capital loss.

The Eighth Schedule determines that if, by definition, there was a **disposal** of an asset, **an event** has occurred for CGT purposes. The first basic principle of the calculation of CGT is to determine the amount of the capital gain or loss by subtracting the base cost from the proceeds for every asset disposed of.

From the wording of the above paragraph, **four key definitions** contained in the Eighth Schedule can be identified. These definitions form the basic building blocks for the determination of a capital gain or capital loss of a taxpayer:

- asset
- disposal
- proceeds
- base cost

Remember the normal tax framework, which was provided to you in previous LU's. Use this framework again and note **WHERE** the calculated taxable capital gain should fit into your calculation of the taxable income of a person.

The normal tax framework for calculating taxable income

GROSS INCOME (defined in section 1)
LESS: Exempt income (section 10, 10A - 10C, 12T)
INCOME (defined in section 1)
LESS: Deductions
ADD: Amounts to be included in taxable income including TAXABLE CAPITAL GAIN
LESS: Qualifying donations (section 18A)
= TAXABLE INCOME (defined in section 1)

Various definitions in the Eighth Schedule must be used to determine the assessed capital loss or the taxable capital gain. The stage of the calculation and where the taxable capital gain fits into the normal tax framework are shown in the CGT process flow chart in SILKE 17.5.

6.1.1 UNGC Principle 10

The UNGC principles were introduced in LU 2. Compliance with the laws and regulations is the basis on which the taxation legislation is founded.

UNGC principle 10 states that businesses should work against corruption in all its forms, including extortion and bribery. The definition of corruption includes dishonest or fraudulent conduct. Tax evasion would fall within the ambit of corruption. Taxpayers must always keep in mind that when an asset is disposed of, the nature of the disposal can either be revenue or capital. If the disposal is in fact revenue in nature, the amount received should be added to the gross income of the taxpayer.

It is important to take note of the UNGC principle 10 not only when studying, but more importantly when applying the CGT principles as entailed in the Eighth Schedule. This means that if an asset is sold, it cannot simply be ignored when doing your tax calculation. You need to be able to calculate the correct aggregate capital gain and/or loss and include it in your taxable income. It also needs to be declared on your annual tax assessment.

6.2 BEANCOUNTER SCENARIO



Before you start studying the detailed provisions of the Income Tax Act, read the following scenario relating to the Beancounter family or watch the [video](#). The scenario requires you to read through the information provided. As you study the different income tax provisions relating to CGT, you should analyse areas of concern that should be brought to the attention of the Beancounter family and the impact thereof on their taxes due.

Barry and Bizzie Beancounter (married in community of property) own a primary residence and Barry owns a beach cottage. He inherited the beach cottage from Exotic, who died on 10 March 2023. As you already know, Exotic did not like Bizzie and she put a clause in her will that this beach cottage would be excluded from their joint estate.

Barry donated the beach cottage to his son Soya (who immigrated to Spain in 2017) on 30 September 2023. He hopes that this will prompt Soya to come and visit more often. The market value of the beach house was R1 360 000 on 30 September 2023.

Exotic purchased the beach cottage on 10 January 2003 for R600 000. On the date of Exotic's death, the beach cottage had a market value of R1 200 000. For the past six years a net annual rental income of R24 000 has been received from letting the beach cottage.

On 30 September 2023 Barry and Bizzie sold their primary residence to the Butterbean testamentary trust at a market-related value.

The primary residence (450 m²) was bought in November 2002 for the amount of R1 200 000 (inclusive of transfer duty). In June 2010 they extended the house by 195 m² (at a cost of R600 000), to enable Barry to dabble in the design of a new clothing range. His business occupied 30% of the house. He declared his income from the clothing business in his income tax return of every year and claimed his current costs as a business expense against his business income for tax purposes. No valuation for tax purposes was done on the house. On 30 September 2023, the market value of the house was R2.2 million. The sale will be funded with an interest-free loan account in both their names in the trust.

Barry would like you to reflect on the information provided to you and assess whether there will be any donations tax payable or a possible taxable capital gain as result of the above transactions.



Discussion Activity

Before attempting to help Barry with his queries, work through and master LU 6. Only then will you be ready to address Barry's queries and you can share this on **Discussion Forum 6.1**. The outcomes (solution) for the Beancounter scenario will be made available during your study week for this Topic.

6.3 CONTENT OF LEARNING UNIT 6

6.3.1 Study approach

In this LU, we will provide you with a Table of Reference for each part of the Eighth Schedule as it is a long LU. Refer to LU 4, note 4.3 for an outline of the study approach followed for Topic 2.

We will enhance your understanding of some concepts with activities in the LU. The time provided for each activity (question or example) is calculated as 6 minutes per page of reading time for each activity, 1.5 minute for every mark and then 6 minutes per page of the solution, for you to review your answer against the solution provided.

6.4 IMPORTANT LAW AMENDMENTS

Before continuing with LU 6, take note of the following amendment to the Income Tax Act, which is contained in the Taxation Laws Amendment Act 17 of 2023. Certain amendments that were enacted in the prior year's Taxation Laws Amendment Act 20 of 2022 are also summarised for your reference.



Law amendments enacted by the Taxation Laws Amendment Act 17 of 2023:

Par 12A(6)(d)

Concession or compromise in respect of a debt

There are certain situations where the debt concession or compromise provisions provided for in par 12A (and section 19) will not apply to a debt benefit. One of these situations is if a debt that is waived, is owed by a person to another company in the same group and the company (referred to as the dormant company) owing the debt has not carried on a trade in the current or previous year of assessment (par 12A(6)(d)). The dormant company exclusion will however not apply to a debt

- used to fund an asset that was disposed of, **before or after that debt benefit arises**, in terms of a corporate reorganisation transaction (as part of an asset-for-share, amalgamation, intragroup transaction or a liquidation distribution under ss 42, 44, 45 or 47 respectively (see Topic 5)), or
- that was incurred by the dormant company to refinance another debt owed between companies that form part of the same group of companies.

The amendment clarified when the dormant company exclusion will not apply to a specific debt by clarifying the timing of the disposal of the asset in relation to the debt benefit. It firstly clarified that for corporate reorganisation transactions the asset could be disposed of before or after the debt benefit arose (previously it only referred to assets disposed of **after** the debt benefit arises) for the dormant company exclusion to not apply.



Law amendments enacted by the Taxation Laws Amendment Act 17 of 2023:

	<p>It further clarified that for years of assessment commencing from 1 January 2024, if this debt benefit arises at any time before the disposal of the asset, the debt benefit must be treated as if it occurred immediately before the date of disposal.</p>
<p>Par 64B(1)(b)</p>	<p>Disposal of equity shares in foreign companies</p> <p>Paragraph 64B(1) disregards the capital gain or loss on the disposal of foreign equity shares by a resident provided certain requirements are met, this exemption is known as the general participation exemption. This exemption will not apply if a person disposes of foreign equity shares to:</p> <ul style="list-style-type: none"> i. a controlled foreign company (CFC) or a connected person in relation to the person disposing of the shares; ii. a non-resident company that formed part of the same group of companies as the company disposing of the shares at any time during the 18 months before that disposal; or iii. a non-resident company of which the shareholders, immediately after the disposal, are substantially the same as the shareholders of any company in the group of companies disposing of the shares (s 64B(1)(b)(i) – (b)(iii)). <p>The main aim of the exemption of the capital gain or loss on the sale of foreign equity shares by residents, is to encourage the reinvestment in South Africa of the proceeds on the disposal of the shares in foreign companies to non-connected non-residents. Two additional exclusions (ii and iii) from the participation exemption, have been added to the section, effective from 1 November 2023 and is applicable to any disposals from that date. These additional exclusions have been included to assist in curbing the unintended application (misuse) of this general participation exemption.</p>
<p>Par 66(1)(a), (1)(c) & (4)</p>	<p>Reinvestment in replacement assets</p> <p>In the case of a disposal of an asset, the taxpayer can elect that par 66 of the Eighth Schedule should apply if reinvesting in a replacement asset and if certain requirements are met. If elected, section 8(4)(e) and par 66 will provide for a delayed taxation of the recoupment (see SILKE par 13.10.3) and the capital gain on the asset sold in proportion to the capital allowances claimed on the replacement asset (par 66(4)). Effective from 1 March 2023, the election of par 66 will also be available for movable assets used in the generation of renewable energy, where allowances were claimed under section 12BA (see Topic 3). This proviso is also explained in par 17.10.3.2 in SILKE and its application will be discussed in detail in Topic 3.</p>



Law amendments enacted by the Taxation Laws Amendment Act 20 of 2022:

Par 5

Annual exclusion

A proviso has been added to par 5(1) that provides that where any person's year of assessment is less than a period of 12 months, the total annual exclusions for years of assessments during the period of 12 months commencing in March and ending at the end of February the immediately following calendar year must not exceed R40 000 (for example when a person emigrates and there will be two years of assessment in a twelve month tax period).

This proviso applies with effect from 1 March 2023 and will affect an individual's 2024 year of assessment. This proviso is also explained in par 17.5 in SILKE.



Use the following link to access to the newly published Acts:

<https://www.sars.gov.za/legal-counsel/primary-legislation/amendment-acts/>

6.5 ADDITIONAL NOTES TO LEARNING UNIT 6

6.5.1 PARTS I AND II OF THE EIGHTH SCHEDULE



- Read the applicable paragraphs in the Eighth Schedule to the Income Tax Act as indicated in the table below.
- Revise the paragraphs in SILKE (as indicated below) and read through any notes provided. You would have covered some of these paragraphs already in previous LU's (for example SILKE par 17.3.3 covering withholding tax on the disposal of immovable property by non-residents covered in LU 5) and only need to revise the content if you lack understanding of the topic.

Legislation 8 th Schedule (All covered in undergrad)	Reference to SILKE	Application	Notes in LU 6	Examinable
par 1	17.1, 17.2, 17.4 & 17.6	Definitions and scope (excluding Value Shifting Agreement)	6.5.1	Yes No
par 2	17.3	Application (persons liable for CGT)		Yes
par 3 – 10	17.5	Capital gain and assessed capital losses	6.5.1	Yes



All examples in SILKE chapter 17 are based on the assumption that the receipt or accrual is of a capital nature and therefore not gross income as defined.

Interaction between the normal tax framework and CGT

We recommend that you interpret the interaction between the normal tax framework (the process of calculating taxable income) and the application of the Eighth Schedule as follows:

The definition of asset

"Asset" is defined in paragraph 1 of the Eighth Schedule and includes – "property of whatever nature, whether movable or immovable, corporeal or incorporeal, excluding any currency, but including any coin made mainly from gold or platinum; and a right or interest of whatever nature to or in such property". It also includes crypto currency.

The definition of asset is wide and includes all assets, regardless of their nature (whether revenue or capital). For example, for tax purposes trading stock is revenue in nature but also an asset in terms of the Eighth Schedule. Remember that the gain or loss of every asset needs to be determined separately. When trading stock is sold, the amount received will be gross income in terms of the definition in the Income Tax Act, but also proceeds in terms of the definition in the Eighth Schedule. When calculating proceeds, paragraph 35(3)(a) of the Eighth Schedule excludes all amounts that must be taken into account as gross income or in the calculation of taxable income before the inclusion of a taxable capital gain. Proceeds will thus have a nil value in the calculation of a capital gain or loss.

The acquisition of trading stock is an allowable expense in terms of section 11(a) of the Income Tax Act. In terms of paragraph 20 of the Eighth Schedule, the base cost of trading stock will be the cost of acquisition, BUT paragraph 20(3)(a) excludes expenditure allowed or allowable as a deduction in the calculation of taxable income before the inclusion of taxable capital gain from the CGT calculation. The base cost will have a Rnil value and there will be no capital gain or loss. The purpose is not to tax the same amount twice or to allow a double deduction.

Although there might not be an actual disposal of an asset, there might be a deeming provision applicable, deeming an asset to be disposed of (paragraphs 12 and 12A of the Eighth Schedule respectively and section 9H of the Income Tax Act). For example, when a capital asset becomes trading stock, a deemed disposal takes place (the asset has not actually been disposed of, but its nature has changed (from being capital in nature to revenue in nature). A capital gain/loss therefore has to be calculated. At the same time, a deemed acquisition takes place (which will also be taken into account for the purposes of section 22 of the Income Tax Act (the trading stock valuation section)).



Activity 6.1 (20 minutes)



To better grasp the interaction between the normal tax framework and CGT, work through Example 6.1 and Example 6.2



Example 6.1: Trading stock

Facts: A taxpayer purchased trading stock worth R1 200 during the current year of assessment and sold it for R2 000.

Result: An "event" has occurred for CGT purposes (disposal of an asset) and the provisions of the Eighth Schedule must be applied. At the same time, the amount received will be gross income in terms of the Income Tax Act.

Determination of taxable income

Sales	(gross income definition)	R 2 000
<u>Less:</u> Purchases	(section 11(a))	(1 200)
<u>Plus:</u> Taxable capital gain	(section 26A) – see calculation below	nil
Taxable income		<u>800</u>

Calculation of taxable capital gain

Proceeds		R	R
Selling price		2 000	nil
Less: Reduced by amounts taken into account in the calculation of taxable income (gross income as defined) before the inclusion of taxable capital gain (par 35(3)(a))		(2 000)	
<u>Less:</u> Base cost			nil
Purchase price		1 200	
Less: Reduced by amounts taken into account in the calculation of taxable income (s 11(a)) before the inclusion of taxable capital gain (par 20(3)(a))		(1 200)	
Taxable capital gain			<u>Nil</u>



Example 6.2: Recoupment of an asset

Facts: All amounts exclude VAT and paragraphs 65 and 66 of the Eighth Schedule (roll-over provisions) (refer to Topic 3 for more extensive examples) are not applicable. The cost price of a second-hand machine was R100 000. Section 12C allowances in terms of the Income Tax Act (for the current and previous years of assessment) amounted to R40 000. The **tax value** is thus R60 000 (R100 000 – R40 000). The company sold the asset for R120 000.

Result: An "event" has occurred for CGT purposes (disposal of an asset) and the provisions of the Eighth Schedule must be applied. At the same time, a portion of the amount received will be a recoupment in terms of section 8(4)(a) of the Act. So:

The determination of taxable income

		R
Recoupment (section 8(4)(a) (R100 000 – R60 000))	❶	40 000
<u>Less:</u> Section 12C allowance (for the current year of assessment (20% x R100 000))	❷	(20 000)
<u>Plus:</u> Taxable capital gain (in terms of section 26A (see – calculation below))		16 000
Taxable income		<u><u>36 000</u></u>

Calculation of taxable capital gain

	R	R
Proceeds		
Selling price	120 000	
Less: Reduced by amounts taken into account in the calculation of taxable income before the inclusion of taxable capital gain (section 8(4)(a) in this example) Recoupment	❶ (40 000)	80 000
<u>Less:</u> Base cost		
Purchase price	100 000	
Less: Reduced by amounts taken into account in the calculation of taxable income before the inclusion of taxable capital gain (section 12C: previous year R20 000 and R20 000❷ for current year)	(40 000)	60 000
Capital gain		<u><u>20 000</u></u>
Taxable capital gain (R20 000 x 80% inclusion rate for companies)		<u><u>16 000</u></u>

Remember:

1. For each asset disposed of, a capital gain or loss is determined (calculated) **separately** during a year of assessment. A capital loss or gain is calculated by deducting the **base cost** of the asset from the **proceeds** of the asset. If the proceeds exceed the base cost, it will be a capital gain; if not (if the proceeds are less than the base cost), it will be a capital loss.
2. A natural person and a special trust are entitled to an annual exclusion of R40 000, but the annual exclusion is **not available to companies and other trusts**. From 1 March 2023 this exclusion is apportioned when the individual emigrates.
3. A capital loss is **reduced** by the annual exclusion before it will be carried forward to the next year of assessment.
4. You **first** have to make use of the annual exclusion **before** you apply the applicable inclusion rate.

A **non-resident** will not be liable for CGT except on the disposal of

- immovable property situated in South Africa and any interest (see SILKE 17.3.2) in it (paragraph 2(1)(b)(i))
- assets effectively connected with a permanent establishment through which the non-resident carries on business in South Africa (paragraph 2(1)(b)(ii))

A **non-resident** who disposes of any immovable property in the Republic, the proceeds of which exceed R2 million, will be subject to withholding tax in terms of section 35A of the Income Tax Act – refer to LU 5. This withholding tax is a prepayment of the non-resident's normal tax and must be withheld by the purchaser.

6.5.2 PART III OF THE EIGHTH SCHEDULE – DISPOSAL OF ASSETS



- Read the applicable paragraphs in the Eighth Schedule to the Income Tax Act as indicated in the table of reference below.
- Revise SILKE (as indicated below) and read through the notes provided.

Legislation 8 th Schedule/section (All covered in undergrad)	Reference to SILKE	Application	Notes in LU	Examinable
par 11	17.7, 17.7.1, 17.7.2	Disposals and non-disposals	6.5.2	Yes
par 12, 12A & s 9H which was covered in LU 5	17.7.3 17.8.4, 13.10.8	Events treated as disposals and acquisitions (excluding par 12A(5))	6.5.2, 6.5.5 LU 5	Yes No
s 9K		<i>Listing of security on exchange outside Republic</i>		No
par 13	17.7.4	Time of disposal	6.5.2	Yes
par 14	17.7.5	Persons married in community of property	6.5.2	Yes

Interpretation Notes are not included in the SAICA Student Handbook, but to the extent that an Interpretation Note creates a practice generally prevailing (refer to section 5 of the Tax Administration Act), the relevant extract will be provided in the test or examination.

The following Interpretation Note relates to the concession or compromise of a debt:



Interpretation Notes are available at: [Interpretation Notes | South African Revenue Service \(sars.gov.za\)](https://www.sars.gov.za/interpretation-notes)

Interpretation Note:

Interpretation Note: No. 91 (Issue 2). Date: 20 July 2022 - Concession or compromise of a debt (par 12A)

The Eighth Schedule can only apply when there is a **disposal (paragraph 11)** or **deemed disposal (paragraphs 12, 12A and section 9H)** of an **asset**. Every person (as defined in the Income Tax Act) is subject to the CGT rules contained in the Eighth Schedule.

What is meant by a deemed disposal? A deeming provision means that the normal logical rules are disregarded and the exception to the rule must be applied in a certain given situation.

Paragraph 11: disposals

Disposal is defined in paragraph 1 and refers to the comprehensive definition in paragraph 11. This definition boils down to "you had something (an asset), then an event happens and after that event you no longer have the asset or the enjoyment of the asset". A disposal is the event that triggers CGT. An event is usually caused by a change in ownership (for example, selling the asset, donating an asset, loss of the asset, the asset is destroyed or even expropriated). The death of a person will also be a CGT event because the assets are transferred to the estate of the deceased.

On the other hand, a temporary cession of an asset for financial purposes means that you will get your asset back if you fulfil the terms of the agreement. A temporary cession of an asset for financial purposes is therefore not treated as a disposal. CGT is not levied on non-disposals in terms of paragraph 11(2) (see SILKE 17.7.2).

Paragraph 12: events treated as disposals and acquisitions (deemed disposals)

These are deeming provisions and they apply when the situation of the taxpayer changes or where the nature of the asset changes or when an event occurs that may fall outside the CGT net.

- ***An asset ceases to be trading stock (paragraph 12(3))***

The use of the asset changes from speculation (revenue in nature) to investment (capital in nature) purposes. Section 22(8) deems a disposal to have taken place at market value. The cost of the trading stock will be deductible in terms of section 22(2) as opening stock or as purchases if bought during the same year of assessment. A normal tax liability originates and the profit will be taxed at the normal tax rate, although there has been no change in ownership. A deemed acquisition has taken place in terms of paragraph 12(3) of the Eighth Schedule and the value taken into account in section 22(8)(b)(v) of the Income Tax Act will be deemed to be expenditure actually incurred for the purposes of paragraph 20(1)(a) (base cost provision).

If the asset, which is now kept as an investment, is disposed of at a later stage, then a further tax liability may arise in terms of the Eighth Schedule – proceeds less base cost (calculated in terms of section 22(8)).



Trading stock will be discussed in full in Topic 3. Revisit the commentary on the *Natal Estates* case in the [Case Law Guide](#) Chapter 2.

Remember that if paragraph (jA) of the gross income definition applies, trading stock "manufactured" by the taxpayer does not change its nature and will be treated as trading stock until disposed of.

- ***Personal-use asset becomes a trade asset (paragraph 12(2)(d))***

Certain capital gains on personal-use assets are disregarded in terms of paragraph 53 of the Eighth Schedule. A personal-use asset is an asset of a natural person, or a special trust, used mainly for purposes other than the carrying on of a trade. If (for example) a piece of furniture is used in a home for private purposes and the owner decides to use this furniture for trade purposes in his office, the use of the asset changes from a personal-use asset to a trade asset. A deemed disposal takes place at **market value** and a deemed reacquisition of the asset takes place **at market value**.



Activity 6.2 (15 minutes)



Work through Example 6.3 (personal-use assets) and Example 6.4 (change of intention) to enhance your understanding of the topics covered.



Example 6.3: Personal-use asset becomes a trade asset

Facts: Mr Engineer (not a vendor for VAT purposes) resigned from his employment and started his own business. Furniture with a cost price of R7 000 and a market value of R8 000 was moved from his home to his office on 1 March 2023.

Tax effect: A deemed disposal (of the personal-use asset) and immediately thereafter a reacquisition of the trade asset takes place in terms of paragraph 12(2)(d) of the Eighth Schedule.

Calculation of taxable capital gain on deemed disposal

Proceeds	R 8 000
<u>Less: Base cost</u>	<u>(7 000)</u>
Capital gain	1 000
<u>Less: Disregard (par 53(1))</u>	<u>(1 000)</u>
Taxable capital gain	<u>nil</u>

Calculation of taxable income

Assume that the Commissioner will allow a section 11(e) allowance on R8 000 (based on the market value) over a remaining period of two years. Note that the base cost of the asset is R8 000 (market value on day of disposal (par 12(2)(d))).

Gross income	R XXX
<u>Less: Section 11(e) (R8 000/2)</u>	<u>(4 000)</u>
<u>Add: Taxable capital gain</u>	<u>nil</u>

- **Capital asset becomes trading stock (par 12(2)(c))**



Example 6.4:
Change of intention – capital asset to trading stock

Facts: Mr F bought a farm for R5 000 000 on 10 January 2012. The farm was used for farming purposes and all produce was exported. Because of drought, his efforts put into farming activities are no longer worthwhile. He decides to rezone the farm for residential purposes and to develop the farm into a small but exclusive retirement villa. Mr F decides to do the development himself to keep himself busy. He also believes that the return on his surplus funds, which he will invest in this project, will be more than the 5% that he is currently earning. The development will start in January 2024 (after the harvest season) and he believes that the first sales will be made in the following year of assessment. The market value of the farm is R7 000 000 in January 2024. Assume that Mr F will be able to prove the nature of the asset as capital until he changed his intention. He will also be able to prove the market value as R7 000 000 in January 2024.

Result: A deemed disposal of an asset took place. The provisions of the Eighth Schedule must be applied.

Calculation of taxable capital gain

	R
Proceeds (deemed disposal par 12(2)(c))	7 000 000
<u>Less: Base cost (par 20)</u>	<u>(5 000 000)</u>
Capital gain	2 000 000
Taxable capital gain (R2 000 000 – R40 000) x 40% inclusion rate	<u><u>784 000</u></u>

Calculation of taxable income

	R	R
Sales (trading stock - land)		nil
<u>Less: Deemed acquisition cost</u> (section 22(3)(a)(ii))	<u>(7 000 000)</u>	
<u>Plus: Closing stock</u> (section 22(1))	<u>7 000 000</u>	nil
<u>Plus: Taxable capital gain</u> (section 26A)		<u>784 000</u>
Taxable income		<u><u>784 000</u></u>

- **Trade asset becomes a personal-use asset (paragraph 12(2)(e))**

A trade asset is now being used for personal use. A deemed disposal has taken place at market value and a capital gain or loss should be determined. A recoupment in terms of section 8 of the Income Tax Act could also be applicable.

- **Debt benefit and paragraph 12A – also refer to part iv of the 8th Schedule below, SILKE 17.8.4, 13.10.8 and Topic 3**

This is a uniform debt relief system that comes into operation through section 19 of the Income Tax Act, but it also has a CGT effect, which is mainly contained in paragraph 12A of the Eighth Schedule. See the diagram in SILKE 17.8.4 to determine if there is a CGT consequence in respect of the debt. Section 19 (see SILKE chapter 13.10.8) is dealt with in detail in Topic 3. However, you must have a basic understanding of par 12A of the Eighth Schedule (SILKE 17.8.4).

Eighth Schedule	Summary and application of paragraph 12A and s 19	SILKE
12A Debt relief or debt benefit	<p>If the purchase of either an asset (other than an allowance asset) or an allowance asset was funded by a debt and the debt is consequently reduced by the creditor, the reduction amount (in the hands of the debtor) is applied as follows and in the following order:</p> <ul style="list-style-type: none"> • Asset (non-allowance asset) <ul style="list-style-type: none"> ○ Debt benefit applied to reduce base cost (par 12A) ○ Asset disposed of in year prior to when debt benefit arises: <ul style="list-style-type: none"> ○ Difference between the recalculated capital gain or loss (taking into account prior debt benefits) and actual capital gain or loss on disposal included as capital gain in year when debt benefit arises (par 12A) • Allowance asset <ul style="list-style-type: none"> ○ Debt benefit applied to reduce base cost of allowance asset (par 12A) ○ Excess of debt benefit recouped under s 19(6) and s 8(4)(a) ○ Asset disposed of in year prior to when debt benefit arises: <ul style="list-style-type: none"> ○ Difference between the actual recoupment on disposal and the recoupment if the debt benefit was taken into account when calculating this recoupment will be taxed as a recoupment under s 19(6A) and s 8(4)(a) ○ Difference between the recalculated capital gain or loss (taking into account prior debt benefits) and actual capital gain or loss on disposal included as capital gain in year when debt benefit arises (par 12A) • Refer to the flow diagram in SILKE 17.8.4. • See examples 17.15 and 17.16 in SILKE (Examples 17.17 and 17.18 will be discussed in Topic 3). • Par 12A therefore applies to the debtor. Remember, the amount which is outstanding and which is reduced will represent a credit amount in the books of the debtor if you think in accounting terms. 	17.8.4

Paragraph 13: time of the disposal

The general timing rule is that a disposal of an asset and the acquisition of the asset by another person must take place on the same date. Exceptions to this rule occur and you can revisit and study any paragraphs you are not comfortable with in SILKE 17.7.4.



The time of the disposal of an interest in an asset of a trust to a beneficiary when the beneficiary has a vested interest in the asset is the date on which the interest vests. Trusts will be dealt with in detail in Topic 5.

Paragraph 14: disposals by spouses married in community of property

Spouses married in community of property are equal owners of joint property. Disposals of assets (part of the joint estate) are deemed to be made in equal shares unless they were excluded from the joint estate.

6.5.3 PART IV OF THE EIGHTH SCHEDULE – LIMITATION OF LOSSES



- Read the applicable paragraphs in the Eighth Schedule to the Income Tax Act as indicated in the table below.
- Work through SILKE and revisit those paragraphs you are not yet comfortable with (as indicated below) and the notes provided.
- Note that although reference is made to paragraph 39 in the note below, it will be addressed in more detail under note 6.5.5.
- Revisit the definition of a connected person in section 1 of the Income Tax Act.

Legislation 8 th Schedule (All covered in undergrad)	Reference to SILKE	Application	Notes in LU 6	Examinable
par 53	17.10.2,	Personal-use assets	6.5.2	Yes
par 15	17.10.5 17.10.5.1	Certain personal-use assets		Yes
par 19	17.10.5.5	Losses on disposal of certain shares		No
par 37	17.10.5.6	Assets of trusts and companies		No
par 56	17.10.5.8	Disposal by a creditor of debt owed by a connected person	6.5.2	Yes

Interaction between paragraphs 12A, 39, 56, 20(3) and 35(1)(a)

The following paragraphs deal with the CGT consequences of the reduction of a debt, reduction of base cost, refunds on proceeds and losses between connected persons and the subtle differences between them. You need to understand the link between these paragraphs. The differences between and the application of these paragraphs are summarised in the table below:

Eighth Schedule	Summary and application	SILKE
Par 56 Losses	<ul style="list-style-type: none"> • When a creditor disposes (includes the waiver or cancellation of that debt) of a debt owed by a debtor who is a connected person, any loss on that disposal must be disregarded by that creditor. This paragraph will not apply if par 12A applies (to the debtor). Par 12A will apply if there is an underlying asset linked to the debt. • Par 56(2)(a) therefore applies to the creditor. Remember, the amount disposed of (or written off) will represent a debit amount (hence a loss) in the books of the creditor if you think in accounting terms. • See examples 17.60 and 17.61 in SILKE if you want to review the practical application of the paragraph. 	17.10.5.8
Par 39 Clogged losses	<ul style="list-style-type: none"> • This paragraph ring-fences a capital loss between connected persons. Such losses may only be offset against future capital gains between the same connected persons. These are called clogged losses. If par 56(2)(a) applies, then par 39 will not apply. • Par 39 therefore applies to the seller of the asset. • See example 17.59 in SILKE for an example of a disposal to a connected person. 	17.10.5.7

Eighth Schedule	Summary and application	SILKE
Par 20(3) Base cost	<ul style="list-style-type: none"> This paragraph is only applicable if the base cost of the asset is reduced or recovered. If the asset is no longer on hand, there will be a capital gain. If the reduction or recoupment of expenditure relates to a debt reduction, par 12A applies. See example 17.14 in SILKE if you want to review the practical application of the paragraph. Par 20(3) applies to the buyer of the asset. 	17.8.3
35(3)(b) Proceeds	<ul style="list-style-type: none"> If for some reason the selling price of an asset is reduced, the seller of the asset must reduce the "proceeds" of this asset by that amount. See example 17.39 in SILKE if you want to review the practical application of the paragraph. Par 35(3)(b) applies to the seller of the asset. 	17.9.1

6.5.4 PART V OF THE EIGHTH SCHEDULE – BASE COST



- Read the applicable paragraphs in the Eighth Schedule to the Income Tax Act as indicated in the table below. Work through SILKE and revisit those paragraphs you are not yet comfortable with (as indicated below) and any notes provided.
- Ignore notes on controlled foreign companies. Section 8C in SILKE 17.8.1 will be covered under Topic 4.

Legislation 8 th Schedule (All covered in undergrad)	Reference to SILKE	Application	Notes in LU6	Examinable
par 20 & s 23C	17.8, 17.8.1, 17.8.2, 17.8.3, 17.8.4 and 17.8.5	Base cost of an asset	6.5.4 6.5.3	Yes
par 20A		Provisions relating to farming development expenditure	-	No
par 21	17.8.6	Limitation of expenditure	-	Yes
par 22	17.8.7	Amount of donations tax included in base cost	6.5.4	Yes
par 23	17.12.1	Value-shifting arrangement – par 1 definition base cost formula in par 23	-	No
par 24	17.8.8	Base cost of an asset of an immigrant	-	No
par 25(1), 26 & 27	17.8.9	Base cost of pre-valuation date assets	-	No
par 25(2) & (3)	17.13.2	Redetermination of pre-valuation assets		No
par 28	17.8.10	Valuation date value of a section 24J instru- ment (market value will be provided)	-	No
par 29	17.8.11	Market value on valuation date (market value will be provided)	-	No
par 30	17.8.12	Time-apportionment base cost (TAB - amounts will be provided, integration remains important)	-	No
par 31	17.8.13	Market value of assets (Market value will be provided)	-	Yes

Legislation 8 th Schedule (All covered in undergrad)	Reference to SILKE	Application	Notes in LU6	Examinable
par 32	17.8.14	Base cost of identical assets	-	Yes
par 33	17.8.15	Part disposals	-	Yes
par 34	17.8.16	Debt substitution	-	Yes

The following Interpretation Note relates to the deduction of security expenditure:



Interpretation Notes are available at: [Interpretation Notes | South African Revenue Service \(sars.gov.za\)](http://www.sars.gov.za/interpretation-notes)

Interpretation Note:

Interpretation Note: No. 45 (Issue 3). Date: 24 August 2018 - Deduction of security expenditure (par 20 & par 53)

Base cost of an asset – paragraph 20

Base cost consists of all the direct expenditure attributable to get the asset in its current condition. If an asset was acquired by way of an event other than purchase, the market value on the date of the event will usually be taken as the base cost on the date of acquisition. If the asset was acquired on or after 1 October 2001, its base cost is determined in terms of paragraph 20.

Paragraph 20 of the Eighth Schedule provides that if all or a portion of the base cost has already been taken into account in the calculation of taxable income (before the inclusion of any taxable capital gain), the base cost must be reduced by that amount (par 21(1)). If this were not the case, then the taxpayer would have been able to deduct the same amount twice.



Activity 6.3 (10 minutes)



To enhance your understanding of the calculation of the base cost, work through Example 6.5 and Example 6.6.



**Example 6.5:
Calculation of base cost**

A machine was acquired for R100 000 (VAT excluded) for use in a manufacturing process. A section 12C allowance was claimed, which reduced the taxpayer's normal tax liability. When the asset is disposed of, the base cost of that asset must be reduced by amounts already taken into account in terms of the section 12C allowance.



If an input tax credit was **not allowed** in terms of the VAT Act, the VAT cost will form part of the qualifying expenditure of the asset.

The following example (Example 6.6) has been taken from the SARS comprehensive CGT guide and adjusted for amendments to the legislation:



Use the following link to access the comprehensive CGT guide:
<https://www.sars.gov.za/lapd-cgt-g01-comprehensive-guide-to-capital-gains-tax/>



**Example 6.6:
Improvements reflected in state or nature of asset at date of disposal
(paragraph 20(1)(e))**

Ms T acquires a second property at a cost of R300 000 in November 2009, from which she derives rental income. She replaced the kitchen at a cost of R30 000 and installed a security system costing R10 000. In 2012 she installed a jacuzzi in one of the bedrooms at a cost of R25 000. In October 2023, the jacuzzi cracked and all the water leaked out. It was not worth repairing, so she had it removed.

Ms T's base cost will be R300 000 + R10 000 = R310 000. The replacement of the kitchen is not added to the base cost as it is considered to be a repair. The jacuzzi is dealt with as a part disposal (see SILKE 17.8.15) in terms of par 33. The calculation of this will be the portion of the base cost of the house allocated to the part disposed, using the ratio of the market value of the jacuzzi immediately before disposal relative to the market value of the entire house.

The workings of paragraph 22

Formula in terms of paragraph 22 = $[(M - A)/M] \times D$

Where:

M = market value of donated asset

A = all amounts other than donations tax taken into account in determining base cost

D = total amount of donations tax payable



Activity 6.4 (10 minutes)



To enhance your understanding of paragraph 22, work through Example 6.7.



Example 6.7: Donation of a block of flats – paragraph 22

My brother and I wish to donate our block of flats in the Republic to an *inter vivos* trust. The beneficiaries will be our children. My brother is a non-resident. We are both married out of community of property. The rental income will be utilised to pay for our children's university fees. The cost price of the block of flats was R6 000 000 on 1 May 2010, when we acquired it in equal partnership. The market value of the donation will be R8 000 000. We (my brother and I) did not make any other donations for the current year of assessment.

Please determine the capital gain (if any) for both me and my brother on the disposal of the asset to the trust. Assume that the cumulative value of donations up to the date of current donation did not exceed R30 million and that no other donations arose other than mentioned in the question.

Suggested solution

Non-resident – block of flats

Proceeds	50% x R8 000 000	R 4 000 000
<u>Less: Base cost</u>	50% x R6 000 000	<u>(3 000 000)</u>
Capital gain		<u>1 000 000</u>

Resident – block of flats

Proceeds		R 4 000 000
<u>Less: Base cost</u>	R3 mil + (R4 mil – R3 mil/R4 mil x ①R780 000) - Par 22	<u>(3 195 000)</u>
Capital gain		<u>805 000</u>

① Donations tax: (R4 000 000 – R100 000) (par 56(2)(b)) x 20% = R780 000



- The brother is a non-resident and not subject to donations tax.
- The non-resident is liable for CGT (immoveable property situated in RSA).
- Although section 35A (withholding tax) applies to non-resident sellers of South African fixed property (where the selling price exceeds R2 million), it cannot apply in this case as there is no amount payable by the purchaser to the seller.

6.5.5 PART VI OF THE EIGHTH SCHEDULE – PROCEEDS



- Read the applicable paragraphs in the Eighth Schedule to the Act as indicated in the table below.
- Work through SILKE and revisit those paragraphs you are not yet comfortable with (as indicated below) and the notes provided.

Legislation 8 th Schedule/section (All covered in undergrad)	Reference to SILKE	Application	Notes in LU 6	Examinable
par 35	17.9, 17.9.1	Proceeds (definition, inclusions and when proceeds must be reduced)	6.5.5	Yes
<i>par 35(2)</i>		<i>Value shifting arrangement</i>		No
<i>par 35A</i>	17.9.2	<i>Disposal of certain debt claims</i>		No
s 24M	17.9.3	Incurred and accrued amounts not quantified	Topic 3	Yes
<i>par 36</i>	17.11.5	<i>Disposal of partnership assets</i>		No
<i>par 37</i>	17.10.5.6	<i>Assets of trusts and companies</i>		No
par 38(1) & par 38(2)(e)	17.9.5	Disposal and donations not at arm's length or to a connected person	6.5.5	Yes
<i>par 38(2)</i>		<i>Subsection link to s 8A, 8B, 10(1)(nE) & 37D that is excluded</i>		No
par 39	17.10.5 17.10.5.7	Capital losses on disposals to connected persons	6.5.3	Yes
par 39A	17.9.4	Disposal of asset for unaccrued amount of proceeds		Yes
<i>par 40</i>		<i>Disposal to and from deceased estate – replaced by s 9HA –see below</i>		No
<i>par 41</i>		<i>Tax payable by heir of deceased estate</i>		No
s 9HA	17.11.4 27.3.2	Disposal by deceased person	6.5.5 Topic 4	Yes
s 9HB	17.10.3.3	Transfer of assets between spouses	6.5.8	Yes
s 25	17.11.4, 27.4	Taxation of deceased estates		TAX4862 only
par 42	17.12.2	Short-term disposals and acquisitions of identical financial instruments		No
par 43	17.12.5	Transactions in foreign currency and cryptocurrency		TAX4862 only
<i>par 43(7)</i>		<i>“local currency” par (b), (c) & (d)</i>		No
<i>par 43A</i>	17.12.3	<i>Pre-sale dividends treated as proceeds</i>		No
<i>par 43B</i>	17.12.6	<i>Base cost of assets of controlled foreign companies</i>		No

The following Interpretation Note relates to contingent liabilities assumed in the acquisition of a going concern:



Interpretation Notes are available at: [Interpretation Notes | South African Revenue Service \(sars.gov.za\)](http://www.sars.gov.za/interpretation-notes)

Interpretation Note:

Interpretation Note: No. 94. Date: 19 December 2016 - Contingent liabilities assumed in the acquisition of a going concern (par 35(1))

Proceeds (general – paragraph 35)

The amount received by or accrued to the seller will be either the selling price (if it is an arm's-length transaction), or it will be the market value at date of disposal.

Where an amount was already taken into account in taxable income before the inclusion of taxable capital gain, then the proceeds must be reduced by that amount. The same amount should not be taxed twice.

Tax implications of a deceased person

The normal tax implications of deceased persons and estates are determined in terms of the provisions of sections 9HA and 25 of the Income Tax Act. In this LU you need to have a basic understanding of section 9HA.

Here is a short example of the application of section 9HA



Activity 6.5 (30 minutes)



To clarify your understanding of the application of section 9HA, work through this basic example, Example 6.8.



Example 6.8:
Normal tax (income tax and CGT) implications for a deceased person and deceased estate

Mr Expire, who was married out of community of property, died on 5 January 2024, at the age of 60 years.

1. Mr Expire owned the following assets on the date of his death:

	Market value on date of death	Base cost
	R	R
Primary residence	800 000	500 000
Holiday home	360 000	90 000
Shares in listed South African companies	400 000	280 000
Cash	400 000	400 000

Mr Expire's will provides for the following:

- His wife inherited the primary residence and R200 000 cash.
 - He left his holiday house to his daughter.
 - The executor of the estate had to sell the listed shares, and after paying all liabilities and costs, Mr Expire's daughter inherited the remainder of the estate.
2. The executor sold the listed shares for R500 000 and paid the following amounts/costs and liabilities:
- | | R |
|--|----------|
| • Costs (excluding executor's remuneration of R68 600 and master's fees of R600) | 55 000 |
| • Settling the bond on the holiday house | 80 000 |
| • Settling the bond on the primary residence | 100 000 |
3. Mr Expire's wife will be responsible for any cash shortfall in the estate.
4. Mr Expire had no other taxable income up until the date of his death.

REQUIRED:

- | | |
|-----|--|
| (a) | Determine the capital gains tax implications for Mr Expire on the date of his death. |
| (b) | Determine the taxable income of Mr Expire for the 2024 year of assessment. Until the date of his death he received local dividends of R200 000 and a pension of R170 000 for the year of assessment. |

Suggested solution

	R	R
(a) CGT implications for Mr Expire		
Primary residence (bequeathed to wife):		
Proceeds (to spouse at base cost ito section 9HA(2))	500 000	
<u>Less: Base cost</u>	<u>(500 000)</u>	nil
Holiday home to daughter:		
Proceeds (market value ito section 9HA(1))	360 000	
<u>Less: Base cost</u>	<u>(90 000)</u>	270 000
Shares in listed companies (Note 1)		
Proceeds	400 000	120 000
<u>Less: Base cost</u>	<u>(280 000)</u>	nil
Cash (currency not an asset for CGT)		
Capital gain		<u>390 000</u>
Annual exclusion (par 5)		(300 000)
Net capital gain		<u>90 000</u>
Taxable capital gain (40%) (par 10)		<u><u>36 000</u></u>

Note 1:

In Mr Expire's hands it is a deemed disposal of the assets at market value on date of death (section 9HA(2)). The sale of the shares takes place in the estate. The proceeds in the estate for CGT purposes will therefore be the selling price.

	R	R
(b) Income tax liability of Mr Expire		
Pension		170 000
Local dividend	200 000	
<u>Less: Dividend (exempt section 10(1)(k)(i))</u>	<u>(200 000)</u>	nil
Taxable capital gain - see above		<u>36 000</u>
Taxable income		<u><u>206 000</u></u>

6.5.6 PART VII OF THE EIGHTH SCHEDULE – PRIMARY RESIDENCE EXCLUSION

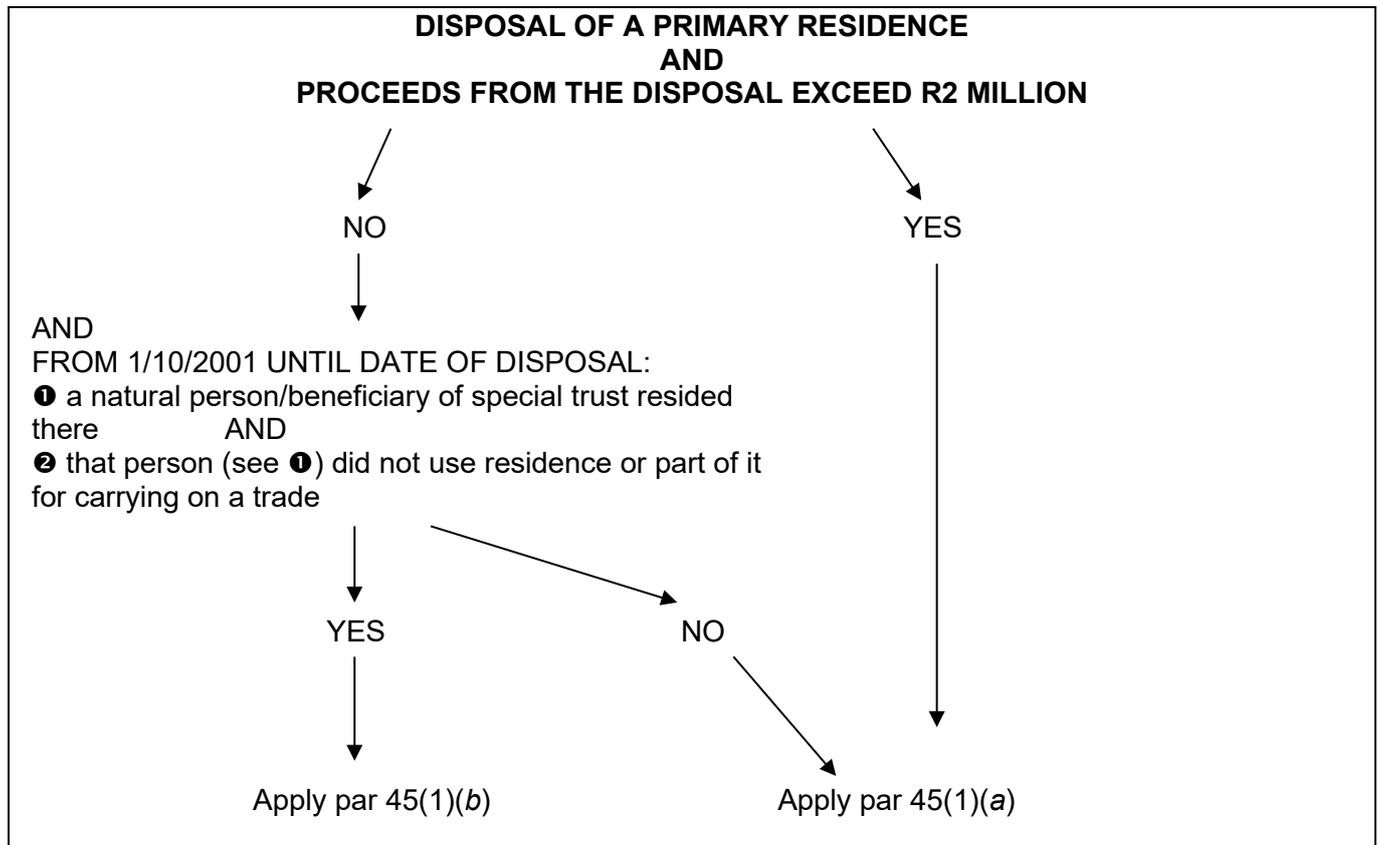


- Read the applicable paragraphs in the Eighth Schedule to the Income Tax Act as indicated in the table below.
- Work through SILKE and revisit those paragraphs you are not yet comfortable with (as indicated below) and the notes provided.

Legislation 8 th Schedule (All covered in undergrad)	Reference to SILKE	Application	Notes in LU 6	Examinable
par 44	17.10.1 17.10.1.1	Definitions (with regard to primary residence exclusions)	6.5.6	Yes
par 45	17.10.1 17.10.1.2	General principles	6.5.6	Yes
par 46	17.10.1.3	Size of residential property qualifying for exclusion	6.5.6	Yes
par 47	17.10.1.3	Apportionment in respect of periods when not ordinarily resident	6.5.6	Yes
par 48	17.10.1.3	Disposal and acquisition of primary residence	6.5.6	Yes
par 49	17.10.1.3	Non-residential use	6.5.6	Yes
par 50	17.10.1.3	Rental periods	6.5.6	Yes
<i>Par 51&51A</i>	<i>17.10.1.4</i>	<i>Transfer of residence from company or trust</i>		<i>No</i>

Primary residence exclusion

The following diagram provides an overview of the primary residence exclusion in terms of par 45:



When the proceeds in respect of the disposal of a primary residence, by a natural person or special trust, are less than or equal to R2 million, any capital gain or loss will be disregarded (paragraph 45(1)(b)). However, paragraph 45(1)(b) will not be applicable if the natural person, or a spouse or beneficiary of a special trust

- did not ordinarily reside there for the full period (from 1 October 2001 until date of disposal); or
- used the residence (or a portion of it) for the purposes of carrying on a trade for any portion of the period commencing from 1 October 2001 until date of disposal.

Primary residence exclusion (general)

Only a natural person or a special trust qualifies for a R2 million exclusion on the capital gain or loss when a primary residence is disposed of. The capital gain or the loss on disposal must first be calculated before the exclusion will apply. A natural person/special trust may only have **one** primary residence per tax period. A primary residence is the place where the taxpayer normally resides. A primary residence may also be a boat or caravan and is not restricted to fixed property.

The R2 million exclusion is not a once-in-a-lifetime exclusion. However, uninterrupted ordinary residence is required (paragraph 47) for use of the full exclusion. So, if a residence is used for part of the period, an adjustment must be made. Par 47 to par 49 also applies for a spouse of that person or beneficiary.

For example: it is possible that a taxpayer may buy a home and use it for, say, five years as a primary residence and then move to another house. This 5-year period will qualify for the primary residence exclusion, even if the taxpayer does not use it for residential purposes anymore. If the asset (home) is then sold (say after 12 years), only a portion (relating to the actual period lived in the house, that is 5/17) of the total capital gain can qualify for the primary residence exclusion.

If a portion of a primary residence is used for trade purposes, the taxpayer can deduct qualifying expenses relating to that portion through the Act, which will reduce the taxable income. When this property is sold, there will be no recoupment of the amounts previously deducted as running costs, as this type of expenditure does not enhance the value of the property. However, the capital gain that will qualify for the primary residence exclusion (in terms of paragraph 49) will be reduced by the portion of the residence that had been used for trade purposes by the natural person (or a spouse of that person or beneficiary). This portion will be subject to CGT.

When a person disposes of a primary residence together with the land on which it is situated, the exclusion of the capital gain or loss will apply only so much of the land as does not exceed two hectares.



Activity 6.6 (25 minutes)



To enhance your understanding of the application of the primary residence exclusion, work through the following three examples (Example 6.9 to 6.11) which were adapted from the **SARS comprehensive guide to CGT (2020)** (adapted for legislative amendments).



Example 6.9: Primary residence

Mr D purchased a residence to be utilised solely as a primary residence on 1 October 2016 at a total cost of R1 250 000. Seven years later (1 October 2023), Mr D sells this primary residence for R3 500 000 in order to purchase another primary residence. Assuming Mr D pays income tax at the maximum marginal rate of 45% and that he has no other capital gains or losses in the year of assessment in question, his additional income tax liability as a result of the capital gain realised is determined as follows:

Proceeds	R 3 500 000
Less: Base cost	(1 250 000)
Capital gain	<u>2 250 000</u>
Disregarded in terms of par 45(1)(a)	(2 000 000)
Less: Annual exclusion (par 5)	<u>(40 000)</u>
Aggregate capital gain	<u>210 000</u>
Taxable capital gain (R210 000 x 40%) (par 10)	<u>84 000</u>
Tax payable (R84 000 x 45%)	<u><u>37 800</u></u>

The R2 million exclusion operates on a primary residence basis and not on a person holding an interest in the primary residence basis.



**Example 6.10:
Spouses married in community of property**

The facts are the same as for the above example, except that Mr D is married to Mrs D in **community** of property and the primary residence falls within their **joint** estate. Assuming that Mrs D has no other capital gains or losses in the year of assessment in question, Mr D and Mrs D's taxable capital gains are determined as follows:

	Total R	Mr D R	Mrs D R
Capital gain (apportioned in terms of par 14)	2 250 000	1 125 000	1 125 000
Disregarded in terms of par 45(1)(a)	(2 000 000)	(1 000 000)	(1 000 000)
Annual exclusion		(40 000)	(40 000)
Aggregate capital gain		<u>85 000</u>	<u>85 000</u>
Taxable capital gain (R85 000 x 40%)		<u>34 000</u>	<u>34 000</u>

Non-residential use: paragraph 49

The purpose of this paragraph is to allow the primary residence exclusion only in respect of the portion of the capital gain or capital loss on the disposal of the primary residence that is attributable to any period on or after valuation date during which the taxpayer or a spouse of that person or beneficiary used that residence for domestic purposes as well as to the part used mainly for purposes other than the carrying on of a trade.



**Example 6.11:
Residence used partly for trade purposes and interrupted residence**

Ms Y acquired a residence on valuation date for R350 000 and resided in it for 10 years. During this time, she operated her consulting business from the premises. Approximately 35% of the floor space was used for business purposes. Ms Y also claimed 35% of her current costs as a business expense against her business income for tax purposes. As an opportunity arose for her to expand her business 10 years after she had acquired the property, she purchased another residence in which to live and converted her old residence into business premises. Fifteen years after converting the property, she sold it for R2 650 000. Improvements over the years and all other capital costs associated with the acquisition and disposal of the property amounted to R250 000.

Proceeds upon disposal	R 2 650 000
<u>Less: Base cost (R350 000 + R250 000)</u>	<u>(600 000)</u>
Capital gain	2 050 000
Period not occupied as primary residence (R2 050 000 x 15/25)	<u>(1 230 000)</u>
	820 000
Part partially used for trade purposes (R820 000 x 35%)	<u>(287 000)</u>
Capital gain attributable to being a primary residence	<u>533 000</u>

Ms Y will be able to apply the primary residence exclusion to R533 000 of the total capital gain realised. The balance of R1 517 000 (R1 230 000 + R287 000) will be subject to CGT and will be aggregated by any other capital gains or losses arising in the year of disposal before the R40 000 annual exclusion is applied.

6.5.7 PART VIII OF THE EIGHTH SCHEDULE – OTHER EXCLUSIONS

An exclusion for CGT purposes will disregard a capital gain or loss on an asset. You have to know which assets are excluded from the CGT net, as no capital gain or loss is calculated on the disposal of these assets. Exclusions, limitations of capital losses and the roll-over relief are exceptions to the general rules.



- Read the introduction in SILKE 17.10 (exclusions, roll-overs, attributions and limitations).
- Read the applicable paragraphs in the Eighth Schedule to the Income Tax Act as indicated in the table below. Work through SILKE and revisit those paragraphs you are not yet comfortable with (as indicated below) and the notes provided.
- Note that we already dealt with Part VII of the Eighth Schedule (primary residence exclusion) in the previous note.

Legislation 8 th Schedule (All covered in undergrad)	Reference to SILKE	Application	Notes in LU 6	Examinable
par 52	17.10.2	General principles		Yes
par 54	17.10.2, Note 2	Lump-sum retirement benefits of a natural person	6.5.7	Yes
par 55	17.10.2, Note 3	Long-term assurance policies	6.5.7	Yes
par 57	17.10.2, Note 4	Disposal of small business assets of a natural person		Yes
par 57A	17.10.2, Note 5	<i>Disposal of micro business assets</i>		No
par 58	17.10.2, Note 6	Options exclusion		Yes
par 59	17.10.2, Note 7	Compensation for personal injury, illness or defamation		Yes
par 60	17.10.2, Note 8	Gambling, games and competitions		Yes
par 61	17.10.2, Note 9	Collective investment scheme in securities		Yes
par 62	17.10.2, Note 10	Donations and bequests to public benefit organisation (PBO)		Yes
par 63	17.10.2, Note 11	Exempt persons		Yes
par 63A	17.10.2, Note 12	<i>Public benefit organisations</i>		No
par 63B	17.10.2, Note 13	<i>Small business funding entities</i>		No
par 64	17.10.2, Note 14	<i>Assets used to produce exempt income</i>		No
par 64A	17.10.2, Note 15	<i>Awards under the Restitution of the Land Rights Act</i>		No
par 64B(1)	17.10.2, Note 16	Disposal of equity shares in foreign company.	Topic 5	Yes
par 64B(2-6)	17.10.2, Note 16	<i>Disposal of interest in equity share capital of foreign co.</i>		No

Legislation 8 th Schedule (All covered in undergrad)	Reference to SILKE	Application	Notes in LU 6	Examinable
par 64C	17.10.2, Note 17	Disposal of restricted equity instruments – only linked to s 8C(4)(a)		No
Par 64D	17.10.2, Note 18	Land donated in terms of land reform measures		No
Par 64E	17.10.2, Note 19	Disposal by trust in terms of a share incentive scheme		No

Note on paragraphs 54 and 55

The right to claim an amount from a retirement fund or insurer is an asset for CGT purposes. This should not be confused with the payment of an insurance or retirement amount. Currency (cash) is excluded from the definition of an asset and will not be subject to CGT. When the right to claim the amount is turned into currency, the disposal of that right is disregarded in terms of paragraphs 54 and 55.

6.5.8 PART IX OF THE EIGHTH SCHEDULE – ROLLOVERS



- Read the applicable paragraphs in the Eighth Schedule to the Income Tax Act, as well as section 9HB, as indicated in the table below.
- Work through SILKE and revisit those paragraphs you are not yet comfortable with (as indicated below) and the notes provided.

Legislation 8 th Schedule/section (All covered in undergrad)	Reference to SILKE	Application	Notes in LU 6	Examinable
Par 65	17.10.3, 17.10.3.1	Involuntary disposal – Exclude par 65B	Topic 3	Yes
Par 65B	17.10.3.4	Disposals by recreational clubs		No
Par 64E	17.10.2	Disposal by trust in term of share incentive scheme		No
Par 66	17.10.3.2	Reinvestment in replacement assets	Topic 3	Yes
S 9HB	17.10.3.3	Transfer of asset between spouses	6.5.8	Yes
Par 67B, C & D	17.10.3.4	Share block companies, Mineral rights and Communication licence conversions		No

Roll-overs (general)

Certain capital gains may be rolled over before determining the aggregate capital gain or loss. Roll-over means that either the base cost is transferred to the new owner (meaning that there is no CGT effect for the person transferring the asset), or the capital gain is spread over a period. These are relief measures.

Section 9HB: Transfer of asset between spouses

In terms of section 9HB, where a person disposes of an asset to his/her spouse, any capital gain or loss is disregarded. The transferee spouse takes over all aspects relating to the asset. The transferee is therefore treated as having acquired the asset

- at the same time,
 - for the same cost
 - in the same currency, and
 - for use in the same manner
- as the transferor during the ownership by the transferor.

The asset is transferred between spouses at base cost. No capital gain or loss is taken into account at the time of the transfer (disposal). When the new owner (spouse) sells the asset, the base cost will be the original base cost for the spouse who transferred the property plus any subsequent qualifying costs (paragraph 20). This provision is subject to the attribution rules (Trusts in Topic 5) in terms of part X in the Eighth Schedule.

6.5.9 DEALT WITH IN LATER TOPICS

Part X: Attribution of capital gains (par 68 – 73) – with trusts (Topic 5)
 Part XI: Company distributions (par 74 – 78) – with dividends (Topic 5)
 Part XII: Trusts and trust beneficiaries (par 80 – 82) – with trusts (Topic 5)

6.6 SOLUTION OF THE BEANCOUNTER SCENARIO



Discussion activity

Read the Beancounter scenario again, or watch the [video](#), and make a rough summary of what your solution would be now that you have studied LU 6 on CGT. Share your solution on the [Discussion Forum 6.1](#), then refer to the [solution](#) that will be made available during the study week for this LU. You need to review the solution to improve your own understanding of the tax principles involved.

The more you actively participate in these discussion forums, the more your communication skills will develop.

6.7 SUMMARY OF LEARNING UNIT 6

This LU introduced you to the content in the CGT as set out in the Eighth Schedule of the Income Tax Act as well as the relevant law amendments. A short table of reference was provided under every part of the Eighth Schedule to guide you through the work. The Eighth Schedule was discussed according to the sequential parts thereof. This ought to provide you with a well-rounded and systematic knowledge base of the four key elements of a CGT event, exclusions, limitation of losses and roll-overs applicable to the CGT calculation.

Ensure that you do not study CGT in isolation and that you consider the impact of CGT on all applicable transactions. You are now ready to apply your knowledge of LU's 4 to 6 by doing the integrated activities below.

6.8 INTEGRATED ACTIVITIES 6.7 – 6.12



Below are seven activities for you to complete. Use these activities to assess your own knowledge, competencies and take responsibility for your own learning experience. The activities will assist you to identify shortcomings in your knowledge relating to Topic 2 and will also serve as a measure of your understanding and ability to apply your tax knowledge obtained in practical situations.

ACTIVITY	CONTENT	MARKS/TIME **
6.7	Capital Gains Tax	8/24
6.8	Gross Income and Capital Gains Tax	25/68
6.9	Value-Added Tax and Capital Gains Tax	50/111
6.10	Gross income, exempt income, CGT, withholding taxes	11/35
6.11	Gross income, exempt income, resident and non-resident, CGT	20/54
6.12	Donations tax, VAT, gross income, exempt income, resident and non-resident, CGT	40/102

** The time provided for each question is calculated as 6 minutes of reading time for each activity, 1.5 minutes for every mark and then 6 minutes per page of the solution, for you to review your answer against the solution provided.

**ACTIVITY 6.7 (8 marks / 24 minutes)**

Mr Sanders (a resident in South Africa and unmarried) acquired a one-bedroom flat on 1 November 2010 for R800 000 and lived in it as his primary residence for eight years after that date. During this period, he operated a small computer business from the premises using 40% of the area for this purpose. The business expanded to such an extent that he decided to buy a house to use as his primary residence in the 2019 year of assessment. From 1 November 2018 the existing one-bedroom flat was used exclusively for purposes of the computer business after the necessary trade permission was obtained from his municipality.

After a further five years, during which time he spent a further R300 000 on improvements to the one-bedroom flat used for the business, he sold it for R2 600 000 on 1 November 2023.

YOU ARE REQUIRED TO:

Determine the net capital gain on the one-bedroom flat (if any) to be included in the taxable income of Mr Sanders for the year of assessment ended 29 February 2024.

ACTIVITY 6.7 - SUGGESTED SOLUTION**Mr Sanders -CGT**

	R	
Proceeds - par 35(1)	2 600 000	(1)
Base cost - para 20(1)(a) and 20(1)(e) (R800 000 + R300 000)	(1 100 000)	(1)
Capital gain	<u>1 500 000</u>	
<u>Less</u> : 5/13 years not ordinarily resident in premises - par 47 ①	(576 923)	(1)
	<u>923 077</u>	
<u>Less</u> : 40% business use for initial period - par 49	(369 231)	(1)
	<u>553 846</u>	
<u>Less</u> : Primary residence exclusion R2m limited to actual - par 45 ②	(553 846)	(1)
Primary residence capital gain / loss	<u><u>nil</u></u>	

Capital gain on disposal of property

	R	
Primary residence	nil	
Business use (taxable) ①	369 231	(1)
Period not used as primary residence (taxable) ②	576 923	(1)
Capital gain (total as only asset sold)	<u>946 154</u>	
<u>Less</u> : Annual exclusion (par 5)	(40 000)	(1)
Aggregate capital gain	<u>906 154</u>	
No assessed capital loss brought forward	nil	
Net capital gain	<u><u>906 154</u></u>	
	<u>8</u>	

Note:

The profit is subject to capital gains tax. A maximum primary residence exclusion to the amount of R2 000 000 is allowed as a deduction against the capital gain. However, this exemption cannot apply when the property is not used for primary residence purposes only, for example the letting of the property or the use of the property for trade purposes. The taxpayer is penalised and the taxpayer cannot claim the exemption on the full capital gain.

The capital gain is calculated as follows: Capital gain, before the primary residence exclusion, is R1 500 000 less the allowable portion of the primary residence exclusion of R553 846. The capital gain is R946 154.



ACTIVITY 6.8 (25 marks / 68 minutes)

PART A

7 marks

Allan Breker (a 45-year-old resident of the Republic and married out of community of property to Nerina) is one of the directors of Test (Pty) Ltd. On 13 May 2024, Allan approached you for assistance in relation to his 2024 tax return.

Allan Breker provided you with the following information:

- He received a basic salary of R60 000 per month for the 2024 year of assessment.
- Much to his wife's annoyance, the company sent him to Armenia (ignore any double taxation agreement) from 1 July 2023 until 31 January 2024, to launch a new product. He spent every last weekend of the month as well as 12 September until 18 September 2023 (to attend his daughter's birthday), as well as 22 December 2023 until 1 January 2024 in South Africa. He has been in Armenia for 187 days in aggregate during the year of assessment.
- On 1 February 2024 Allan Breker used R360 000 of his inheritance (his mother died in August 2023) to purchase a lifetime annuity of R28 800 per annum from an insurer. It will be paid to him at an amount of R2 400 per month. The first R2 400 was paid to him on 29 February 2024. His life expectancy (based on the life expectancy tables) is 25,38 years.

REQUIRED	Marks
Determine Allan Breker's taxable income for the 2024 year of assessment, providing supporting reasons or reference to tax legislation with regard to receipts and accruals that are exempt from taxation.	7

PART B

18 marks

Don and Dawn Smith have been married in community of property for more than 25 years. Don is an orthopaedic surgeon while Dawn is an interior decorator. They have decided to do some serious estate planning, given Don's retirement within a few years. They have approached an independent certified financial planner to assist them in this regard. He has requested them to each prepare a detailed list of all the assets and investments that they currently possess, stipulating their original cost, and the current market value. Once presented with such a list, he will propose a restructuring of their current joint estate.

Don and Dawn like to spend their holidays at their bushveld lodge close to Bela-Bela. Don inherited this bushveld lodge on 18 November 2017 from the estate of his late mother. The property was transferred into his name on 18 November 2017 and had a market value of R1 350 000 on the date of his mother's death. The last valid will of Don's mother stipulated that the bushveld lodge may never become part of any joint estate Don might be party to. Don has made capital improvements of R150 000 during November 2018 at the bushveld lodge. He has all the relevant substantive documentation to prove the cost.

Don (a sole practitioner) started to practice as an orthopaedic surgeon long before he and Dawn got married. Don has started to scale down his practice, but it is still an active practice. Don is also advertising to sell his practice. He envisages that the possible proceeds from such a sale would realise R1 200 000. He had a good number of enquiries from young orthopaedic surgeons interested in purchasing his practice.

ACTIVITY 6.8 (continued)

The couple both prepared their own list of assets and investments.

The following list of assets and investments was prepared by Don as at 31 December 2023:

Description	Original cost	Market value on 31/12/2023
	R	R
2014 BMW 740i	450 000	425 000
1980 MG Sport (not used for business)	40 000	550 000
Ski boat (13 meters)	200 000	450 000
Paintings at his residence	50 000	380 000
Listed shares portfolio (in the Republic)	220 000	450 000
Bushveld lodge	1 350 000	4 100 000
Krugerrands (regarded as an investment for income tax purposes)	100 000	150 000
Antique furniture (not used for trade)	90 000	150 000
Practice (with active business assets) – sole practitioner	650 000	2 450 000
Primary residence	1 200 000	3 500 000

The independent certified financial planner suggested the following restructuring to these assets/investments:

- Sell the 1980 MG Sport for R550 000 and invest the proceeds in a townhouse for earning of future rental income.
- Sell the ski boat for R450 000 and invest the proceeds in a townhouse for earning of future rental income.
- Sell the paintings for R380 000 and settle the outstanding balance of the hire purchase agreement on the 2014 BMW 740i.
- Sell 60% of the listed share portfolio (held for speculative purposes) for R270 000 and invest the proceeds in preference shares.
- Sell the bushveld lodge for R4 100 000 and invest 50% of the proceeds in commercial rental property and 50% in entry level residential rental properties
- Sell the Krugerrands for R150 000 and invest the proceeds in government bonds.
- Sell the antique furniture for R150 000 and invest the proceeds in a money market account.
- Sell the practice for R2 450 000 (as a going concern) and invest the proceeds in student flats close to the local university to generate rental income. The practice will not be sold on credit terms. You may assume that there will be no recoupments on the depreciable practice assets included in the sale of the practice. You may also ignore any VAT implications on this transaction.

Don and Dawn have accepted all the suggestions of the independent certified financial planner regarding the selling of their assets and investments to restructure their joint estate.

ACTIVITY 6.8 (continued)

The following list of assets and investments was prepared by Dawn as at 31 December 2023:

Description	Original cost	Market value on 31/12/2023
	R	R
2005 Toyota Tazz	55 000	35 000
Listed shares (in the Republic) – long-term investment	350 000	600 000
Persian carpets – part of household carpets	150 000	190 000
Household furniture	350 000	400 000

The independent certified financial planner suggested the following restructuring of these assets and investments:

- Sell 60% of the listed share portfolio for R360 000 and invest the proceeds in a money market account.
- Sell all the Persian carpets for R190 000 and invest the proceeds in a money market account.

Dawn and Don have accepted all the suggestions of the independent certified financial planner regarding the selling of “their” assets and investments to restructure their joint estate.

All assets and investments will be sold and realised during February 2024, for their respective market values as at 31 December 2023. Don has an assessed capital loss of R10 500 brought forward from the 2023 tax year. Don is currently 56 years old and Dawn 54. Except for his own practice, Don has never had any other business, practice, business interest or practice interest in the past.

REQUIRED	Marks
Determine the taxable capital gain on the assets and investments realised during February 2024, for Don only for the 2024 year of assessment. If the proceeds of a particular asset or investment are not subject to capital gains tax, provide a brief reason or reference to applicable legislation.	18

(UNISA Test 2 2006 amended)

ACTIVITY 6.8 - SUGGESTED SOLUTION**PART A****Calculation of Allan Breker's taxable income for the year of assessment ended 29 February 2024**

		R	
Salary (R60 000 x 12)	Paragraph (c) of the gross income definition	720 000	(1)
Exempt income:	Section 10(1)(o)(ii) application: Any remuneration will be exempt if: Allan was outside the Republic for a period exceeding 183 full days (he has been in Armenia for 187 in aggregate) during any period of 12 months and for a continuous period exceeding 60 full days. Although his total remuneration for 12 months is less than R1.25 million, Allan came back on a regular basis (every last weekend of the month), no exemption will be granted as there was no continuous period in excess of 60 full days in Armenia.	nil	(2)
Purchased annuity	One month <u>Less:</u> Section 10A exemption: $Y = A/B \times C$ Capital element = $R360\,000 / (25,38 \times R28\,800) \times R2\,400$	2 400	(1)
		<u>(1 182)</u>	(3)
Income:		<u><u>361 218</u></u>	
			<u><u>7</u></u>

PART B**Calculation of taxable capital gains for Don for the 2024 tax year**

Description	Calculation	Capital gain/ (loss) R	
1980 MG Sport	Personal use asset – exclusion i.t.o. par 53	nil	(1)
Ski boat – 13 meters	Proceeds <u>Less:</u> Base cost Capital gain	R 450 000 <u>(R 200 000)</u> <u>R 250 000</u> x 50%	(1/2) (1/2) (1/2)
	<i>(in community of property therefore only 50% inclusion)</i>	125 000	
Paintings	Personal-use asset – exclusion i.t.o. par 53	nil	(1)
Listed shares	Proceeds to be included as gross income (the share portfolio is held for speculative purposes). Therefore as this amount is already taken into account for income tax purposes it will be excluded from proceeds and base cost, which means that the shares (trading stock) will therefore have a base cost of Rnil (acquisition costs less deduction allowed for normal tax purposes) and proceeds will also be Rnil (proceeds less amount already taxed for normal tax purposes). Note: Trading stock will be further dealt with in LU 9 but you must know the basic principle.	nil	(2)

ACTIVITY 6.8 - SUGGESTED SOLUTION (continued)

Description	Calculation	R	Capital gain/ (loss) R	
Bushveld lodge	Proceeds	4 100 000		(½)
	<u>Less: Base cost</u>	(1 350 000)		(½)
	Costs after 18/11/2017	<u>(150 000)</u>		(1)
	Capital gain	<u>2 600 000</u>	2 600 000	
	Excluded from the joint estate i.t.o. the last will of Don's mother.			(½)
Krugerrands	Proceeds	150 000		(½)
	<u>Less: Base cost</u>	(100 000)		(½)
	Capital gain	<u>50 000</u> x 50%	25 000	(½)
Antique furniture	Personal use asset – exclusion i.t.o. par 53		nil	(½)
Practice - Small Business	Proceeds	2 450 000		(½)
	<u>Less: Base cost</u>	<u>(650 000)</u>		(½)
		1 800 000		
	<u>Less: Exclusion (par 57(3))</u> (Limited to R1 800 000)	<u>(1 800 000)</u>		(1)
	Capital gain		nil	(2)
	The requirements for selling small business assets (practice) were met, and therefore the exclusion of R1 800 000 can be utilised.			
Listed shares (From Dawn)	Proceeds (R600 000 x 60% = R360 000)	360 000		
	<u>Less: Base cost</u> (R350 000 x 60%)	<u>(210 000)</u>		(1)
	Capital gain	150 000 x 50%	75 000	(1)
Persian carpets	Personal use asset – exclusion i.t.o. par 53		nil	
Total capital gain			<u>2 825 000</u>	
<u>Less: Annual exclusion (par 5)</u>			<u>(40 000)</u>	(1)
			<u>2 785 000</u>	
Assessed capital loss brought forward from 2023			<u>(10 500)</u>	(½)
Net capital gain			<u>2 774 500</u>	
Inclusion rate @ 40 %				(1)
Taxable capital gain for 2024			<u>1 109 800</u>	
			<u>Total</u>	<u>18½</u>
			Limited to	<u>18</u>



ACTIVITY 6.9 (50 marks / 111 minutes)

Marcel Carvalho is a 28-year-old divorcee who inherited assets and investments from his deceased father's estate on 20 November 2020. All amounts exclude VAT, except if stated otherwise.

As Marcel is an Italian passport holder, while also being a resident of the Republic, he decided to leave South Africa on a permanent basis and to live and work in Italy. On 10 May 2023, he left the Republic, intending never to live here again and only to visit his South African family every now and again. He did visit the Republic on two occasions after emigrating. The first visit was during August 2023 for 20 days and his second visit was in January 2024 also for 20 days. He was therefore physically present in the Republic for 111 days and absent from the Republic for 255 days during the year of assessment ended 29 February 2024.

His assets and investments as well as the transactions relating to them, income accrued and expenses incurred are as follows:

1. Residential property

Marcel inherited a residential property from his father's estate on 20 November 2020. The market value on date of his father's death amounted to R2 200 000 on 20 November 2020. Marcel effected further improvements to this property during November 2020 and December 2020 to the value of R180 000 and commenced using the property as his primary residence on 5 January 2021.

He resided at the property from 5 January 2021 until 30 April 2023. From 1 to 10 May 2023 he stayed with his brother until his departure from the Republic on 10 May 2023. The market value of the residence on 9 May 2023 was R4 400 000.

During his residence at the property, he used 10% of the floor space of the house as an office. This office was equipped for purposes of his trade and used as such until 30 April 2023.

The total property was let to a tenant on a monthly basis from 1 May 2023. On 1 May 2023, while the property was subject to the rental agreement, it was also put up for sale in the property market. The tenant consequently gave notice and moved out on 31 July 2023. Marcel decided not to re-let the residence again, hoping that it would rather be sold. The house was subsequently sold on 31 August 2023 for R4 500 000. The agent's commission paid by Marcel and which was not included in the selling price amounted to R260 000.

ACTIVITY 6.9 (continued)

A refundable deposit of R20 000, which is equal to one month's rent, was received from the tenant on 1 May 2023. The tenant only paid rent for May and June 2023. On 31 July 2023, he forfeited his refundable deposit, as he did not pay rent for July 2023. City Council rates and taxes, which were paid by Marcel, amounted to R2 100 per month throughout the current year of assessment. The tenant defaulted on the payment of his water and electricity account at the city council for July 2023 and Marcel consequently had to pay the outstanding account of R7 200 on 10 September 2023 in order for the registration of the sale to be effected. Repairs amounting to R23 000 were affected by Marcel to the residence during August 2023.

You may use the following periods for any allocations, which you may deem necessary:

Total period of owning the residence	20 November 2020 – 31 August 2023	34 months
Period of residing in the residence	5 January 2021 – 30 April 2023	28 months

2. Investment / trading property

Marcel inherited an undeveloped property (vacant stand) from his father's deceased estate on 20 November 2020 as well, which had a market value of R2 200 000 on that date. The cost price for his father was R1 000 000 in October 2010. At first, Marcel was undecided on what to do with the property and eventually just held on to it as a capital investment. On 3 March 2023, when the property had a market value of R2 900 000, he commenced the subdivision of the property into 10 industrial stands of 500m² each (therefore he commenced trading with that property from that date). The cost of the subdivision was R1 200 000 and advertising expenses were R65 000. He commenced selling the stands on 15 April 2023. All 10 stands were sold for R550 000 each by 1 May 2023.

3. Portfolio of local shares

Marcel inherited this share portfolio from his father's estate on 20 November 2020. All the shares in the portfolio were purchased by Marcel's father more than three years before his death on 5 October 2017. The total cost of the shares acquired over the years by him amounted to R1 230 000. On 20 November 2020 the market value of the shares was R2 150 000 and on 9 May 2023 the market value amounted to R2 655 000. Marcel did not trade with this share portfolio and is not seen as a sharedealer by SARS. During his visit to the Republic in January 2024 he sold all the shares in the portfolio for R2 350 000. He paid securities transfer tax of R5 875 and broker's commission of R2 350 on this transaction.

4. Portfolio of foreign shares – refer to LU 9 and LU 18

Marcel commenced trading in foreign shares during 2021. He entered into the following transactions for the year of assessment ended 29 February 2024:

Share code	Date purchased	Cost price	Date sold	Selling price	Market value on 9 May 2023
		R		R	R
FRESIN	12/03/2021	68 000	17/04/2023	89 000	-
CODEL	08/04/2021	110 000	10/06/2023	163 000	158 000
SHONDE	22/08/2023	95 000	06/01/2024	155 000	-

These shares are traded on stock exchanges in the foreign countries and Marcel does not own more than 10% in any foreign company. None of the companies are controlled foreign companies (CFC's as defined). CFC's is excluded from the ITC Tax examinable pronouncements.

ACTIVITY 6.9 (continued)**5. Cash investment**

Marcel invested R3 748 000 in a local money market fund. This investment earned R30 750 interest for the period 1 March 2023 until 9 May 2023. He transferred the funds in this investment to Italy on 10 May 2023 and invested it there at an Italian Bank earning R72 000 (Rand equivalent) interest for the period 10 May 2023 until 29 February 2024.

6. Other capital (personal-use) asset transactions

Note	Asset	Date purchased / inherited	Cost price/ market value when inherited or obtained R	Date sold	Selling price R	Market value at 9 May 2023 R
6.1	Yacht	20/11/2020	830 000	14/04/2023	810 000	-
6.2	Gold coin collection	20/11/2020	985 000	10/01/2024	992 000	970 000
6.3	Bugatti Roadster	10/09/2021	920 000	20/04/2023	1 100 000	

- 6.1 The yacht was purchased by his father during 2010 for R530 000 and bequeathed to Marcel in his valid will. The yacht is used by Marcel for recreational purposes, e.g. sailing during week-ends. The yacht is 12 metres long.
- 6.2 The gold coin collection was purchased over the years by Marcel's father. The total cost price for his father amounted to R962 000. As Marcel did not really know what to do with these coins, he left them in a safe deposit box at a local bank but then subsequently sold them to a gold coin company when he visited the Republic during January 2024.
- 6.3 The Bugatti Roadster was used by Marcel for personal travel. It was sold to an investment car dealer.

REQUIRED:		Marks
(a)	Determine Marcel Carvalho's taxable income for the year of assessment ended 29 February 2024. Provide short reasons or reference to applicable Income tax legislation for amounts, which you regard as not taxable and not deductible. Show all calculations. Assume that Marcel did not conduct any activities in a permanent establishment in the Republic after his emigration and that he did not have any taxable capital gain for the remainder of 2024, after emigrating).	45
(b)	Reflect , with reasons and references to the VAT Act, whether Marcel Carvalho should register for VAT regarding the transaction in paragraph 2 of this question, assuming the transaction is a supply of goods in the course or furtherance of an enterprise. Also calculate the amount of output tax which he would be liable for on the transaction (assuming he should have registered for VAT and the selling price of R550 000 per stand includes VAT).	5

Unisa Exam 2013 (amended)



PLEASE NOTE

Item 4: Foreign shares and share dealers will also be discussed in LU 9 (trading stock) & LU 18 (dividends and shares). We have left it in the integrated activity question to demonstrate the level of integration expected from you in the year-end exam (assessment). You however need to know the effect of a change in intention in terms of the gross income definition.

ACTIVITY 6.9 - SUGGESTED SOLUTION



PLEASE NOTE

The solution refers to section 9HA and we expect you to understand the basic CGT principles and apply section 9HA in your assessments.

(a) Taxable income of Marcel Carvalho for the year of assessment ended 29 February 2024

	R	R Capital gains	R Taxable income
1. Residential property			
Not deemed disposal on date of emigration (Immovable property in South Africa) – section 9H(4)		nil	(1)
Proceeds 31/8/2023	4 500 000		(1)
<u>Less: Base cost</u>	(2 640 000)		
Inherited on 20/11/2020 (s 9HA) at market value	2 200 000		(1)
Improvements (2020) (par 20(1)(e))	180 000		(1)
Agent's commission (par 20(1)(c)(i))	260 000		(1)
Rates and taxes (denied ito par 20(2)(b))	-		(1)
Repairs (denied ito par 20(2)(b))	-		(1)
Capital gain	<u>1 860 000</u>		
<u>Less: Period interrupted residence (par 47)</u> (R1 860 000 x 6/34 months)	<u>(328 235)</u>	328 235	(1)
	1 531 765		
<u>Less: Portion used as study (10%) (par 49)</u> (R1 531 765 x 10%)	<u>(153 176)</u>	153 176	(1)
	1 378 589		
<u>Less: Primary residence exclusion (par 45(1)(a))</u>	<u>(1 378 589)</u>		(1)
	-		
Rent: RSA source			
Rent received (R20 000 x 2m) (May – June 2023)			40 000 (1)
Deposit forfeited – rent received for July 2023			20 000 (1)
Rates and taxes (R2 100 x 3m) (May – July 2023)			(6 300) (1)
Water and electricity (July 2023)			(7 200) (1)
Repair in August – no trade after 31/7/23 (no s 11(a))			- (1)
2. Investment / trading property			
Proceeds – deemed disposal (par 12(2)(c))	2 900 000		(1)
<u>Less: Base cost (s 9HA) at market value</u>	<u>(2 200 000)</u>		(1)
Capital gain	<u>700 000</u>	700 000	

ACTIVITY 6.9 - SUGGESTED SOLUTION (continued)

<i>Trading stock will be discussed in full in LU 9</i>			
Sale of trading stock property units (R550 000 x 10)		5 500 000	(1)
Cost of sales		(2 900 000)	(1)
Cost of sales		(1 200 000)	(1)
Advertising costs		(65 000)	(1)
3. Portfolio of local shares			
Proceeds – deemed disposal on 9 May 2023 s 9H(2)			
	2 655 000		(1)
Less: Base cost (s 9HA) at market value	(2 150 000)		(1)
Securities transfer tax (STT) and Broker's commission – no cost incurred on deemed disposal	nil		(1)
Capital gain	505 000	505 000	
Sale of share –non-resident selling movable assets		nil	(1)
4. Portfolio of foreign shares (Refer to LU 9 and LU 18 as well)- sold within 3 years, no section 9C			
<u>FRESIN [net amount R21 000]</u>			
Sale of trading stock (17/4/2023)		89 000	(1)
Less: Cost of sales		(68 000)	(1)
<u>CODEL (9/5/2023) [net amount R48 000]</u>			
Deemed sale of trading stock		158 000	(1)
Less: Cost of sales		(110 000)	(1)
Sale of shares after May 2023, not a resident nor from a deemed source.		nil	(1)
SHONDE (purchased after May 2023)			
Not a resident nor from a deemed source.		nil	(1)
5. Cash investment			
Deemed disposal on 9/5/2023, but proceeds (R3 748 000) = base cost (R3 748 000)		nil	(1)
Local interest received		30 750	(1)
Less: Interest exemption (s 10(1)(i))		(23 800)	(1)
Foreign interest received			
Not a resident nor from a deemed RSA source.		nil	(1)
6. Other capital assets			
6.1 Yacht			
Proceeds on 14/04/2023	810 000		(1)
Less: Base cost (s 9HA)	(830 000)		(1)
Capital loss	(20 000)		
Not a personal-use asset as it is >10 metres – par 53. Capital gain will not be disregarded. Par 15 is applicable and therefore the loss will be disregarded.		nil	(1)
6.2 Gold coin collection			
Proceeds on 09/05/2023 (deemed disposal) – s 9H	970 000		(1)
Less: Base cost	(985 000)		(1)
Capital loss	(15 000)		
Excluded from personal-use asset – par 53. Loss is not excluded into par 15.		(15 000)	(1)
Sale of coins – not taxable non-resident selling movable assets		nil	(1)

ACTIVITY 6.9 - SUGGESTED SOLUTION (continued)**6.3 Bugatti Roadster**

Proceeds on 20/04/2023	1 100 000		
<u>Less: Base cost</u>	<u>(920 000)</u>		
Capital gain	180 000		
Excluded as Roadster is a personal-use asset – par 53.		nil	(2)
Total capital gains	1 671 411		
<u>Less: Annual exclusion</u>	<u>(40 000)</u>		(1)
Net capital gain	1 631 411		
Taxable capital gain (after annual exclusion @ 40%)		652 564	(1)
Taxable income		<u>2 110 014</u>	<u>6</u>
		Max	<u>45</u>

(b) Registration for VAT

Section 23(1) of the VAT Act	(1)
A person is required to register as a vendor:	(1)
- At the end of the month during which the total value of the taxable supplies for the preceding 12 months exceeded R1 million; or	
- At the beginning of any month where, in terms of a contractual obligation in writing, the total value of the taxable supplies to be made by that person in the coming 12 month period will exceed R1 000 000.	
Marcel has an obligation to register in terms of section 23(1)(b) once the sale agreements of two stands are duly signed and entered into; or in terms of section 23(1)(a) at the end of the month when two stands are sold.	(1)
Output tax: $R550\,000 \times 15/115 \times 10 = R717\,391$.	(1)
Total	<u>5</u>



ACTIVITY 6.10 (11 marks / 35 minutes)

Mr Bob Builder is a 29 year-old, unmarried, engineer and building expert who was born, bred and lives in South Africa (SA). He is passionate about buildings and he developed an innovative design to build low-cost housing that will withstand tornados and floods. He registered a patent for his building design at a cost of R50 000 (no deduction was claimed in this regard) in February 2023 in South Africa.

The following transactions occurred during the 2024 year of assessment:

1. SA Interest
Interest accrued from Beep Bank, a South African financial institution, on 1 July 2023 and on 1 January 2024 amounting to R15 000 and R16 000 respectively.
2. Primary residence: plot and house (Bob Builder does not carry on farming activities)
On 1 June 2013, Mr Builder purchased a small plot of land in Cullinan for R1 200 000. The plot consists of a small farmhouse on 2.5 hectares of land. He sold the Cullinan plot on 1 December 2023 to Ms Huis, a South African resident, for R3 800 000. The plot has not been used for purposes of a trade.

REQUIRED		Marks
(1)	Determine the taxable income for Mr Builder for his 2024 year of assessment. (Ignore any VAT implications)	8
(2)	Assuming Mr Builder is a non-resident , determine the withholding tax for transactions 1 and 2 for the 2024 year of assessment. Provide reasons for each transaction for inclusions or exclusions. Also assume that because Mr Builder is a non-resident, the plot and house in transaction 2 cannot be his primary residence but treat it as a long-term investment.	3

(Extract from Test 1, 2014)

Round all amounts off to the nearest Rand.



Remember that the parts in the solution that are highlighted in grey should not be studied as this is excluded from the ITC 2025 examinable pronouncements and is only included for completeness sake.

ACTIVITY 6.10 - SUGGESTED SOLUTION**QUERY 1 – Calculate the taxable income**

		Taxable income R	
<u>Tx 1: SA Interest (R15 000 + R16 000)</u>	31 000		(1)
Exemption ito S10(1)(i)	<u>(23 800)</u>	7 200	(1)
<u>Tx 2: Sale of primary residence</u>			
Proceeds	3 800 000		
Less: Base cost	<u>(1 200 000)</u>		
Capital gain	2 600 000		(1)
Capital gain attributable to 2 ha (Par 46)	2 080 000		(1)
2ha / 2.5ha x 2 600 000			
Less: Primary residence exclusion (limited to R2m)	<u>(2 000 000)</u>		(1)
	<u>80 000</u>		
Aggregate capital gain:			
Capital gain after primary residence exclusion	80 000		
Portion of primary residence in excess of 2 ha			
R520 000 (R2.6m x 0.5ha/2.5ha) OR (R2,6m - R2.08m = R520 000)	<u>520 000</u>		(1)
	600 000		
Less: Annual exclusion (par 5)	<u>(40 000)</u>		(1)
	<u>560 000</u>		
Taxable capital gain - inclusion rate of 40% (par 10)		224 000	(1)
TOTAL TAXABLE INCOME		<u>231 200</u>	
		Total	<u>8</u>

ACTIVITY 6.10 - SUGGESTED SOLUTION (continued)**QUERY 2 - Withholding tax implications**

	R	
<u>Tx 1:</u> SA Interest - source in SA		
Interest received 1 July 2023 (R15 000) and 1 January 2024 (R16 000) is subject to withholding tax at 15% ito s50B however it is also exempt from WHT ito s50D(1) because it is interest received from a bank.		(1)
	nil	(1)
<u>Tx 2:</u> Sale of immovable property		
SA source subject to WHT ito S35A at 7.5% on proceeds (seller is an individual).		
R3 800 000 x 7.5%	285 000	(1)
<i>Note:</i> S35A is not a final tax but an amount withheld (pre-paid tax) by the purchaser of the property		
TOTAL WITHHOLDING TAX PAYABLE	285 000	
	Total	<u>3</u>



ACTIVITY 6.11 (20 marks / 54 minutes)

William Wheel is a 35-year-old bachelor living in Johannesburg, South Africa. He is the owner of a cycling shop and an avid cyclist. He purchased a house in Melville, Johannesburg, for an amount of R800 000 during April 2017. He had major renovations done whereby a double storey was added to a portion of the house to be used as an apartment for him to live in. The ground floor was converted into a bicycle shop. His apartment consists of 25% of the total floor area. The renovations were completed at a total cost of R650 000 and William moved into the apartment on 1 October 2017.

During his spare time, William Wheel has been working on a project in developing an Autopilot software program. The software was registered as a patent on 10 March 2023. William spent R15 000 on legal fees to register the patent. The software (a Java-based program) used to develop the software was downloaded for free. William has not claimed any allowance on the development of the software in terms of section 11(gB) (deduction of registration cost – see LU 8). On 10 April 2023 he was contacted by Tevla Inc. who was interested in using his Autopilot software in their electric cars. Tevla Inc. is a company based in California, USA. The company does not have any business entities in South Africa. After lengthy negotiations, a deal was concluded whereby Tevla Inc. would pay monthly royalties of R75 000 (Rand equivalent) for the use of the software. The payments are made to William on the 5th of each month, starting from May 2023.

Due to the complicated nature of the software program, Tevla Inc. decided to offer William Wheels full-time employment at the Tevla Inc. factory in California, USA. With effect from 6 August 2023, the royalty agreement between Tevla Inc. and William was terminated by mutual agreement and William accepted the offer of employment. The patent had a market value of R2.7 million on 31 August 2023. He started his new career on 1 September 2023 in California. William therefore ceased to be a resident on 31 August 2023.

William decided to keep his bicycle shop as well as the property in Melville, and appointed his nephew, who was struggling to find employment, as the store manager. When he left for California, the shop had stock at hand with a market value of R1 800 000. The acquisition price of the stock was R1 200 000. His nephew did not want to stay in the apartment and as a result the apartment was rented out to a non-connected person for an amount of R4 000 per month from 1 September 2023.

Due to a drop in sales, William decided to relocate his cycle shop to a major shopping centre in the Melville area. The house was put up for sale and sold on 29 February 2024 for an amount of R1 950 000. This was the selling price for the property only and did not include any stock of the cycle shop as everything was relocated to the new shop in the shopping centre.

Before he left for California William put his *bona fide* game farm in Thabazimbi up for sale. When William bought the game farm for R1 600 000 in 2018, the only dwelling on the property consisted of a small thatch roof house. During a storm in December 2019, lightning struck the thatch roof and the roof caught fire. Luckily the fire was prevented from spreading and the only damage was the complete destruction of the thatch roof. William had no insurance and replaced the roof with a corrugated iron roof at a cost of R75 000. William had four self-catering chalets build on the game farm at a cost of R350 000 each in 2020. The farm was sold for R3 200 000 on 1 August 2023.

ACTIVITY 6.11 (continued)

William had no use for his motor vehicle and donated it to his nephew when he left for California. The vehicle had a market value of R180 000 on 31 August 2023.

William had an investment in a fixed deposit account (not a tax-free investment as defined in section 12T) at a South African Bank. He received interest of R2 500 per month on the investment. He kept the investment account when he emigrated.

REQUIRED	Marks
Calculate the income tax effect of all transactions on the taxable income of William Wheel for the 2024 year of assessment. Provide a brief reason only if an amount is exempt or will not be included in the calculation of his taxable income.	19
Show all calculations and round off to the nearest Rand.	
<i>Communication mark: Layout</i>	1
Total for Part B	20

(Extract from Test 1, 2017)

ACTIVITY 6.11 - SUGGESTED SOLUTION**Income tax effects for William Wheel for the February 2024 year of assessment.**

	<u>CGT</u> <u>R</u>	<u>Income Tax</u> <u>R</u>	
<u>Period of assessment: 1/3/2023 to 30/8/2023</u>			
<u>Transactions to date of emigration</u>			
Royalties received	(R75 000 x 4)	300 000	(1)
Interest received (R2 500 x 6)		15 000	(1)
Exempt ito section 10(1)(i), R23 800 ltd to amount received		(15 000)	(1)
Trading stock - No disposal (section 9H(4)(c)) (Asset forms part of permanent establishment in SA)	-		(1)
House in Melville -No disposal (section 9H(4)) (immovable property))	-		(1)
Motor vehicle donated to nephew	-		
par 53 personal use asset –no CGT effect			(1)

ACTIVITY 6.11 - SUGGESTED SOLUTION (continued)

	R	R	R
Registration of patent			
Proceeds - Market value	2 700 000		(1)
Base cost (legal fees)	(15 000)		(1)
Capital gain	<u>2 685 000</u>	2 685 000	
Game farm in Thabazimbi			
Proceeds - Par 35 and note on par 31(f) and (g) (note)	3 200 000		(1)
Less: Base cost	(3 000 000)		
- Purchase price	1 600 000		(1)
- Repairs to roof (not added to base cost, par 20(2)(b))	-		(1)
- New chalets added to the farm (R350 000 x 4)	1 400 000		(1)
	<u>200 000</u>	200 000	
Total capital gains		<u>2 885 000</u>	
Less: Annual exclusion (par 5) (R40 000 x 183/366)		<u>(20 000)</u>	(1)
Net capital gain		<u>2 865 000</u>	
Inclusion @ 40%			<u>1 146 000</u> (1)
			<u>1 446 000</u>

Note: The 30% below fair market value for bona fide farming property is restricted. It may only be used in the case of the death of a person or when the immovable property is disposed of by way of donation or non-arm's-length transaction if: fair market value less 30%, fair market value less 30% was used as base cost when the immovable property was acquired on or after the valuation date by way of inheritance, donation or non-arm's-length transaction.

ACTIVITY 6.11 - SUGGESTED SOLUTION (continued)

	<u>CGT</u>	<u>Income Tax</u>
	<u>R</u>	<u>R</u>
<u>Period of assessment: 31/08/2023 – 29/02/2024</u>		
<u>Transactions after emigration date</u>		
Rental income – apartment (R4 000 x 6)		24 000 (1)
Interest received (R2 500 x 6)		15 000 (1)
No exemption ito section 10(1)(h) as he was present in RSA for >183 days		(15 000) (1)
Exempt ito section 10(1)(i), R23 800 ltd to amount received		
Sale of house in Johannesburg		
Proceeds	1 950 000	(1)
Less: Base Cost	(1 450 000)	
- Purchase price	800 000	(1)
- Renovations	650 000	(1)
Less: Primary residence exclusion	-	(1)
(no exclusion, par 44, not mainly used as primary residence)	500 000	500 000
Total capital gain	500 000	
Less: Annual exclusion (par 5) (R40 000 x 183/366)	(20 000)	(1)
Net capital gain	480 000	
Inclusion @ 40% (par 10)		<u>192 000</u> (1)
		<u>216 000</u>
	Total	<u>23</u>
	Max	<u>20</u>



ACTIVITY 6.12 (40 marks / 102 minutes)

This question consists of two (2) related parts, Parts A and B.

PART A

20 marks

You recently qualified as a Chartered Accountant (SA). On your first day as a Tax Manager in the firm, Yakuxava Chartered Accountants (SA) Incorporated, you were assigned your first client, AboutToMove (Pty) Ltd ("AboutToMove"). AboutToMove is a solar panel manufacturing company with a February year end, based in Rustenburg, South Africa. The company has customers globally. Due to the energy crisis in South Africa, the company struggled to sustain its operations locally and decided to register a company in Botswana, JustMoved (Pty) Ltd. JustMoved (Pty) Ltd's structure mirrors that of the South African company but under Botswana laws. AboutToMove moved all their business operations to the new company in Botswana and effectively deregistering on 29 February 2024. During the 2024 year of assessment, certain transactions and events took place.

You can assume the following for AboutToMove:

- AboutToMove is a registered Category C VAT vendor,
- all South African parties mentioned are VAT vendors and registered on the invoice basis,
- all parties make 100% taxable supplies and are not connected persons,
- all amounts **include VAT** where applicable, and
- all required documentation for VAT purposes is in order.

The CEO of AboutToMove, Mr Peter ItsSolronic, approached you for tax advice on the following issues relating to its 2024 year of assessment:

Issue 1

During the period 1 September to 30 November 2023, Mr ItsSolronic (the CEO) and his team had various engagements with the suppliers and customers of AboutToMove relating to the intention to move their business operations to a newly incorporated Botswana company. Despite all the efforts to make the engagements virtual, a major customer in the United States of America ("US"), requested a week-long meeting in Manhattan, New York City (US) during September 2023, to discuss the issues it foresee. The following transactions relate to the visit to Manhattan:

No	Date	Description	Amount (R)
1	12 September 2023	The Marketing Manager, Mrs Mutodo AlwaysBroke, was granted a staff loan by AboutToMove, to assist her with the travel to the US. This was in addition to her travel and subsistence allowance.	14 000
2	13 September 2023	AboutToMove paid Merwalo Transport Services to transfer all their employees from Rustenburg to the OR Tambo International Airport, and back on their return.	6 600
3	14 September 2023	Hotel accommodation and meal expenses for the team (incurred in USD (\$) and correctly converted to Rand)	144 500
4	24 September 2023	Bonus paid to Sales Director, Mr Pitso Motlagasi, for the successful conclusion of the US business deals and for selling additional solar panels during the visit. This was paid to him two days after returning to South Africa	850 000

ACTIVITY 6.12 (continued)**Issue 2**

AboutToMove purchased a steel-cutting machine beginning of August 2023 for R685 000 and immediately brought it into use in its manufacturing process in Rustenburg. During a 96-hour power outage during October 2023, the machine was stolen. The insurance company paid R620 000 into AboutToMove's bank account on 16 November 2023. The monthly insurance premium for the machine was R2 850, which was duly paid for the 2024 year of assessment.

Issue 3

AboutToMove has been paying membership fees to Rustenburg Rugby Club (RRC), a sports club, and to the Marketing Association of South Africa (MASA) on behalf of Mr ItsSolronic and Mrs Mutodo AlwaysBroke, respectively. Mrs Mutodo AlwaysBroke is a marketing professional and Marketing Manager of AboutToMove. Mr ItsSolronic realised that the Accountant of AboutToMove had not claimed input tax on his membership fees but only for Mrs Mutodo AlwaysBroke. Mr ItsSolronic requested that you review this matter and provide your opinion.

Issue 4

Issue 4 was not disclosed to you by AboutToMove, you discovered it while finalising your assignment.

Mr ItsSolronic (CEO of AboutToMove) is also the chairperson of the well-known and successful Rustenburg Rugby Club ("RRC"). In recent months, rugby matches had been cancelled because of loadshedding and consequently AboutToMove donated 18 solar panels to the club, RRC, on 18 December 2023, on request of the CEO. When you discovered the donation, you immediately phoned Mr ItsSolronic to obtain additional information about this transaction, and noted the following during your conversation with him:

- The club is not a registered Public Benefit Organisation (PBO);
- The cost of the panels donated to AboutToMove was R87 000, and the market value was R123 500, on 18 December 2023;
- This was the first donation made by AboutToMove since its incorporation.

At the end of your conversation, the CEO indicated that there were no funds available for the payment of any donations tax, as your invoice was the last payment that AboutToMove could accommodate before deregistering. He made the following statement: "I hear you, but AboutToMove and myself as the CEO simply can't afford to bleed financially anymore. It is just not possible to pay any other amount at our end. Afterall, we do not exist anymore, right?" After which he hung up the phone.

PART B**20 marks**

After wrapping up your assignment, Mrs Mutodo AlwaysBroke and Mr Pitso Motlagasi reached out to you to assist them with their personal tax matters (issue 5 and 6 below) as they were really impressed with how knowledgeable and professional you were.

Issue 5

Mr and Mrs AlwaysBroke aged 52 and 49 respectively (married in community of property) are residents of South Africa but will be emigrating to Gaborone, Botswana once AboutToMove deregisters the South African company and move their business activities to Botswana. They intend to sell their primary residence (not used for business purposes) and household contents at its market value before emigrating from South Africa but not their 3-bedroom investment property due to the additional rental income it provides. Mrs Mutodo AlwaysBroke's daughter, Mali, is a third year BCom Accounting student at Unisa and currently enrolled for a taxation module. Consequently, Mrs AlwaysBroke asked her to prepare a preliminary capital gains calculation for her, so that she could prepare herself for the additional amount, if any, that will be included in her taxable income as a result of the sale of these assets.

ACTIVITY 6.12 (continued)

To ensure that Mali works with accurate amounts, Mrs Mutodo AlwaysBroke obtained a valuation from a professional valuator for all their assets. Below is an extract of the valuation report:

Description (All assets were purchased after 1 October 2001.)	Original cost	Market value on 29/02/2024
	Amount (R)	
Primary residence in Cashan, Rustenburg	2 950 000	3 850 000
Household contents	500 000	675 000
3-bedroom apartment in Waterkloof, Rustenburg	1 250 000	1 470 000

Mrs Mutodo AlwaysBroke is concerned about the additional amount to be included in her taxable income based on Mali's preliminary calculation of the taxable capital gain and has asked you to review the calculation:

Calculation of capital gain to be included in taxable income of Mrs AlwaysBroke (Mom)	
Prepared by: Mali, aspiring CA(SA)	
Primary residence in Cashan, Rustenburg	
	R
Proceeds (3 850 000+675 000)	4,525,000.00
Less: Base cost (2 950 000+500 000)	(3,450,000.00)
Capital gain	1,075,000.00
Less: Primary residence exclusion R2 Million limited to actual	(1,075,000.00)
Primary residence capital gain	-
3-bedroom apartment in Waterkloof, Rustenburg	
Proceeds	1,470,000.00
Less: Base cost	(1,250,000.00)
Capital gain	220,000.00
Total capital gain (0+ 220 000)	220,000.00
Taxable capital gain - inclusion rate of 80%	176,000.00

Issue 6

Mr Pitso Motlagasi is 45-years old, unmarried, and a resident of South Africa. The following notes pertain to Mr Motlagasi's income for the year of assessment ended 29 February 2024.

Notes:

- Mr Motlagasi earned a monthly cash salary of R160 000.
- The sales team has a policy to wear blue or red golf t-shirts to work on Wednesdays and Fridays, which serves as their uniform. Mr Motlagasi received R5 500 from AboutToMove as a clothing allowance and used this money to buy himself basic golf t-shirts from local clothing chains in the specified colours.
- Mr Motlagasi was one of six beneficiaries who inherited R250 000 on 28 March 2023 from his grandmother's death policy, after she passed away on 5 March 2023.
- Mr Motlagasi earned the following investment income:

Local interest from SABA (not a tax-free savings investment account)	R28 300
Net dividends received on a local listed share portfolio	R60 000

ACTIVITY 6.12 (continued)

PART A

REQUIRED		Marks	
		Sub-Total	Total
(a)	Issue 1: Determine the VAT implications for the transactions listed in <i>Issue 1</i> , for the period 1 March 2023 to 29 February 2024. Provide brief reasons or reference to relevant legislation in your answer.		4
(b)	Issue 2: Determine the VAT implications for the month of August and November 2023. Indicate whether an item is Input or Output tax.		5
(c)	Issue 3: Write a memo to the CEO of AboutToMove clarifying the VAT treatment of the membership fees paid in respect of the two memberships in question. Support your answer with reference to relevant legislation. <i>Communication skills – layout and structure</i>	4	5
		1	
(d)	Issue 4: Summarise, supported by calculations, the donations tax implications for AboutToMove (Pty) Ltd and indicate when the donations tax, if any, will be payable. Also indicate who is liable to pay the donations tax. Your answer should cover all the aspects of the donation made to the Rugby club, but not the implications you became aware of from the statement made by Mr ItsSolronic about the company and himself not being able to make any further payments.		3
(e)	Issue 4: Based on the statements made by Mr ItsSolronic, in <i>Issue 4</i> , about the inability to make any donations tax payments if applicable, assess the consequences in terms of the Income Tax Act of 1952, as amended if the donations tax is not paid.		3
Total for Part A			20

PART B

REQUIRED		Marks	
		Sub-Total	Total
(a)	Issue 5: Critically review Mali's CGT calculation and provide comments to Mrs Mutodo AlwaysBroke on whether the taxable capital gain calculated is correct. No calculations are required. <i>Communication skills: Logical argument</i>	8	9
		1	
(b)	Issue 5: Mr and Mrs AlwaysBroke consider donating their 3-bedroom investment property to Mali before emigration. They asked you to briefly reflect on whether there will be any tax consequences, other than donations tax, that will result from this donation. No calculations are required.		3
(c)	Issue 6: Determine Mr Pitso Motlagasi's income for the 2024 year of assessment. Provide reasons, or references to legislation, to support your calculations.		8
Total for Part B			20
TOTAL			40

ACTIVITY 6.12 - SUGGESTED SOLUTION**Part A****20 marks**

(a)		
Description	VAT (R)	Marks
12 September 2023 Loan to Mrs Mutodo – financial service - exempt supply, <i>section 12(a)</i>	-	(1)
13 September 2023 Merwalo Transport Services – transport of fare-paying passengers by road: - exempt supply, <i>section 12(g)</i>	-	(1)
14 September 2023 Hotel accommodation and meals – no VAT charged as not a supply in South Africa – no VAT claimable in South Africa	-	(1)
24 September 2023 Bonus paid to Mr Motlagasi – the bonus is part of a salary that is specifically excluded from the “enterprise” definition in section 1 (proviso (iii)(aa)) as it is not the carrying on of an enterprise for VAT – it is constituting remuneration that was paid to Mr Motlagasi for his services rendered to AboutToMove	-	(1)
	Total	4

(b)			
August 2023		R	
Purchase of steel-cutting machine (R685 000 X 15/115)	Input tax	89 348	(1)
Insurance premium – R2 850 X 15/115) (s 17(1) and definition of “input tax” in section 1)	Input tax	372	(1)

November 2023		R	
Indemnity payment - s8(8) – R620 000 x 15/115 <i>Received for a loss incurred in the course of carrying on an enterprise, thus deemed to be consideration received for a supply of service</i>	Output tax	80 870	(2)
Insurance premium – R2 850 X 15/115 (s 17(1) and definition of “input tax” in section 1)	Input tax	372	(1)

Total marks 5

(c)

Memo

To: Mr ItsSolronic - CEO of AboutToMove

From: Tax Manager – Yakuxava Chartered Accountants (SA) Incorporated

Date: 14 March 2024

Re: VAT treatment of membership fees

(1)

In terms of <i>section 17(2)(b)</i> of the VAT Act, an input tax deduction is denied in respect of any fees or subscription paid by a vendor in respect of any club, association or society of a sporting, social or recreational nature.	(1)
Your membership with the Rustenburg Rugby Club falls within the scope of <i>section 17(2)(b)</i> as the club is of a sporting nature and the input tax cannot be claimed.	(1)

ACTIVITY 6.12 - SUGGESTED SOLUTION (continued)

Mrs Mutodo AlwaysBroke's membership to Marketing Association of South Africa is to a professional body that is not in respect of a sporting, social or recreational nature. Therefore, it is not denied under section 17(2)(b) and the input tax can be claimed.	(1)
Therefore, the accountant's treatment of the membership fees is correct.	(1)
Total marks	<u>5</u>

(d)

In terms of section 57 of the Income Tax Act the donation at market value (R123 500) is deemed to have been made by Mr ItsSolronic as this was made at his instance as the Chairperson of the Rustenburg Rugby Club (RCC); and there is no donations tax payable by the company AboutToMove. Mr ItsSolronic, as the donor, will be liable for donations tax.

Marks available	<u>4</u>
Limited to	<u>3</u>

(e)

- As already established in (d) above and also stated in the required, Mr ItsSolronic is liable to pay donations tax on the donation made to RRC, as the **donation was made at his instance (under section 54 of the Income Tax Act**
- In terms of section 59 of the Income Tax Act, **the person liable for the donations tax is the donor.** (1)
- **Mr ItsSolronic is the donor as the donation was made at his instance**
- In the case where the donor fails to pay within the prescribed period in accordance with section 60(1), both the donor and donee become jointly and severally liable for the donations tax, as Mr ItsSolronic indicated that he does not have the funds to pay for the donations tax, **it will be the responsibility of the Rustenburg Rugby Club** to pay the amount of donations tax due. (2)

Total	<u>3</u>
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PART B**20 marks**(a) **Issue 5:**

Mr. and Mrs. Alwaysbroke are married in community of property which means that they are equal owners of the joint property (all assets). Therefore, the disposal of the primary residence by Mr. and Mrs. Alwaysbroke is deemed to be made in equal shares (1)
and the capital gain realised will be divided in two and 50% will be taxed in each of their hands. (1)

It was incorrect to apply the primary residence exclusion as R2 000 000 (limited to the gain) as this should be divided into equal shares and therefore the primary residence exclusion for Mrs. Mutodo Alwaysbroke should have been R1 000 000 in terms of par 45(2) of the Eighth Schedule. (1)

Mali was incorrect in adding the household contents to the primary residence calculation, as these are two separate assets for CGT purposes and needs to be calculated separately. (1)

The household contents are a personal use asset and as such the capital gain will be disregarded in terms of par 53 of the Eighth Schedule (1)

ACTIVITY 6.12 - SUGGESTED SOLUTION (continued)

In terms of section 9H(2)(a)(i), there is a deemed disposal when a person ceases to be a resident and all assets will be treated as having been disposed of at market value, on the day preceding the day that they emigrate. However, this will not be the case for the 3-bedroom apartment as this is not a deemed disposal in terms of section 9H(4) as the apartment is an immovable property situated in South Africa and will not be sold. There is thus no CGT calculation on the investment property. (1)

The annual exclusion of R40 000 was omitted from the calculation and as Mrs. Mutodo is a natural person, she will be entitled to this exclusion in terms of par 5 of the Eighth Schedule. (1)

The inclusion rate used of 80% is incorrect as Mrs. Mutodo is an individual, 40% should have been used in terms of par 10 of the Eighth Schedule. (1)

Based on the above, the calculation by Mali is incorrect. (1)

	Available	10
	Limited to	8
<i>Communication skills – logical argument</i>		1
	Total	9

(b) Issue 5:

Capital gains tax consequences:

The donation of the investment property asset is considered to be a disposal for CGT purposes (par 11(1)(a) of the Eighth Schedule) (1)

Mr and Mrs AlwaysBroke will be deemed to have disposed of the investment property to Mali at its market value of R1 470 000 as they are connected persons (par 38 of the Eighth Schedule) (1)

The donations tax payable will be included in the base cost of the investment property for purposes of calculating CGT (par 20(1) of the Eighth Schedule) (1)

Total 3

(c) Issue 6:	Calculations R	R	
Salary received - par (c) of the gross income definition (R160 000 x 12 months)		1 920 000	(1)
Uniform - par (c) of the definition of gross income - received in respect of services rendered		5 500	(1)
No exemption as the basic golf t-shirts purchased are not separately distinguishable from ordinary clothing		-	(1)
Inheritance received from late grandmother – capital in nature (gross income def in s 1)		-	(1)
Interest received from SABA Bank		28 300	(1)
Less: Exemption (s 10(1)(i)) <65 years		(23 800)	(1)
Local dividends received (R60 000 x 100/80 (dividends tax added back))		75 000	(1)
Less: Exemption (s 10(1)(k)) local shares are fully exempt		(75 000)	(1)P
Income		1 920 000	
		Total	8

6.9 LIST OF REFERENCES OF LEARNING UNIT 6

- SAICA. 2024. *SAICA Student Handbook 2023/2024 Volume 3*. Durban, LexisNexis.
- SARS. 2020. SARS Comprehensive CGT guide, Available at: <https://www.sars.gov.za/lapd-cgt-g01-comprehensive-guide-to-capital-gains-tax/>
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- South Africa. 2023. *Taxation Laws Amendment Act (Act No. 17 of 2023)*. Cape Town: Government Printer
- Stiglingh, et al. 2024. 'Chapter 17: Capital Gains Tax (CGT)', *Silke: South African Income Tax 2024*. Durban, LexisNexis.

END OF LEARNING UNIT 6

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