NATIONAL
TREASURY

REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

TAXATION LAWS AMENDMENT BILL, 2018
(DRAFT)

16 July 2018

[W.P. – '18]

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1. INCOME TAX: INDIVIDUALS, SAVINGS AND EMPLOYMENT

1.1 CLARIFYING THE TAX TREATMENT AND OBLIGATIONS OF FUNDS MANAGED BY BARGAINING COUNCILS

[Applicable provisions: New paragraphs 2(*m*) and 12E of the Seventh Schedule to the Income Tax Act No. 58 of 1962 ('the Act')]

I. Background

In 2017, changes were made in the Taxation Laws Amendment Act No.17 of 2017 (2017 TLAA) in order to afford Bargaining Councils established in terms of section 27 of the Labour Relations Act No. 66 of 1995 an opportunity to regularise their tax affairs to become tax compliant with the provisions of the Act.

The relief, formally referred to as "Bargaining Council tax relief" in Part II of the 2017 TLAA covers non-compliant Bargaining Councils in respect of employees' tax that should have been deducted from all payments made by the Bargaining Councils to their members between 1 March 2012 and 28 February 2017 and income tax that should have been paid in respect of all undeclared amounts (growth/returns) received by or accrued to the Bargaining Councils between 1 March 2012 and 28 February 2017.

However, going forward, Bargaining Councils are expected to be fully tax compliant and will not be afforded any legislative relief.

II. Reasons for change

In line with Government's policy to encourage taxpayer compliance with prevailing tax law as well as Government's policy of a tax system that fosters ease of compliance with tax legislation, Government held public consultations with various Bargaining Councils to discuss the way forward regarding tax compliance of Bargaining Councils.

As a result, general consensus emerged during the public consultations that going forward, i.e. post the Bargaining Council tax relief, compliance with prevailing tax legislation in respect of employees' tax that should be deducted from all payments made by the Bargaining Councils to their members can be accommodated through the application of withholding taxes, such as Pay-As-You-Earn (PAYE) by the employer in respect of contributions made in respect of employees who are members of a Bargaining Council to the funds administered by the Bargaining Councils. This consensus was reached based on the understanding that the employer withholding can be operated by virtue of the tried and tested administrative architecture already in place for PAYE withholding.

A. PAYE withholding by the employer in respect of employer contributions made in respect of employees to funds managed by the Bargaining Council

Employer contributions to funds administered by Bargaining Councils for the benefit of employees should constitute a taxable fringe benefit in the employee's hands and be subject to PAYE withheld by employers. The value of the taxable fringe benefit should be the contribution made by the employer on behalf of the employee. In the event that bulk contributions are made by the employer on behalf of employees to the funds administered by the Bargaining Councils and the employer is unable to attribute specific contributions to specific employees, the taxable fringe benefit is to be calculated in respect of the total contributions paid by the employer divided by the number of employees on behalf of which the contributions are paid. The above taxable fringe benefit provisions should not be applicable to the extent that the contribution is being made to a pension or provident fund as the taxation of those contributions is already specifically catered for in the Act.

In cases where the employee makes contributions to the fund administered by the Bargaining Council, they should not be subject to PAYE withholding by the employer as the contributions can only be made from the employee's post-tax income.

Based on the above, as both employer and employee contributions to the funds administered by the Bargaining Councils would have been subjected to PAYE withholding, any payments made by the funds administered by the Bargaining Councils to their members should be tax free, except to the extent that the pay-out is from a pension or provident fund.

B. Income tax payable by the Bargaining Council in respect of amounts received by or accrued to that Bargaining Council

Except for Bargaining Councils qualifying for Bargaining Council tax relief, or that did get an official confirmation of income tax exemption from SARS, income tax is payable in respect of all amounts (in the form of growth and/returns) received by or accrued to them.

III. Proposal

In view of the above, it is proposed that the following amendments be made in the Act to regularise the tax treatment of funds managed by Bargaining Councils:

A. PAYE withholding by the employer in respect of employer contributions made in respect of employees to funds managed by the Bargaining Council

The employer should be required in terms of the Fourth Schedule to the Act to withhold PAYE from employer contributions to the funds administered by the Bargaining Councils in respect of employees who are members of those Bargaining Councils. The above fringe benefit provisions will not be applicable to the extent that the contribution is being made to a pension or provident fund as the taxation of the above mentioned contributions is already specifically catered for in the Act.

Employee contributions to the fund administered by the Bargaining Council will not be subject to PAYE withholding as such contributions can only be made from after taxed income.

As both employer and employee contributions to the funds administered by the Bargaining Councils would have been subjected to PAYE withholding, any payments made by the funds administered by the Bargaining Councils to their members should be tax free, except to the extent that the pay-out is from a pension or provident fund.

B. Income tax payable by the Bargaining Council in respect of amounts received by or accrued to that Bargaining Council

Under current law, Bargaining Councils that did not get an official confirmation of income tax exemption from SARS should pay income tax to SARS in respect of amounts received by or accrued to those Bargaining Councils.

IV. Effective date

The proposed amendments will come into operation on 1 March 2019 and apply in respect of any year of assessment commencing on or after that date.

1.2 ADDRESSING ANOMALIES IN RESPECT OF MEDICAL TAX CREDITS

[Applicable provision: Section 6A of the Act]

I. Background

In 2011, the system of deductions against income in respect of medical scheme contributions paid by individual taxpayers for the benefit of themselves, their spouse and dependents was converted to a medical tax credit system. Medical tax credits are non-refundable and they operate in a similar manner as the normal tax rebates which are used to reduce a taxpayer's normal tax liability.

Section 6A of the Act makes provision for a prescribed amount of monthly medical scheme contributions that will qualify as a medical tax credit, which gradually increases depending on the number of dependants covered under a medical scheme plan.

II. Reasons for change

There are instances where medical scheme contributions are being proportionally shared by taxpayers, for example, children jointly contributing towards their parent's medical expenses under a medical scheme or under more than one medical scheme. Although medical scheme contributions are being proportionally shared, there is an unintended anomaly in the provisions of the Act that currently allows each of the taxpayers who proportionally share the medical costs for a single individual (for example, their mother) to independently claim the full medical tax credit for each of the shared dependants (their mother).

As a result, upon assessment, taxpayers who have opted to share the cost of medical scheme contributions are being allowed the full medical tax credit in respect of a dependant. Due to the fact that the medical scheme contributions are being shared, medical tax credits should be apportioned between the various taxpayers who are contributors to the medical scheme in respect of a dependent.

III. Proposal

In order to address this anomaly, it is proposed that amendments be made to the Act so that, where taxpayers carry a share of the medical scheme contributions in respect of dependants, medical tax credits should be proportionally allocated between taxpayers who made the payment of medical scheme contributions.

Further, it is proposed that consequential amendments should be made to the definition of "dependant" in section 6A to cater for instances where the person making the medical scheme contributions and the person the payments are made on behalf of, are not in the same medical scheme, as required in terms of the Medical Schemes Act. As a result, the definition of "dependant" in section 6A will be aligned with the definition of "dependant" in section 6B.

IV. Effective date

The proposed amendments will come into operation on 1 March 2018 and apply in respect of years of assessment commencing on or after that date.

1.3 REMOVING TAXABLE BENEFIT ON TO LOW OR INTEREST FREE LOANS GRANTED TO LOW-INCOME EMPLOYEES FOR LOW-COST HOUSING

[Applicable provision: Paragraph 11(4) of the Seventh Schedule to the Act]

I. Background

Paragraph 2 of the Seventh Schedule to the Act makes provision for a taxable benefit deemed to have been granted by the employer if, by reason of such employment, the employee is granted one of the benefits described in that paragraph. This includes, inter alia, the acquisition of an asset (for example a house) at less than actual market value or the provision of low or interest free loans.

In order to encourage employers that empower their low-income earning employees through home ownership, amendments were made in 2014 to paragraph 5(3A) of the Seventh Schedule to the Act to remove the taxable benefit in respect of employer provided housing for the benefit of low-income earning employees, provided that such employees' remuneration proxy does not exceed R250 000 per annum and the low-cost housing has a market value not exceeding R450 000.

II. Reasons for change

The above-mentioned 2014 amendments regarding the relief from triggering a taxable benefit do not apply in instances where a low-income earning employee requires a loan directly from the employer to fund the acquisition of low cost housing.

Consequently, if an employer provides a low or interest free loan for the acquisition of a low-cost house instead of solely providing low-cost housing to a low-income earning employee, the low or interest free loan will, in terms of paragraph 11 of the Seventh Schedule of the Act, be regarded as a taxable benefit in the hands of that employee.

In line with Government's policy to promote the provision of housing, it is the objective of Government to be supportive of employers who take this initiative aimed at benefiting low-income earning employees. Consequently, whether an employer provides low-cost housing or a low or interest free loan for the acquisition of low-cost housing to a low-income earning employee, the tax treatment should be the same, provided that the ultimate ownership of the residential accommodation belongs to the employee.

III. Proposal

In order to accelerate the Government's policy of providing housing, it is proposed that the relief from triggering a taxable benefit be extended to apply to a low or interest free loan with a value not exceeding R450 000 provided by an employer to a low-income earning employee with a remuneration proxy not exceeding R250 000, provided the loan is granted solely for the acquisition of residential accommodation.

IV. Effective date

The proposed amendments will come into operation on 1 March 2019 and will apply in respect of years of assessment commencing on or after that date.

1.4 TAX TREATMENT OF TRANSFERS OF ACTUARIAL SURPLUS BETWEEN RETIREMENT FUNDS

[Applicable provisions: Paragraphs 1, 2(*l*) and 4 of the Seventh Schedule to the Act]

I. Background

Currently, paragraph 2(*l*) of the Seventh Schedule to the Act provides for a taxable benefit to have been granted by an employer to an employee in cases where an employer makes any contributions to a retirement fund for the benefit of an employee. Further, paragraph 4 of the Seventh Schedule to the Act makes provision for any benefit provided to an employee by an associated institution of the employer to create a taxable benefit in the employee's hands if such benefit would have constituted a taxable benefit had it been granted directly by the employer. Such benefit is deemed to have been granted by the employer. Associated institutions, as defined in paragraph 1 of the Seventh Schedule include, *inter alia*, any fund established solely or mainly for providing benefits for employees or former employees of an employer.

II. Reasons for change

Based on the above-mentioned provisions of Seventh Schedule to the Act, any contributions made by an employer owned retirement fund into another employer owned retirement fund for the benefit of the employees shall create a taxable fringe benefit in the hands of employees.

This tax treatment would also apply in respect of transfers of actuarial surpluses between, or within retirement funds of the same employer. The transfer is deemed to be a contribution by the fund for the benefit of employees, and is as a result of the application of the provisions of the Seventh Schedule to the Act regarded as a taxable benefit in the employee's hands.

In principle, Government is of the view that there should be no additional tax consequences for members of the fund if the transfers between, or within retirements funds of the same employer refer to amounts that have already been contributed to a retirement fund.

III. Proposal

In order to address these unintended anomalies, it is proposed that amendments be made to the Act to allow for transfers of amounts as contemplated in section 15E(1)(*b*) of the Pension Funds Act No 24 of 1956 between, or within retirements funds of the same employer not to create a taxable fringe benefit in the employee's hands.

IV. Effective date

The proposed amendments are deemed to have come into operation on 1 March 2017 and apply in respect of years of assessment commencing on or after that date.

1.5 ALIGNMENT OF TAX TREATMENT OF WITHDRAWALS FROM PRESERVATION FUNDS UPON EMIGRATION OR REPATRIATION ON EXPIRY OF WORK VISA

[Applicable provisions: Section 1 of the Act, the definition of "Pension Preservation Fund", definition of "Provident Preservation Fund"]

I. Background

Paragraph (*b*)(x)(*dd*) of the proviso to the definition of "retirement annuity fund" in section 1(1) of the Act makes provision for a payment of lump sum benefits where a member of a retirement annuity fund ceases to be a tax resident, withdraws from the retirement annuity fund due to that member emigrating from South Africa and such emigration is recognised by the South African Reserve Bank for the purposes of exchange control.

The above-mentioned definition of "retirement annuity fund" also allows for expatriates to withdraw a lump sum from their retirement annuity when they leave South Africa at the expiry of the work visa that was granted in terms of the Immigration Act No. 13 of 2002.

II. Reasons for change

The current provisions of the Act only allow members of retirement annuity fund to be able to access and withdraw the full value of their post-tax retirement benefits upon emigration or repatriation on expiry of the work visa, while members belonging to a pension preservation fund or a provident preservation fund are restricted from doing so.

As a result, when members of pension preservation or provident preservation funds emigrate from South Africa and such emigration is recognised by the South African Reserve Bank for the purposes of exchange control or upon repatriation on expiry of the work visas, they are not entitled to receive a lump sum payment from their pension preservation or provident preservation funds.

III. Proposal

In order to promote Government's policy of a uniform approach on the tax treatment of all retirement funds, it is proposed that the tax treatment of different types of preservation fund withdrawals be aligned to allow members of all preservation funds to be able to access and withdraw the full value of their post-tax retirement benefits upon emigration or repatriation on expiry of the work visas.

Consequently, it is proposed that the definitions of "pension preservation fund" and "provident preservation fund" in section 1 of the Act be amended to make provision for the members of pension preservation funds and provident preservation funds to be entitled to withdraw their full lump sum benefit when they emigrate from South Africa and such emigration is recognised by the South African Reserve Bank for the purposes of exchange control or upon repatriation on expiry of the work visas.

IV. Effective date

The proposed amendments will come into operation on 1 March 2019 and apply in respect of years of assessment commencing on or after that date.

1.6 TAX TREATMENT OF TRANSFERS TO PENSION PRESERVATION OR PROVIDENT PRESERVATION FUNDS AFTER REACHING NORMAL RETIREMENT AGE BUT BEFORE RETIREMENT DATE

[Applicable provisions: Section 1 of the Act, definition of “Pension Preservation Fund”; definition of “Provident Preservation Fund”; definition of “Pension Fund”; definition of “Provident Fund”, paragraph 6A of the Second Schedule to the Act]

I. Background

In 2017, amendments were made in the Act to allow employees to transfer their benefits from a pension or provident fund into a retirement annuity fund on or after reaching normal retirement age, as defined in the rules of the fund, but before retirement date. These amendments increased the choice of available retirement funds in cases where individuals decided to postpone retirement.

II. Reasons for change

Currently, the Act only allows transfers from a pension or provident fund to a retirement annuity fund after reaching normal retirement age but before an election to retire is made by the member of the fund. Transfers to pension preservation and provident preservation funds are excluded as it was considered that it would be administratively burdensome, as it could result in the withdrawal of all benefits as a lump sum, rather than the preservation of funds, as restricting that withdrawal could result in further complexity. During public consultations on the 2017 Draft Taxation Laws Amendment Bill (2017 Draft TLAB), industry indicated that the system changes required for the transfers to pension preservation and provident preservation fund will not be onerous.

III. Proposal

In order to address these concerns, it is proposed that changes be made in the Act to allow for transfers from a pension or provident fund to a pension preservation or provident preservation fund on or after reaching normal retirement age, as defined in the rules of the fund, but before retirement date. In addition, the single allowable withdrawal applicable to preservation funds will not apply to the amounts transferred from a pension or provident fund to a pension preservation or provident preservation fund made by the member of the fund after reaching normal retirement age but before an election to retire.

IV. Effective date

The proposed amendments will come into operation on 1 March 2019 and apply in respect of years of assessment commencing on or after that date.

2. INCOME TAX: BUSINESS (GENERAL)

2.1 REFINEMENT OF RULES DEALING WITH CONVERSION OF DEBT INTO EQUITY AND ARTIFICIAL REPAYMENT OF DEBT

[Applicable provisions: Section 19 of the Act and paragraph 12A of the Eighth Schedule to the Act]

I. Background

The Act contains debt relief rules that make provision for tax consequences in respect of a waiver, cancellation, reduction or discharge of a debt owed by a taxpayer. Section 19 of the Act deals with income tax implications in respect of a debt that was previously used to fund tax deductible expenditure such as operating expenses. On the other hand, paragraph 12A of the Eighth Schedule deals with capital gains tax implications in respect of a debt that was used to fund capital or allowance assets.

In 2017, various changes were made in the debt relief rules including the introduction of definitive rules dealing with the tax treatment of conversion of debt into equity and to ensure that these rules apply in all instances where a debt is settled by a debtor and the creditor received inadequate consideration for the debt claim. In particular, the above-mentioned 2017 changes include the following:

A. Introduction of definitions of "Debt benefit" and "Concession or Compromise" in debt relief rules

The definition of the term *"reduction amount"* was removed from section 19 and paragraph 12A of the Act. In turn, the following definition of the terms "debt benefit" and "concession or compromise" were introduced in the Act. These new definitions listed all events that would trigger a tax consequence under debt relief rules in terms of section 19 and paragraph 12A of the Act.

Under this new paradigm, the debt relief rules would be triggered when –

a) A change in the terms or conditions of a debt or the substitution of a debt occurs;

b) An obligation in respect of a debt is substituted for another obligation; and

c) A debt is converted into shares.

In order to determine a "debt benefit" in respect of which tax consequences would arise, a debtor would be required to determine the amount by which the face value of the claim held by the creditor in respect of that debt prior to entering into any of the above mentioned arrangements, exceeds the market value of the claim in respect of that debt or shares (as the case may be) held or acquired by reason or as a result of the implementation of these arrangements.

It came to government's attention that in some instances when a debt is settled by way of a debt to share conversion, it can result in an increase in the market value of the shares in another company held by the creditor that forms part of the same group of companies as the debtor, for example where the creditor also holds shares in a shareholder company of the debtor. In order to cater for the above mentioned scenario, amendments were made in the Act to make provision for the debt benefit determined to be reduced by any increase in the market value of the shares held by a creditor in another company that forms part of the same group of companies as the debtor company, provided that the increase is attributable solely to the implementation of the conversion of debt into equity.

B. Exclusion of interest from the application of debt relief rules

The 2017 changes made provision for the amounts of interest to be excluded from the application of the debt relief rules. As a result, amendments were made to the definition of debt to wholly exclude interest.

C. Exclusion of debt to equity conversions limited to group companies

Lastly, the 2017 changes proposed that the exclusion of debt to equity conversions should be limited to apply only between companies that form part of the same group of companies as contemplated in section 41 of the Act.

II. Reasons for change

Following the 2017 amendments to the debt relief rules, the following concerns regarding the practical application of the debt relief rules were raised:

A. Changes to the terms and conditions

Although there is an understanding that voluntary intra-group debt subordinations may be used for tax structuring, however, the inclusion of any changes in the terms or conditions of a debt as a "*concession or compromise*" may have the unintended consequence of affecting legitimate transactions. This is due to the fact that in instances when debt funding is raised with third parties such as banks; it is often required by the lender (bank) that related party debt should be subordinated. As such, it is argued that the inclusion of a change in the terms and conditions of a debt as a "*concession or compromise*" is more of a blunt instrument aimed at targeting a narrow group of taxpayers and as a result, it should be removed.

B. Substitution of debt

The inclusion of a substitution of an obligation in respect of a debt adversely affects arrangements that do not result in any loss to the fiscus and as a result, it should be removed. Such arrangements include instances where a bridge loan (i.e. a temporary loan raised while waiting for the finalisation of permanent funding) is replaced by permanent funding.

C. Quantification of a debt benefit based on the face value of a debt and its subsequent market value

It is argued that determining the amount of a *"debt benefit"* by comparing the face value of a debt prior to a *"concession or compromise"* with the market value thereafter is cumbersome for each and every event and as a result, it should be removed.

III. Proposal

In order to address the above mentioned issues, the following amendments are proposed in section 19 and paragraph 12A of the Act:

A. Definition of a "concession or compromise"

A new and more comprehensive definition of a "*concession or compromise*" is proposed. Under this revised definition, circumstances under which the debt relief rules will apply will be limited to realisation events. In terms of the new definition, there will be no regard to changes in the terms and conditions of taxpayers' debt arrangements unless they result in a realisation event.

Furthermore, there will be a focus on interest-bearing debt in the case of debt to equity conversions so as to exclude equity loans that are generally non-interest bearing. Group debt which is interest-bearing that is converted to equity will still be excluded from the application of the debt relief rules.

As a result, it is proposed that the following events should constitute a "*concession or compromise*":

a) The cancellation, waiver or remittance of a debt;

b) When a debt is extinguished by way of a redemption of the debt claim or by way of a merger by reason of the acquisition of the debt claim by the person owing that debt; and

c) When an interest-bearing debt owed by a company to a person is settled by way of a conversion or exchange for shares in that company or by applying the proceeds from shares issued by that company to a person in the instance that immediately after this arrangement, the company is a connected person in relation to that person.

B. Definition of an "interest-bearing debt"

In order to exclude equity loans from the ambit of the debt relief rules, it is proposed that only interest-bearing debt that is converted into to equity should be subject to the debt relief rules. In order to facilitate this exclusion of equity loans, it is proposed that a definition of what constitutes an "*interest-bearing debt"* for purposes of the debt relief rules should be introduced in section 19 and paragraph 12A of the Eighth Schedule to the Act. Under this definition, an "*interest bearing debt"* will be regarded as a debt in respect of which any interest (as defined in section 24J) has been or will be incurred; or any debt (whether interest-bearing or not) that directly or indirectly substitutes such a debt.

C. Definition of a "debt benefit"

It is proposed that a "debt benefit" should be determined in respect of a debt owed by a person to another person, as follows:

a) In the case of a debt that is cancelled, waived or remitted, the debt benefit will be the amount that is cancelled, waived or remitted.

b) In the case of a redemption of a debt claim or merger by reason of the debtor acquiring the claim in respect of the debt, the debt benefit will be the amount by which the face value of the claim exceeds the market value of the debt after such redemption or merger.

c) In the case of debt to equity conversion where the creditor or another person that subscribes for or acquires shares in a company did not a direct or indirect interest in that company prior to the conversion, the debt benefit will be the amount by which the face value of the claim prior to the conversion exceeds the market value of the shares held or acquired by reason of or as a result of that conversion.

d) In the case of a debt to equity conversion where the creditor or another company that subscribes for or acquires shares in a company held a direct or indirect interest in that company prior to the conversion, the debt benefit will be the amount by which the face value of the claim prior to the conversion exceeds the amount by which the market value of the shares held by the creditor or that other company after the conversion exceeds the market value of the shares held by that person in that company prior to that conversion.

D. Reductions to a "debt benefit" determined in respect of debt converted into equity

A mechanism will also be included in respect of debt that is converted into shares to ensure that an increase in the value of the effective shareholding of the creditor in the debtor company is applied to reduce the debt benefit. This is a departure from the current mechanism as it results in a loophole that allows taxpayers to reduce their debt benefit by multiple increases of multiple layers of shareholdings in the debtor company (i.e. double counting due to direct and indirect shareholdings in the debtor company). As a result, definitions of a "*direct interest*" and an "*indirect interest*" will be inserted into the section in order to clarify the operation of this mechanism to eliminate double counting.

E. Introduction of a definition of "market value"

A definition of *"market value"* will also be introduced under the debt relief rules. The purpose of the introduction of this definition in this regard is to provide clarity of the timing of the determination of the market value of shares acquired in respect of a debt to share conversion. As a result, taxpayers will be required to determine the market value of shares acquired as a result of such arrangements, immediately after the implementation of the debt to share arrangement.

IV. Effective date

The proposed amendments will be deemed to have come into operation on 1 January 2018 and apply in respect of years of assessment commencing on or after that date.

2.2 CLARIFICATION OF THE INTERACTION BETWEEN THE ANTI-AVOIDANCE RULES DEALING WITH DIVIDEND STRIPPING AND CORPORATE RE-ORGANISATION RULES

[Applicable provisions: Section 22B of the Act and paragraph 43A of the Eighth Schedule to the Act]

I. Background

The anti-avoidance rules dealing with dividend stripping were first introduced in the Act in 2009. These rules were inserted to curb the use of dividend stripping structures by taxpayers as a result of the dividends tax exemption in respect of dividends paid by a resident company to another resident company. Dividend stripping normally occurs when a resident shareholder company that is a prospective seller of shares in a target company avoids income tax (including capital gains tax) arising on the sale of shares by ensuring that the target company declares a large dividend to that resident shareholder company prior to the sale of shares in that target company to a prospective purchaser. This pre-sale dividend, which is exempt from Dividends Tax, decreases the value of shares in the target company. As a result, the seller can sell the shares at a lower amount, thereby avoiding a larger capital gains tax charge in respect of sale of shares.

In 2017, amendments were made in the Act in order to strengthen the anti-avoidance rules dealing with dividend stripping. According to the 2017 changes, exempt dividends that are regarded as extra-ordinary dividends, received by a shareholder resident company are treated as proceeds or income subject to tax for that resident shareholder company, provided that the shares in respect of which extra-ordinary dividends are received, are disposed of within a period of 18 months prior to that disposal. To ensure that resident companies do not avoid the application of these anti-avoidance rules by disposing of their shares using the roll-over provisions of the corporate re-organisation rules, amendments were made in the Act to make provision for the re-organisation rules to be subject to these anti-avoidance rules dealing with dividend stripping.

II. Reasons for change

It has come to Government's attention that the 2017 amendments making provision for the anti-avoidance rules dealing with dividend stripping rules to override cooperate re-organisation rules may affect some legitimate transactions. In particular, in instances where a resident company enters into a corporate re-organisation transaction and does not enter into any avoidance transaction thereafter (i.e. disinvesting from a company in respect of which a large dividend was previously received by or accrued to that resident company), the anti-avoidance rules dealing with dividend stripping should not nullify the roll-over relief provided under the corporate re-organisation rules.

III. Proposal

In order to address these concerns, it is proposed that the following amendments be made in the Act to clarify the interaction between the anti-avoidance rules dealing with dividend stripping and the corporate re-organisation rules:

A. Reversal of the override of the corporate re-organisation rules

In order to ensure that the anti-avoidance rules dealing with dividend stripping rules do not affect legitimate transactions, it is proposed that the 2017 changes making provision for the anti-avoidance rules dealing with dividend stripping rules to override cooperate re-ogarnisation rules should be reversed. Instead, it is proposed that anti-avoidance rules dealing with dividend stripping rules should be triggered when the corporate re-organisation rules are abused by taxpayers who use the corporate re-organisation rules with the intention of subsequently disposing of their shares to unrelated purchasers outside of the realm of the re-organisation rules.

B. Introduction of the definition of the term "deferral transaction"

It is proposed that amendments be made in the Act to clarify the timing of the trigger of the anti-avoidance rules dealing with dividend stripping and the tax consequence thereof in instances where corporate re-organisation rules are used by the taxpayers with the intention of subsequently disposing of their shares to unrelated purchasers outside of the realm of the re-organisation rules. As a starting point, it is it is proposed that a new definition of the term "*deferral transaction*" should be introduced under the anti-avoidance rules dealing with dividend stripping. The term *"deferral transaction"* should be defined to mean transactions in respect of which PART III of Chapter II of the Act (i.e. the corporate re-organisation provisions) apply.

C. Application of the anti-avoidance rules dealing with dividend stripping to disposals of shares that are not in terms of a deferral transaction

It is proposed that the anti-avoidance rules dealing with dividend stripping should also be triggered upon the disposal of shares by a resident company provided that that the disposal is not in terms of deferral transactions and a resident company received an extraordinary dividend within 18 months of the date of that disposal or as consequence of that disposal. As a result, where a resident company disposes of shares in another company as contemplated in the anti-avoidance rules dealing with dividend stripping, the resident company will have to recognise as income or proceeds from the disposal of those shares (as the case may be) the amount of its extraordinary dividend in the year of assessment of that disposal. However, if the dividend that qualifies as an extraordinary dividend is received by or accrues to the resident company in a subsequent year of assessment, such amount must be taken into account when determining the tax liability of the resident company in that subsequent year of assessment.

D. Application of the anti-avoidance rules dealing with dividend stripping to disposals of shares in terms of a deferral transaction

Where a resident company disposes of shares it holds in another company in terms of a deferral transaction, the anti-avoidance rules dealing with dividend stripping rules will not be immediately triggered. However, it is proposed that specific claw-back rules should apply to exempt dividends received or accrued in respect of those shares or other shares acquired in exchange for those shares in respect of which such exempt dividends were received or accrued within 18 months of their acquisition. These claw back rules should apply at the time when such shares are subsequently disposed of in terms of a transaction that is not a deferral transaction within 18 months of their acquisition.

Application of the claw back rules: scenario1

Where exempt dividends are received or accrued to the resident company 18 months prior to disposing of the shares in respect of which those exempt dividends were received or accrued in terms of a deferral transaction, in the case of a company that acquired the shares in respect of which those exempt dividends were received or accrued to another company in terms of that deferral transaction, the following should apply:

- If that company disposes of the shares so acquired within 18 months of the deferral transaction, that company is, for purposes of determining whether the anti-avoidance rules dealing with dividend striping apply to that subsequent disposal outside of a deferral transaction, deemed to have received or accrued the exempt dividends that were previously received by or accrued to the company from the shares acquired in the period that that company held those shares. This is subject to an addition condition that the company and the company that previously received exempt dividends in respect of those shares are connected persons immediately after the deferral transaction. This is due to the fact that it is usually the result of deferral transactions.

Application of the claw back rules: scenario2

Where exempt dividends are received or accrued to the resident company 18 months prior to disposing of the shares in respect of which those exempt dividends were received or accrued in terms of a deferral transaction, in the case a company that acquires other shares (herein after referred to as new shares) in exchange for or by virtue of holding shares disposed of in terms of a deferral transaction, the following should apply:

- If that company disposes of the new shares within 18 months of the deferral transaction, the company is, for purposes of determining whether the anti-avoidance rules dealing with dividend striping apply to that subsequent disposal outside of a deferral transaction, deemed to have received or accrued the exempt dividends that were previously received by or accrued to that company for shares it previously disposed of under the deferral transaction.

E. Application of anti-avoidance rules dealing with dividend stripping to exempt dividend splitting using deferral transactions

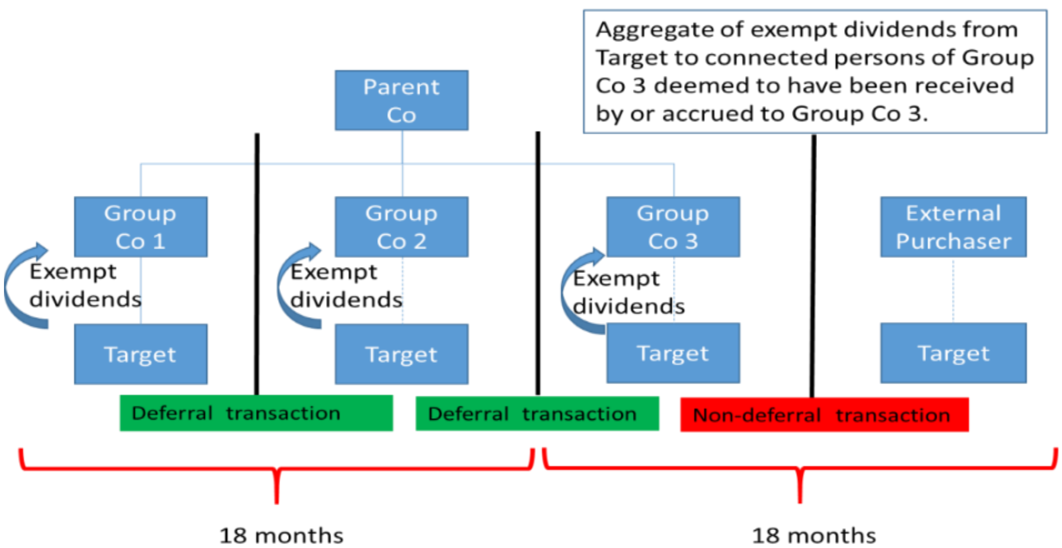
It is noted that taxpayers that are connected persons or that form part of the same group of companies may use deferral transactions to split exempt dividends among themselves in order to ensure that no one connected person or a group company receives an extraordinary dividend. As a result, it is proposed that the anti-avoidance rules dealing with dividend stripping should apply where –

a) A company disposes of shares in terms of a transaction that is not a deferral transaction and those shares were acquired in terms of a deferral transaction; and

b) Within 18 months prior to the acquisition of those shares that are disposed of in terms of a transaction that is not a deferral transaction, exempt dividends were received by or accrued to another person who disposed of those shares in terms of a deferral transaction, and that person was a connected person in relation to that company during 18 months prior to the acquisition of those shares or that person was a connected person immediately after that disposal.

Under the above-mentioned circumstances, the exempt dividends of those connected persons will be treated as being those of the company that disposes of the shares within 18 months of acquiring them in terms of a deferral transaction.

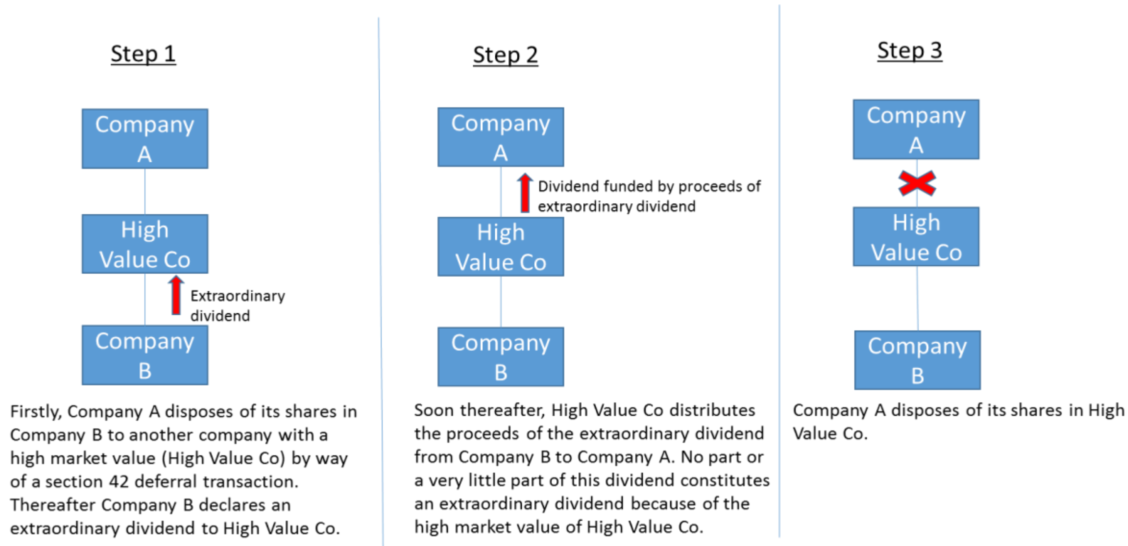
Example 1



F. Application of anti-avoidance rules dealing with dividend stripping to distributions derived from extraordinary dividends

Taxpayers may strip the value of a company after entering into a deferral transaction and avoid the application of the extraordinary dividend threshold by using a company with high value shares to on distribute exempt dividend. This can be achieved as follows:

Example 2



In order to curb this abuse, it is proposed that amendments be made to the Act to ensure that taxpayers that embark on this kind of structuring are subject to the anti-avoidance rules dealing with dividend-stripping on the higher of –

a) The extraordinary dividend determined from the application of the ordinary rule relating to disposal of shares within 18 months of a deferral transaction (set out in above) which under this example will be minimised due to the use of a high market value entity; or

b) In the case of an exempt dividend received by a company in respect of the new shares that was derived, directly or indirectly, from an amount that accrued to or was received as an exempt dividend in respect of the old shares by the company to which the old shares were disposed to within 18 months of that disposal, the extent to which the exempt dividend in respect of the old shares that funded the exempt dividend in respect of the new shares would have constituted an extraordinary dividend in respect of the old shares had those shares been disposed of in terms of a transaction that is not a deferral transaction.

This rule will, in the above example, ensure that the amount of the exempt dividend that High Value Co distributed to Company A be subjected, at the very least, to the dividend stripping rules to the extent that the dividend in respect of the old shares that funded it would have constituted an extraordinary dividend in respect of the old shares.

IV. Effective date

The proposed amendments will come into operation on 1 January 2019 and apply in respect of any disposal on or after that date.

2.3 INTRODUCING SPECIFIC ANTI-DIVIDEND STRIPPING RULES REGARDING PREFERENCE SHARES

[Applicable provisions: section 22B and paragraph 43A of the Eighth Schedule]

I. Background

In 2017, the anti-avoidance rules dealing with dividend stripping were amended. These amendments related to the broadening of the current rules regarding anti-dividend stripping to, *inter alia*, take into account variations in the share buy-back and dividend stripping schemes that taxpayers were entering into in order to avoid normal tax on income or capital gains that would ordinarily arise on the outright sale of shares. In particular, the 2017 changes sought to expand on the limited scope of application of the then anti-dividend stripping rules.

In order to achieve this, the shareholding levels of a shareholder affected by the rules were lowered for purposes of the application of the rules. The rules were amended to make pre-sale exempt dividends taxable in respect of any shares disposed of by a shareholder company that together with connected persons holds at least 50 per cent of the shares in an unlisted company or holds at least 20 per cent of the shares in an unlisted company in the instance that no other shareholder holds a majority interest in that unlisted company. In the case of listed companies, the rules would taint pre-sale exempt dividends in the instance that a shareholder company (together with connected persons) holds at least 10 per cent of the shares in a listed company.

In addition, not all pre-sale exempt dividends are tainted by the rules as only those dividends that accrued to an affected shareholder that constitute extraordinary dividends will be taxable. In the case of preference shares, extraordinary dividends are the amount of pre-sale dividends received by or accrued to a shareholder company that exceeds the amount of dividends that would have been determined with reference to a rate of interest of 15 per cent. For any other shares, extraordinary dividends are the amount of pre-sale dividends received by or accrued to a shareholder company within a period of 18 months prior to the disposal of shares or in respect or as consequences of the disposal of shares by that shareholder company in respect of which those shares exceed 15 per cent of the higher of market value of those disposed shares 18 months prior to their disposal or at the date of their disposal.

II. Reasons for change

Subsequent to the 2017 changes, taxpayers have raised concerns that the rules around preference shares are vague and therefore need to be clarified. As a starting point, clarity in the form of a definition in the legislation of what constitutes a preference share for purposes of the anti-dividend stripping rules is sought.

In addition, the determination of what is an extraordinary dividend for preference share dividends is vague. Under the current rules, it is clear that any amount of dividends received by a shareholder in respect of shares other than preference shares during an 18 front period prior to a share disposal that exceeds 15 per cent of the highest market value of that disposed share at any point in time during that 18-month period will be tainted. However, in the case of preference shares, the use of a 15 per cent rate without specifying the base of its application leads to uncertainties as it is not clear whether the base is the value of the preference shares on the date of disposal or at some time point in time prior to the date of disposal.

III. Proposal

In order to provide taxpayers with clarity on the application of the anti-dividend stripping rules in the case of

To respond to the issues raised, substitution of paragraph (*a)* of the definition of extraordinary dividend is sought. Term "extraordinary dividend" will mean, in relation to a preference share, the amount of any dividend received or accrued exceeding the amount that would have otherwise accrued with respect to that share if it was determined with respect to the considerations for which that share was issued by applying an interest rate of 15 per annum**.**

For interpretation purposes of the anti-avoidance rules, the insertion of the definition of preference share is proposed. This definition is referenced to the current definition of "preference share" in section 8EA which provides that a preference share is any share other than an equity share or a share that is an equity shares if that equity 's dividends are determined with reference to a specified rate of interest or the time value of money.

IV. Effective date

The proposed amendments will come into operation on 19 July 2017 and apply in respect of disposals on or after that date.

2.4 DETERMINATION OF AN OPERATING COMPANY FOR DEBT-FINANCED ACQUISITIONS OF CONTROLLING SHARE INTERESTS

[Applicable provision: Section 24O of the Act]

I. Background

In 2012, a special interest deduction rule that allowed interest on a debt to be deductible when a company used that debt to acquire a controlling share interest in an operating company was introduced in section 24O of the Act. This rule was meant to discourage the use of multiple step debt-push-down structures that taxpayers would enter into solely for purposes of obtaining excessive interest deductions in respect of debt used to fund the direct or indirect acquisition of a controlling share interest in an operating company. A direct acquisition envisaged an acquisition of the shares in an operating company while an indirect acquisition envisaged the acquisition of a share interest in a holding company in relation to an operating company. This special interest deduction is only available when a shareholder company uses debt to acquire a controlling interest in an operating company.

In 2015, the provision relating to the special interest deduction was amended to align the circumstances under which the special interest deduction is granted with the underlying policy objectives. As a result, changes were made in section 24O of the Act to ensure that share interests that qualify for a special interest deduction are limited to shares the value of which is largely determined with reference to the value of shares in operating companies. In this instance, shaes in a holding company would qualify if at least 80 per cent of their value is derived from an income producing operating company. The legislation was amended to ensure that when a holding company in relation to an operating company ceases to be a controlling company in relation to it, a redetermination should be done to determine whether the special interest deduction should still be allowed. A redetermination is also required if the operating company ceases to be an operating company as defined or if an operating company or holding company in relation to an operating company ceases to form part of the same group of companies as the company that acquired it.

II. Reasons for change

The special interest deduction is only available when a shareholder company uses debt to directly or indirectly acquire a controlling interest in an operating company. To qualify as an operating company, at least 80 per cent of a company's receipts and accruals should constitute income as defined (i.e. gross receipts and accruals less receipts and accruals that are exempt for tax purposes) and that income must have been generated from its business of providing goods and services. This means that for a company to qualify as an operating company, no more than 20 per cent of its receipts and accruals should constitute exempt income (for example dividends).

Concerns have been raised as to when should an acquirer that incurs interest on a debt used to fund the acquisition of an interest in a company, determine whether that company meets the requirements. For example, the consequences for a shareholder company are not clear if a company in which shares are acquired receives or accrues a large exempt dividend during a year of assessment. In such an instance, the company is likely to not qualify as an operating company after receiving or accruing that exempt dividend. This results in a number of uncertainties, which include:

a) It is not clear at which point in time the company ceases to be an operating company in that year of assessment. It is not clear whether a company that receives or accrues a large exempt dividend at the beginning of the year, is disqualified from being an operating company for that year or should a determination be made at the end of the year.

b) Lastly, taxpayers are unsure whether a shareholder can continue to claim a special interest deduction in the year of assessment following one in which a company ceased to be an operating company should the requirements be met.

III. Proposal

In order to address these concerns, it is proposed that amendments be made in the Act to clarify that the end of the year of assessment of the shareholder company should be used for purposes of determining the point in time when a shareholder company may claim the special interest deduction. This is based on the fact that generally, the end of the year of assessment of the subsidiary company whose operating company status must be determined is in most cases similar to the year end of the shareholder company.

Practical difficulties in determining whether a shareholder company is eligible for a tax deduction during the determination is dependent on the activities of the subsidiary. However, it has become common practice (although it may not be the case for all) for taxpayers to align the year of assessment of a subsidiary company with that of its shareholder company. This is particularly common in instance where the shareholder company holds a controlling interest in the subsidiary as in the case of a shareholder company in relation to an operating company for purpose of the special interest deduction which requires that the acquirer and the operating company form part of the same group of companies as defined in section 41 of the Act.

As a result, a shareholder company will determine whether its subsidiary company qualifies as an operating company at the end of each year of assessment that the debt remains outstanding. This also clarifies the issue relating to when a subsidiary company does not qualify as an operating company at the end of one-year assessment and subsequently qualifies at the end of the following year of assessment. This is because at each end of a year assessment the income level of the subsidiary company will be determined and only when it meets the requirements, will the shareholder company be able to benefit from the special interest deduction in respect of the interest that company incurred during that year of assessment.

IV. Effective date

The proposed amendments will come into operation on 1 January 2019 and apply in respect years of assessment commencing or after that date.

2.5 CLOSING OF A LOOPHOLE IN DEBT RELIEF RULES

[Applicable provisions: Section 19 of the Act and paragraph 12A of the Eighth Schedule to the Act]

I. Background

The debt relief rules available in the Act give rise to a taxable debt benefit in respect of a debt owed by the taxpayer if that debt is cancelled, waived, extinguished (by way of a redemption or merger) or converted to or exchanged for shares. The tax treatment of such debt benefit depends on whether the initial debt was used to finance deductible operating expenditure or allowance assets. For example, if the initial debt was used to finance tax deductible expenditure (operating expense, for example rental expenses or employee salaries) section 19 of the Act makes provision for recoupment, i.e. reversal of income tax deductions previously granted in respect of operating expenses and inclusion in the taxable income of the taxpayer that is subject to normal tax. On the other hand, if the initial debt was used to finance capital expenditure, the acquisition of capital assets or the acquisition of allowance assets, paragraph 12A of the Eighth Schedule to the Act makes provision for the debt benefit relating to a debt to first reduce the base cost of the capital or allowance assets held by the debtor (taxpayer). This will result in a higher capital gain or a reduced capital loss when the asset is disposed of in the future.

The structure of the debt relief rules in the Act makes provision for the ordering rules that give preference to the application of other provisions of the Act, before the application of the debt relief rules. These ordering rules may result in instances where the debt relief rules do not apply because another provision of the Act is applicable. For example, if a debt reduction or cancellation constitutes property of an estate and that debt relief is reduced or cancelled in favour of an heir or legatee by virtue of a bequest, in terms of the ordering rules, the provisions of Estate Duty Act will apply and the debt relief rules will not apply in this regard. In addition, if the debt reduction or cancellation qualifies as a donation under the donations tax, according to the ordering rules, the provisions of donations tax will apply and the debt relief rules will not apply. Further, if the debt reduction or cancellation stems from an employer or employee relationship, the amount is generally viewed as taxable salary subject to pay-as-you-earn and in terms of the ordering rule, the provisions of the Fourth and Seventh schedule to the Act will apply and the debt relief rules will not apply.

II. Reasons for change

It has come to Government's attention that in some instances mentioned below, the ordering rules may create an anomaly that may have an unintended consequence of a debt benefit that does not trigger tax implications.

A. Ordering rules - Donations tax exclusion

The ordering rules under debt relief were meant to carve out instances where another tax charge would exist in instances where a debt benefit arises in respect of a debt. However, in the case of donations tax, the exclusion has been formulated in such a manner that if an arrangement in respect of a debt constitutes a donation, the exclusion from the application of debt relief rules applies irrespective of whether donations tax is paid. In other words, if the donation qualifies for an exemption from donations tax, the ordering rules will result in the unintended consequence of neither donations tax being payable nor the triggering of the application of the debt relief rules.

B. Ordering rules - CGT exclusion

In the CGT realm, there are no tax consequences on a debt benefit that arises in respect of a debt used to fund a capital or allowance asset if the asset has been disposed of by the taxpayer and that taxpayer has no assessed capital losses. This results in instances where some taxpayers would sell their debt funded assets prior to entering into a debt relief arrangement. As a result, those taxpayers realise a lower capital gain on their asset disposal and also has no adverse tax consequences on the subsequent debt relief arrangement.

III. Proposal

In order to address the above mentioned anomalies, it is proposed that the following amendments should be made to the Act:

A. Ordering rules - Donations tax exclusion

The donations tax exclusion under the debt relief rules should be amended to provide that the exclusion will only be available in the instance that donations tax is payable on a donation arising from a debt relief arrangement.

B. Ordering rules - CGT exclusion

Amendments should be made in the debt relief rules to provide that where a “concession or compromise” arises after a capital or allowance asset has been disposed of, this will give rise to tax consequences. As a result, taxpayers will be required to determine the capital gain, capital loss or recoupment that would have resulted, had the debt benefit been determined prior to the disposal of the asset. The difference between the capital gain, capital loss or recoupment determined on the prior sale and the secondary calculation taking into account the debt benefit will result in the taxpayer recognising additional capital gain and recoupment, if any, to the extent that these were not taken into account in the year of the asset disposal.

IV. Effective date

The proposed amendments will come into operation on 1 January 2019 and apply in respect of years of assessment commencing on or after that date.

2.6 ADDRESSING TAX AVOIDANCE THROUGH THE USE OF COLLATERAL ARRANGEMENT PROVISIONS

[Applicable provision: Section 64EB of the Act]

I. Background

Since 2015, changes were made in the Act to provide relief in respect of an outright transfer of listed shares, or local or foreign government bonds in collateral lending arrangements. As a result, if a listed share, or local or foreign government bond is transferred as collateral for a lending arrangement, there are no income tax, capital gains tax and securities transfer tax implications provided that identical shares or bonds are returned to the borrower by the lender within a limited period of 24 months from the date on which the collateral arrangement was entered into.

II. Reasons for change

It has come to Government's attention that certain schemes, similar to the dividend conversion schemes identified in 2012 using securities lending arrangements, are using collateral arrangements for the benefit of foreign shareholders of local listed shares. The effect is that taxable dividends are converted into exempt payments by exploiting collateral arrangements. The conversion is essentially structured to avoid dividends tax, for example, a foreign shareholder takes out a loan with a South African resident company and uses the listed shares as collateral during the period. The resident company receives the dividend tax free (company to company exemption) and afterwards, per the collateral agreement, pays an amount (a manufactured dividend) based on the dividend received by that resident company to that foreign company, free of dividends tax.

In addition, the current wording of section 64EB creates anomalies as it specifically refers to arrangements that are implemented after the announcement or declaration of a dividend in respect of those shares. However, the dividend conversion schemes are being implemented in respect of listed shares prior to the announcement or declaration of a dividend in respect of those shares.

III. Proposal

In order to address these concerns, it is proposed that the following amendments be made to Section 64EB of the Act:

a) The provisions of section 64EB should be expanded to apply to dividend conversion schemes using collateral arrangements and that a deemed beneficial owner is liable for dividends tax in respect of any deemed dividend arising from the scheme;

b) The wording of section 64EB which specifically refers to arrangements that are implemented after the announcement or declaration of a dividend in respect of those shares should be amended to address instances where the dividend conversion schemes are being implemented in respect of listed shares prior to the announcement or declaration of a dividend.

IV. Effective date

The amendments will come into operation on 1 January 2019 and apply in respect of years of assessment commencing on or after that date.

2.7 ADJUSTING THE DIAMOND EXPORT LEVY THRESHOLDS

[Applicable provision: Diamond Export Levy Act]

I. Background

The Diamond Export Levy Act (2007) distinguishes between small, medium and large producers, based on gross sales thresholds. The larger the producer, the more stringent the requirements for sales to local cutters and polishers. To avoid penalties, at least 40 per cent of the value of large producers' sales must be sold to diamond beneficiation licence holders (local cutters and polishers). Medium-sized producers must sell at least 15 per cent to licence holders. As diamonds are traded solely in US dollars, rand depreciation against the dollar since 2007 has effectively halved the gross sales thresholds in US dollar terms.

The Diamond Export Levy Act refers to gross sales values in two places:

a) R20 million in clause 9(*a*), being the maximum threshold for small producers (USD 2,8 million on enactment date, at 7.05 ZAR to USD, being the exchange rate at enactment date).

b) R3 billion in clause 8(1)(*b*), being the maximum threshold for medium producers (USD 425 million on enactment date, at 7.05 ZAR to USD, being the exchange rate at enactment date); and

II. Reasons for change

With the depreciation of the rand, the USD equivalents of these producer thresholds were USD 1,5 million and USD 225 million in 2017. This could have unintended consequences given that all diamonds are priced and traded in US dollars. The Diamonds Act itself refers to diamond values in USD terms (for example, regulation 10(2)(*a*) and 10(2)(*b*)). A small scale holder of a mining permit could be classified as a medium producer on the discovery of only one or two higher value stones.

III. Proposal

Given that diamonds are traded in USD, it is proposed that the thresholds are adjusted to USD terms, so that exchange rate fluctuations do not influence how much of a company's output is sold too local cutters and producers. As a result, it is proposed that the following amendments be made in the Diamond Export Levy Act:

a) The maximum threshold for small producers be changed to USD 2.2 million; and

b) The maximum threshold for medium producers be changed to USD 325 million.

IV. Effective date

The proposed amendment will come into operation on 1 January 2019.

2.8 TAX IMPLICATIONS OF FRUITLESS AND WASTEFUL EXPENDITURE IN RESPECT OF PUBLIC ENTITIES

[Applicable provisions: Sections 10 and 23(*o*) of the Act]

I. Background

Generally, section 11*(a)* of the Act makes provision for the deduction of expenditure actually incurred in the production of income, provided such expenditure is not of capital nature. On the other hand, section 23 of the Act makes provision for limitation of deduction of certain types of expenditure, including expenditure that constitutes a corrupt activity as defined in the Prevention and Combating of Corrupt Activities Act No.12 of 2004 or expenditure that constitutes a fine or penalty imposed as a result of an unlawful activity.

The limitation of deduction of expenditure provided in section 23 of the Act does not cover fruitless and wasteful expenditure. This implies that fruitless and wasteful expenditure incurred in the production of income may qualify for income tax deduction in terms of section 11*(a)* of the Act.

II. Reasons for change

Government, through the Public Finance Management Act No.1 of 1999 (PFMA), prohibits all public entities from incurring fruitless and wasteful expenditure. Fruitless and wasteful expenditure is defined in the PFMA to mean any expenditure that was made in vain and would have been avoided had reasonable care been exercised.

III. Proposal

Government is continuing with its efforts to ensure proper governance of public entities. In order to encourage further accountability, it is proposed that any expenditure determined and reported by a Public Entity as fruitless and wasteful expenditure in terms of the PFMA should not be allowed as a deduction in the determination of that Public Entity's taxable income.

The PFMA does however require a public entity to take effective and appropriate disciplinary steps against any employee of the public entity who makes or permits fruitless and wasteful expenditure. Effective and appropriate steps include any actions by the public entity to recover such wasteful and fruitless expenditure from the offending employee. As a measure to ensure tax neutrality in the legislation, it is proposed that any amount of fruitless and wasteful expenditure that was not allowed as a deduction and was recovered by the public entity be deemed to be exempt from income tax during the year of assessment in which it is received or accrued.

IV. Effective date

The proposed amendment will come into operation on 1 April 2019 and apply in respect of years of assessment commencing on or after that date

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3. INCOME TAX: BUSINESS (FINANCIAL INSTITUTIONS AND PRODUCTS)

3.1 ALLOWING NEWLY LICENCED SOUTH AFRICAN EXCHANGES TO UTILISE THE REIT PROVISIONS IN THE ACT

[Applicable provision: Section 1 of the Act]

I. Background

In 2012, a unified system for taxing Real Estate Investment Trusts (REITs) was introduced in the Act. In order to qualify as a REIT for tax purposes, the entity must be a South African tax resident and securities in the entity must be a listed on the Johannesburg Stock Exchange (JSE) as securities in a REIT. The JSE has in its listing requirements a category for the listing of REIT securities in section 13 of the JSE Limited Listings Requirements.

II. Reason for change

For many years the JSE has been operating as the only exchange in South Africa. Consequently, when the unified system for taxing REITs was introduced in the Act in 2012, one of the criteria for a company to constitute a REIT is to have shares in the company listed on the JSE as securities in a REIT. In 2016, in order to broaden competition and market participation, South Africa granted new stock exchange licenses to 4 operators, namely, A2X, 4AX, ZARX and EESE. The current criterium in the Act that for a company to constitute a REIT is to have shares in the company listed on the JSE as securities in a REIT becomes a barrier for the newly licensed stock exchanges because the reference in the Act refers only to JSE.

III. Proposal

In order to cater for other South African exchanges that have recently been licensed to utilise the REIT provisions in the Act, it is proposed that the following amendments be made in the Act:

A. Listing requirements of the licensed exchanges

In order to qualify as a REIT for tax purposes, it is proposed that the newly licensed stock exchanges must have a category for the listing of REIT securities in their listing requirements and the REIT listing requirements must in terms of section 11 of the Financial Markets Act No.19 of 2012 (Financial Markets Act) have been approved by the registrar in consultation with the Minister of Finance and the approval has been given before REIT securities may be included in the listing requirement maintained by that exchange and traded on the trading facility.

IV. Effective date

The proposed amendments will come into operation on 1 January 2019 and apply in respect of listing requirements approved in terms of section 11 of the Financial Markets Act on or after that date.

3.2 CREATING MORE CERTAINTY ON THE TAX TREATMENT OF DOUBTFUL DEBTS

[Applicable provision: section 11(*j*) of the Act]

I. Background

In 2015, amendments were made to the Act to provide for the change to an income tax self-assessment system. As a result, the discretions given to the SARS Commissioner in administering some of the provisions of the Act, including section 11(*j*), were amended, some were removed and others reformulated.

Section 11(*j*) of the Act made provision for a deduction of an allowance to be made in respect of debts which would have been allowed as a deduction had they become bad. The allowance made in the current year of assessment is then included in the income of the taxpayer in the following year of assessment. In practice, the Commissioner applies the discretion granted in terms of section 11(*j*) and gives an allowance of 25 per cent of the face value of doubtful debts. At times, this percentage may be increased depending upon the facts and circumstances of the specific taxpayer.

II. Reasons for change

Section 11(*j*) of the Act that gives discretion to the SARS Commissioner on allowance for doubtful debts is one of the sections that were amended in 2015 in anticipation of the move to a self-assessment income tax system. Consequently, the Commissioners discretion in section 11(*j*) would be deleted with effect from the date to be announced by the Minister of Finance. The new section 11(*j*) makes provision for the allowance to be claimed according to the criteria set out in a public notice issued by the Commissioner. However, the effective date for the removal of the Commissioner’s discretion in section 11(*j*) has not yet been announced as the criteria for claiming the allowance for doubtful debts have not yet been formulated.

III. Proposal

In order to provide certainty, it is proposed that the criteria for determining the doubtful debt allowance be specifically included in the Act. It is therefore, proposed that the following allowances relating to doubtful debts be allowed in determining taxable income in terms of section 11(*j*) of the Act:

A. Companies using International Financial Reporting Standards (IFRS) 9 accounting standard for financial reporting purposes

It is proposed that 25 per cent of the loss allowance relating to impairment as contemplated in IFRS 9 excluding lease receivables contemplated in IFRS 9 (because a deduction may be allowed for the lessor of leased assets in terms of section 11(*e*) of the Act) be allowed as deduction if recognised for financial reporting purposes`. The allowances allowed in a year of assessment must be added back to income in the following year of assessment.

B. Companies not using IFRS 9 accounting standard for financial reporting purposes

It is proposed that an age analysis of debt be used in this regard. As a result, it is proposed that 25 per cent of the face value of doubtful debts that are 90 days past due date be allowed as deduction. The allowances allowed in a year of assessment must be added back to income in the following year of assessment.

Example 1 - Application of 90-day rule

Debtor fails to make full payment for 90 days after due date of an amount that is payable. The debtor is 90 days in arrears and the full debt becomes doubtful then 25 per cent of the debt is allowed as a doubtful debt under section 11*(j)* of the Act.

IV. Effective date

The proposed amendments will come into operation on 1 January 2019 and apply in respect of years of assessment commencing on or after that date.

3.3 TAX TREATMENT OF AMOUNTS RECEIVED BY OR ACCRUED TO PORTFOLIOS OF COLLECTIVE INVESTMENT SCHEMES

[Applicable provision: Section 25BA(3) to (6) of the Act]

I. Background

A portfolio of a Collective Investment Scheme (CIS) is basically a pool of funds created through the contributions of a number of investors and operates as an investment vehicle on behalf of those investors (holders of participatory interests or portfolio unit holders). The CIS is managed by a professional manager who, depending on the mandate of that CIS will use the contributions of the investors to invest in listed shares, bonds, property and other financial instruments. Portfolios of collective investment schemes are separate persons for income tax purposes and are in essence vesting trusts with specific timing rules for the accrual of amounts.

For income tax purposes, distributions that are not of a capital nature from a CIS to unit holders within 12 months after that income is accrued or in the case of interest is received by a CIS follow the flow through principle and are deemed to accrue to the unit holders on the date of distribution and be subject to tax in respect of the unit holders.

The Act does not provide a definition of what constitutes an amount of a capital nature. The concept of what constitutes an amount of a capital nature depends on facts and circumstances as well as the tests enunciated in case law.

II. Reasons for change

It has come to Government's attention that some CIS are in effect generating profits from the active frequent trading of shares and other financial instruments. These CIS argue that the profits are of a capital nature. They base this argument on the intention of long term investors in the CIS.

The fact that the determination of capital or revenue distinction is not explicitly stated in the Act and reliance is based on facts and circumstances as well as the case law has led to different application of the law and this has resulted in an uneven playing field regarding the taxation of CIS.

III. Proposal

In order to provide clarity and certainty with regard to the tax treatment of CIS, the following is proposed:

A. One-year holding period rule

It is proposed that distributions from CIS to unit holders derived from the disposal of financial instruments within 12 months of their acquisition should be deemed to be income of a revenue nature and be taxable as such in the hands of the unit holders if distributed to them under current tax rules relating to distributions.

B. First-in-first-out method

It is proposed that where a CIS acquired financial instruments at various dates, the CIS will be deemed to have disposed of financial instruments acquired first. The first in first out method will be used to determine the period the financial instruments were held for the purposes of the one year holding period rule.

C. Treatment of losses

Deductions and allowances do not flow through to unit holders and amounts deemed to have accrued to unit holders are limited to amounts of gross income reduced by deductions allowable under section 11.

IV. Effective date

The proposed amendments will come into operation on 1 March 2019 and apply in respect of financial instruments disposed of on or after that date.

3.4 TAX ISSUES RESULTING FROM THE INSURANCE ACT

[Applicable provision: Section 28 of the Act]

I. Background

Currently, the Short-term Insurance Act No. 53 of 1998 (Short-term Insurance Act) requires that any person that wishes to conduct a short-term business or a reinsurance business in South Africa to be incorporated as a public company under the Companies Act No. 71 of 2008 (the Companies Act). This implies that if a foreign person wants to conduct a short term insurance business or a reinsurance business in South Africa, that person must establish a foreign owned subsidiary in South Africa. Consequently, branches of foreign short-term insurers and foreign reinsurance companies are currently not allowed to conduct short term insurance business or reinsurance business in South Africa.

Similarly, section 28 of the Act dealing with the tax treatment of short-term insurance business is limited to short-term insurers that are resident and carrying on short-term insurance business in South Africa. These provisions do not cater for the tax treatment of a non-resident short term insurer that carries on short-term insurance business through a branch in South Africa. Therefore, the tax treatment of short-term insurance business is aligned with the requirements of the Short-term Insurance Act.

II. Reasons for change

On 18 January 2018, the Insurance Act No. 18 of 2017 (the Insurance Act) was gazetted for proclamation. The Insurance Act replaces and consolidates substantial parts of the Long-term Insurance Act No. 52 of 1998 and the Short-term Insurance Act. In particular, the Insurance Act permits foreign reinsurers to operate a reinsurance business in South Africa through a branch. This permission for a foreign reinsurer to conduct insurance business in South Africa through a branch of that foreign reinsurer is granted if the foreign reinsurer is granted a license, establishes a representative office and establishes a trust in South Africa.

III. Proposal

The above-mentioned changes brought by the Insurance Act necessitate changes to be made in the tax treatment of short term insurers. As a result, it is proposed that a foreign reinsurer that conducts insurance business through a branch of that foreign reinsurer as envisaged in Part 3, section 6 of the Insurance Act, be deemed to be a short-term insurer for purposes of the Act.

IV. Effective date

The proposed amendment is deemed to have come into operation on 1 July 2018 and apply in respect of years of assessment ending on or after that date.

4. INCOME TAX: BUSINESS (INCENTIVES)

4.1 REVIEW OF VENTURE CAPITAL COMPANY RULES

[Applicable provision: Section 12J of the Act]

I. Background

Since the introduction of the Venture Capital Company (VCC) tax incentive regime in 2008, as one of the measures to encourage equity funding to a portfolio of Small, Medium and Micro-Enterprises (SMME), the uptake of the VCC tax incentive regime has grown significantly over the past two years leading to a meaningful investment into the economy.

II. Reasons for change

A. Administrative and technical issues

It has come to Government's attention that the following administrative issues and technical aspects, however, still remain as an impediment to even further uptake of the VCC tax incentive regime.

Investment income threshold test

As a legislative measure to ensure that the VCC's investment into any target company (the qualifying company) is actively used to grow the underlying business of that qualifying company, paragraph (*f*) of the definition of qualifying company in section 12J makes provision for the investment income derived by the qualifying company during any year of assessment not to exceed 20 per cent of gross income of that qualifying company.

Several investments have been identified where the qualifying company's underlying business is both time and infrastructure intensive initially with the qualifying company only being able to generate any income, other than investment income as defined in paragraph (*f*) of the definition of qualifying company in section 12J, from the business upon the completion of the infrastructure. As such, the qualifying company can unintentionally breach the 20 per cent investment income threshold. This has an unintended consequence of making potential investors reluctant to invest in VCCs.

Controlled company test

Paragraph (*b*) of the definition of qualifying company in section 12J defines a "qualifying company" as a company that is not a "controlled group company" in relation to a group of companies. This implies that a "controlled group company" is a company that has a corporate shareholder that holds directly or indirectly, at least 70 per cent of the shares in that company. This "controlled company test" in the definition of "qualifying company ensures that at a minimum, there is more than a 30 per cent independent shareholding in a qualifying company apart from the VCC. However, the current provisions of section 12J are not clear as to when is the "controlled company test" applied. At issue is whether the "controlled company test" should only at the date of acquisition or after the date of acquisition of equity shares in a qualifying company.

Connected Person Test - Withdrawal of VCC Status

In 2011, a connected person test was added in section 12J as an anti-avoidance measure aimed at addressing the potential abuse regarding deduction of expenditure incurred by investors in acquiring VCC shares. This anti-avoidance measure requires the retrospective withdrawal of the VCC status and the inclusion in income of VCC of an amount equal to 125 per cent of allowable tax deduction in respect of expenditure incurred to acquire VCC shares effective from the date of approval of the VCC. The above-mentioned retrospective withdrawal anti-avoidance measure requires the South African Revenue Service to reopen assessments for previous years of assessment for both the VCC and the VCC investor, and results in administrative and financial burden, including the imposition of interest for late payment of taxes.

B. Closure of abusive schemes

In addition, concerns have been raised including reports in the public domain regarding abusive tax structures using the current VCC regime. For example, immediately before the 2018 Budget Review, some companies were advertising tax structures in media using the current VCC regime.

III. Proposal

A. Administrative and technical issues

In order to address the administrative and technical issues obstructing the increased uptake of the VCC tax incentive regime, it is proposed that the following amendments be made in section 12J of the Act:

Investment income threshold test

It is proposed that paragraph (*f*) of the definition of qualifying company in section 12J be amended to allow for the 20 per cent investment income threshold test to be applied at the earliest of either the year when the qualifying company starts to trade or the year after a period of 36 months from the date of acquisition of shares by the VCC in the qualifying company and every year of assessment after that.

Controlled company test

The current provisions of paragraph (*b*) of the definition of qualifying company in section 12J dealing with controlled company test are not expressly clear as to when is the test applied. It is proposed that amendments be made in paragraph (*b*) of the definition of qualifying company in section 12J to make provision for the controlled company test to be applied from the date of acquisition of shares by the VCC in the qualifying company and any time during every year of assessment after that date.

Connected Person Test-Withdrawal of VCC Status

To allow for a reduced administrative impact, the following is proposed:

a) The Commissioner for SARS should withdraw the VCC status during the current year of assessment in which the VCC fails to take corrective steps acceptable to SARS; and

b) an amount equal to 125 per cent of allowable tax deduction in respect of expenditure incurred to acquire VCC shares should be included in the income of a VCC in the year of assessment in which the VCC status is withdrawn.

B. Closure of abusive schemes

In an attempt to close the abusive schemes using the current VCC regime, it is proposed that amendments be made in the definition of qualifying company and approval requirements for a VCC to limit the abuse of trading between an investor that invested in a VCC company and a qualifying company in which that VCC takes up shares.

IV. Effective date

The proposed amendment will come into operation on 1 January 2019 and apply in respect of years of assessment commencing on or after that date.

4.2 EXTENDING THE DISTRIBUTION PERIOD FOR SMALL BUSINESS FUNDING ENTITIES

[Applicable provision: Section 30C(1)(*d*)(vi) of the Act]

I. Background

In 2014 section 30C was introduced in the Act to provide income tax exemption for entities whose sole or primary objective is to provide funding to Small Medium and Micro Enterprises ("SMME's"). The main aim of the tax exemption was to assist the SMME's in alleviating the difficulty they experience in obtaining funding.

One of the conditions the small business funding entities need to comply with in order to qualify for the tax exemption is to ensure that 25 per cent of amounts received by or accrued to them during the tax year (excluding amounts received from the disposal of assets held in that tax year) are distributed for the purpose of funding the SMME's by the end of that tax year.

II. Reasons for change

It has come to Government's attention that the ability by the small business funding entities to meet the distribution requirement of 25 per cent of amounts received by or accrued to them during the tax year (excluding amounts received from the disposal of assets held in that tax year) to SMME's by the end of that tax year is proving challenging more especially in cases where small business funding entities receive those amounts on or close to the last day of the tax year. As the development of SMME's is a government priority, it is the Government's objective to be supportive of entities that take initiatives in funding SMME's.

III. Proposal

In order to better assist small business funding entities that are providing funding to SMME's, it is proposed that section 30C of the Act be amended so that small business funding entities be required to distribute or incur the obligation to distribute 25 per cent of all amounts received or accrued from assets held during a tax year within 12 months of the end of that tax year.

IV. Effective date

The proposed amendments will come into operation on 1 March 2019 and will apply in respect of years of assessment commencing on or after that date.

4.3 REVIEWING THE WRITE-OFF PERIOD FOR ELECTRONIC COMMUNICATION CABLES

[Applicable provisions: Sections 12D and 11(*f*) of the Act]

I. Background

The Income Tax Act contains rules in sections 11(*f*)(v)(*aa*), 11(*f*)(v)(*dd*) and 12D(3)(*c*) that make provision for the write-off in respect of electronic communication cables. Currently, the write-off period depends on whether such electronic communication cables are owned or leased by the taxpayer.

With regard to electronic cables defined in paragraph (c) of the definition of affected asset in section 12D(1) owned by the taxpayer and used in South Africa, the write-off period is currently 15 years. On the other hand, with regard to electronic cables defined in that section not owned by the taxpayer but the taxpayer is leasing them at a certain premium as contemplated in section 11(*f*)(v)(*aa*) and those electronic cables are used in South Africa, the write-off period is currently the number of years over which the taxpayer is entitled to use the electronic cables or 25 years whichever is the greater. Further, with regard to electronic cables not owned by the taxpayer but the taxpayer is leasing them at a certain premium and those electronic cables are used for transmission of electronic communications outside South Africa as contemplated in section 11(*f*)(v)(*dd*), the write off period is currently 15 years.

II. Reasons for change

It is important that the tax system remains up to date with technological advancements and international practice. The current write-off period in respect of the above-mentioned assets was last reviewed in 2014 in light of the international best practices. Given the technological advances and the environment that affects the useful life of these assets, both of which reduce their useful economic life, it is important that the current write-off periods be reviewed from time to time. In addition, it is important that the write-off period in respect of the above-mentioned similar assets be aligned, irrespective of whether the taxpayer owns or leases the asset.

III. Proposal

In order to address these concerns, it is proposed that:

a) The write-off period in respect of the abovementioned electronic cables defined in paragraph (c) of the definition of affected asset in section 12D(1) be aligned, irrespective of whether the taxpayer owns the asset or the asset is leased by the taxpayer or whether the asset is used in South Africa or the asset is used outside South Africa.

b) The write-off period in respect of electronic cables defined in paragraph (c) of the definition of affected asset in section 12D(1) owned by the taxpayer and used in South Africa should be reduced to 10 years which will be effected by amending the current write-off period in section 12D(3)(*c*);

c) The current rules for pipelines, transmission lines or cable or railway lines that are contained in section 11(*f*)(v) will no longer apply in respect of lines and cables used for the transmission of electronic communication as defined in paragraph (c) of the definition of affected asset in section 12D(1). Instead a new section 11(*f*)(vi) that applies to lines and cables used for the transmission of electronic communication as defined in paragraph (c) of the definition of affected asset in section 12D(1), will be inserted.

d) The write-off period in respect of lines and cables used for the transmission of electronic communication defined in paragraph (c) of the definition of affected asset in section 12D(1) and catered for in the new section 11(*f*)(vi), that are not owned by the taxpayer but the taxpayer is leasing those electronic cables at a certain premium, will be reduced to number of years of which the taxpayer is entitled to use the asset or 10 years, whichever is the greater.

e) The write off period in respect of electronic cables not owned by the taxpayer but the taxpayer is leasing those electronic cables at a certain premium and those electronic cables are used for transmission of electronic communications outside South Africa as contemplated in section 11(f)(v)(dd), should be reduced to the number of years of which the taxpayer is entitled to use the asset or 10 years, whichever is the greater

IV. Effective date

The proposed amendments will come into operation on 1 April 2019 and apply in respect of assets acquired or brought into use on or after that date.

4.4 REVIEW OF INTERNATIONAL SHIPPING RULES

[Applicable provision: Section 12Q of the Act]

I. Background

With effect from 1 April 2014, government introduced a new regime providing tax relief for qualifying South African shipping companies. The policy rationale for this regime was to make South Africa more competitive (as other countries were introducing tonnage tax or exempting international transport shipping income altogether) and to attract ships to be flagged under the South African register. In order to qualify for this relief, the company at issue must be a resident and must operate one or more South African ships that are utilised in international shipping that:

a) Are registered in South Africa in terms of the Ship Registration Act No. 58 of 1998 (Ship Registration Act); and

b) Used for international transportation for reward of passengers or goods.

Tax relief provided by this regime includes exemptions from normal tax, capital gains tax, dividends tax as well as cross-border withholding tax on interest. Shipping companies qualifying for this regime also have the benefit of using a currency other than the Rand as the company's functional currency thus eliminating inadvertent currency gains and losses.

II. Reasons for change

The current exemption provided in terms of this regime is limited to South African resident companies that derive income from the operation of South African ships for purposes of international traffic. While this limitation is intended to ensure that the regime is not abused and utilised for its policy intended purpose, that is, to attract ships to be flagged under the South African register, it has the effect of creating unintended consequences in cases where a non-South African ship (non-flagged ship) is brought into use temporarily by a South African resident company as a replacement ship due to the fact that a South African ship (South African flagged ship) is not available because the South African ship is undergoing maintenance or repairs.

In view of the fact that the replacement ship is not a South African ship, the South African resident company that temporarily makes use of the replacement ship may not qualify for exemption in terms of this regime for gross income from that ship.

III. Proposal

In order to address the above-mentioned concerns, it is proposed that amendments should be made in the definitions of "*South African ship*" and "*international shipping income*" in section 12Q of the Act to take into account income derived by a qualifying South African company that temporarily makes use of a replacement non-South African ship for purpose of international traffic for a short period of time due to the fact that the South African ship is not available due to maintenance or repairs.

IV. Effective date

The proposed amendment will come into operation on 1 April 2019 and apply in respect of years of assessment commencing on or after that date.

4.5 EXTENSION OF EMPLOYMENT TAX INCENTIVE SCHEME

[Applicable provision: Section 12 of the Employment Tax Incentive Act No. 26 of 2013 (Employment Tax Incentive Act)]

I. Background

The Employment Tax Incentive (ETI) was introduced in January 2014 to promote employment, particularly of young workers. After the initial 3 years of the ETI regime it was extended for a further two years. This period is set to lapse on 28 February 2019.

The first extension of ETI regime was based on a process of review and a consultation process in the National Economic Development and Labour Council (NEDLAC), which indicated (i) modest positive effects on growth rates of youth employment in claiming firms; and (ii) that significant negative effects did not materialise.

II. Reasons for change

A further extension of the ETI regime is proposed in light of the need to support youth employment, as indicated in the State of the Nation Address (SONA) delivered on 15 February 2018. In addition, as part of the on-going monitoring and evaluation of the ETI regime another round of inputs will be collected from social partners through NEDLAC this year. The on-going review process may result in further amendments being proposed in this regard. Such proposed amendments may be considered in the following legislative cycle.

III. Proposal

In view of the above, it is proposed that the ETI regime should be extended for a further period of 5 years, from 28 February 2019 to 28 February 2024, with an interim report on its performance to be published after 3 years.

IV. Effective date

The proposed amendments will come into operation from the date of promulgation of the 2018 Taxation Laws Amendment Bill.

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5. INCOME TAX: INTERNATIONAL

5.1 ADDRESSING AN OVERLAP IN THE TREATMENT OF DIVIDEND AS DEFINED IN SECTION 1 AND AMOUNT DEEMED AS DIVIDEND IN SECTION 31 OF THE ACT

[Applicable provisions: Section 1 definition of dividend, section 31 and 64D of the Act]

I. Background

A. Definition of dividend in section 1 of the Act

On 1 April 2012 dividends tax came into effect replacing the secondary tax on companies (STC) and the definition of the dividend was also revised. The definition of dividend in section 1 of the Act treats as a dividend any amount transferred or applied by a company that is a resident of South Africa for the benefit of or on behalf of any person in respect of any share in that company. An amount transferred or applied includes a distribution made by or consideration for the acquisition of any share in that company. The definition contains three exclusions, namely, amounts resulting in a reduction of contributed tax capital, where company transfers shares in that company and acquisition by a listed company of its own shares on the JSE.

B. Amount deemed as dividend in section 31 of the Act

In 2015, amendments were made in section 31 of the Act to make provision for a company making a transfer pricing secondary adjustment to deem the amount to be a dividend consisting of a distribution of an asset *in specie* (dividend *in specie*) declared and paid by the resident company to the non-resident connected person. The deemed dividend *in specie* is currently subject to dividends tax at a rate of 20 per cent. In addition, the dividends tax rate of 20 per cent in respect of this deemed dividend *in specie* cannot be reduced by the application of the dividend article in the tax treaty.

II. Reason for change

Currently, there is a potential overlap between the treatment of a dividend as defined in section 1 of the Act and the treatment of an amount deemed as a dividend under the transfer pricing provisions of section 31 of the Act. Consequently, an amount deemed as a dividend *in specie* as a result of a transfer pricing secondary adjustment in terms of section 31, may depending on the facts and circumstances of the case, constitute a dividend as defined in section 1 of the Act. This overlap may also unintendedly result in tax treaty relief being available in respect of an amount deemed as a dividend *in specie* as a result of a transfer pricing secondary adjustment in terms of section 31 of the Act.

III. Proposal

In order to address this anomaly, it is proposed that clarity should be provided in the Act that an amount deemed as a dividend *in specie* as a result of a transfer pricing secondary adjustment in terms of section 31 of the Act is excluded from the definition of dividend in section 1 of the Act.

In turn, consequential amendments should be made in section 64D of the Act to include an amount deemed as a dividend *in specie* as a result of a transfer pricing secondary adjustment in terms of section 31 of the Act, as a dividend subject to dividends tax.

IV. Effective date

The proposed amendments will come into operation on 1 January 2019 and appy in respect of years of assessment commencing on or after that date.

5.2 REVERSING EXCHANGE DIFFERENCE FOR EXCHANGE ITEMS DISPOSED AT A LOSS

[Applicable provision: Section 24I(4) of the Act]

I. Background

In 2017, a new section 24I(4) was introduced into the Act. The new subsection (4) provides relief in respect of foreign exchange gains and losses on debt by reversing any exchange gains and losses in respect of the portion of the exchange item that has become bad. For example, where a debt owing to the taxpayer has gone bad or irrecoverable, and in previous years' foreign exchange gains or losses were included or deducted from its income, subsection (4) provides for the reversal of these amounts and therefore, previous foreign exchange gains may be deducted and previous losses must be included in the income of the taxpayer.

II. Reason for change

In instances where the exchange item is disposed at a loss by reason of a decline in the market value of that exchange item and not because the debtor is unable to pay, section 24I(4) does not provide for a reversal of the previous foreign exchange gains or losses that were included or deducted from the income of that taxpayer. This could, for example, occur where an instrument such as a foreign bond is sold on the market at a price or an amount that is less than the price or amount that was paid for it due to the changes in the prevailing interest rate.

III. Proposal

In order to address these concerns, it is proposed that the provisions of section 24I(4) of the Act be extended to provide relief where an exchange item is disposed of at a loss as a result of market forces.

IV. Effective date

The proposed amendments will come into operation on 1 January 2019 and apply in respect of years of assessments commencing on or after that date.

5.3 RULES ADDRESSING THE USE OF TRUSTS TO DEFER TAX OR RECHARACTERISE THE NATURE OF INCOME

[Applicable provisions: Sections 7(8), 10B(2) and 25B(2A)of the Act and paragraphs 64B, 72(*b*) and 80(3) of the Eighth Schedule to the Act]

I. Background

Government has, since 2008 been concerned that the Controlled Foreign Company (CFC) rules do not capture foreign companies held by interposed foreign trusts. In order to close this loophole, in 2017, changes were made to the CFC rules in section 9D of the Act to extend the application of the CFC rules to foreign companies held through foreign trusts and foreign foundations and whose financial results form part of the consolidated financial statements, as defined in the IFRS 10, of a group of which the parent company is resident in South Africa.

II. Reason for change

The 2017 changes to the CFC rules dealt with the issue of South African resident companies having an indirect interest in a foreign company through foreign trusts and did not address the issue of South African resident individuals having an indirect interest in a foreign company through foreign trusts.

The first 2017 Draft Taxation Laws Amendment Bill that was published for public comments on 19 July 2017, contained rules in the proposed section 25BC dealing with South African resident individuals holding shares in a foreign company through foreign trusts and foreign foundations. These rules deemed all distributions of the discretionary foreign trusts or foreign foundations to individuals and trusts to be income in the hands of South African resident beneficiaries. This was done in order to discourage the use of trusts to defer tax or recharacterise the nature of income.

Following oral presentations on the 2017 Draft TLAB at hearings held by the Parliament Standing Committee on Finance on 29 August 2017 and a meeting held with stakeholders on 18 September 2018, the above-mentioned proposed rules were withdrawn due to the wide nature and complexity and postponed to 2018 legislative cycle.

III. Proposal

In order to close the loophole in the current tax legislation regarding the use of trusts to defer tax or recharacterise the nature of income, it is proposed that the following amendments be made to the Act:

A. Disregarding participation exemption in respect of foreign dividends for purposes of income inclusion in terms of section 7(8) of the Act

In determining an amount that should be included as taxable income in terms of section 7(8)(*a*) of the Act, in the hands of a resident who made a donations, settlement or other dispositions to a foreign trust and that foreign trust holds shares in a foreign company, it is proposed that the participation exemption as contemplated in section 10B(2)(*a*) of the Act in respect of foreign dividends should be disregarded, provided that those foreign dividends are paid by a foreign company where more than 50 per cent of the total participation rights or voting rights in that foreign company, are directly or indirectly exercisable by that resident who made a donation settlement or other dispositions to a foreign trust or connected person in relation to the resident.

B. Disregarding participation exemption in respect of foreign dividends for purposes of income inclusion in terms of section 25B of the Act

In determining an amount that should be included as taxable income in terms of section 25B(2A) of the Act, in the hands of a resident who acquires a vested right in a foreign trust and that foreign trust holds shares in a foreign company, it is proposed that the participation exemption as contemplated in section 10B(2)(*a*) of the Act in respect of foreign dividends should be disregarded, provided that those foreign dividends are paid by a foreign company where more than 50 per cent of the total participation rights or voting rights in that foreign company, are directly or indirectly exercisable by that resident who made a donation settlement or other dispositions to a foreign trust or connected person in relation to the resident.

C. Disregarding participation exemption in respect of capital gains derived from the sale of foreign shares for purposes of attribution of capital gain in terms of paragraph 72 of the Eighth Schedule to the Act

In determining an amount of capital gain that should be attributed in terms of paragraph 72 of the Eighth Schedule to the Act, in the hands of a resident who has made a donation to a foreign trust, and a capital gain is attributable to that donation in such foreign trust as a result of the sale of shares held by that foreign trust in a foreign company, it is proposed that the participation exemption as contemplated in paragraph 64B of the Eighth Schedule to the Act in respect of capital gains derived from the sale of foreign shares should be disregarded.

D. Disregarding participation exemption in respect of capital gains derived from the sale of foreign shares for purposes of attribution of capital gain in terms of paragraph 80 of the Eighth Schedule to the Act

In determining an amount of capital gain that should be attributed in terms of paragraph 80 of the Eighth Schedule to the Act, in the hands of a resident beneficiary, it is proposed that the participation exemption as contemplated in paragraph 64B of the Eighth Schedule to the Act in respect of capital gains derived from the sale of shares held by the foreign trust (in which a beneficiary is a resident) in a foreign company should be disregarded.

IV. Effective dates

The proposed amendments will come into operation on the following dates:

a. The proposed amendments to section 7(8) will come into operation on 1 March 2019 and applies in respect of amounts received or accrued on or after that date;

b. The proposed amendments to section 25B will come into operation on 1 March 2018 and applies in respect of any years of assessment commencing on or after that date;

c. The proposed amendments to paragraph 72 of the Eighth Schedule will come into operation on 1 March 2019 and applies in respect of any amounts vesting on or after that date;

d. The proposed amendments to paragraph 80 of the Eighth Schedule will come into operation 1 March 2019 and applies in respect of disposals on or after that date.

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6. VALUE ADDED TAX

6.1 INSERTION OF THE DEFINITION OF "FACE VALUE" UNDER THE PROVISIONS DEALING WITH IRRECOVERABLE DEBTS

[Applicable provision: Section 22 of the Value Added Tax Act No. 89 of 1991 ("the VAT Act")]

I. Background

A VAT registered vendor is in terms of section 22(1) of the VAT Act, permitted to claim a deduction for VAT on taxable supplies of goods or services that have been written off, if those taxable supplies were provided on credit, and the debt is irrecoverable. If that vendor cedes or sells the debt book in respect of the debt that has been written off on a non-recourse basis to another vendor, for example a collection agent or bank, for an amount that is less than the amount owing, then the sale of debt is exempt from VAT and the vendor is not required to make any adjustments to the previous VAT deduction.

II. Reasons for change

It has come to Government's attention that some vendors (for example collection agents or banks) that buy the debt book in terms of the above-mentioned arrangement then attempt to claim a further VAT deduction if they write off all or part of this debt in future. This results in a double VAT deduction, which is against the intention of the legislation as seen in the definition of "face value of a debt transferred" in the Explanatory Memorandum to the Taxation Laws Amendment Bill, 1997.

The Explanatory Memorandum provides that the 'face value' of a debt transferred is, for the purpose of section 22(1), the net value of the account receivable at time of transfer, after adjustments have been made for debit and credit notes and after taking into account the input tax claimed on the bad debt amount already written off by the (first / supplier) vendor.

III. Proposal

In order to address this anomaly and prevent the double VAT deduction, it is proposed that amendments be made in section 22 of the VAT Act by inserting a definition of "face value" to take into account the policy rationale explained in the Explanatory Memorandum to the Taxation Laws Amendment Bill, 1997.

IV. Effective date

The proposed amendments will come into operation on 1 April 2019.

CLAUSE-BY-CLAUSE

CLAUSE 1

Income Tax: Amendment to section 1

See Sub-clause (a): Definition of “company” – notes on **ALLOWING NEWLY LICENCED SOUTH AFRICAN EXCHANGES TO UTILISE THE REIT PROVISIONS IN THE ACT.**

Sub-clause (b): Definition of “dividend” – See notes on **ADDRESSING AN OVERLAP IN THE TREATMENT OF DIVIDEND AS DEFINED IN SECTION 1 AND AMOUNT DEEMED AS DIVIDEND IN SECTION 31 OF THE ACT**

Sub-clause (c): Definition of “financial instrument” – The proposed insertion of cryptocurrency in the definition of “financial instrument” seeks to clarify the existing provisions dealing with cryptocurrencies in the South African tax law.

Sub-clause (d): Insertion of the new definition of “Financial Sector Conduct Authority” – The proposed insertion of the definition of “Financial Sector Conduct Authority” is a consequential amendment due to the transformation of the Financial Services Board into Financial Sector Conduct Authority as a result of the coming into effect of the Financial Sector Regulation Act on 1 April 2018.

Sub-clause (e): Deletion of the definitions “Financial Services Board” and “Financial Services Board Act” – The proposed deletion is a consequential amendment due to the transformation of the Financial Services Board into Financial Sector Conduct Authority as a result of the coming into effect of the Financial Sector Regulation Act on 1 April 2018.

Sub-clause (f): Definition of “identical share” – The proposed amendments correct a grammatical error and change the following words; “that” to “a” and “Listing” to Listings”.

Sub-clause (g): Insertion of the new definition of “Financial Sector Regulation Act” – The proposed insertion of the definition of “Financial Sector Regulation Act” is a consequential amendment due to the transformation of the Financial Services Board into Financial Sector Conduct Authority as a result of the coming into effect of the Financial Sector Regulation Act on 1 April 2018.

Sub-clause (h): Insertion of the new definition of “Insurance Act” – The proposed insertion of the definition of Insurance Act is a consequential amendment as a result of the coming into effect of the 2017 Insurance Act on 1 July 2018.

Sub-clause (i): Definition of “official rate of interest” – The proposed amendment seeks to clarify the scope of definition of official rate of interest by subjecting both paragraphs *(a)* and *(b)* of the definition to the proviso.

Sub-clause (j): Definition of “pension fund” – The proposed insertion of a comma after the amount R165 000 in subparagraph (dd) of paragraph (ii) of the proviso to the definition of pension fund corrects an omission that was made in the 2017 TLAA, which did not have a coma and gives effect to the policy intent.

Sub-clause (k): Definition of “pension fund” –

The proposed insertion of a comma after the amount R165 000 in subparagraph (*dd*) of paragraph (ii) of the proviso to the definition of pension fund corrects a mistake that was made in the 2017 TLAA, which did not have a coma and gives effect to the policy intent.

The proposed amendments relating to the election to transfer – See notes on **TAX TREATMENT OF TRANSFERS TO PENSION PRESERVATION OR PROVIDENT PRESERVATION FUNDS AFTER REACHING NORMAL RETIREMENT AGE BUT BEFORE RETIREMENT DATE**

Sub-clause (l): Definition of “pension preservation fund” – See notes on **TAX TREATMENT OF TRANSFERS TO PENSION PRESERVATION OR PROVIDENT PRESERVATION FUNDS AFTER REACHING NORMAL RETIREMENT AGE BUT BEFORE RETIREMENT DATE**

Sub-clause (m): Definition of “pension preservation fund” – See notes on **TAX TREATMENT OF TRANSFERS TO PENSION PRESERVATION OR PROVIDENT PRESERVATION FUNDS AFTER REACHING NORMAL RETIREMENT AGE BUT BEFORE RETIREMENT DATE**

Sub-clause (n): Proviso to paragraph (*c*) of the definition of “pension preservation fund” - See notes on **ALIGNMENT OF TAX TREATMENT OF WITHDRAWALS FROM PRESERVATION FUNDS UPON EMIGRATION OR REPATRIATION ON EXPIRY OF WORK VISA;** and see notes on **TAX TREATMENT OF TRANSFERS TO PENSION PRESERVATION OR PROVIDENT PRESERVATION FUNDS AFTER REACHING NORMAL RETIREMENT AGE BUT BEFORE RETIREMENT DATE**

Sub-clause (o): Proviso to paragraph (*a*) of the definition of “pension preservation fund” – The proposed amendments to subparagraph (ii) of the proviso to paragraph (*a*) of the definition of “pension preservation fund” take into account the policy intent explained in the Explanatory Memorandum on the Taxation Laws Amendment Bill 2011 for permitted transfers between retirement savings funds from less restrictive funds to equal or more restrictive funds.

Sub-clause (p): Proviso to paragraph (b) of the definition of “provident fund” - See notes on **TAX TREATMENT OF TRANSFERS TO PENSION PRESERVATION OR PROVIDENT PRESERVATION FUNDS AFTER REACHING NORMAL RETIREMENT AGE BUT BEFORE RETIREMENT DATE.**

Sub-clause (q): Proviso to paragraph (a) of the definition of “provident preservation fund” - See notes on **TAX TREATMENT OF TRANSFERS TO PENSION PRESERVATION OR PROVIDENT PRESERVATION FUNDS AFTER REACHING NORMAL RETIREMENT AGE BUT BEFORE RETIREMENT DATE.**

Sub-clause (r): Proviso to paragraph (b) of the definition of “provident preservation fund” - See notes on **TAX TREATMENT OF TRANSFERS TO PENSION PRESERVATION OR PROVIDENT PRESERVATION FUNDS AFTER REACHING NORMAL RETIREMENT AGE BUT BEFORE RETIREMENT DATE.**

Sub-clause (s): Proviso to paragraph (c) of the definition of “provident preservation fund” - See notes on **ALIGNMENT OF TAX TREATMENT OF WITHDRAWALS FROM PRESERVATION FUNDS UPON EMIGRATION OR REPATRIATION ON EXPIRY OF WORK VISA;** and see notes on **TAX TREATMENT OF TRANSFERS TO PENSION PRESERVATION OR PROVIDENT**

PRESERVATION FUNDS AFTER REACHING NORMAL RETIREMENT AGE BUT BEFORE RETIREMENT DATE

Sub-clause (t): Definition of “pension preservation fund” – Proposed amendments to subparagraph (iv) of the proviso to paragraph (a) of the definition of “pension preservation fund” take into account the policy intent explained in the Explanatory Memorandum on the Taxation Laws Amendment Bill 2011 for permitted transfers between retirement savings funds from less restrictive funds to equal or more restrictive funds.

Sub-clause (u): Definition of “REIT” – See notes on **ALLOWING NEWLY LICENCED SOUTH AFRICAN EXCHANGES TO UTILISE THE REIT PROVISIONS IN THE ACT**

Sub-clause (v): Definition of “relative” – The proposed amendment to the definition of relative updates the definition by removing gender in the wording and updates other words as a matter of style and consistency.

Sub-clause (w): Definition of “retirement date” – The proposed amendment in paragraph (a) of the definition of retirement date makes a correction by removing reference to subparagraph (c) of paragraph 2 of the Second Schedule.

CLAUSE 2

Income Tax: Amendment to section 3

The proposed insertion of “Financial Sector Regulation Act” and “Financial Sector Conduct Authority” is a consequential amendment due to the transformation of the Financial Services Board into Financial Sector Conduct Authority as a result of the coming into effect of the Financial Sector Regulation Act on 1 April 2018.

CLAUSE 3

Income Tax: Amendment to section 5

Sub-clause (a): The proposed amendment to subsection (2)*(b)* updates wording as a matter of style and consistency.

Sub-clause (b): The proposed amendment to subsection (10) for paragraph (*c*) of the formula clarifies the policy position that any severance benefit should be excluded from the special remuneration calculation as it is already subject to its own rate of tax calculation in respect of taxable income.

CLAUSE 4

Income Tax: Amendment to section 6

The proposed amendments to section 6 are consequential amendments to align all the provisions of the Act to amendments made to the tax charging provisions of the Act in 2017.

CLAUSE 5

Income Tax: Amendment to section 6A

Sub-clauses (a) – (e) See notes on **ADDRESSING ANOMALIES IN RESPECT OF MEDICAL TAX CREDITS**

Sub-clause (f): The proposed addition of subsection (5) is a consequential amendment to align all the provisions of the Act to amendments made to the tax charging provisions of the Act in 2017.

CLAUSE 6

Income Tax: Amendment to section 6B

The proposed addition of subsection (6) is a consequential amendment to align all the provisions of the Act to amendments made to the tax charging provisions of the Act in 2017.

CLAUSE 7

Income Tax: Amendment of section 6*quat*

The proposed amendments to section 6*quat* are consequential amendments as a result of the introduction of Section 11F (dealing with deduction in respect of contributions to retirement funds) in Act in 2017 and clarify the ordering rule for claiming foreign tax credits, tax deductible donations in terms of section 18A as well as deduction in terms of section 11F to ensure the correct application of the legislation.

CLAUSE 8

Income Tax: Amendment of section 7

See notes on **RULES ADDRESSING THE USE OF TRUSTS TO DEFER TAX OR RECHARACTERISE THE NATURE OF INCOME**

CLAUSE 9

Income Tax: Amendment of section 7C

The proposed amendments to section 7C are consequential as a result of the anti-avoidance amendments made in 2017 making provision for an interest free or low interest loans, advances or credit made by a natural person or a company (at the instance of a natural person) to a company that is a connected person in relation to a trust to fall under the ambit of anti-avoidance measures to prevent tax avoidance through the use of trusts.

CLAUSE 10

Income Tax: Insertion of section 7F

The proposed insertion of section 7F is a consequential amendment as a result of insertion of sections 7D and 7E to the Act in 2017. The amendment clarifies an anomaly where interest received by a taxpayer from SARS is included in gross income, while interest from SARS to which the taxpayer was not entitled is refunded to SARS, is not allowed as a deduction.

CLAUSE 11

Income Tax: Amendment of section 8E

The proposed amendment to subsection(1)*(b)*(ii)*(aa)* of the definition of “hybrid equity instrument” corrects the reference and replaces the word “ordinary share”, which is an undefined word in the Act with the word “equity share”, which is a defined term in the Act.

CLAUSE 12

Income Tax: Amendment of section 8EA

The proposed amendment to subsection (2A) corrects the reference and changes the reference from "third-party backed instrument" to the defined "third-party backed share" as defined in this section.

CLAUSE 13

Income Tax: Amendment of section 8F

The proposed amendment to subsection (2) for the words preceding paragraph *(a)* are a correction of amendments that were made to section 8F in 2017. As part of those amendments, the provision characterising a debt instrument as a hybrid debt instrument was erroneously used to characterise interest as hybrid interest. This amendment corrects this error and ensures that the characterisation rule applies to rather characterise a debt instrument as a hybrid debt instrument.

CLAUSE 14

Income Tax: Amendment of section 8FA

The proposed amendment to subsection (2) for the words preceding paragraph *(a)* are a correction of amendments that were made to section 8FA in 2017. As part of those amendments, the provision characterising interest as hybrid interest was erroneously used to characterise a debt instrument as a hybrid debt instrument. This amendment corrects this error and ensures that the characterisation rule applies to rather characterise interest as hybrid interest.

CLAUSE 15

Income Tax: Amendment of section 9

The proposed amendment in section 9(2)*(k)*(i)*(aa)* replaces the words "attributable to" with the words "effectively connected with" and brings the wording in line with the OECD Model Tax Treaty.

CLAUSE 16

Income Tax: Amendment of section 9C

Sub-clause (a): The proposed amendment to the definition of "disposal" aligns the meaning of disposal to disposals as defined in paragraph 1 of the Eighth Schedule to the Act.

Sub-clause (b): The proposed amendment to the definition of "equity share" clarifies the exclusion period in terms of this section.

Sub-clause (c): The proposed amendment in subsection (2A) corrects an anomaly where section 9C(2A) will not apply once a venture capital share has been held for more than five years. Under section 12J(9) of the Act once a venture capital share has been held for more than five years, the expenditure allowed as a deduction under section 12J(2) of Act is no longer subject to recoupment under section 8(4)(*a*) of the Act. There is thus no reason why the amount not exceeding that expenditure should not be deemed to be of a capital nature. At present it is only the portion exceeding the expenditure that is subject to section 9C(2) of the Act.

Sub-clause (d): The proposed amendment in subsection (3) brings it in line with section 9C(2) of the Act which refers to the three-year period prior to the receipt or accrual of an amount in respect of an equity share. It will thus ensure that section 9C(2) of the Act does not apply when a return of capital or foreign return of capital is received or accrued under the specified circumstances after the equity share has been held for at least three years.

CLAUSE 17

Income Tax: Amendment of section 9D

Sub-clause (a): The proposed amendment in paragraph (*b*) of the definition of "controlled foreign company" corrects punctuation.

Sub-clause (b): The proposed amendment in the proviso to subsection (2A) for paragraph *(k)* clarifies the proviso by including the definition of local currency in Section 24I to this provision as the rule does not exist for a CFC for an exchange item that is not attributable to any permanent establishment.

Sub-clause (c): The proposed amendment to the further proviso to subsection (2A) seeks to renumber paragraph (ii)*(cc)* of section 9D(2A) to paragraph (iii) for uniformity purposes. The subparagraph does not deal with foreign tax payable but with hypothetical normal tax payable.

CLAUSE 18

Income Tax: Amendment of section 9HA

Sub-clause (a): The proposed amendment in subsection (1)*(a)* is grammatical in nature and better clarifies the policy intent.

Sub-clause (b): The proposed amendment in subsection (1) for the words following paragraph *(c)* corrects a referencing as the definition of market value in the Eighth Schedule is moved from paragraph 31 to paragraph 1 of the Eighth Schedule.

Sub-clause (c): The proposed amendment in subsection (3) corrects a referencing as the definition of market value in the Eighth Schedule is moved from paragraph 31 to paragraph 1 of the Eighth Schedule.

CLAUSE 19

Income Tax: Insertion of section 9HB

The proposed insertion of section 9HB is a result of the move of paragraph 67 of the Eighth Schedule (dealing with "Transfer of assets between spouses") to the main body of the Act to ensure parity of treatment of all disposals between spouses, including disposals of trading stock and livestock and produce.

CLAUSE 20

Income Tax: Insertion of section 9J

The proposed insertion of section 9J is as a result of the insertion of the provisions dealing with "interest of non-resident persons in immovable property" that are also available in paragraph 2(2) of the Eighth Schedule to the Act in the main body of the Act and also aligns the wording with the new UN/OECD Model Tax Treaty.

CLAUSE 21

Income Tax: Amendment of section 10

Sub-clause (a): The proposed insertion of new paragraph *(g*J*)* – See notes on **CLARIFYING THE TAX TREATMENT AND OBLIGATIONS OF FUNDS MANAGED BY BARGAINING COUNCILS**

Sub-clause (b): The proposed amendment in section 10(1)*(h)*(i) is grammatical in nature.

Sub-clause (c): The proposed amendment in section 10(1)*(q*A*)*(ii) corrects an error regarding referencing and replaces Fourth Schedule with Seventh Schedule.

Sub-clause (d): The proposed amendment in section 10(1)*(y*A*)* corrects and updates the wording by putting an "and" after the semi-colon for style and consistency.

Sub-clause (e): The proposed insertion of new paragraph (*z*L) - See notes on **TAX IMPLICATIONS OF FRUITLESS AND WASTEFULL EXPENDITURE IN RESPECT OF PUBLIC ENTITIES**

CLAUSE 22

Income Tax: Amendment of section 10B

Sub-clause (a): The proposed amendment in subsection (2)(*c*)(*bb*) for item A corrects a referencing and seeks to delete the reference to paragraph *(b)* of section 10B(2)*(c)* of the Act, as this paragraph does not deal with foreign dividends received or accrued to that resident. In turn, it is proposed that a correct referencing to paragraph (*e*) of section 10B of the Act should be added as the resident would have received an exempt foreign dividend in respect of a listed share that consist of the distribution of an asset *in specie*.

Sub-clause (b): The proposed insertion of subsection (7) is a consequential amendment to align all the provisions of the Act to amendments made to the tax charging provisions of the Act in 2017.

CLAUSE 23

Income Tax: Amendment of section 11

Sub-clauses (a) – (d): See notes on **REVIEWING THE WRITE OFF PERIOD FOR ELECTRONIC COMMUNICATION CABLES**

Sub-clause (e): The proposed amendment to paragraph *(j)* – See notes on **CREATING MORE CERTAINTY ON THE TAX TREATMENT OF DOUBTFUL DEBTS**

Sub-clause (f): The proposed amendment in paragraph *(jA)* is a consequential amendment to 2017 amendments dealing with exclusion of impairment adjustments from the determination of taxable income and clarify the policy intent that any holding company as defined in the Banks Act is not eligible for the allowance in section 11*(jA)*.

Sub-clause (g): The proposed amendment to paragraph *(nB)* seeks to clarify that paragraph *(nB)* applies to both paragraphs *(cA)* and *(cB)* of the definition of gross income in section 1 of the Act. This is a consequential amendment as a result of restraint of trade amendments made in 2014, that created the insertion of new paragraph *(cB)* of the definition of gross income in section 1 of the Act.

Sub-clause (h): The proposed amendment in paragraph *(o)*(i) deletes obsolete references to section 11B, 14, 14*bis* which are repealed.

CLAUSE 24

Income Tax: Amendment of section 11F

Sub-clause (a): The proposed amendment in subsection (2)*(a)* deletes the word “or” and moves it to subsection (2)*(b)*.

Sub-clause (b): The proposed amendment in subsection (2)*(b)*(ii) is a consequential amendment as a result of the introduction of Section 11F (dealing with deduction in respect of contributions to retirement funds) in Act in 2017 and clarifies the ordering rule for claiming deduction in terms of section 11F, foreign tax credits in terms of section 6quat as well as tax deductible donations in terms of section 18A to ensure the correct application of the legislation.

Sub-clause (c): The proposed amendment in subsection (2)*(c)* for the word preceding subparagraph (i) is a consequential amendment as a result of the introduction of Section 11F (dealing with deduction in respect of contributions to retirement funds) in Act in 2017 and clarifies the ordering rule for claiming deduction in terms of section 11F, foreign tax credits in terms of section 6quat as well as tax deductible donations in terms of section 18A to ensure the correct application of the legislation.

Sub-clause (d): The proposed amendment in subsection (3)*(c)* is a consequential amendment as a result of the introduction of Section 11F (dealing with deduction in respect of contributions to retirement funds) in Act in 2017 and clarifies the ordering rule for claiming deduction in terms of section 11F, and amounts taken into account in determining exempt amounts in terms of section 10C to ensure the correct application of the legislation.

Sub-clause (e): The proposed amendment in subsection (4) seeks to clarify that any amount paid or contributed by an employer on behalf of an employee as contemplated in paragraphs 2(*l*) and 2(*h)* of the Seventh Schedule to a retirement annuity fund should qualify for deduction in terms of section 11F.

CLAUSE 25

Income Tax: Amendment of section 12C

The proposed amendments correct the spelling of the word “hotelkeeper” which is one word to “hotel keeper” which is two words and aligns it with the definition in section 1 of the Act.

CLAUSE 26

Income Tax: Amendment of section 12D

See notes on **REVIEWING THE WRITE OFF PERIOD FOR ELECTRONIC COMMUNICATION CABLES**

CLAUSE 27

Income Tax: Amendment of section 12J

See notes on **REVIEW OF VENTURE CAPITAL COMPANY RULES**

CLAUSE 28

Income Tax: Amendment of section 12N

The proposed amendment deletes the superfluous reference to section 13*bis* of the Act as section 13*bis* does not require the taxpayer to be the owner of the building or the improvement.

CLAUSE 29

Income Tax: Amendment of section 12Q

See notes on **REVIEW OF INTERNATIONAL SHIPPING RULES**

CLAUSE 30

Income Tax: Amendment of section 12T

The proposed insertion of “Financial Sector Regulation Act” and “Financial Sector Conduct Authority” is a consequential amendment due to the transformation of the Financial Services Board into Financial Sector Conduct Authority as a result of the coming into effect of the Financial Sector Regulation Act on 1 April 2018.

CLAUSE 31

Income Tax: Amendment of section 13*bis*

Sub-clause (a): The proposed amendment in subsection (1)*(e)* corrects the spelling of the word “hotelkeeper” which is one word to “hotel keeper” which is two words and aligns it with the definition in section 1 of the Act.

Sub-clause (b): The proposed deletion of subsection (1A) corrects an anomaly in the legislation as section 13*bis* does not require the deeming provisions of section 12N of the Income Tax Act as section 13*bis* already does not require the taxpayer to be the owner of the building or the improvement.

Sub-clause (c): The proposed amendment in subsection (1)*(e)* corrects the spelling of the word “hotelkeeper” which is one word to “hotel keeper” which is two words and aligns it with the definition in section 1 of the Act.

CLAUSE 32

Income Tax: Amendment of section 13*quat*

The proposed amendment in section 13*quat* (7)(*b*A) seeks to correct an erroneous reference by deleting reference to subsection (6)(c) and making reference to subsection (6)(*b*) as section 13*quat* (6)(*c*) does not exist.

CLAUSE 33

Income Tax: Amendment of section 18A

Sub-clause (a): The proposed amendment to in subsection (1)*(c)*(B) clarifies the ordering rule regarding claiming tax deductible donations and foreign tax credits in section *6quat* to ensure the correct application of the legislation.

Sub-clauses (b) – (d): The proposed amendments seek to insert the following words; programme, fund, High Commissioner, office entity or organisation and are consequential amendments as a result of 2017 amendments made to section 18A of the Act regarding clarifying the scope of the tax deductible donation status for international donor funding organisations.

Sub-clause (e): The proposed insertion of Financial Sector Regulation Act and other amendments in subsection (3B)*(b)* are consequential amendments due to the transformation of the Financial Services Board into Financial Sector Conduct Authority as a result of the coming into effect of the Financial Sector Regulation Act on 1 April 2018.

CLAUSE 34

Income Tax: Amendment of section 19

Sub-clauses (a) - (d) - See notes on **REFINEMENT OF RULES DEALING WITH CONVERSION OF DEBT INTO EQUITY AND ARTIFICIAL REPAYMENT OF DEBT**

Sub-clauses (e) - (h) – See notes on **CLOSING A LOOPHOLE IN DEBT RELIEF RULES**

CLAUSE 35

Income Tax: Amendment of section 20A

The proposed amendment seeks to clarify the existing provisions dealing cryptocurrencies in the South African tax law and clarify that assessed losses relating to cryptocurrencies are ring-fenced.

CLAUSE 36

Income Tax: Amendment of section 22B

Sub-clauses (a), (d) and (e) - See notes on **CLARIFICATION OF THE INTERACTION BETWEEN THE ANTI-AVOIDANCE RULES DEALING WITH DIVIDEND STRIPPING AND CORPORATE RE-ORGANISATION RULES**

Sub-clauses (b) and (c) - See notes on **INTRODUCING SPECIFIC ANTI-DIVIDEND STRIPPING RULES REGARDING PREFERANCE SHARES**

CLAUSE 37

Income Tax: Amendment of section 23

See notes on **TAX IMPLICATIONS OF FRUITLESS AND WASTEFULL EXPENDITURE IN RESPECT OF PUBLIC ENTITIES**

CLAUSE 38

Income Tax: Amendment of section 23G

The proposed amendment in subsection (2)(*b*) removes the word “or” as it is superfluous.

CLAUSE 39

Income Tax: Amendment of section 23M

The proposed amendment seeks to clarify wording for ease of application.

CLAUSE 40

Income Tax: Amendment of section 23N

The proposed amendment seeks to clarify wording for ease of application.

CLAUSE 41

Income Tax: Amendment of section 24I

Sub-clause (a): The proposed amendment in subsection (7)(*a*)(ii) seeks to delete the reference to section 11*(gA)* of the Act since this section does not apply to expenditure incurred in the year of assessment commencing on after 1 January 2004 to acquire property listed under the section.

Sub-clause (b): The proposed amendment in subsection (4) – See notes on **REVERSING EXCHANGE DIFFERENCE FOR EXCHANGE ITEMS DISPOSED AT A LOSS**

CLAUSE 42

Income Tax: Amendment of section 24JB

The proposed amendment subsection (2A) is a consequential amendment as a result of the amendments made in 2017 relating to the Refinement to the taxation of financial assets and liabilities due to changes in accounting standard and making reference to IFRS9 and clarify that it applies to financial instrument issued on or after 1 January 2018.

CLAUSE 43

Income Tax: Amendment of section 24L

The proposed amendment in subsection (3) is a clarification of the policy intent that seeks to make provision for the premium or like consideration other than of a capital nature to be included in gross income.

CLAUSE 44

Income Tax: Amendment of section 24O

See notes on **DETERMINATION OF AN OPERATING COMPANY FOR DEBT-FINANCED ACQUISITIONS OF CONTROLLING SHARE INTERESTS**

CLAUSE 45

Income Tax: Amendment of section 25

The proposed amendments in subsection (5) clarify that the estate of the deceased person must be treated as a resident if the deceased was a resident at the time of death.

CLAUSE 46

Income Tax: Amendment of section 25B

Sub-clause (a) The proposed amendment in subsection (2A)*(a)* replaces the word “arose” with the words “consist of or is derived, directly or indirectly” and clarify wording for ease of application.

Sub-clause (b) Proposed amendments in subsection (2B) - See notes on **RULES ADDRESSING THE USE OF TRUSTS TO DEFER TAX OR RECHARACTERISE THE NATURE OF INCOME**

CLAUSE 47

Income Tax: Amendment of section 25BA

See notes on **TAX TREATMENT OF AMOUNTS RECEIVED BY OR ACCRUED TO PORTFOLIOS OF COLLECTIVE INVESTMENT SCHEMES**

CLAUSE 48

Income Tax: Amendment of section 25BB

Sub-clause (a): The proposed amendment in paragraph (*a*) of the definition of "qualifying distribution" in subsection 1 seeks to clarify that the provisions of paragraph (*a*) do not apply in subsequent years.

Sub-clause (b): The proposed amendments in subsection (2A)(*a*) is a consequential amendment as a result of amendments made in 2016 and seek to align the wording in subsection (2A)(*a*) with the wording in subsection (2A)(*b*).

CLAUSE 49

Income Tax: Amendment of section 28

Sub-clauses (a) – (e): See notes on **TAX ISSUES RESULTING FROM THE INSURANCE ACT, 2017**

CLAUSE 50

Income Tax: Amendment of section 29A

The proposed amendment in the proviso to subsection (15) replaces the word "disclosed" with the word "recognised" and aligns it with the provisions of this section.

CLAUSE 51

Income Tax: Amendment of section 30C

See notes on **EXTENDING THE DISTIBUTION PERIOD FOR SMALL BUSINESS FUNDING ENTITIES**

CLAUSE 52

Income Tax: Amendment of section 37D

Sub-clause (a): The proposed amendment in subsection (1)*(b)* seeks to clarify the wording to ensure the correct application of the legislation.

Sub-clause (b): The proposed amendment in subsection (2) for the words preceding paragraph (a) seeks to clarify that the words "market value or municipal value" are meant to be interpreted as one or the other.

Sub-clause (c): The proposed amendment to for subsection (3) inserts missing words and is of a textual nature.

CLAUSE 53

Income Tax: Amendment of section 41

Sub-clause (a): Proposed insertion in section 41 of the reference to section 25BB(4) dealing with taxation of REITS, is to clarify that following a reorganization transaction a REIT is not allowed to claim a building allowance as contemplated in section 25BB(4)

Sub-clause (b): Proposed deletion from section 41 of the reference to section 22B and paragraph 43A of the Eighth Schedule - See notes on **CLARIFICATION OF THE INTERACTION BETWEEN THE ANTI-AVOIDANCE RULES DEALING WITH DIVIDEND STRIPPING AND CORPORATE RE-ORGANISATION RULES**

CLAUSE 54

Income Tax: Amendment of section 42

Sub-clause (a): The proposed amendment in subsection (3)(*a*) is consequential to the amendments made in 2017 to allow for rollover relief to apply in respect of transfers of allowance assets to a REIT or controlled company

Sub-clause (b): The proposed amendment in subsection (3)(*a*)(ii)(*bb*) clarifies the policy intention that there should be no complete exemption on the transfer of any asset to a REIT or controlled company in respect of which allowances were previously claimed.

Sub-clause (c): The proposed amendment in subsection (3A) for the words preceding paragraph (a) seeks to correct a reference to paragraph *(c)* of the definition of "qualifying interest".

Sub-clause (d): The proposed amendment in subsection (8) seeks to clarify the wording to ensure the correct application of the legislation.

CLAUSE 55

Income Tax: Amendment of section 44

Sub-clause (a): The proposed amendment in subsection (3)(*a*) is consequential to the amendments made in 2017 to allow for rollover relief to apply in respect of transfers of allowance assets to a REIT or controlled company.

Sub-clause (b): The proposed amendment in subsection (3)(*a*)(ii)(*bb*) clarifies the policy intention that there should be no complete exemption on the transfer of any asset to a REIT or controlled company in respect of which allowances were previously claimed.

Sub-clause (c): The proposed deletion of subsection (9) is a consequential amendment as a result of repeal of section 64B relating to STC.

CLAUSE 56

Income Tax: Amendment of section 45

Sub-clause (a): The proposed amendment in subsection (3)(*a*) is consequential to the amendments made in 2017 to allow for rollover relief to apply in respect of transfers of allowance assets to a REIT or controlled company.

Sub-clause (b): The proposed amendment in subsection (3)(*a*)(ii)(*bb*) clarifies the policy intention that the should be no complete exemption on the transfer of any asset to a REIT or controlled company in respect of which allowances were previously claimed.

CLAUSE 57

Income Tax: Amendment of section 47

Sub-clause (a): The proposed amendment in subsection (1)(*a*) is consequential to the amendments made in 2017 to allow for rollover relief to apply in respect of transfers of allowance assets to a REIT or controlled company

Sub-clause (b): The proposed amendment in subsection (3)(*a*)(ii)(*bb*) clarifies the policy intention that the should be no complete exemption on the transfer of any asset to a REIT or controlled company in respect of which allowances were previously claimed.

CLAUSE 58

Income Tax: Amendment of section 50D

The proposed amendment seeks to clarify the rules of the Act as to avoid double taxation so that interest income that is attributed in terms of section 7(8) and is subject to tax in the hands of the resident taxpayer is exempt from withholding tax on interest.

CLAUSE 59

Income Tax: Amendment of section 64D

Sub-clause (a): Definition of “dividend” – See notes on **ADDRESSING AN OVERLAP IN THE TREATMENT OF DIVIDEND AS DEFINED IN SECTION 1 AND AMOUNT DEEMED AS DIVIDEND IN SECTION 31 OF ACT**

Sub-clause (b): The proposed deletion of the definitions “dividend cycle” and “STC Credit” is a consequential amendment as a result of the repeal of STC provisions from the Act.

CLAUSE 60

Income Tax: Amendment of section 64EB

See notes on **ADDRESSING TAX AVOIDANCE THROUGH THE USE OF COLLATERAL ARRANGEMENT PROVISIONS**

CLAUSE 61

Income Tax: Amendment of section 64F

Sub-clause (a): The proposed amendment for the heading updates wording as a matter of style and consistency.

Sub-clause (b): The proposed amendment in subsection (1) for the words preceding paragraph (a) updates wording as a matter of style and consistency.

Sub-clause (c): The proposed deletion of subsection (1)*(k)* seeks to correct superfluous wording as both sections 64G(2)*(c)* and 64H(2)*(b)* of the Income Tax Act already apply and no declarations and undertakings by the beneficial owners (CISs in securities and hedge funds) are required.

Sub-clause (d): The proposed amendment for subsection (2) updated wording as a matter of style and consistency.

CLAUSE 62

Income Tax: Amendment of section 64J

The proposed deletion of section 64J is a consequential amendment as a result of the repeal of the provision which was a transitional measure due to the introduction of Dividends Tax.

CLAUSE 63

Income Tax: Amendment of paragraph 12 of the First schedule

The proposed amendment seeks to correct obsolete referencing.

CLAUSE 64

Income Tax: Amendment of paragraph 6 of the Second Schedule

Sub-clause (a) and (b): The proposed amendments to paragraphs 6(1)(*a*)(i)(*dd*) and 6(1)(*a*)(ii)(*dd*) take into account the policy intent explained in the Explanatory Memorandum on the Taxation Laws Amendment Bill 2011 for permitted transfers between retirement savings funds from less restrictive funds to equal or more restrictive funds.

Sub-clause (c): The proposed amendments to paragraph 6(1)(*b*)(v)(*bb*) inserts the word "directly" for clarification and ease of application.

CLAUSE 65

Income Tax: Amendment of paragraph 6A of the Second Schedule

See notes on **TAX TREATMENT OF TRANSFERS TO PENSION PRESERVATION OR PROVIDENT PRESERVATION FUNDS AFTER REACHING NORMAL RETIREMENT AGE BUT BEFORE RETIREMENT DATE**

CLAUSE 66

Income Tax: Amendment of paragraph 2 of the Fourth schedule

The proposed amendment in item (*b*A) of subparagraph (4) adds the words "amount paid" and seeks to clarify wording for ease of application.

CLAUSE 67

Income Tax: Amendment of paragraph 1 of the Sixth Schedule

The proposed amendment is a technical correction, to adjust wording inserted by the Taxation Laws Amendment Act, 2016.

CLAUSE 68

Income Tax: Amendment of paragraph 2 of the Seventh Schedule
Sub-clause (a): The proposed amendment for subparagraph *(l)* – See notes on **TAX TREATMENT OF TRANSFERS OF ACTUARIAL SURPLUS BETWEEN RETIREMENT FUNDS**

Sub-clause (b): The proposed addition of subparagraph *(m)* – See notes on **CLARIFYING THE TAX TREATMENT AND OBLIGATIONS OF FUNDS MANAGED BY BARGAINING COUNCILS**

CLAUSE 69

Income Tax: Amendment of paragraph 11 of the Seventh Schedule

See notes on **REMOVING TAXABLE BENEFIT TO LOW OR INTEREST FREE LOANS GRANTED TO LOW-INCOME EMPLOYEES FOR LOW-COST HOUSING**

CLAUSE 70

Income Tax: Insertion of paragraph 12D in the Seventh Schedule

The proposed addition of items *(c)* and *(d)* seeks to clarify the circumstances under which an updated contribution certificate may be supplied under paragraph 12D(4). The current wording of the Income Tax Act does not, for example, allow a fund to change the certificate where the fund made an error in calculating the fund member category factor. Also where an employee's fund member category changed during the year, it is also not provided for that an updated contribution certificate may be issued which will affect the calculation of the taxable benefit.

CLAUSE 71

Income Tax: Amendment of paragraph 12E of the Seventh Schedule

See notes on **CLARIFYING THE TAX TREATMENT AND OBLIGATIONS OF FUNDS MANAGED BY BARGAINING COUNCILS**

CLAUSE 72

Income Tax: Amendment of paragraph 1 of the Eighth Schedule

Sub-clause (a): The proposed amendment clarifies that the provisions of the Eighth schedule to the Act apply to all disposals contemplated throughout the Act.

Sub-clause (b): The proposed insertion of the definition of "*market value*" clarifies that market value means market value as defined paragraph 31 of the Eighth Schedule to the Act and that paragraph 31 should apply for the purposes of the Eighth Schedule as a whole.

CLAUSE 73

Income Tax: Amendment of paragraph 2 of the Eighth Schedule

The proposed deletion of the words "other than as trading stock" in subparagraph 2(*a*) of the Eighth Schedule aligns the wording dealing with "*Interest of non-resident persons in immovable property"* with the wording in the new UN/OECD Model Tax Treaty.

CLAUSE 74

Income Tax: Amendment of paragraph 5 of the Eighth Schedule

The proposed addition of subparagraph (3)(*a*) is a consequential amendment to align all the provisions of the Act to amendments made to the tax charging provisions of the Act in 2017.

CLAUSE 75

Income Tax: Amendment of paragraph 10 of the Eighth Schedule

Sub-clause (a): The proposed addition of subparagraph (1) is consequential correction to ensure the correct numerical order to allow for the addition of subparagraph (2).

Sub-clause (b): The proposed addition of subparagraph (2) is a consequential amendment to align all the provisions of the Act to amendments made to the tax charging provisions of the Act in 2017.

CLAUSE 76

Income Tax: Amendments to paragraph 12A of the Eighth Schedule

Sub-clauses (a) – (d): See notes on **REFINEMENT OF RULES DEALING WITH CONVERSION OF DEBT INTO EQUITY AND ARTIFICIAL REPAYMENT OF DEBT**

Sub-clauses (e) - (h): See notes on **CLOSING A LOOPHOLE IN DEBT RELIEF RULES**

CLAUSE 77

Income Tax: Amendment of paragraph 35 of the Eighth Schedule

The proposed amendment seeks to correct an anomaly where paragraph 11(2)(*b*) of the Eighth Schedule was reversed in 2015, paragraph 35(1A) should also have been deleted.

CLAUSE 78

Income Tax: Amendment of paragraph 39 of the Eighth Schedule

The proposed amendment in subparagraph (5) seeks to clarify that capital losses between connected persons are ring-fenced in respect of the redemption of an interest held by a person in another person who is a connected person in relation to that person.

CLAUSE 79

Income Tax: Amendment of paragraph 43A of the Eighth Schedule

Sub-clause (a): The proposed amendment in subsection (1) for the words preceding the definition of "equity share" seeks to correct the wording from "section" to "paragraph" to ensure the correct application of the legislation.

Sub-clauses (b), (e) and (f) - See notes on **CLARIFICATION OF THE INTERACTION BETWEEN THE ANTI-AVOIDANCE RULES DEALING WITH DIVIDEND STRIPPING AND CORPORATE RE-ORGANISATION RULES**

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8 Sub-clauses (c) and (d) - See notes on **INTRODUCING SPECIFIC ANTI-DIVIDEND STRIPPING RULES REGARDING PREFERANCE SHARES**

CLAUSE 80

Income Tax: Amendment of paragraph 45 of the Eighth Schedule

The proposed addition of subparagraph (1A) is a consequential amendment to align all the provisions of the Act to amendments made to the tax charging provisions of the Act in 2017.

CLAUSE 81

Income Tax: Amendment of paragraph 55 of the Eighth Schedule

The proposed amendment is a consequential amendment and related to a 2014 amendment to section 10(1)*(gI)* of the Income Tax Act which resulted to the replacement of "severe illness" with the word "illness" since the term illness includes both concepts.

CLAUSE 82

Income Tax: Amendment of paragraph 57 of the Eighth Schedule

The proposed addition of subparagraph (7)(*a*) is a consequential amendment to align all the provisions of the Act to amendments made to the tax charging provisions of the Act in 2017.

CLAUSE 83

Income Tax: Amendment of paragraph 64B of the Eighth Schedule

The proposed deletion of subparagraph (3)(*c*)(ii)(*bb*)(A) is a consequential amendment as a result of repeal of STC provisions in the Act.

CLAUSE 84

Income Tax: Repeal of paragraph 67 of the Eighth Schedule

The proposed deletion of paragraph 67 from the Eighth Schedule (dealing with "*transfer of assets between spouses*") is as a result of this paragraph being moved to the body of the Act to ensure parity of treatment of all disposals between spouses, including disposals of trading stock and livestock and produce.

CLAUSE 85

Income Tax: Amendment to paragraph 72 of the Eighth Schedule.

See notes on **RULES ADDRESSING THE USE OF TRUSTS TO DEFER TAX OR RECHARACTERISE THE NATURE OF INCOME**

CLAUSE 86

Income Tax: Amendment of paragraph 80 of the Eighth Schedule

See notes on **RULES ADDRESSING THE USE OF TRUSTS TO DEFER TAX OR RECHARACTERISE THE NATURE OF INCOME**

CLAUSE 87

Customs and Excise Act: Amendment to certain Schedules

The proposed amendments make provision for the continuation of certain amendments of Schedules to the Customs and Excise Act.

CLAUSE 88

Value Added Tax Act: Amendment to section 2

The proposed amendments seek to clarify the existing provisions dealing with cryptocurrencies in the South African tax law by adding cryptocurrencies under section 2 of the VAT Act, dealing with Financial Services.

CLAUSE 89

Value-Added Tax Act: Amendment of section 22 of Act 89 of 1991

See notes on **INSERTION OF THE DEFINITION OF "FACE VALUE" UNDER THE PROVISIONS DEALING WITH IRRECOVERABLE DEBT**

CLAUSE 90

Value-Added Tax Act: Amendment of section 25

The proposed amendment deletes the now obsolete reference to section 25(*d*A) of the VAT Act.

CLAUSE 91

Value-Added Tax Act: Amendment of section 41

The proposed amendment deletes the now obsolete reference to section 41A of the VAT Act.

CLAUSE 92

Value-Added Tax Act: Exemption in respect of goods or services supplied by international Telecommunication Union.

The proposed amendment seeks to exempt goods and services supplied by the International Telecommunication Union ("ITU"). The ITU, an agency of the United Nations, was invited by the Presidency to hold its "Telecom World 2018" exhibition of telecommunication equipment in South Africa. An international precedent exists obliging host countries to provide relief from tax to the ITU. In terms of the amendment introduced by this clause the supply of any goods or services by the ITU in connection with "Telecom World 2018" will be exempt from value-added tax. The ITU will thus not have to register as a vendor for VAT nor levy VAT on any of its supplies made in South Africa for the duration of exhibitions held in the Republic. Relief for the VAT incurred is already provided for in terms of section 68 of the VAT Act, which deals with tax relief to diplomatic missions.

CLAUSE 93

Diamond Export Levy Act: Amendment of section 8

See notes on **ADJUSTING THE DIAMOND EXPORT LEVY THRESHOLDS**

CLAUSE 94

Diamond Export Levy Act: Amendment of section 9 of Act 15 of 2007

See notes on **ADJUSTING THE DIAMOND EXPORT LEVY THRESHOLDS**

CLAUSE 95

Mineral and Petroleum Resources Royalty Act ("MPRR Act"): Amendment of section 6 of Act 28 of 2008

Sub-clause (a): The proposed amendment in subsection (1) deletes the now obsolete reference to paragraph *(b)* of the definition of "transfer" in section 1 of the MPRR Act.

Sub-clause (b): The proposed amendment in subsection (2) deletes the now obsolete reference to paragraph *(b)* of the definition of "transfer" in section 1 of the MPRR Act.

Sub-clause (c): The proposed amendment in subsection (3)*(b)* seeks to clarify the original policy intent. When the Mineral and Petroleum Resource Royalty Act was introduced in 2008, the policy intention was clear regarding the definition of the tax base. The tax base was generally defined both in the legislation and the explanatory memorandum as gross sales excluding the costs of transportation, insurance and handling of the final product or mineral between the seller and the buyer as this would unintentionally increase gross sales leading to a higher royalty tax payable. In 2009, additional clarification was made in section 6(3) of the Mineral and Petroleum Resource Royalty Act dealing with gross sales. The 2009 changes resulted in the policy intent regarding the definition of gross sales not to be clearly expressed in the text of the legislative provision even though the policy intent was clear in the explanatory memorandum.

In order to give certainty regarding policy intent, it is proposed that the meaning of gross sales be clarified in the legislation to take into account the policy rationale which is explained when the Mineral and Petroleum Resource Royalty Act was introduced by reverting back to the original wording prior to the 2009 amendment.

CLAUSE 96

Mineral and Petroleum Resources Royalty Act: Amendment of section 6A of Act 28 of 2008

Sub-clauses (a) – (c): The proposed amendments correct grammatical errors and changes the word “at” to “in”.

CLAUSE 97

Mineral and Petroleum Resources Royalty Act: Substitution of section 8

The proposed amendment corrects a grammatical error and changes the word “does” to “do”.

CLAUSE 98

Taxation Laws Amendment Act, 2013: Amendment to section 13

The proposed amendment postpones the effective date for sections 8F(3)*(b)*, 8F(3)*(c)* and 8F(3)*(d)* from 1 January 2016 to 1 January 2020.

CLAUSE 99

Taxation Laws Amendment Act, 2013: Amendment to section 15

The proposed amendment postpones the effective date for section 8FA(3)*(b)*, 8FA(3)*(c)* and 8FA(3)*(d)* from 1 January 2016 to 1 January 2020.

CLAUSE 100

Employment Tax Incentive Act, 2013: Amendment to Section 12

See notes on **EXTENSION OF EMPLOYMENT TAX INCENTIVE SCHEME**

CLAUSE 101

Taxation Laws Amendment Act, 2015: Amendment to section 3 of Act 25

Sub-clause (a): The proposed amendment seeks to correct the 2015 Taxation Laws Amendment Act that incorrectly substituted item (*bb*).

Sub-clause (b) and (c): The proposed amendment deletes the reference to Insurance Act 2016 and the correct reference is Insurance Act 2017.

CLAUSE 102

Taxation Laws Amendment Act, 2015: Amendment to section 13

The proposed amendment seeks to insert the effective date of the amendments made in the Act in relation to the Insurance Act and aligns it with the effective date of the Insurance Act,2017, which is 1 July 2018.

CLAUSE 103

Taxation Laws Amendment Act, 2015: Amendment of Section 16

The proposed amendment seeks to correct the Afrikaans text of section 16 of the 2015 Taxation Laws Amendment Act.

CLAUSE 104

Taxation Laws Amendment Act, 2015: Amendment of section 18

The proposed amendment corrects a difference in effective dates between the Taxation Laws Amendment Act, 2015 and the Taxation Laws Amendment Act, 2016 to ensure the position that section 12U is not an additional deduction allowable to any other deduction contemplated in the Income Tax Act as proposed in the Taxation Laws Amendment Act, 2016.

CLAUSE 105

Taxation Laws Amendment Act, 2015: Amendment of section 52

The proposed amendment seeks to insert the effective date of the amendments made in the Act in relation to the Insurance Act and aligns it with the effective date of the Insurance Act,2017, which is 1 July 2018.

CLAUSE 106

Taxation Laws Amendment Act, 2015: Amendment of section 53

The proposed amendment seeks to insert the effective date of the amendments made in the Act in relation to the Insurance Act and aligns it with the effective date of the Insurance Act,2017, which is 1 July 2018.

CLAUSE 107

Taxation Laws Amendment Act, 2015: Repeal of section 78

The proposed amendment seeks to repeal this section with effect from 8 January 2016

CLAUSE 108

Taxation Laws Amendment Act, 2016: Amendment of section 29

The proposed amendment seeks to insert the effective date of the amendments made in the Act in relation to the Insurance Act and aligns it with the effective date of the Insurance Act,2017, which is 1 July 2018.

CLAUSE 109

Taxation Laws Amendment Act, 2016: Amendment of section 50

The proposed amendment seeks to insert the effective date of the amendments made in the Act in relation to the Insurance Act and aligns it with the effective date of the Insurance Act,2017, which is 1 July 2018.

CLAUSE 110

Taxation Laws Amendment Act, 20170: Amendment of section 46

Sub-clause (a): The proposed amendment seeks to insert the effective date of the amendments made in the Act in relation to the Insurance Act and aligns it with the effective date of the Insurance Act,2017, which is 1 July 2018.

Sub-clause (b): The proposed amendments seek to clarify tax amendments related to risk policy fund as a result of amendments made in 2016 relating to long term insurers.

CLAUSE 111

Taxation Laws Amendment Act, 2017: Amendment of section 105

The proposed amendment seeks to correct the reference to the amendments made “Bargaining Council tax relief” in Part II of the 2017 TLAA

CLAUSE 112

Short title and commencement