REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

TAXATION LAWS AMENDMENT BILL 17B OF 2016

15 December 2016

[Bill 17 B - 2016]

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1. INCOME TAX: INDIVIDUALS, SAVINGS AND EMPLOYMENT

1.1. RETIREMENT FUND CONTRIBUTION DEDUCTION AGAINST PASSIVE INCOME

[Applicable provision: Section 11(k) of the Income Tax Act No.58 of 1962 ('the Act')]

I. Background

From 1 March 2016 the tax treatment of contributions to retirement funds was amended to be harmonized across all retirement funds. Previously, deductions to retirement annuity funds were only allowed to be set off against "non-retirement funding income" (which included passive income such as interest or royalties, but excluded taxable capital gains), while deductions to pension funds could only be set off against "retirement funding income" (which represented income from employment and did not include passive income).

II. Reasons for change

The harmonisation of the tax treatment of contributions in section 11(k) allowed for a deduction against income from "carrying on a trade", which unintendedly excluded passive income. This resulted in members of retirement annuity funds who were using the deduction against passive income to no longer able to deduct their contributions against the passive income.

III. Proposal

In order to correct this anomaly and to allow retirement annuity members to continue to receive a deduction and fully align the treatment between all retirement fund members, it is proposed that deductions for contributions to all retirement funds should be allowed to be set off against passive income. For the purpose of the section 11(k) deductions, the passive income does not include taxable capital gains.

IV. Effective date

The amendments are deemed to have come into operation on 1 March 2016.

1.2. CLARIFYING SOURCE RULES FOR RETIREMENT ANNUITY FUNDS

[Applicable provisions: Sections 9(2)(i) and 9(3) of the Act]

I. Background

Sections 9(2)(i) and 9(3) of the Act deems the portion of the lump sum and annuity payments from a pension fund and provident fund to be from a source outside South Africa, if the amounts received are in respect of services rendered outside South Africa.

II. Reasons for change

There is a view within the industry that the exclusion from South Africa source rule referred to in sections 9(2)(i) and 9(3) of the Act also includes payments made from retirement annuities. However, contributions to retirement annuities are not linked to employment and should not be associated with any type of services rendered, whether they are within South Africa or outside of South Africa.

III. Proposal

It is proposed that changes should be made in section 9(2)(i) of the Act to remove the ambiguity and clarify that the exclusion from South Africa source rule in section 9(2)(i) does not apply to lump sum, or annuities received from retirement annuity funds.

It is also proposed that section 9(3) of the Act be repealed as it creates ambiguity.

IV. Effective date

The amendments will come into operation on 1 March 2017.

1.3. USING THE CORRECT DEFINITION OF INCOME FOR THE FORMULA TO DETERMINE THE FRINGE BENEFIT FOR DEFINED BENEFIT CONTRIBUTIONS AND ELIMINATING A POTENTIAL LOOPHOLE

[Applicable provision: Paragraph 12D of the Seventh Schedule of the Act]

I. Background

The new paragraph 12D of the Seventh Schedule (dealing with the valuation of contributions made by employers to certain retirement funds) inserted a formula to calculate the taxable fringe benefit for contributions to a retirement fund that has a defined benefit component. The provisions of paragraph 12D of the Seventh Schedule stated the formula would cover contributions by the employer to the retirement fund.

II. Reasons for change

The formula in paragraph 12D of the Seventh Schedule to the Act assumes that the value “A” represents the income that the retirement fund uses to calculate the required level of contributions given the expected liabilities of the fund. However, the wording of the provision currently refers to “remuneration” which is a different income figure. Remuneration may also differ for two individuals depending on the level of travel allowance, leading to a situation where two identical members of the same defined benefit fund would have a different fringe benefit value for the employer contribution.

This wording also refers only to employer contributions and is silent on contributions made on behalf of the employer by the fund. These types of contributions may be interpreted to be exempt from the formula, creating a potential loophole.

III. Proposal

It is proposed that changes be made in paragraph 12D of the Seventh Schedule to adjust the definition of income to determine the value "A" in the formula and to include contributions made by the fund on behalf of the employer.

IV. Effective date

- The amendment in respect of the adjustment of the definition of income to determine the value "A" in the formula will come into operation on 1 March 2017 and applies in respect of contributions made on or after that date.
- The amendment in respect of inclusion of contributions made by the fund on behalf of the employer is deemed to have come into operation on 1 March 2016 and applies in respect of contributions made on or after that date.

1.4. DISALLOWING THE EXEMPTION FOR A LUMP SUM, PENSION OR ANNUITY FROM A RETIREMENT FUND THAT IS LOCATED WITHIN THE REPUBLIC

[Applicable provision: Section 10(1)(gC)(ii) of the Act]

I. Background

When the residence based system was introduced in 2001, section 10(1)(gC) was included in the Act to exempt the receipt of foreign pensions arising from employment outside of the Republic. The provisions of section 10(1)(gC) allows a South African tax resident who is employed outside of the Republic to receive those retirement benefits (that they earned while outside the country) free from tax.

II. Reasons for change

There is uncertainty regarding the interpretation of the current provisions of section 10(1)(gC). The consequence is that South African tax residents who work outside of the Republic can receive a tax deduction on contributions made to the South Africa retirement fund (local retirement fund). The deduction can either be made in the same tax year if they have other forms of taxable income or worked partially within that year or the amounts can be rolled over to be deducted in a future year of assessment. However, upon receipt of the retirement benefits the amount that accrued while the South African tax resident was employed outside the Republic will be free from tax.

III. Proposal

To ensure a fair tax treatment of retirement benefits received by South African residents, it is proposed that the exemption provided in section 10(1)(gC)(ii) only applies to retirement benefits from foreign retirement funds or amounts relating to foreign retirements funds that were transferred to a local retirement fund i.e. retirement benefit from a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as

defined in section 1 of the Act (where members are eligible for deductible contributions) will not qualify for the exemption in section 10(1)(gC)(ii)

IV. Effective date

The amendments will come into operation on 1 March 2017 and apply in respect of years of assessment commencing on or after that date.

1.5. INCLUSION OF EMIGRATION FOR EXCHANGE CONTROL PURPOSES IN RESPECT OF WITHDRAWALS FROM RETIREMENT FUNDS

[Applicable provision: Definition of “retirement annuity fund” in section 1 of the Act]

I. Background

In 2015, changes were made in the Act to allow individuals to withdraw a lump sum from the retirement annuity fund when they cease to be tax resident or when they leave South Africa at the end of their work visa.

II. Reasons for change

The 2015 Draft Taxation Laws Amendment Bill (2015 Draft TLAB), which was released for public comments on 22 July 2015 made provision for the following criteria to be met in order for individuals to be able to withdraw a lump sum from their retirement annuity fund:

a. when the individual emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control,

b. when the individual ceases to be a tax resident;

c. when the individual leaves South Africa at the expiry of the work visa contemplated in the Immigration Act, 2002; or

d. is not regarded as a resident by the South African Reserve Bank for purposes of exchange control.

Based on the public comments received on the 2015 Draft TLAB, changes were made in the 2015 TLAB to limit the criteria to be met in order for the individuals to be able to withdraw a lump sum from their retirement annuity fund to only the following:

a. when the individual ceases to be tax resident; or

b. when the individual leaves South Africa at the expiry of the work visa contemplated in the Immigration Act No. 13, of 2002.

It has come to Government attention that exclusion of the requirement that an individual must emigrate from the Republic and that emigration must be recognised by the South African Reserve Bank for purposes of exchange control creates a loophole for South African nationals

or tax residents to be able to make an early withdrawal from their retirement annuity funds, without formally emigrating. This was not the original policy intention.

III. Proposal

In order to align the current provisions of the Act allowing individuals to withdraw a lump sum from their retirement annuity fund to the underlying policy objectives, the following is proposed:

a. The definition of the "retirement annuity fund" in section 1(b)(x)(dd) should be amended to include the requirement that an individual must emigrate from the Republic and that emigration must be recognised by the South African Reserve Bank for purposes of exchange control as one of the criterion to be met in order for individuals to be able to withdraw a lump sum from their retirement annuity fund.

IV. Effective date

The amendments are deemed to have come into operation on 1 March 2016 and apply in respect of years of assessment commencing on or after that date.

1.6. INTRODUCING MEASURES TO PREVENT ESTATE DUTY AND DONATIONS TAX AVOIDANCE THROUGH THE USE OF INTEREST FREE OR LOW INTEREST LOANS TO A TRUST

[Applicable provision: New sections 7C]

I. Background

The transfer of wealth by a person through the use of trusts can be achieved in a number of ways. These alternatives all have their resultant tax consequences.

a. In the first instance, a person may donate his or her assets to a trust and trigger donations tax at a rate of 20 per cent of the fair market value of the assets in the hands of the donor. If the donor does not pay the donations tax due, then that donor and the donee (the trust) become jointly and severally liable for the donations tax due.

b. A person may sell his or her assets to a trust on loan account, the loan being subject to interest at a market related rate. The person will be fully taxed on the interest portion of the loan repayments paid to him or her by that trust.

c. A person may sell his or her assets to a trust on loan account and the loan may be subject to interest that is below market rates or charge no interest on the loan. The result is that donations tax is not triggered as the transaction is a sale and not a donation. Income tax is also not paid by that person on the forgone interest as a result of not charging interest at market rates.

d. Lastly, a person may advance an interest free loan or a loan with interest below market rates to a trust in order to enable that trust to acquire assets or to simply retain that advance and avoid donations tax and income tax on the forgone interest as a result of the person not charging interest at market rates.

II. Reasons for change

At issue is the avoidance of estate duty and donations tax when a person transfers wealth through the use of an interest free loan or a loan with interest below market rates. These loans are either used to facilitate the transfer of assets or assist the trust to acquire an asset. This is done in order to avoid donations tax as no donation arises on the sale of an asset or on advancing loan funding to a trust.

Coupled with the above, in some instances the lender reduces or waives the loan capital which is supposed to be paid back to him/her (whether as settlement for an outstanding asset disposal consideration or the settlement of loan funding that was advanced to a trust for its own use). This further avoids estate duty through the reduction or waiver of the asset base of the lender in respect of the loan capital.

Due to the fact that the loan is an interest free loan or a loan with interest below market rates, no interest is paid to the seller or interest paid is less than market rates, the seller will not be liable for income tax on the interest that is forgone. This results in a further reduction of the tax base.

III. Proposal

In order to limit taxpayers' ability to transfer wealth to a trust without being subject to tax, it is proposed that rules focusing on affected loans be introduced in section 7C of the Act.

A. Affected loans

For purposes of section 7C, affected loans will encompass interest free loans or loans with interest below market rates that are made to a trust directly or indirectly by:

a. a natural person, or

b. a company that is a connected person in relation to that natural person, i.e. a company in which that natural person, either individually or together with a connected person or persons, holds an interest of at least 20 per cent. .

The anti-avoidance measure under the new section 7C will with effect from 1 March 2017 apply to all loans, including loans currently in existence, that meet this criterion if the person or company involved, or any person that is a connected person in relation to that person or company, is a connected person in relation to that trust. This will include loans or credit provided directly to a trust as well as loans or credit routed through other persons or entities.

Example:

Facts

Mr Planner's spouse and three children are beneficiaries of the Quattuor Trust. The Quattuor Trust is the only beneficiary of the Tempus Fugit Trust.

Mr Planner advances a loan of R 5 million to a business associate, Grabbitt,that is not a connected person in relation to any of the trusts. The loan is non-interest bearing, payable on demand and is subject to an arrangement in terms of which Grabbitt will in turn advance an interest-free loan of R5 million that is repayable on demand to the Tempus Fugit Trust and cede the claim for repayment thereof to Mr Planner as security for the repayment of the amount owed by Grabbitt. The Tempus Fugit Trust utilises those funds to acquire a range of shares and interest-bearing assets.

Result

The loan used by the Tempus Fugit Trust was advanced indirectly by Mr Planner. The rules will therefore apply in respect of the loan to the Tempus Fugit Trust.

The proposed rules will apply only in respect of loans advanced or provided by a natural person or, at that person's instance, by a connected company. An amount that is vested irrevocably by a trustee in a trust beneficiary and that is used or administered for the benefit of that beneficiary without distributing or paying it to that beneficiary will not qualify as a loan or credit provided by that beneficiary to that trust if

- the vested amount may in terms of the trust deed governing that trust not be distributed to that beneficiary, e.g. before that beneficiary reaches a specific age; or
- that trustee has the sole discretion in terms of that trust deed regarding the timing of and the extent of any distribution to that beneficiary of such vested amount.

An amount vested by a trust in a trust beneficiary that is not distributed to that beneficiary will, however, qualify as a loan or credit provided by that beneficiary to that trust if that non-distribution results from an election exercised by that beneficiary or a request by that beneficiary that the amount not be distributed or paid over, e.g. if the beneficiary has reached the age at which a vested amount must be paid over or distributed to him or her and

- the trustee accedes to a request by that beneficiary that this not be done; or
- the beneficiary enters into an agreement with the trustee in terms of which the amount may be retained in the trust.

B. Treatment of interest forgone as a donation

Interest foregone in respect of low interest loans or interest free loans that are made to a trust will be treated as an ongoing and annual donation made by the natural person to the trust on the last day of the year of assessment of that trust. For purposes of this anti-avoidance measure, interest foregone will be determined as the difference between the interest charged by the lender or holder of the loan and the interest that would have been payable by the trust had the interest been charged at the official rate of interest as defined in the Seventh Schedule to the Act).

C. Multiple natural persons as shareholders

It is acknowledged that in some instances, an affected loan under these rules may be advanced by a company to a trust at the instance of more than one natural person who are shareholders in that company. To address such scenarios, each person will treated as having made a donation in proportion to their equity interests in the company during the year of assessment that the deemed donation arose.

D. Denial of tax deduction or losses

As discussed above, there is also concerns around the cancellation or waiver of loan accounts that are assets of the lenders. Often, lenders that advance low interest or interest free loans will cancel or waive the loan. This results in the diminution of the asset base of the lender for estate duty purposes. To counter such practices that avoid estate duty, no deduction, loss, allowance or capital loss may be claimed in respect of interest free loans or low interest loans made to trusts.

E. The interaction between section 7C and section 31

This anti-avoidance measure seeks to curb the unfair advantage of using loans that are not subject to interest at market rates have. Similarly, the transfer pricing rules in the Act also apply to counter the mispricing of cross-border loan arrangements. In order to ensure that there is no overlap or double taxation in respect to low or no interest loans made to foreign trusts, the anti-avoidance measure under section 7C will not apply to a loan that is subject to the transfer pricing rules in section 31 of the Act.

F. Exclusions from the application of section 7C

As trusts are used for a myriad of other purposes other than that of estate planning, various exclusions are proposed from the application of these rules. These exclusions include the following:

a. Vesting trusts:

Loans by trust beneficiaries to vesting trusts that comply with the requirements listed in subsection (5)(b) will be excluded from the proposed rules. The vested interest of a beneficiary in the assets and receipts or accruals of such a trust will form part of that beneficiary's estate during his or her life and upon death or when ceasing to be a resident. The interest that remains subject to normal tax as well as estate duty represents, in effect, a fixed stake in the assets disposed of to or acquired by that trust and in the gains made by that trust. An interest-free or a low-interest loan made to that trust by a beneficiary should therefore not result in estate duty avoidance if that beneficiary's vested stake in the trust assets is proportionate to that beneficiary's contributions, including that loan, to that trust.

Examples:

- Loans to a trading trust that meets all the requirements set out in subsection (5)(b).
- A loan by a trust beneficiary to a trust that qualifies as a bewind trust, i.e. a trust that holds and administers assets, the ownership of which vests in that beneficiary, for and on behalf that beneficiary.

b. Trusts that hold a primary residence:

A loan made by or at the instance of a natural person to a trust will be excluded to the extent to which that loan was used by that trust to fund the acquisition of a residence that is used by that person or that person's spouse as a primary residence.

Examples:

Mr Law made an interest-free loan of R5 million to the Law Family Trust during 2010. The trust used R3 million of the funds to acquire a house in which Mr Law and his spouse have resided and used as their primary residence ever since. The remaining R2 million was used to fund the acquisition of other assets.

Result: The anti-avoidance rule will be applied only in respect of the R2 million not used for purposes of acquiring the house.

c. Other exclusions from this targeted anti-avoidance rule include the following:

i. Special trusts that are created solely for the benefit of minors with disability as defined in paragraph (a) of the definition of "special trust" in section 1 of the Act;

ii. Trusts that fall under public benefit organisations as contemplated in section 30 of the Act;

iii. Small Business Funding entities contemplated in section 30C of the Act;

iv. Loans that constitute an affected transaction and subject to the provisions of section 31 of the Act;

v. Loans provided to the trust in terms of a sharia compliant financing arrangement; and

vi. Loans that are subject to the anti-value extraction provisions of section 64E(4) of the Act.

IV. Effective date

The amendments will come into operation on 1 March 2017 and apply in respect of any amount owed by a trust in respect of a loan, advance or credit provided to that trust before, on or after that date.

1.7. ADDRESSING THE CIRCUMVENTION OF RULES DEALING WITH EMPLOYEE BASED SHARE INCENTIVE SCHEMES

[Applicable provisions: Section 8C and section 10(1)(k) of the Act]

I. Background

Amounts in cash or in kind which are received or accrued in respect or by virtue of services or employment are treated, as a point of departure, as ordinary revenue. Section 8C (dealing with taxation of directors and employees on vesting of equity instruments) forms part of a set of anti-avoidance measures aimed at preventing the characterisation of an amount that relates to services or employment as a capital gain or as an exempt amount subject only to dividends tax. For example, dividends that are received or that accrue in respect of services or by virtue of employment or the holding of an office are treated as ordinary revenue.

Section 8C governs schemes that are based on equity shares. A restricted equity instrument represents an interest in the equity shares underlying the scheme that is held either directly or through a derivative mechanism. The retention or acquisition, by a scheme beneficiary, of the benefits flowing from the scheme, e.g. dividends, is subject to suspensive or resolutive terms or conditions. These benefits are dependent, in essence, on continued employment or the rendering of services for a specified period. The distributions derived from a restricted equity instrument and the growth in value of the underlying shares until the date the restrictions fall away constitute, in effect, benefits that arise in respect of services and form part of the reward for services rendered. Dividends in respect of a restricted equity instrument will be exempt only if that instrument complies with specific requirements.

Taxation under section 8C is as a general rule triggered when the restrictions in respect of the interest in the underlying equity shares fall away, i.e. when the employee can, in broad terms, freely dispose of or deal with those shares on the same basis as any shareholder who is not an employee, or is entitled to an amount equal to their value. The amount subject to section 8C is determined with reference to the value of those shares at that time, thus treating the growth in value of that payment in kind as revenue.

II. Reasons for change

Section 8C is based on the implicit assumption that the full value of the equity shares underlying a restricted equity instrument will vest in the employee when the restrictions fall away. The value

derived from the underlying shares may, however, be liquidated in full or in part by means of distributions that are effected before these restrictions fall away, e.g. distributions resulting from the disposal or redemption of the underlying shares or resulting from a return of capital in respect of the underlying shares. Distributions qualifying as a return of capital or a foreign return of capital in respect of the underlying equity shares are treated as revenue. The current inclusion does not extend, however, to a return of capital by way of a distribution of an equity instrument. Distributions in the form of dividends may also impact negatively on the value of the underlying shares.

The policy intent underlying the inclusion, in the income of a holder of a restricted equity instrument, of a return or foreign return of capital was expressed as follows in the Explanatory Memorandum on the Taxation Laws Amendment Bill, 2010: "Capital distribution will generally trigger ordinary revenue in recognition of this partial cash-out. However, if the capital distribution consists of another restricted equity instrument, the capital distribution will be treated as a non-event." The current exclusion of a return or foreign return of capital does not reflect this policy clearly. A return of capital in the form equity shares that are not restricted will erode the value of the equity shares from which the value of a restricted equity instrument is derived.

The above-mentioned exclusion should apply only in respect of an equity instrument that qualifies as a restricted equity instrument subject to section 8C, i.e. if the gain or loss in respect of that instrument will be treated as being of a revenue nature. Other receipts or accruals in respect of a restricted equity instrument that are not treated as dividends and that are not taken into account in determining the gain or loss in respect of the restricted equity instrument may also erode the value of the underlying shares and result in a leakage of the gains that should be treated as income in terms of section 8C. The current requirements regarding dividends in respect of restricted equity instruments that are exempt from normal tax do not deal adequately with dividends consisting of or derived from—

a. the proceeds from the disposal or redemption of—
    i. the underlying equity shares; or
    ii. shares from which those equity shares derive their value; or
b. the liquidation of a company from which those equity shares derive their value.

The treatment, as an exempt dividend, of an amount that reduces or liquidates the gain subject to section 8C converts, in effect, an amount that should be taxed at marginal rates to an amount that is taxed at a lower rate. This conflicts with the policy objective underlying section 8C (i.e. that there should be parity of treatment of amounts in cash and in kind).

III. Proposal

It is proposed that targeted measures that deal adequately with some schemes where restricted shares held by employees are liquidated in return for an amount qualifying as dividend be introduced as follows:

A. Inclusion in section 8C

It is proposed that the provisions of subsection (1A) of section 8C be extended to include any amount received by or accrued to a taxpayer during a year of assessment in respect of a restricted equity instrument in the taxpayer's income for that year of assessment if that amount does not constitute –

a. a return of capital or foreign return of capital by way of a distribution of a restricted equity instrument;

b. a dividend or foreign dividend in respect of that restricted equity instrument; or

c. an amount that must be taken into account in determining the gain or loss, in terms of section 8C, in respect of that restricted equity instrument.

B. Exclusion from dividend exemption in section 10(1)(k)(i)

It is proposed that the exemption in section 10(1)(k)(i) be amended to specifically exclude certain dividends in respect of a restricted equity instrument scheme. Such dividends will be treated as ordinary revenue.

Thus, a new paragraph (jj) will be introduced as a proviso to section 10(1)(k)(i) specifically excluding, from the current exemption, any dividend in respect of a restricted equity instrument as defined in section 8C that was acquired in the circumstances contemplated in section 8C if that dividend is derived directly or indirectly from, or constitutes –

a. an amount transferred or applied by a company as consideration for the acquisition or redemption of any share in that company;

b. an amount received or accrued in anticipation or in the course of the winding up, liquidation, deregistration or final termination of a company; or

c. an equity instrument that is not a restricted equity instrument as defined in section 8C, that will, on vesting be subject to that section.

Example 1

Facts:

Mr Eager, an executive director of Last Hope Ltd, holds a restricted equity instrument in the Last Hope Employee Share Trust that will remain restricted for a period of 5 years after that instrument was awarded to Mr Eager. It entitles him to dividends derived from 10 000 of the equity shares in Real Hope (Pty) Ltd that are held by the trust while the restrictions governing that equity instrument apply and the transfer of those shares once those restrictions fall away. Real Hope (Pty) Ltd is a subsidiary of Last Hope Ltd.

Real Hope buys back 90 per cent of the shares held in it by the trust at R200 per share 4 years after the award of that restricted equity

instrument. The trust distributes an amount of R1 800 000 to Mr Eager as a dividend in respect of his restricted equity instrument.

Result:

The dividend of R1 800 000 will not be exempt as it is derived from the consideration paid by Real Hope in respect of the share buy-back. This result will apply irrespective of whether the consideration in respect of the share buy-back consists of cash or an asset in kind.

Example 2

Facts:

Ms Sharp, an executive director of Tower Projects, holds a restricted equity instrument in the Tower Group Employee Share Trust that will remain restricted for a period of 5 years after that instrument was awarded to her. It entitles her to dividends derived from 10 000 of the equity shares in Mini Tower that are held by the trust while the restrictions governing that equity instrument apply and the transfer of those shares once those restrictions fall away. Mini Tower holds 100 per cent of the class B equity shares in Tower Software while Tower Projects holds all the class A equity shares in Tower Software.

Tower Software redeems 80 per cent of the class B equity shares at R200 per share 4 years after the award of that restricted equity instrument. Mini Tower distributes this amount as a dividend to the trust. The trust distributes an amount of R1 600 000 to Ms Sharp as a dividend in respect of her restricted equity instrument scheme.

Result:

The dividend of R1 600 000 will not be exempt as it is derived from the consideration in respect of the redemption of the class B equity shares.

IV. Effective date

The amendments will come into operation on 1 March 2017 and apply in respect of amounts received or accrued on or after that date.

1.8. INCREASE ON THRESHOLDS FOR EXEMPTION OF EMPLOYER PROVIDED BURSARIES

[Applicable provision: Section 10(1)(q) of the Act]

I. Background

Currently, the Act makes provision for tax exemption for all “bona fide” bursaries or scholarships granted by employers to employees or relatives of qualifying employees, subject to certain monetary limits and other requirements.

If a bursary or scholarship is awarded to a relative of the employee, the exemption will apply only if the employee’s remuneration does not exceed R250 000 during the year of assessment. In addition, the amount of the bursary or scholarship will only be exempted up to a limit of R10 000 for studies from Grade R to 12 including qualifications in NQF levels 1 to 4 and R30 000 for qualifications in NQF levels 5 to 10.

II. Reasons for change

The monetary limits associated with bursaries and scholarships granted to relatives were last revised in 2013. In order to support skills development and to encourage the private sector (employers) in the provision of education and training, Government intends to increase the monetary limits for bursaries and scholarships granted to the relatives of qualifying employees.

III. Proposal

It is proposed that the monetary limits be increased for bursaries and scholarships granted by employers to employees or relatives of qualifying employees:

b. The monetary limit in respect of remuneration for qualifying employees will be increased from R250 000 to R400 000.

c. The monetary limits in respect of exempt bursary or scholarship will be increased from R10 000 to R15 000 and from R30 000 to R40 000 respectively.

IV. Effective date

The amendments are deemed to have come into operation on 1 March 2016 and apply in respect of years of assessment commencing on or after that date.

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2. INCOME TAX: BUSINESS (GENERAL)

2.1. REFINEMENT OF THIRD-PARTY BACKED SHARES: PRE-2012 LEGITIMATE TRANSACTIONS AND START-UP COMPANIES

[Applicable provision: Sections 8E and 8EA of the Act]

I. Background

Third-party backed share anti-avoidance rules were introduced by Government during 2012 to deal with identifiable concerns regarding preference shares with dividend yields backed by third parties. These anti-avoidance rules deem dividend yields of third-party backed shares to be

treated as ordinary revenue unless the funds derived from the issue of the third-party backed shares are used for a qualifying purpose.

The rules target share instruments (typically preference shares) with debt like features, i.e. where the dividends in respect of those shares are guaranteed by unrelated third parties. The holder of the share is in effect not exposed to the risks associated with the issuer that would normally be faced by the holder of an equity stake.

For purposes of these specific anti-avoidance rules, section 8EA of the Act defines third-party backed shares as preference shares in respect of which an enforcement right or obligation exists for the benefit of the holder of the preference shares. An enforcement right means, in broad terms, a right of the holder of the share that is enforceable against a third person (who therefore bears the corresponding obligation) in terms of which that person may be required to

- acquire that share from that holder;
- make any payment in respect of that share in terms of a guarantee, indemnity or similar arrangement; or
- procure, facilitate or assist with any of the above.

A subordination agreement entered into with a third party creditor of the issuer of that share in terms of which the payment of any amount owing to that creditor is conditional upon the prior payment, to the holder of that share, of any amount owed in accordance with the terms governing that share would, for example, be an arrangement that would facilitate or assist with the making of such payment to that holder.

II. Reasons for change

Over the past 2 years, changes have been effected to the third-party backed share anti-avoidance rules to address adverse tax consequences affecting legitimate business transactions not aimed at avoidance. Concerns have been raised that certain provisions in these rules still impede certain historic arrangements and transactions that were entered into before the introduction of these anti-avoidance rules in the Act in 2012.These historic arrangements and transactions were often entered into with guarantees and obligations being bolted on by lenders as standard practice, thus effectively trapping parties to these transactions and arrangements within the ambit of the targeted anti-avoidance rules.

Taxpayers who entered into the historic arrangements and transactions could restructure them so as to remove the excessive guarantees and obligations but at issue is the fact that in absence of any commercial reasons for restructuring other than to avoid the provisions of section 8E or section 8EA of the Act, such restructuring could attract the application of the general anti-avoidance rule.

A further issue that has been raised relates to the definition of qualifying purpose. The use of funds derived from a preference share issue to acquire shares in a company will in terms of the current wording constitute a qualifying purpose only if that company is an operating company at that time, i.e. a company carrying on a business in the course of which it provides goods or

services. This requirement does not cater for the acquisition of shares in start-up companies that have not yet commenced the carrying on of a business, e.g. a company that is still erecting the plant that is required for the provision of goods or services.

III. Proposals

A. Pre 2012 legitimate transactions

In order to provide relief in respect of pre 2012 legitimate transactions, it is proposed that the:

a. legislation be amended to allow any parties that entered into any arrangement or transaction the terms of which were finally agreed to before 01 April 2012, (earliest effective date of the third-party backed share anti-avoidance rules) that fall foul of the provisions of section 8EA be allowed to cancel any enforcement obligation or right;

b. cancellation of any enforcement obligation or right be made within a proposed window period, i.e, the period from the date of introduction of the TLAB on 26 October 2016 to 31 December 2017 ; and

c. relief be prospective. There will be no refunds of tax in respect of amounts received or that accrued in respect of the affected shares prior to the cancellation of the enforcement rights in question.

B. Start-up companies

It is, furthermore, proposed that the definition of a qualifying purpose be amended to cater for the investment, in shares of start-up companies, of funds derived from preference share issues by applying the test whether the company is an operating only at the time of the receipt or accrual of any dividend in respect of those preference shares.

IV. Effective Date

- The amendments in respect of pre 2012 legitimate transactions will come into operation on the date of promulgation of the Taxation Laws Amendment Act, 2016.
- The amendment in respect of start-up companies will come into operation on 1 January 2017 and will apply in respect of years of assessment ending on or after that date.

2.2. ADDRESSING CIRCUMVENTION OF ANTI-AVOIDANCE RULES DEALING WITH THIRD PARTY BACKED SHARES

[Applicable provisions: Sections 8E and section 8EA of the Act]

I. Background

The anti-avoidance measures introduced during 2012 in respect of instruments with debt-like features targeted, firstly, share issues the dividends in respect of which were guaranteed by

unrelated third parties. Secondly, the legislation targeted share issues the dividends in respect of which were fully secured by financial instruments (i.e. the secured financial instrument served as the basis for the dividend yield as opposed to a mix of assets associated with the issuing company as a whole).

II. Reasons for Change

Several schemes have been identified where investors structure transactions to circumvent the hybrid equity anti-avoidance rules. These anti-avoidance schemes are even marketed and sold as tax beneficial products to investors. These schemes include, for example, the formation of trust holding mechanisms whereby investors acquire participation rights in trusts and the underlying investments of those trusts are preference shares. The main aim of these schemes is for the trusts to invest in preference shares in order to generate income in the form of dividends. The interposition of a trust between the investor and the underlying preference shares is aimed at avoiding the anti-avoidance measures in order to preserve the benefit, for the holder of the instrument, of being taxed at the lower dividend withholding tax rate as opposed to the normal tax rate which applies on interest income.

III. Proposal

In order to curb the circumvention of these specific anti-avoidance measures, it is proposed that section 8E as well as section 8EA be extended to include any right or interest where the value of that right or interest is directly or indirectly determined with reference to a share or an amount derived from a share.

IV. Effective Date

The amendments will come into operation on or after 1 January 2017 and apply in respect of years of assessment ending on or after that date.

2.3. CROSS-BORDER HYBRID DEBT INSTRUMENTS

[Applicable provisions: Sections 8F and 8FA of the Act]

I. Background

Specific anti-avoidance rules dealing with hybrid debt instruments and hybrid interest were introduced during 2013. The anti-avoidance rules reclassify amounts incurred as interest as dividends in specie that cannot be deducted by the company that incurred them. The anti-avoidance rules embedded in section 8F focus on the equity-like features of the debt instrument itself, while section 8FA focuses on the nature of the yield (i.e. the method of determining the amount that is labelled as interest).

Section 8F targets, in broad outline, debt instruments that are subject to an arrangement in terms of which

- the instrument must or can be converted into or exchanged for shares;

- the payment of an amount owing in respect thereof is conditional upon the solvency of the issuer; or
- the issuer owes an amount to a connected person and is not obliged to redeem that instrument within 30 years from its date of issue.

Section 8FA focuses on the nature of the yield and targets amounts that are not determined with reference to a rate of interest or the time value of money or that are determined with reference to profits or gains.

These anti-avoidance rules are aimed at preventing the artificial generation of interest deductions by an issuer if the debt instrument qualifies as a hybrid debt instrument because of its equity features, or if the yield is determined not to constitute bona fide interest. In addition, the issuer is furthermore liable for dividends tax at a rate of 15 per cent.

II. Reasons for change

The 2013 Draft Taxation Laws Amendment Bill (2013 Draft TLAB) which was released for public comments on 4 July 2013 made provision for these specific anti-avoidance rules to apply only in respect of debt that was issued by South African tax resident companies. Based on the public comments received on the 2013 Draft TLAB, changes were made in the 2013 Draft TLAB to extend the application of these rules to debt issued by both resident and non-resident companies.

It has come to Government's attention that the current dispensation creates opportunities for tax arbitrage by allowing non-resident issuers of debt instruments to issue debt instruments that include any of the targeted equity features to resident holders in order to take advantage of the re-classification feature of these anti-avoidance rules.

The resident holder of the debt instrument will benefit from the re-classification of interest as dividends in specie as that holder will be deemed to have received a dividend in specie that is exempt from normal tax. However, the anti-avoidance rules will as a general rule not be effective by denying the non-resident issuer an interest deduction as the non-resident issuer would in most instances not be subject to the South African anti-hybrid debt rules. The non-resident issuer would be subject to a dividends withholding tax of 15 per cent (subject to various exemptions and treaty benefits).

III. Proposal

In order to curb this mismatch and discourage non-resident issuers from structuring their loans by including equity features that trigger the re-classification of their interest payments for South African tax purposes, it is proposed that both sets of anti-avoidance rules should be limited to instances under which the intended denial of the interest deduction will apply.

It is therefore proposed that the anti-avoidance rules should only apply:

a. in instances where the issuer is a resident company,

b. where the issuer is a non-resident company, if the interest in respect of that instrument is attributable to a permanent establishment in South Africa; or

c. where that issuer is a controlled foreign company, if the interest in respect of that instrument must be taken into account in determining the net income of that company in terms of section 9D.

IV. Effective date

The amendments are deemed to have come into operation on 24 February 2016 and apply in respect of amounts incurred in respect of an instrument on or after that date.

2.4. HYBRID DEBT INSTRUMENTS SUBJECT TO SUBORDINATION AGREEMENTS

[Applicable provision: Section 8F of the Act]

I. Background

An amount of interest that is incurred in respect of a debt instrument is recharacterised in terms of section 8F of the Act as a dividend in specie declared and paid by the issuer if that debt instrument has specific equity-like or dividend like features. The issuer may not deduct the interest so incurred and becomes liable for dividend withholding tax at a rate of 15 per cent in respect of such dividend in specie.

The anti-avoidance rules will be triggered by any arrangement in terms of which the obligation to repay any amount owing in respect of the debt instrument (i.e. the corpus or interest) is conditional upon the solvency of the debtor (i.e. the market value of the issuer’s assets not being less than its liabilities).

II. Reasons for change

A. Timing of the re-characterisation of the yield on an instrument that is subject to a subordination arrangement

Debt instruments that are subject to section 8F must be tested for the specified equity-like features that trigger the avoidance rules on a continuous basis (i.e. not once off at the date of issue but at any time thereafter). The re-characterisation of the interest labelled yield was intended to apply in respect of the period during which an instrument exhibits these equity-like features. Currently, paragraph (b) of the definition of a “hybrid debt instrument” in terms of which an instrument that is subject to subordination is subject to the re-characterisation rule does not clearly express this intention. The current wording is ambiguous as to whether the re-characterisation rule will apply from the date of issue of the instrument that is subject to a subordination arrangement or only in respect of the period during which a payment of an amount owing was deferred in terms of that arrangement.

B. The impact of applying the re-characterisation rule in respect of an instrument subject to a subordination arrangement where the issuer is in financial distress

In the current economic climate, it is not uncommon for companies to find themselves going through periods of varying levels of financial distress. These periods of financial distress may be short-term or may be fairly sustained. As a result, many companies revert to entering into subordination agreements aimed at subordinating their related party loans in favour of third party borrowings. A subordination arrangement may also result from an audit of the company if its auditors require that shareholder loans be subordinated to ensure that the company's annual financial statements not be qualified regarding whether it can continue as a going concern.

Typically a subordination agreement provides that the company will not make any payments in respect of a debt until such time as the assets of the company fairly valued exceed the liabilities of the company. The re-classification of the interest as a result of the subordination agreement gives rise to added pressures for the company. In the first instance, the company will be treated as having paid a dividend in specie in respect of any interest incurred in respect of the subordinated loan. It will, secondly, be denied a deduction in respect of the incurred interest charges. .

III. Proposal

A. *Timing of the re-characterisation of an instrument due to subordination*

In order to clarify that the re-characterisation of an instrument by virtue of that instrument being or becoming subject to a subordination agreement will only apply for the period that the instrument is subject to subordination, technical changes are proposed to paragraph (b) of the definition of a "hybrid debt instrument". The intention is to confirm that an instrument will be regarded as a "hybrid debt instrument" if the obligation of a company to pay an amount during a year of assessment has been deferred conditional upon the assets of that company exceeding its liabilities. In addition, that instrument will be regarded as a "hybrid debt instrument" only for that period.

B. *Exclusion from re-characterisation of an instrument subject to subordination*

This exclusion for related party debt that is subordinated in favour of third party creditors will result in the company continuing to claim its interest deduction of the debt. In addition, as there will be no re-classification of the interest as dividends in specie, the company will not suffer the added burden of a dividends withholding tax.

For purposes of this exclusion, relief will be provided so that subornation agreements entered into in respect of debt between connected persons as defined in section 1 of the Income Tax Act. As a condition of this relief, the subordination of the envisaged debt must be subject to a request by a registered auditor, as contemplated in the Auditing Profession Act (Act No. 26 of 2005), who or which has certified that the payment, by a company, of an amount owed in respect of that instrument has been or is to be deferred by reason of the market value of the assets of that company being less than the amount of the liabilities of that company.

It is envisaged that the auditor's certification of the subordination of the related party debt for purposes of this exclusion should be evidenced in a separate letter.

IV. Effective date

The amendments are deemed to have come into operation on 1 January 2016 and apply in respect of years of assessment commencing on or after that date.

2.5. REFINING THE TAX IMPLICATIONS ON OUTRIGHT TRANSFER OF COLLATERAL PROVISIONS

[Applicable provisions: Section 1, 22 and paragraph 11 of the Eighth schedule of the Act and section 1 of the Securities Transfers Act No. 25 of 2007]

I. Background

In 2015, changes were made in the tax legislation to provide relief in respect of an outright transfer in beneficial ownership of collateral. As a result, there are no capital gains tax and securities transfer tax implications if a listed share is transferred as collateral in a collateral arrangement, provided that the identical shares are returned to the borrower by the lender within a limited period of 12 months from the date in which the collateral arrangement was entered into. The 2015 tax dispensation that was introduced in the tax legislation for the outright transfer of collateral is similar to the tax dispensation applicable to securities lending arrangements.

The above-mentioned new tax dispensation for collateral arrangements necessitated the introduction of a concept of “identical share” in the tax legislation as well as changes to the provisions dealing with amalgamation transactions in section 44 of the Act, to take into account the impact of amalgamation transaction on the ability of a party to the arrangement to return a share of the same class in the same company as that share originally transferred in terms of that arrangement.

II. Reasons for change

The tax relief on collateral arrangements has been welcomed by industry and taxpayers but concerns have been raised about certain of the restrictions and potential shortcomings not addressed in the current legislation. These restrictions include the following:

A. 12 Month limitation

The limitation of a collateral arrangement to a period of 12 months or less without the ability to re-post collateral due to the underlying obligation is unduly restrictive and would have the effect that it can only be applied in a context of a short term debt and would severely restrict the ability of banks to benefit from collateral arrangements in terms of meeting the regulatory requirements in so far as it relates to high quality liquid assets.

B. Corporate Actions

The 2015 changes to the definitions of “identical share” and “identical security” in the Act only recognize the impact of specific corporate actions on the ability of parties to both collateral and lending arrangements to return an identical share or security only to the extent of amalgamation

transactions as envisaged in section 44 of the Act. These changes do not cater for situations outside of the control of a party to a securities lending/collateral arrangement that could possibly result in an identical share or security being unable to be returned in terms of securities lending/collateral arrangements. In practice, corporate actions and its impact on the ability to deliver an identical share or security in relation to these arrangements can be separated into two categories where a corporate action can either:

a. impact the listed status of the share through the following actions (list not exhaustive nor definitive):

    1. suspension/termination or withdrawal of share listing on a recognized exchange;
    2. winding up/insolvency of issuer of shares; or
    3. unbundling transactions; or

b. result in additional or different shares being returned through the following actions (list not exhaustive nor definitive):

    1. rights offers;
    2. scrip dividends;
    3. capitalization issues; or
    4. unbundling transactions.

These categories or actions could potentially impact the securities lending/collateral arrangement definition post implementation of the securities lending/collateral arrangement, by no fault of the parties to the securities lending/collateral arrangement, which would result in the application of both capital gains tax and securities transfer tax to such securities lending/ collateral arrangement.

C. Listed shares

The special tax dispensation for securities lending/collateral arrangement only applies to the instruments listed in paragraph (a) of "security" as defined in the Securities Transfer Tax Act that is listed on an exchange. This limits the exemption on securities lending/collateral arrangement to listed shares only to be transferred as collateral. As a result, if bonds and other instruments not listed in paragraph (a) of the definition of security are transferred as collateral, they will not qualify for this special tax dispensation.

III. Proposal

A. Extending the 12 Month limitation to a 24 month limitation

Government is still concerned that the 2015 changes made in the tax legislation to provide relief in respect of an outright transfer in beneficial ownership of collateral moves away from common law principles in regard to a change of beneficial ownership. As a result, the 12 month limitation in respect of collateral arrangement was introduced to assist in limiting tax avoidance scenarios

where either the sale of shares are disguised as collateral transactions or transactions where the collateral is used against rolling debt positions that are designed to keep a collateral position open for extended periods of time or even indefinitely.

Due to the fact that collateral arrangements supports financial stability objectives because of the role they play in mitigating credit risk, it is proposed that the legislation be amended to extend the allowable period within which the identical shares are returned to the borrower by the lender from the date on which the collateral arrangement was entered into from 12 to 24 months.

B. Broadening the definitions of "identical share" and "identical security" to cater for other specified corporate actions

It is proposed that the legislation, as it relates to an 'identical security' and 'identical share' for purposes of a security lending/collateral arrangement, be broadened to cater for corporate actions in relation to situations outside of the control of a party to a securities lending/collateral arrangement that could possibly result in an identical security or identical share being unable to be returned in terms of that securities lending/collateral arrangement. The legislation should only recognize corporate actions announced and released, post finalisation of the securities lending/collateral agreement, by a Stock Exchange News Service (SENS) announcement if it specifically relates to the allowable security/collateral within that securities lending/collateral arrangement.

C. Including listed government bonds as allowable instruments on security lending and collateral arrangements

Government is concerned that the extension of security lending/collateral arrangements to other instruments, for example bonds, has little merit due to the fact that bonds are not subject to securities transfer tax and will only be subject to capital gains tax if and when bonds are traded in the secondary market at a capital gain. The value of bonds generally only increases when the market has low inflation or disinflationary expectations, which would see increased demand for fixed instruments such as bonds. The vast majority of bonds in South Africa are held until maturity, meaning that there will be no gains or losses at maturity, regardless of market conditions.

However, Government recognises that the use of government bonds as collateral is embedded in the financial markets industry and affects all its participants and transactions. Based on the above, it is proposed the provisions of securities lending/collateral arrangement be extended to include listed government bonds. As a result, listed government bonds that are transferred as collateral, will qualify for the above-mentioned special tax dispensation.

IV. Effective Date

The amendments will come into operation on 1 January 2017 and apply in respect of any securities lending arrangement or collateral arrangement entered into on or after that date.

2.6. EXTENDING THE SMALL BUSINESS CORPORATION REGIME TO PERSONAL LIABILITY COMPANIES

[Applicable provision: Section 12E of the Act]

I. Background

In 2001, a special dispensation for qualifying business corporations was introduced. In order to qualify for the special dispensation, the entity had to meet the definition of a "small business corporation" as defined in the Act. The Act required that an entity qualifying as a small business corporation had to either be a close corporation or a company registered as a private company in terms of the then applicable Companies Act, 1973 (Act No. 61 of 1973). Furthermore, the scope of the definition of small business corporation was intentionally limited to curb the disguise of passive income and remuneration as business earnings. Such a disguise would otherwise have allowed persons rendering professional services to take advantage of the concessionary tax rates that apply to small business corporations instead of taxing the disguised passive income and remuneration at the normal company tax rate.

The limitation measure provides that an entity that has more than 20 per cent of its revenue receipts and accruals and capital gains being made up of passive income and income earned by the entity for rendering certain professional services which are performed by a person who holds an interest in the entity (i.e. personal services) could not qualify as a small business corporation. In 2005 the abovementioned measure in respect of personal services was relaxed. As a result entities that rendered personal services could qualify as small business corporations provided that they employ at least three full-time employees who do not have an interest in the entity and are not connected persons (i.e. relatives) in relation to those that have an interest in the entity.

II. Reasons for change

In 2009, the new Companies Act, 2008 (Act No. 71 of 2008) was promulgated and is administered by the Department of Trade and Industry. Many provisions of the Act depended or referred to company law principles and definitions contained in the old Companies Act, 1973 (Act No. 61 of 1973). Over the past years subsequent technical corrections have been made in the Act due to the commencement of the 2008 Companies Act in 2011.

It has come to Government's attention that amendments made to the provisions dealing with small business corporations as a result of the Companies Act No. 71 of 2008 did not adequately take into account some of the issues related to small business corporations, for example, under the 2008 Companies Act the definition of a private company expressly excludes a personal liability company. As the definition of a small business corporation in the Act includes a private company, the resultant anomaly is that personal liability companies which typically render personal services are currently automatically excluded from being small business corporations for tax purposes.

III. Proposal

In order to correct this anomaly created by the exclusion of personal liability companies from the definition of a private company in the 2008 Companies Act, it is proposed that personal liability

companies should be expressly included in the definition of a "small business corporation" contained in the Act. However, these personal liability companies would be subject to the requirement to employ at least three full-time employees who do not have an interest in the entity and are not connected persons in relation to those that have an interest in the entity. This amendment will come into effect in line with the date that the 2008, Companies Act came into effect on 1 May 2011.

IV. Effective date

The amendment is deemed to have come into operation on 1 May 2011 and applies in respect of years of assessment ending on or after that date.

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

3.1. INTERACTION BETWEEN REITs AND SECTION 9C

[Applicable provisions: Sections 9C and 25BB of the Act]

I. Background

In 2007, section 9C was introduced in the Act which currently makes provision for amounts in respect of equity shares that are held for a period of at least three continuous years to be deemed to be of a capital nature.

Section 9C(5) provides that when the equity share, held for at least 3 years, is disposed of there must be included in the taxpayer's income any expenditure or losses allowed as a deduction in terms of section 11 in any previous year of assessment, provided that this subsection does not apply in respect of any expenditure or loss to the extent that the amount was recouped in terms of section 8(4)(a) or section 19.

Dividends received from a resident REIT or controlled company, as defined in section 25BB(1), are not exempt from tax in terms of paragraph (aa) of the proviso to section 10(1)(k)(i) but expenditure incurred to produce these taxable dividends and allowed as a deduction may be recouped on disposal of the equity shares in the REIT or controlled company.

II. Reasons for change

The current provisions of section 9C are inappropriate for equity shares in REITs and controlled companies that are residents. Dividends received from a REIT or a controlled company (as defined in section 25BB(1) that is a resident), form part of taxable income but allowable expenditure incurred to produce these taxable dividends that is recouped under section 9C(5) is then effectively not deductible. It is therefore proposed that a proviso be added to section 9C that subsection (5) does not apply to shares in a REIT or controlled company, as defined in section 25BB, that is a resident.

III. Proposal

In order to remove this anomaly, it is proposed that amendments be made in section 9C(5) to clarify that this section does not apply to shares in REITs or controlled companies that are residents.

IV. Effective date

The amendment is deemed to have come into operation on 1 January 2016 and applies in respect of years of assessment ending on or after that date.

3.2. TAX TREATMENT OF REITs- QUALIFYING DISTRIBUTION RULE

[Applicable provision: Section 25BB(1) of the Act, definition of "rental income"]

I. Background

As from 1 April 2013, a special tax dispensation for a listed company that is a Real Estate Investment Trust ("REIT") or a company that is a subsidiary of a REIT ("controlled company") that is a resident was introduced in section 25BB of the Act. Under this special tax regime, a REIT or a controlled company that is a resident is entitled to deduct from its income the amount of any "qualifying distribution" incurred during that year of assessment by that REIT or controlled company that is a resident. "Qualifying distribution" is defined in section 25BB of the Act to include any dividend declared or interest incurred in respect of a debenture forming part of a property linked unit by a REIT or a controlled company, during a year of assessment, if more than 75 per cent of the gross income received by or accrued to such REIT or controlled company consists of rental income.

Based on this specific tax dispensation of a REIT or controlled company, a REIT or controlled company is not entitled to claim specific allowances in respect of immovable property in terms of sections 11(g), 13, 13bis, 13ter, 13quat, 13quin, or 13sex of the Act.

II. Reasons for change

At issue is the fact that a REIT or controlled company that is a resident may have claimed the above-mentioned specific allowances in respect of immovable property before it become a REIT or a controlled company that is a resident. On disposal of such immovable property the general recoupment provisions of section 8(4) of the Act will apply to a REIT or controlled company in so far as that entity claimed the above-mentioned allowances in respect of immovable property. In terms of paragraph (n) of the definition of gross income in section 1 of the Act, the REIT or controlled company that is a resident will therefore have to include the amount of recoupments in respect of allowances previously claimed in its gross income in the year of disposal. The inclusion of the amount of recoupment in the gross income of the REIT or controlled company could affect the 75 per cent rental income analysis for purposes of the qualifying distribution rule.

Example:

Facts:

The REIT or controlled company disposes of property A, on which it had previously claimed commercial building allowances of R30 million during the 2016 financial year. The REIT or controlled company earns rental income of R70 million during the 2016 financial year.

Results:

Based on current legislation

Gross income = R70 million + R30 million = R100 million

Rental income = R70 million

Qualifying distribution threshold = Rental income/Gross income = R70 million/
R100 million = 70 per cent

The net effect is that a REIT or controlled company that is a resident will not qualify for the qualifying distribution deduction (75 per cent).

III. Proposals

In order to assist those REITs or controlled companies that are residents and that may have claimed the above-mentioned specific allowances in respect of immovable property before they obtained the status of a REIT or controlled company, it is proposed that the amount of recoupments in respect of allowances previously claimed be included in the "rental income" definition of section 25BB and form part of the 75 per cent rental income analysis for purposes of the qualifying distribution rule.

The proposed changes will only apply to those REITS or controlled companies that may have claimed the above-mentioned specific allowances in respect of immovable property before qualifying as a REIT or controlled company.

IV. Effective date

The amendments are deemed to have come into operation on 1 January 2016 and apply in respect of years of assessment ending on or after that date.

3.3. FIRST PARTY CELL CAPTIVE ARRANGEMENT'S RESERVING METHODOLOGY FOR SHORT-TERM INSURERS

[Applicable provision: Section 28(3) of the Act]

I. Background

Cell captive arrangements refer to cases where an insurance company enters into a contractual arrangement with a cell shareholder. Cell shareholders are generally companies that wish to self-insure their own risks (first-party cells) or their customers' risks (third-party cells) in a capital-efficient way without the cost and regulatory burden of running a complete insurance company.

The insurance company pledges to provide insurance and financial management of the cell in exchange for a fee. This contractual arrangement includes access to an insurer's insurance licences and underwriting, reserving, reinsurance, claims management, actuarial investment and accounting services.

Under International Financial Reporting Standards (IFRS) 10, a standard on Consolidated Financial Statements, a cell can only be consolidated by the cell owner if it first meets the definition of "deemed separate entities". Cell captive insurers are not legally ring-fenced and therefore do not meet the definition of a "deemed separate entity".

IFRS 4 defines an insurance contract and the measurement of liabilities as dependent on the classification of contracts as an insurance or investment contract. Due to IFRS 10 standard and the fact that the shareholders agreement is read in conjunction with insurance contract, the impact is that first party cell arrangements are not recognised in the income statement (statement of profit or loss and other comprehensive income).

Third party cell arrangements are recognised but the inclusion of cell underwriting profits and expenses do not impact the company's net results, as the result of cell activities that are transferred back to the cell owner (reinsured third party cell owner resulting in a NIL Profit for third party cell arrangements in the Income Statements).

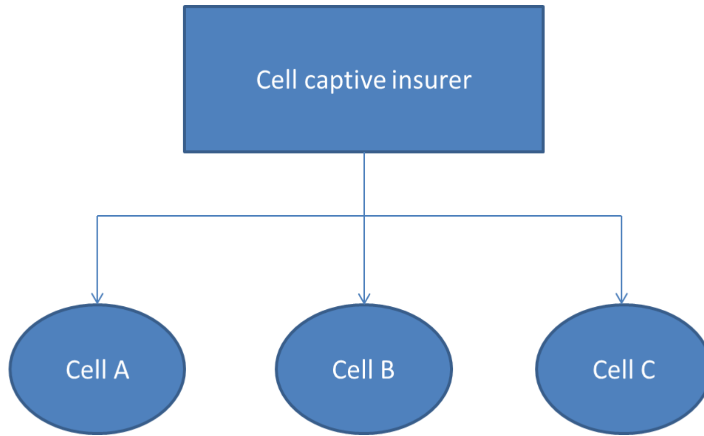
II. Reasons for change

In terms of IFRS 4, an insurance contract is defined as a contract when 'one party (the insurer) accepts significant insurance risk from another party (the policyholder) by agreeing to compensate the policyholder or other beneficiary if a specified uncertain future event (the insured event) adversely affects the policyholder or other beneficiary'. Where there isn't sufficient insurance risk transfer, contracts are classified as investment contracts.

First party cell captive arrangements are arrangements where the cell shareholder and the policyholder are considered the same person. Where more than one contract is entered into with a single counterparty, it is considered to be a single contract, and the shareholder and insurance agreement are considered together for risk transfer purposes. As these contracts are a single contract there is no significant risk transfer and those cell captive facilities are accounted for as investment contracts.

The accounting effect of treating first party cell captive arrangements as investment contracts is that the net profit is excluded from the income statement (statement of profit or loss and other comprehensive income) and the insurance liabilities are excluded from the balance sheet (statement of financial position).

Currently, the cell captive insurance company reports on the total company's profit including cells for tax and for statutory reporting purposes however, in terms of IFRS the cells are excluded as stated above.



III. Proposal

It is therefore proposed to that all insurance contracts reported in the audited annual financial statements of the short-term insurer as investment contracts that relate to short-term insurance business as defined in the Short-term Insurance Act for regulatory purposes should utilise section 28(3) but the effect of IFRS 4/IFRS 10 on the cell captive arrangement should be ignored.

IV. Effective date

The amendments will come into operation on the date on which the Insurance Act, 2016, comes into operation and apply in respect of years of assessment ending on or after that date.

3.4. AMENDMENTS TO THE TAX VALUATION METHOD FOR LONG-TERM INSURERS DUE TO THE INTRODUCTION OF SOLVENCY ASSESSMENT AND MANAGEMENT FRAMEWORK

[Applicable provisions: Section 29A(1); new subsections 14, 15 and 16 of section 29A of the Act]

I. Background

The insurance industry is undergoing changes to the manner in which it is regulated and the manner in which financial reporting will need to be done, due to the introduction of the Solvency Assessment and Management (SAM) framework and the anticipated standard for insurance contained in International Financial Reporting Standards (IFRS), known as IFRS 4 Phase II. The current taxation method for determining taxable profits of a long-term insurer from insurance

business is effectively based on transfers from the Untaxed Policyholder fund, Individual Policyholder fund, Company Policyholder fund and Risk Policy fund to the Corporate fund. The taxable profits are determined as the difference between the market value of the assets allocated to the policyholder funds and the value of the liabilities of these funds. The value of liabilities is currently calculated on the basis determined by the Chief Actuary of the Financial Services Board (FSB) in consultation with the Commissioner for the South African Revenue Service. This basis of determination is based on the Statutory Valuation Method (SVM) with some adjustments.

In 2015, an announcement was made in the Budget Review to cater for the tax treatment of the long term insurance industry as a result of the introduction of the SAM Framework and the new Insurance Act, which will replace the current regulatory regime for the long term insurance industry. As a result, changes were proposed in the 2015 Draft TLAB that was released for public comment on 22 July 2015 and submitted to Parliament. During the parliamentary legislative process, Parliament recommended that due to the fact that the Insurance Bill enabling SAM still requires to be considered by Parliament, proposals relating to the tax treatment of long term insurers due to the introduction of SAM Framework should be removed from the 2015 TLAB and be considered in the 2016 TLAB.

II. Reasons for change

The introduction of the SAM framework will render the current adopted concept of the valuation of policyholder liabilities for tax purposes to be obsolete. More-over the SAM framework recognizes all future income on a policy upfront and is therefore not suitable as a basis for calculating tax where the Income Tax Act generally includes amounts in gross income when the income is received by or accrued to a taxpayer.

In addition, the International Accounting Standards Board is currently reviewing the policy liability valuation basis for long term insurers contained in IFRS and it is expected that the new IFRS 4 Phase II will only be effective for financial years commencing on or after 1 January 2020. It is expected that that IFRS 4 Phase II will provide relevant and accurate recognition of insurance profit and insurance liabilities. The use of current IFRS to value long-term insurer's liabilities is in line with comparable country experience and practice. Effectively, the differences that currently exist between the valuation of liabilities on the statutory basis that is reported to FSB and the current IFRS basis that is reported by the insurer to shareholders in their audited financial statements will be significantly reduced. Furthermore, eventually there will be even greater alignment between insurers when they all apply IFRS 4 Phase II as a basis.

III. Proposals

In order to cater for the tax treatment of the long term insurance industry as a result of the introduction of the SAM Framework and the new Insurance Act, the following is proposed:

A. Definition of "value of liabilities"

Currently, the Act has two separate rules in the definition of "value of liabilities", one applicable to the Untaxed Policyholder fund, Individual Policyholder fund and Company Policyholder fund and the other one applicable only to the Risk Policy fund. There is no policy rationale to have

two separate rules of “value of liabilities” one applicable to the risk policy fund and the other one applicable to the three policyholder funds. It is therefore proposed that the definition of the “value of liabilities” sets out a single rule for both risk policy fund and the three policyholder funds and the current rule in the definition of “value of liabilities” applying to the three policyholder funds should be extended to apply to the risk policy fund.

B. Definition of “adjusted IFRS value”

It is proposed that a new definition of “adjusted IFRS value” should be made applicable to both the risk policy fund and the three policyholder funds and will take into account the following:

a. The IFRS policy liabilities amount is net of reinsurance (gross amount of liabilities less reinsurance amount) determined in accordance with IFRS as annually reported in the audited financial statements. It should be stated that this IFRS policy liabilities amount takes into account cases where policyholder liabilities are determined and reported on a gross basis and a corresponding reinsurance asset is reflected as an asset in the annual financial statements. In this scenario, IFRS policyholder liabilities will be reduced by the amount reflected as a reinsurance asset (see examples for further clarification).

b. The IFRS policy liabilities amount is also net of negative liabilities (gross amount of liabilities less all negative liabilities irrespective of whether they are disclosed as a reduction of liabilities or as an asset) determined in accordance with IFRS as annually reported in the audited financial statements (see examples for further clarification).

c. The amount of liabilities in respect of policies of the insurer net of reinsurance and negative liabilities is determined with reference to the amounts disclosed in accordance with IFRS. The amounts disclosed in accordance with IFRS should be disaggregated in order to allocate the amounts to the relevant policyholder fund or risk policy fund. After the allocation a single net amount of liabilities in respect of all policies allocated to a fund is determined.

d. If the determination under the previous three paragraphs results in a net “negative liability” the amount under paragraph (a) of the definition is limited to Rnil. The reason therefor is that the transfer mechanism under subsection (7) operates on the assumption that the value of liabilities cannot be a number less than zero. See examples for further clarification.

e. Although the “adjusted IFRS value” applies to the risk policy fund and the three policyholder funds, only the policyholder funds should include the deferred tax liabilities in respect of assets allocated to those funds in the “adjusted IFRS value”. This stems from the fact that unrealised gains on assets allocated to the risk policy

fund are not earned for the benefit of specific policyholders as in the case of policyholder funds under the trustee basis of taxation.

C. Transitional rules: Phasing in amount and period of phasing in

It is proposed that a phasing in amount and a phasing in period of 6 years be introduced as a transitional measure aimed at stabilising tax collections by SARS and reducing the financial impact on certain long term insurers due to these proposed changes. These rules are intended to cater for the difference in treatment of negative liabilities under the new regime (coming into effect when the Insurance Act of 2016 and SAM come into effect) and the previous rules, which applied before the coming into effect of the proposed definition of "adjusted IFRS value", in so far as it relates to negative liabilities. Negative liability means the amount by which the expected present value of future receipts from a policy exceeds the expected present value of future claims and expenses in respect of a policy – effectively expected profit from a policy. This fixed amount representing the difference relating to policies allocated to a fund between the liabilities for tax purposes and the liabilities disclosed in the insurer's published annual financial statements for 2016 will be phased in over a period of six years.

The amount of negative liabilities will be reduced by the negative liabilities that are recognised as an asset on the balance sheet (statement of financial position) by insurers that are in a net asset position (total negative liabilities exceeds total positive liabilities to policyholders). The reason for the exclusion is to avoid a significant negative impact on the liquidity of insurers that have a net negative liability for policies allocated to a specific tax fund.

D. Anti-avoidance measures for calculating the phasing in amount

The introduction of transitional rules is intended to stabilise tax collections by SARS and reduce the financial impact on certain long term insurers flowing from the treatment of negative liabilities. However, some insurance companies may change the manner of disclosure of negative liabilities for either or both tax and financial reporting purposes in 2016 in order to benefit from a deferral of tax payable as a result of the phasing in rules.

It is therefore proposed that negative liabilities as disclosed for tax and financial reporting in 2016 be adjusted to the manner of disclosure that applied in 2015.

Examples of calculating the phasing in amount:

Example 1

Facts:

Assuming the year of assessment ends after 30 June 2017 and after the Insurance Act, 2016, came into effect.

In respect of the 2016 year of assessment the accounting net liabilities in respect of policies were R100 (taking into account negative liabilities of R20). However, for reporting to shareholders, liabilities in respect of policyholders were disclosed as R104, which mean negative liabilities of R16 have been recognised. In 2016 for statutory reporting and also for tax

purposes the value of liabilities was R120 – therefore no negative liabilities have been taken into account. It is assumed the manner of disclosure for financial reporting and tax reporting did not change from 2015 to 2016. The phasing-in amount is R16 (R16 – R0).

Results:

In respect of the first year of assessment after the Insurance Act, 2016 came into effect the new value of liabilities definition (without the phasing in) results in an amount of R110. After applying the phasing in rules the value of liabilities is R123.3= (R110 + (0.833 x 16)).

In respect of the second year of assessment after the Insurance Act, 2016 came into effect the new value of liabilities definition (without the phasing in) results in an amount of R125. After applying the phasing in rules the value of liabilities is R135.7 = (R125 + (0.667 x 16)).

In respect of the third year of assessment after the Insurance Act, 2016 came into effect the new value of liabilities definition (without the phasing in) results in an amount of R150. After applying the phasing in rules the value of liabilities is R158 = (R150 + (0.5x 16)).

In respect of the fourth year of assessment after the Insurance Act, 2016 came into effect the new value of liabilities definition (without the phasing in) results in an amount of R165. After applying the phasing in rules the value of liabilities is R170.3 = (R165 + (0.333x 16)).

In respect of the fifth year of assessment after the Insurance Act, 2016 came into effect the new value of liabilities definition (without the phasing in) results in an amount of R180. After applying the phasing in rules the value of liabilities is R182.7 = (R180 + (0.167x 16)).

In respect of the sixth year of assessment after the Insurance Act, 2016 came into effect the new value of liabilities results in an amount of R200. The negative liabilities have been fully phased in and no further adjustment applies.

Example 2

Facts:

Assuming the year of assessment ends after 30 June 2017 and after the Insurance Act, 2016, came into effect.

In respect of the 2016 year of assessment the accounting net liabilities in respect of policies were R80 (taking into account negative liabilities of R20). However, for reporting to shareholders, liabilities in respect of policyholders were disclosed as R94, which mean negative liabilities of R6 have been recognised. In 2016 for statutory reporting and also for tax

purposes the value of liabilities was R82 – therefore R18 negative liabilities have been recognised. It is assumed the manner of disclosure for financial reporting and tax reporting did not change from 2015 to 2016. The phasing-in amount is R12 (R18 – R6).

Results:

In respect of the first year of assessment after the Insurance Act, 2016 came into effect the new value of liabilities definition (without the phasing in) results in an amount of R110. After applying the phasing in rules the value of liabilities is R100 = (R110 – (0.833x 12)).

In respect of the second year of assessment after the Insurance Act, 2016 came into effect the new value of liabilities definition (without the phasing in) results in an amount of R125. After applying the phasing in rules the value of liabilities is R117 = (R125 – (0.667x 12)).

In respect of the third year of assessment after the Insurance Act, 2016 came into effect the new value of liabilities definition (without the phasing in) results in an amount of R150. After applying the phasing in rules the value of liabilities is R144 = (R150 – (0.5x 12)).

In respect of the fourth year of assessment after the Insurance Act, 2016 came into effect the new value of liabilities (without the phasing in) results in an amount of R165. After applying the phasing in rules the value of liabilities is R161 = (R165 – (0.333 x 12)).

In respect of the fifth year of assessment after the Insurance Act, 2016 came into effect the new value of liabilities (without the phasing in) results in an amount of R180. After applying the phasing in rules the value of liabilities is R178 = (R180 – (0.167 x 12)).

In respect of the sixth year of assessment after the Insurance Act, 2016 came into effect the new value of liabilities results in an amount of R200. The negative liabilities have been fully phased in and no further adjustment applies.

Examples: Liabilities in respect of policies

R billion	Example 3	Example 4	Example 5	Example 6
Gross liabilities in respect of policies	200	100	40	120
Negative liabilities recognised in accordance with IFRS	30	120	300	20
IFRS disclosure as:				

- Long-term policy liabilities	170		40	120
- Assets under insurance contracts		20	300	20
Amount referred to in par (a) of "Adjusted IFRS value"	170	0	0	100

Examples: Reinsurance

R billion	Example 7	Example 8
Gross liabilities in respect of policies	200	100
Amounts recoverable under reinsurance	10	7
IFRS recognition as:		
- Long-term policy liabilities	190	100
- Long-term reinsurance assets		7
Amount referred to in par (a) of "Adjusted IFRS value"	190	93

Examples: Phasing-in amount

R billion	Example 9	Example 10
Total negative liabilities	10	10
IFRS recognition as:		
- Reduction of policy liabilities	10	0
- Assets under insurance contracts	0	0
Reduction of "value of liabilities" for	0	10

tax		
Amount referred to in par (a) of “Phasing-in amount”	10	
Amount referred to in par (b) of “Phasing-in amount”		10

R billion	Example 11	Example 12	Example 13
Total positive liabilities	20	5	20
Total negative liabilities	10	10	10
IFRS recognition as:			
- Reduction of policy liabilities	5	5	0
- Assets under insurance contracts	5	5	10
Reduction of “value of liabilities” for tax	7	7	1
Amount referred to in par (a) of “Phasing-in amount”	3		9
Amount referred to in par (b) of “Phasing-in amount”		2	

R billion	Example 14	Example 15
Total positive liabilities	10	10
Total negative liabilities	20	20
IFRS recognition as:		
- Reduction of policy liabilities	10	8
- Assets under insurance	10	12

contracts		
Reduction of “value of liabilities” for tax	2	3
Amount referred to in par (a) of “Phasing-in amount”	8	7
Amount referred to in par (b) of “Phasing-in amount”		

E. Meaning of asset in applying the five fund approach for tax purposes

In allocating assets to the different funds under subsections (4), (5) and (12), and when determining assets to be transferred in terms of subsections (7) and (8), for tax purposes, certain assets recognised in the audited financial statements of the insurer for IFRS purposes should not be taken into account when reference is made to an asset in those subsections. It is proposed that the following assets for financial reporting purposes be disregarded when applying section 29A (except for subsection 15 when determining the phasing-in amount):

a. negative liabilities,

b. policies of reinsurance,

c. a deferred tax asset or

d. goodwill.

The reasons therefor are that negative liabilities and reinsurance are already taken into account in determining the value of liabilities for tax purposes and deferred tax assets and goodwill are not assets that should be recognised at market value for tax purposes or that could be transferred to a different fund of the insurer under subsection (7).

IV. Effective date

- The amendments in relation to adjustment to the definition of “value of liabilities” are deemed to have come into operation on 1 January 2016 and apply in respect of years of assessment commencing after that date.
- Other amendments in relation to the tax treatment of long term insurers due to the introduction of SAM will come into operation on the date on which the Insurance Act, 2016, comes into operation and apply in respect of years of assessment ending on or after that date.

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4. INCOME TAX: BUSINESS (INCENTIVES)

4.1. CLARIFYING THE TAX TREATMENT OF GOVERNMENT GRANTS

[Applicable provision: Paragraph (IC) of the definition of "gross income" in section 1 of the Act]

I. Background

A uniform regime for the taxation of government grants was introduced under section 12P of the Act in 2012. Under this uniform regime, government grants can only be exempt if they form part of the comprehensive legislative list set out in the Eleventh Schedule or they are specifically identified by the Minister of Finance by notice in the Government Gazette as a mechanism to cater for grants originating in the middle of a legislative cycle for which there will be a delay in listing them in the Eleventh Schedule. These two mechanisms were introduced to ensure that the key determinations to be observed when seeking to exempt any government grant are properly considered. The intention is that these mechanisms would ensure that only genuine grants and not some forms of disguised consideration or transfer paid for or in exchange for goods and services required by Government would be exempt and that the financial and tax implications were borne in mind when deciding to grant an exemption.

II. Reasons for change

Under the current dispensation, a government grant that is neither listed in the Eleventh Schedule nor identified by the Minister in the Government Gazette may still avoid being taxed. This arises as a result of the grant falling outside the definition of "gross income" because that grant is meant to subsidise the procurement or acquisition of capital assets and is thus capital in nature.

III. Proposal

It is proposed that the legislation should be clarified and aligned in accordance with normal tax practices applicable to taxable receipts. Firstly, the amount must be included in the "gross income" of the recipient. Any exclusion from tax should be made on the basis of a special exemption granted in terms of section 12P read together with the Eleventh Schedule to the Act.

The proposed inclusion in "gross income" for all government grants will be included under a new paragraph (IC) of the definition of "gross income".

IV. Effective date

The amendments will apply to all grants received or accrued on or after the date of promulgation of the Taxation Laws Amendment Act, 2016.

4.2. TAX EXEMPTION OF NATIONAL HOUSING FINANCE CORPORATION

[Applicable provisions: Sections 10(1)(t) and section 30(3)(b) of the Act]

I. Background

The Department of Human Settlements is currently consolidating all its Human Settlement Development Finance Institutions, namely, the National Housing Finance Corporation (NHFC), National Urban Reconstruction and Housing Agency (NURCHA) and the Rural Housing Loan Fund (RHLF) under one entity, namely, the NHFC, which is wholly owned by Government. Currently, NURCHA and RLHF qualify as Public Benefit Organisations (PBOs) in terms of the Act and are exempt from normal income tax. On the other hand, NHFC is a taxable entity.

II. Reason for Change

The existing different tax treatment of Human Settlement Development Finance Institutions creates difficulties, more especially during consolidation. Before consolidation, the activities were performed by two entities (NURCHA and RHLF), which are tax exempt. After consolidation, the same activities will be performed by one entity (NHFC), which is not exempt from tax.

In turn, the consolidation of functions into one entity requires the transfer of assets and liabilities from the aforementioned two tax exempt entities to this single taxable entity, which triggers a tax charge. Given that these activities qualify as public benefit activities and were tax exempt before consolidation, consolidation should not deter public benefit activities that qualify for tax exemption.

III. Proposal

The Human Settlement Development Finance plays a key role in improving the delivery of adequate housing to the needy. It is proposed that the receipts and accruals of NHFC should be exempt from tax in terms of section 10(1)(t) of the Act.

In order to allow for tax neutral transfer of assets and liabilities from NURCHA and RHLF to NHFC, it is proposed that a further amendment be made to section 30(3)(b) of the Act.

IV. Effective Date

The amendments are deemed to have come into operation on 1 April 2016 and apply in respect of receipts and accruals on or after that date.

4.3. PROVISION FOR EXCEPTION TO THE RESEARCH AND DEVELOPMENT (R&D) INCENTIVE PRESCRIPTION RULES

[Applicable provisions: Section 11D of the Income Tax Act 58 of 1962 and section 93 of the Tax Administration Act 28 of 2011]

I. Background

The income tax system contains an incentive for research and development to promote R&D related job opportunities and economic growth in South Africa. The tax incentive is in the form of

a 150 per cent deduction for non-capital R&D expenditure. Taxpayers seeking to benefit from this allowance are required to obtain pre-approval from the Minister of Science and Technology, who in turn decides whether to provide such approval based on the findings of a committee set up for this purpose. Management and administration of the pre-approval committee is essentially done by the Department of Science and Technology (DST), although the committee comprises people sourced from the DST, National Treasury and SARS.

Since inception of the R&D pre-approval system in 2012, the pre-approval adjudication committee has experienced teething, administration and capacity problems. These setbacks have led to delays and substantial backlogs in the processing of applications. The backlogs have resulted in calls by taxpayers and tax practitioners for a task team to be appointed to make recommendations on how the R&D tax incentive could be improved. The Minister of Science and Technology responded to these calls and appointed such a task team, consisting of expert representatives from academia, government and the private sector. The task team has completed its mandate and has provided the Minister of Science and Technology with its findings.

II. Reason for change

Amongst the issues raised by the task team was that delays in processing approvals could cause assessments to prescribe before an application is adjudicated upon. This situation is exacerbated because SARS has made it clear that submission of income tax and provisional tax returns should not be delayed pending pre-approval by the R&D committee. Further, taxpayers have been advised that when submitting such returns they should not assume a successful pre-approval as wrongfully doing so could result in them being subject to the imposition of interest and penalties.

Example:

Facts:

Company X has a 30 June year end. On 1 November 2012, Company X submitted a proposed research and development project to DST for pre-approval. On 1 August 2013 Company X submitted its return to SARS for assessment and was duly assessed on that day (company has until 30 June 2014 to submit its return). In submitting its return the taxpayer claimed certain R&D expenditure to the value of R1, 000,000 (incurred between November 2012 and 30 June 2013). On 10 August 2016 the DST approved the pre-approval application of 1 November 2012.

Results:

At the time of submitting the tax return, the taxpayer did not claim an additional R500,000, which it anticipated it would be entitled to once its R&D project was approved by the Minister of Science and Technology. Given the approval date by DST on 10 August 2016, which is more than three years after the date of assessment, the taxpayer wanted to re-open its 2013 tax return to include a claim for an additional allowance of

R500,000. Since the authority to revise an assessment prescribes three years after a tax return has been assessed, the taxpayer has lost the benefit of the R&D allowance. In this case the taxpayer's return would have already been prescribed by 1 August 2016 before receiving the decision from DST.

III. Proposal

An amendment should be made to section 11D to allow for a re-opening of assessments in the circumstances outlined above.

IV. Effective date

The amendment is deemed to have come into operation on 1 October 2012 and applies in respect of expenditure incurred in respect of research and development on or after that date, but before 1 October 2022.

4.4. ADDRESSING POSSIBLE ADMINISTRATIVE AND TECHNICAL CHANGES IN RESPECT OF INDUSTRY POLICY FOR SECTION 12I

[Applicable provision: Section 12I of the Act]

I. Background

Section 12I of the Act allows taxpayers an additional investment and training allowance in respect of industrial policy projects provided that the projects meet certain criteria prescribed by way of regulation. The additional investment allowance ranges from 35 per cent to 100 per cent of the cost of any new and unused manufacturing assets used for the project, depending on whether the project has qualifying status or preferred status, and whether the project is located in an industrial development zone (or designated special economic zone).

The additional investment allowance also has specific legislative requirements that requires the asset:

a. to be owned by the company claiming the additional allowance;

b. to be used for the furtherance of the industrial policy project carried on by that company;

c. to have been acquired and contracted for on or after the date of approval of the relevant project as an industrial policy project; and

d. was brought into use within four years from the date of approval of the relevant project as an industrial policy project.

II. Reasons for change

A. Status change of project

The current provisions of section 12I(12) only envisages the withdrawal of project approval when the company fails to comply with any requirements as set on approval.

It, however, does not account for the situation where the project was initially approved on preferred status, but the project status subsequently changes and becomes a qualifying status project by the end of the compliance period.

For example, the project may have scored 7 out of 8 points upon project approval and qualified as a preferred status project, but by the end of the compliance period, the project only scores 6 out of 8 points and is regarded as a qualifying status project. In this example, the approved project may not be disqualified as it still meets the minimum requirements for an approved industrial policy project, i.e. qualifying status project. Nonetheless, if it does not meet the scoring criteria for a preferred status project by the end of the compliance period, it should not be allowed to claim the preferred status allowance of either 55 per cent or 100 per cent of the cost of any new and used manufacturing assets, depending on whether the project is located within a special economic zone or not.

The risk to the fiscus is that the project which was approved as a preferred status but changes to a qualifying status before the end of a compliance period could be claiming a larger allowance value than it is allowed to claim, thereby reducing revenue collection over that period. This is a gap in the current legislation which needs to be addressed, because there is a risk that this may happen more frequently as many more projects near the end of the compliance period.

B. Extending period to bring assets into use

Given the estimates used at the approval stage and the nature of these large-scale manufacturing projects, start-up delays are a distinct possibility. In this regard the legislation does allow the Minister of Trade and Industry the discretion to extend the period within which assets are required to be brought into use, after taking into account the recommendations of the adjudication committee.

Current legislation contains a technical oversight in that the relevant discretionary enabling legislation does not extend to certain other provisions in the section. There is no policy rationale for the Minister’s discretion in this regard to not extend to all the relevant provisions.

III. Proposal

A. Status change of project

It is proposed that section 12I be amended to enable SARS to recoup the difference in allowance claimed in respect of a project which was approved as a preferred status but changes to a qualifying status by the end of the compliance period. If a project was initially approved on preferred status and claimed allowances on that basis, but by the end of the compliance period the project only reaches qualifying status, the Commissioner must substitute the preferred approval with that of a qualifying approval. To recognise the impact that the change in status

could possibly have on historic provisional tax return the excess value claimed should be recouped from the taxpayer in the year of assessment that the Commissioner, after taking into account the recommendations of the adjudication committee, makes the decision to substitute the statuses and not the year that the Minister identifies as the year of assessment that the change effectively occurred.

B. Extending period to bring asset into use

The discretion contemplated in section 12I(19)(a) should be extended to also include a reference to subparagraph (7)(c) of the same section.

IV. Effective date

The amendments will come into operation on the date of promulgation of the Taxation Laws Amendment Act, 2016.

4.5. EXTENSION OF THE LEARNERSHIP TAX INCENTIVE

[Applicable provision: sections 12H of the Act]

I. Background

The Learnership Tax Incentive was introduced to encourage skills development and job creation, by providing an additional tax deduction for formal, SETA-registered training programmes.

II. Reasons for change

The review of the programme indicated that the incentive delivers on its objectives where it is accessible to employers and training programmes are relevant to needs of employers. Claims are not evenly spread across sectors. Sectors with high uptake are sectors where SETAs are perceived to administer training programmes effectively.

In its current form, the incentive will only be available for learnership registered before 1 October 2016. An extension will require legislative amendment.

The current design targets all skills levels equally. The economic situation and skills development priorities have shifted since, and government support should target workers that are most vulnerable to unemployment due to a lack of relevant qualifications.

III. Proposal

National Treasury proposes continuation of the programme until a sunset date of 31 March 2022.

The values of the claims are adjusted in order to target the incentive to crucial training, in line with DHET policies. While all registered learnerships will still qualify for the incentive, our proposed targeting prioritises learners without basic to intermediate qualifications by providing a higher value of claims. The prior qualifications of the learner entering into the learnership agreement will determine the value of the claim.

Table 1: Proposed Learnership Tax Incentive claim values

	Qualification	**Proposed**	Current
Person without disability	NQF 1 - 6	**40,000**	30,000
	NQF 7 - 10	**20,000**	30,000
Person with disability	NQF 1 - 6	**60,000**	50,000
	NQF 7 - 10	**50,000**	50,000

In order to augment the future evidence base for policy evaluation, National Treasury and the SARS are discussing the most appropriate mechanism to collect more information on claims and learners. The intention is to make reporting compulsory for claimants of the learnership tax incentive.

IV. Effective date

The amendments are deemed to have come into operation on 1 October 2016 and apply in respect of learnership agreements entered into on or after that date.

4.6. REFINING THE ENABLING VENTURE CAPITAL REGIME FOR START-UP VENTURE CAPITAL COMPANIES

[Applicable provision: Section 12J of the Act]

I. Background

To encourage equity funders to invest in small businesses, the venture capital company (VCC) regime was introduced in 2008. Taxpayers investing in a VCC generate an upfront deduction for the investment (whereas most equity investments are non-deductible) with a recoupment upon withdrawal if the investment is not held for a minimum of five years.

The VCC has several sets of requirements including investor-level requirements for the allowable deduction in the hands of the investor. Included in the investor-level requirements is a connected person test provision (connected persons do not qualify for the VCC tax deduction) that ensures that a taxpayer cannot obtain a deduction merely by recycling funds among closely connected parties (as opposed to obtaining a new independent investment).

Concerns have been raised that at the initial stages of finding investors for a VCC, it may transpire that only a limited number of investors are able to provide seed funding. This could mean that these initial investors hold more than 20 per cent shares in the VCC, which could potentially put them in breach of the investor level requirements of the VCC. Due to the timing issues typical of start-ups like new VCC's, initial anchor investors risk not meeting the investor level requirements. As a result, VCC's have indicated that several potential large investors have opted out of the VCC initiative, making it less likely that smaller investors will come on board as well.

II. Reasons for change

The current VCC regime makes provision for investors to obtain a tax deduction in respect of any expenditure incurred in acquiring shares in a VCC, subject to various limitations. At issue is the limitation imposed by the connected person test. The connected person test defines any person holding 20 per cent or more of shares in a company at the end of any year of assessment as connected. This connected person test provides that no deduction will be granted to taxpayers who acquire shares in a VCC, where immediately after the acquisition the taxpayer is a connected person in relation to the VCC. Currently, the Act makes provision for the connected person test to be performed at the end of every year of assessment of the VCC.

In an already challenging economic environment, it is believed that the additional risks associated with the application of the connected person test will prevent many VCC's from raising capital.

III. Proposal

A. *Timing of the connected person test:*

In order to create a more enabling environment for VCC, it is proposed that the timing of the connected person test be reviewed. It is proposed that the connected person test first be performed 36 months after the first shares are issued by the VCC and where after it is performed at the end of every year of assessment.

By only performing the first connected person test after 36 months from first shares being issued, it should enable the VCC's to find additional start-up/angel investors, and give them more flexibility in terms of when they issue the shares in the start-up phase of the VCC.

B. *Anti-avoidance:*

To address the concerns raised with regard to potential abuse regarding the proposed timing of the connected person test, the following measures are proposed:

a. Initial connected person test

1. Should any taxpayer who is an investor in a VCC be a connected person in relation to that VCC, with effect from the day after the 36 months from the

date of the first issue of shares expired and after due notice to the VCC by the Commissioner:

ii. the Commissioner must withdraw the approval of that company as a VCC, if corrective steps acceptable to the Commissioner are not taken by the company within a period stated in the notice; and

iii. the VCC must include an amount equal to the expenditure incurred (which qualified for a deduction) for the issue of those shares held in that venture capital company in the income of that VCC during the year of assessment in which approval is withdrawn.

b. Subsequent connected person test

1. Should any taxpayer who is an investor in a VCC or any person that incurs expenditure to acquire any share in a VCC be a connected person in relation to that VCC, during any year of assessment after the 36 months from the date of the first issue of shares expired and after due notice to the VCC by the Commissioner:

i. the Commissioner must withdraw the approval of that company as a VCC, if corrective steps acceptable to the Commissioner are not taken by the company within a period stated in the notice; and

ii. the VCC must include an amount equal to the expenditure incurred (which qualified for a deduction) for the issue of those shares held in that venture capital company in the income of that VCC during the year of assessment in which the approval is withdrawn.

IV. Effective date

The amendments will come into operation on 1 January 2017.

4.7. CLARIFYING THE TAX RATE APPLICABLE TO SMALL BUSINESS CORPORATIONS LOCATED IN SPECIAL ECONOMIC ZONES

[Applicable provision: Section 12R of the Act]

I. Background

In 2013, the Department of Trade and Industry (DTI) together with the National Treasury proposed the introduction of special economic zones (SEZs) regime. The SEZ regime was intended to replace the Industrial Development Zones (IDZs) regime with the aim to further promote investment, growth and job creation in the South African manufacturing sector and the development of selected key zones. The SEZ regime (which will apply to the current IDZs and any newly designated zones approved by the Minister) differs from the IDZ regime in that it expands on the value-added tax and customs duty relief that are applicable within customs

controlled areas in the IDZs. This expansion under the SEZ regime includes normal income tax incentives that will encourage higher levels of investments into the designated zones.

II. Reasons for change

For normal tax purposes, companies that qualify for the incentives under the SEZ regime will be taxed at a more favourable rate of 15 per cent and are also eligible for an accelerated capital allowance on buildings built within a designated SEZ. However, the current provisions of the Act that provide for these incentives do not provide clarity on the tax rates applicable in the instance that the qualifying company is a small business corporation as defined in section 12E of the Act.

At issue is that the current provisions of the SEZ incentives provide only for a flat tax rate of 15 per cent while section 5(2) and the annual Rates and Monetary Amounts and Amendment of Revenue Laws Acts provide for concessionary tax rates which follow a graduated marginal structure (0 per cent, 7 per cent, 21 per cent and 28 per cent). In instances that the small business corporation would have been taxed at an effective rate that is lower than 15 per cent, the flat rate of 15 per cent would not be advantageous. In addition, it is currently not clear in the legislation which rate should apply in the instance that the small business corporation would have been taxable at an effective rate that is higher than 15 per cent (for example 21 per cent or 28 per cent).

III. Proposal

It is proposed that the legislation should be amended in order to clarify that small business corporations located within an SEZ should be able to benefit from the lower effective tax rate that they would otherwise qualify for under the graduated marginal structure and should, furthermore, also be able to benefit from the flat rate of 15 per cent in the instance that their effective tax rate would have exceeded the flat rate of 15 per cent. As such, a small business corporation will be subject to tax at the flat rate of 15 per cent or the effective rate determined in terms of the graduated marginal structure, whichever is the lower.

It should be noted that there is no policy change regarding qualifying companies that are currently excluded from benefiting from the preferential tax rates as a result of their activities.

IV. Effective date

These amendments are deemed to have come into operation on the date on which the Special Economic Zones Act, 2014 (No. 16 of 2014) came into operation. The rates applicable are reflected in the 2016 Rates and Monetary Amounts and Revenue Laws Amendment Act.

4.8. ACCELERATED CAPITAL ALLOWANCE IN RESPECT OF SUPPORTING INFRASTRUCTURE USED IN PRODUCING RENEWABLE ENERGY

[Applicable provision: Section 12U of the Act]

I. Background

South Africa as a party to the United Nations Framework Convention on Climate Change (UNFCCC) aims to reduce greenhouse gas (GHG) emissions and to incentivise investments in low carbon, clean energy. Renewable energy is prioritized by government as a viable alternative to the current carbon–intensive economy. Since 2005 targeted incentives for renewable energy have been introduced through the provisions of the Act.

II. Reasons for change

Currently, large scale renewable energy projects are not adequately catered for under the existing accelerated depreciation regime due to the capital intensive nature of supporting infrastructure whose tax treatment would need to be specifically targeted. Capital expenditures that indirectly support renewable electricity production, such as the construction of fences and roads, do not qualify for deductions under the Act. According to industry, this is one of the limitations that influence the viability of most large-scale renewable energy projects.

III. Proposal

It is therefore proposed that the provisions of the Act be broadened to include the supporting capital infrastructure in the form of capital expenditure actually incurred on roads and security fences for large scale renewable energy projects as follows:

A. Renewable energy projects qualifying for deductions:

It is proposed that only large scale renewable energy projects that generate electricity exceeding 5MW will qualify. Current evidence suggests that renewable energy projects within the band of 5 – 50MW are barely economically viable and as such this proposed incentive will assist in increasing the financial viability. The proposed amendment further took into account that the majority of renewable energy projects approved under the auspices of the Renewable Energy Independent Power Producers Procurement Programme of the Department of Energy currently exceed 5MW.

B. Timing of proposed deduction:

Should the renewable energy production supporting capital infrastructure expense be incurred pre-commencement of trade, then similar to section 11A of the Act which provides for certain pre-trade expenditure to be allowed as a deduction, the capital expense will have to be:

a. Actually incurred prior to the commencement of and in preparation of carrying on that trade; and

b. Not have been allowed as a deduction in that year or any previous year of assessment.

C. Roll over:

It is proposed that the envisaged allowable supporting infrastructure capital expenditure that exceeds the taxable income to the specific trade of the production of renewable energy in any year of assessment be rolled-over as an allowable capital expenditure during the next

succeeding year of assessment against income specific to the trade of the production of renewable energy.

IV. Effective date

The amendments are deemed to have come into effect on 1 April 2016 and apply in respect of years of assessment commencing on or after that date

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4.9. URBAN DEVELOPMENT ZONES (UDZ) – ALLOWING ADDITIONAL MUNICIPALITIES TO APPLY FOR THE UDZ TAX INCENTIVE

[Applicable provision: Section 13quat of the Act]

I. Background

The urban development zone tax incentive was designed to encourage property investment in central business districts i.e. areas with high population carrying capacity and developed infrastructure for transport. The principal objective of the incentive is to address dereliction and dilapidation, and promote urban renewal by stimulating investment in the construction and renovation of commercial and low cost residential buildings. The incentive is in the form of an accelerated depreciation allowance under section 13quat of the Act. The incentive is aimed at promoting investment in 16 designated inner cities, 15 of which now have demarcated UDZs within its boundaries. The incentive was initially available from January 2004 until March 2014, where after a review of its effectiveness it was extended to March 2020.

In 2015, changes were made in the Act to allow municipalities with a population of 1 million demarcate an additional UDZ area. Furthermore, where the municipality's population is below 1 million, the Minister of Finance (MoF) may approve the demarcation of an additional UDZ having regard to the provisions set out under section 13quat(6) and (7) of the Act.

II. Reason for change

Municipalities outside of the 16 designated UDZs areas have approached the Minister to broaden the scope of the UDZ incentive to cover additional municipalities, as they seek to integrate the incentive into existing urban renewal plans. Section 13quat of the Act only caters for the 16 municipalities (Annexure A) and makes no provision for municipalities not listed under subsection 13quat(6)(a) to be eligible for the incentive.

Given the continued state of under-development and dilapidation in their inner cities, there is demand from municipalities to expand the scope of the incentive and allow municipalities to apply to the Minister to be considered for the UDZ tax incentive. Where this inner city dilapidation continues, it discourages new investment and increases disinvestment in property. There may thus be a case to expand the scope of the incentive as it is seen to stimulate investment in the construction and renovation of commercial and low-cost residential buildings in the inner city.

III. Proposal

A. Additional Municipalities

It is proposed that section 13quat of the Act be amended to provide a framework for the Minister to consider applications from municipalities currently not allowed to designate a UDZ area. The Minister's assessment criteria will be based on the current legislative requirements as contained in section 13quat(6) and (7), as well as the additional criteria contained in Annexure B below.

The application process will apply to all municipalities that are not listed under subsection 13quat(6)(a) – i.e. all municipalities not currently part of the original 16 that were eligible since the inception of the UDZ incentive. Such municipalities may apply directly to the Minister for a UDZ area to be demarcated

If the municipality's application is successful and the Minister issues the notice in the Government Gazette, the municipality will be added to the list of qualifying municipalities through a legislative amendment under subsection 13quat(6)(a).

B. Additional Criteria

The inclusion of the additional criteria contemplated in Annexure B is aimed at providing an assessment framework to consider when broadening access to the incentive, through prioritising urban renewal and development in a manner that counters spatial fragmentation. Essentially Annexure B prescribes several criteria items of differing significance, dependent on each application's facts and circumstances, which have to be applied in context of each application.

A broader target market for the incentive could potentially increase the associated fiscal cost, however, the additional criteria essentially focuses on high-performing municipalities that have significant growth potential. The demarcation of the UDZ should not put an additional strain on municipal finances, but contribute positively towards an increase in the generation of own revenues from the municipality.

The municipality must support its application with evidence that it meets all the requirements of subsections 13quat (6) and (7).

The additional criteria proposed in Annexure B should be issued as a separate document through the means of a regulation to guide both the Minister and municipalities when considering approving/applying (for) a UDZ area. These represent some of the factors that the Minister will use in assessing whether to allow the demarcation of a UDZ in that municipality.

The additional criteria contained in Annexure B will also be used to assist the Minister in assessing applications for additional UDZs from municipalities that have a population of less than 1 million [s13quat (7)(bA)].

IV. Effective date

The amendments will come into operation on the date of promulgation of the Taxation Laws Amendment Act, 2016.

Annexure A

Municipalities Eligible for UDZ incentive

1	Buffalo City
2	Cape Town
3	Ekurhuleni
4	Emalahleni
5	Emfuleni
6	eThekwini Metro
7	Mahikeng
8	Johannesburg Metro
9	Mangaung
10	Matjhabeng
11	Mbombela
12	Msunduzi
13	Nelson Mandela Metro
14	Polokwane
15	Sol Plaatje
16	Tshwane Metro

Annexure B

SUGGESTED criteria for new applications and ADDITIONAL urban development zones

Category	Item	Motivation	Measurement
Urban renewal	Proposed area should contain derelict and dilapidated buildings that require rejuvenation.	Relates to the original purpose of the UDZ, i.e. to rejuvenate the inner cities.	Number of derelict buildings in need of upgrading.
Spatial	Proposed area should be located	This criteria acts as a counter against urban	The following key elements need to be

Targeting	within/close to a spatially targeted node identified within the municipal spatial development framework (SDF) and have proven locational potential.	sprawl and ensures that densification and focused, integrated interventions are addressed. It also ensures that the basic requirements for economic development are in place.	considered in evaluating the proposed UDZ: • A transport interchange in close proximity to the area; • Convergence of people; • The area should be linked to primary and/or at least secondary transport routes. • A conglomeration of mixed use activities and facilities should be present within the area.
Economic growth	Economic growth prospects and performance of the municipality as a whole	The overall economic output of the municipality needs to demonstrate positive growth over the last 2 years. Proven market performance should be evident.	Gross value added (GVA) to be more than the national average, but a minimum of 1.5% over the previous 2 years.
Municipal commitment	• Proven fiscal measures and plans towards improvements in the area. • Municipality should demonstrate current ability to generate own revenue.	Own revenue should be >=50% of total municipality income	Own revenue : total municipal income = 0.5: 1

Annual submission of progress reports on historically approved UDZ's	• Municipality must have submitted reports annually as required in section 13quat (9).	The reports will provide information regarding the current progress of the UDZ and whether an extension of the area is justified.	

4.10. PROVIDING TAX RELIEF FOR MINING COMPANIES SPENDING ON INFRASTRUCTURE FOR THE BENEFIT OF MINING COMMUNITIES

[Applicable provision: Section 36 of the Act]

I. Background

The Mineral and Petroleum Resources Development Act, 2002, (Act No 28 of 2002) (MPRDA) has multiple purposes – one of which is to transform mining and production industries in South Africa. To ensure effective transformation, the MPRDA makes it compulsory for mining companies to submit a Social and Labour Plan (SLP). SLPs are entered into between the community, the mining company and the Department of Mineral Resources (DMR). One of the requirements is to assist with the development of mining communities, which typically involves a company agreeing to build infrastructure – ranging from roads and drainage systems to crèches, schools, clinics, housing, and recreational buildings – to benefit workers and communities surrounding the mine.

II. Reasons for change

Currently, section 36(11) of the Act enables mining companies to deduct certain capital expenditure in lieu of other sections in the Act. Mining companies can only deduct such capital expenditure if it relates directly to its employees, not the wider community. If, for example, a mining company builds a clinic purely to serve its employees, the mining company will be entitled to deduct the related capital expenses in equal amounts over a ten year period. If the clinic was built to serve the wider community instead, the mining company is unable in terms of the current provisions of the Act to deduct any of the capital expenditure incurred.

In particular, section 36(11)(e) of the Act makes provision for mining companies to deduct capital expenditure incurred pursuant to the MPRDA, but excluding capital expenditure incurred by mining companies in respect of infrastructure or environmental rehabilitation.

III. Proposal

To recognise the SLP requirements (of the MPRDA) for mining companies to meaningfully contribute toward community development, the following is proposed:

a. To extend the current relief provided to mining companies (for capital expenditure incurred in respect of infrastructure for the benefit of employees) to capital expenditure

incurred by mining companies on infrastructure in terms of the SLP requirements of the MPRDA, for the benefit of the people living in mining communities (other than employees). The intent is not to widen this treatment to all expenditure in respect of an SLP (e.g. teachers' salaries), but rather to cater for eligible infrastructure.

b. To be eligible for the capital expenditure deduction, the infrastructure erected or developed by the mining company should reflect what was agreed to between the mining company and the DMR in terms of SLP requirements of the MPRDA.

c. The DMR will improve effective monitoring and oversight of such plans and the Tax Administration Act, 2011 (No. 28 of 2011) allow SARS to request the SLP and associated annual reports.

d. That current ten year period for deductions applicable to mining companies in respect of capital expenditure incurred on infrastructure for the benefit of employees be applicable in respect of capital infrastructure expenditure incurred by mining companies in terms of the SLP requirements of the MPRDA. It is recognised that this may not render a benefit for mining companies nearing the end of their useful lives as the deduction is likely to add to assessed losses, which the company derives no value from. However, policy choices involve a balancing act between policy objectives and affordability for the fiscus.

IV. Effective date

The amendments will come into operation on 1 April 2017 and apply in respect of expenditure incurred during years of assessment commencing on or after that date.

4.11. TAX TREATMENT OF LAND DONATED UNDER LAND-REFORM INITIATIVES

[Applicable provisions: Section 56 of the Act, paragraph 64A of the Eighth Schedule and an addition of new paragraph 64D of the Eighth Schedule to the Act]

I. Background

The Act makes provision for tax relief in respect of land donated under certain land reform programmes. For example, land granted in terms of the Land Reform Programme as contemplated in the White Paper on South African Land Policy, 1997 is exempt from donations tax. In addition, awards or compensations in terms of Restitution of Land Rights Act, 1994 are exempt from capital gains tax.

II. Reasons for change

The above-mentioned tax relief was introduced in the Act in 1994 and 2002 respectively. Subsequent to this, Government has since introduced other land reform initiatives as stipulated

in Chapter 6 of the National Development Plan (NDP). As the existing tax relief in the Act was introduced prior to the publishing of the NDP, the relief does not extend to land reform initiatives aligned to Chapter 6 of the NDP.

III. Proposal

In order to provide relief to other land reform initiatives as stipulated in Chapter 6 of the NDP, it is proposed that:

a. Exemption from donations tax in section 56 of the Act be extended to include land reform initiatives under Chapter 6 of the NDP.

b. Exemption from capital gains tax in paragraph 64A of the Eighth Schedule to the Act be extended to include awards in terms of land reform initiatives under Chapter 6 of the NDP.

   1. Introduction of new paragraph 64D of the Eighth Schedule to the Act to cater for exemption from capital gains tax in respect of land donated in terms of the land reform initiatives under Chapter 6 of the NDP.

IV. Effective date

The following effective dates are proposed:

a. Extending the exemption from donations tax in section 56 of the Act to include the land reform initiatives under Chapter 6 of the NDP.

   1) The amendment is deemed to have come into operation on 1 March 2016 and applies in respect of any donation made on or after that date.

b. Extending the exemption from capital gains tax in paragraph 64A of the Eighth Schedule to include awards in terms of land reform initiatives under Chapter 6 of the NDP

   1) The amendment is deemed to have come into operation on 29 February 2016 and applies in respect of years of assessment ending on or after that date.

c. Introducing a new exemption in terms of paragraph 64D of the Eighth Schedule to cater for exemption in respect of land donated in terms of land reform initiatives under Chapter 6 of the NDP.

   1) The amendment is deemed to have come into operation on 29 February 2016 and applies in respect of years of assessment ending on or after that date.

4.12. TAX EXEMPTION OF PUBLIC BENEFIT ORGANISATIONS PROVIDING INDUSTRY BASED EDUCATION AND TRAINING ACTIVITIES

[Applicable provision: Part I of the Ninth Schedule to the Act]

I. Background

The Act contains provisions in sections 10(1)(cN) and 30, and the Ninth Schedule that provide exemption for public benefit organisations if they meet certain requirements as set out in the Act, including the carrying on of public benefit activities. Paragraph (a) of the definition of public benefit activities refers to activities listed in Part 1 of the Ninth Schedule. In turn, paragraph 4 of Part I of the Ninth Schedule lists qualifying education and development public benefit activities. Tax exemption is not automatic and public benefit organisation must still apply to SARS in order to obtain the tax exemption status.

II. Reasons for change

It has come to Government's attention that certain industries establish special associations to promote the common interest of members in that particular industry or profession. These associations also provide training to employees of that particular industry as well as implementing industry based standards. The associations also develop certification schemes for employees working in that specific industry in line with best international practice. The main source of funding is derived from training courses and other related income which is analogous to tuition fees received by a University. Industry based associations such as these are directed by the requirements of the industry and are linked for accreditation to the Quality Council for Trades and Occupations (QCTO).

Although the principal objective of these associations is to carry on educational and training activities for the benefits and needs of the public, these associations do not qualify for tax exemption as they do not meet the requirements set out in sections 10(1)(cN) and 30, and paragraph 4 (dealing with exemption of education and development) in Part 1 of the Ninth Schedule.

III. Proposal

It is proposed that amendments be made in the Act to extend the list of public benefit activities to qualifying public benefit organisations, in order to exempt education and training activities to benefit industry based training organisations. This is to encourage the industry to provide education and development, which play a key role in increasing not only more skilled individuals in the workplace but also to the poor and needy persons who seek cost effective/affordable quality industry based education and training.

It is therefore proposed that:

a. receipts and accruals of industry based public benefit associations providing education and training programmes and courses for the development of persons or employees in that particular industry be exempt from normal taxation by including the activities performed by them under "Education and Development" in paragraph 4 of Part I of the Ninth Schedule to the Act provided that those qualifications are compatible with the type of qualifications in the Quality Council for Trades and Occupations.

b. Receipts and accruals of industry based public benefit associations administering examination and providing certification programmes for the benefit of that particular

industry be exempt from normal taxation by including the activities performed by them under "Education and Development" in paragraph 4 of Part I of the Ninth Schedule to the Act, provided that that association is accredited to conduct those activities by the South African National Accreditation System (SANAS), South Africa's member of the International Accreditation Forum.

IV. Effective date

The amendments will come into operation on the date of promulgation of the Taxation Laws Amendment Act of 2016.

4.13. EXTENSION OF THE EMPLOYMENT TAX INCENTIVE

[Applicable provisions: sections 1, 4, 7, 9, 10 and 12 of the Employment Tax Incentive Act No. 26 of 2013]

I. Background

The Employment Tax Incentive (ETI) was introduced in January 2014 to promote employment, particularly of young workers. A programme of this nature is new to the South African policy landscape. The initial three-year period of the programme was intended to evaluate the viability of the programme, and to indicate initial economic effects.

II. Reasons for change

During the legislative process to introduce the ETI, National Treasury committed to review the programme before its sunset, i.e. after three years. From the review process, we are now able to indicate significant positive effects on growth rates of youth employment in claiming firms – albeit modest in size. Significant, wide-spread negative effects did not materialize.

In its current form, the incentive can only be claimed by employers up to 31 December 2016. In order to extend the programme, the process of legislative amendment is required.

Government has seen a higher-than-expected take up, which means that the programme exceeded initial cost estimates. We have also started to gather an evidence base to indicate for which employers the incentive makes the biggest impact – namely in smaller firms. While this does not suggest that there are no effects in larger firms, we can attempt to target the incentive better in order to eliminate some portion of windfall benefits for activities that would have taken place in absence of the incentive.

III. Proposal

To extend the ETI programme beyond 31 December 2016, we propose the following refinements to its application:

a. Extending the incentive: Allow claims beyond the current sunset of 31 December 2016, namely until 28 February 2019. The extension to the end of February is proposed in order to coincide with the end of the tax year. During this period further data and

evidence on the performance of the programme can shed light on impacts of the programme.

b. Limit back-dated claims: Monthly claims can only be made up to the date of each 6-monthly reconciliation. After that no further claims for that reconciliation period can be allowed. At this time any excess becomes available as a refund.

c. Clarifying the number of hours worked in the definition of "monthly remuneration".

d. Clarifying the applicable hours in the grossing up / grossing down calculation.

e. Administrative issues.

IV. Effective date

The amendments will come into operation on 1 March 2017. A separate effective date for extension of the ETI is deemed to have come into effect from 1 October 2016.

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5. INCOME TAX: INTERNATIONAL

5.1. EXEMPTION OF COLLECTIVE INVESTMENT SCHEMES IN PARTICIPATION BONDS AND IN SECURITIES FROM CONTROLLED FOREIGN COMPANIES RULES

[Applicable provision: Section 9D of the Act]

I. Background

A. Controlled Foreign Companies

The South African tax system has controlled foreign company (CFC) rules that are anti-avoidance rules generally aimed at preventing South African residents from shifting tainted forms of taxable income offshore by investing through CFCs. The CFC rules make provision for the net income of a CFC to be attributed and included in the income of South African shareholders.

Section 9D of the Act defines a CFC as any foreign company where more than 50 per cent of the total participation rights in that foreign company are directly or indirectly held, or more than 50 per cent of the voting rights in that foreign company are directly or indirectly exercisable, by one or more persons that are residents other than persons that are headquarter companies. Section 1 of the Act defines a foreign company as any company which is not a resident. In turn, the definition of a company in section 1 of the Act includes portfolios of foreign collective investment schemes in securities.

The amount of income which is included in the net income of a CFC is subject to various exemptions such as the foreign business establishment, high-tax and related party exemptions.

These exemptions seek to strike a balance between protecting the tax base and the need for South African multinational entities to be competitive.

B. Collective Investment Schemes

Paragraph (e)(ii) of the definition of a company in section 1(1) of the Act includes any portfolio of a foreign collective investment scheme that is comparable to a portfolio of a collective investment scheme in participation bonds and in securities in pursuance of any arrangement in terms of which members of the public are invited or permitted to contribute or hold participatory interest in that portfolio through shares, units or any other form of participatory interest.

A collective investment scheme is an investment vehicle used by investment managers to pool investors' funds to enable them to access investments which they might not otherwise be able to access in their individual capacities. In South Africa, collective investments schemes are generally established as vesting trusts, with investors in such schemes being the beneficiaries of the trust. The assets of a collective investment scheme portfolio are held by the trustees on behalf of the holders of participatory interests. The taxation of these vesting trusts holders of and participatory interests is regulated by section 25BA. These collective investment schemes are regulated by the Collective Investment Schemes Control Act. No 45 of 2002.

II. Reasons for change

When funds are invested in a collective investment scheme in participation bonds or in securities portfolio, an investor acquires a portion of the participatory interests in the total collective investment scheme in participation bonds or securities portfolio. In turn, investors get to share the risks and benefits of their investment in a collective investment scheme in securities or in participation bonds in proportion to the participatory interests in that scheme.

At issue is the application of the CFC rules in cases where the South African collective investment scheme in securities or in participation bonds invested in a global fund, which is a foreign fund. Concerns have been raised that as South African collective investment schemes in securities or in participation bonds invested in a global fund, South African collective investment schemes in securities or in participation bonds should be considered to be the direct holders of the participation rights in that global fund. On the other hand, there is an argument that as South African collective investment schemes in securities or in participation bonds are established as vesting trusts, the units in the global fund are beneficially owned by the investors in the South African collective investment schemes in securities or in participation bonds in proportion to their effective interests in such global fund.

In addition, there is uncertainty as to whether the global fund is comparable to a portfolio of collective investment scheme in securities or in participation bonds as envisaged in the above-mentioned paragraph (e) (ii) of the definition of "company" of section 1(1) of the Act.

More specifically, the uncertainty arises in the determination of whether:

a. the global fund can be regarded as a CFC;

b. a South African collective investment scheme or investors in a South African collective investment scheme in securities or in participation bonds should be treated as holders of the participation rights in that global fund;

c. a South African collective investment scheme in securities or in participation bonds or investors in a South African collective investment scheme in securities or in participation bonds should be considered to directly or indirectly to exercise voting rights in that global fund.

III. Proposal

In order to eliminate the uncertainty and potential double taxation described above, it is proposed that:

a. South African collective investment schemes in participation bonds or in securities investing in a global fund should be excluded from applying the CFC rules (section 9D) to investments made in that global fund;

b. a South African collective investment schemes in participation bonds or in securities are established as vesting trusts, the conduit principle should apply when South African collective investment schemes in participation bonds or in securities invest in a global fund and that tax should ultimately arise in the hands of investors in the South African collective investment schemes in participation bonds or in securities in proportion to their effective interests in such global fund.

IV. Effective date

The amendments will come into operation on 1 March 2017 and apply in respect of any foreign tax year commencing on or after that date.

5.2. ADJUSTING THE CALCULATION FOR HIGH TAX EXEMPTION IN RESPECT OF CONTROLLED FOREIGN COMPANIES

[Applicable provision: Section 9D(2A) of the Act]

I. Background

The 2009 tax legislative amendments introduced the CFC high-tax exemption. The purpose of the exemption is to disregard tainted CFC income, if little or no South African tax was at stake after taking into account the South African tax rebates.

The CFC will qualify for the high-tax exemption if it's net income as an aggregate is subject to foreign tax of at least 75 per cent of the amount of normal tax that would have been imposed had that CFC been fully taxed in South Africa.

The high-tax exemption is based on a calculation of a hypothetical amount of the global level foreign taxes imposed by all foreign spheres of government. The global foreign tax is calculated after disregarding foreign tax carryover and carry-back losses as well as group losses.

II. Reasons for change

Generally, the income tax does not allow foreign tax rebate on notional taxable income. However, in the calculation of the hypothetical amount of foreign taxes some CFCs within a group of companies that are in a loss making position benefit from the high tax exemption. This creates an anomaly because in these circumstances, no foreign tax is actually paid or payable by the CFC.

Example:

Facts:

SA Company, Co A owns all the shares in CFC 1, CFC 2 and CFC3 and CFC 4. All these four CFC's are resident in country Y. CFC 1 generates a loss of $ 100, CFC 2 generates a loss of $ 200, CFC 3 generates income of $ 1500 and CFC 4 generates a loss of $ 5000.

Results in Country Y

Country Y has group taxation provisions and the group of companies gets treated as a single entity for tax purposes, which is referred to as a fiscal unity. The result is that the profit of CFC3 will be offset with the losses of the three CFC's resulting in an overall loss of $ 3800. As a result, the fiscal unity does not get to pay any tax in country Y.

Results in South Africa

In terms of SA tax law, the net income of CFC 3 will be translated to a rand amount in order to be imputed into South African resident, Co A's income. The high tax exemption calculation will then be performed in order to establish as to whether the income is exempt from imputation or not. The actual foreign tax imposed in country Y is at a rate of 25%.

The comparison will be as follows:

Net Income of CFC 3 - $1500 x 15 exchange rate = R22 500

Tax deemed to be payable in county Y - R22 500 x 25% = R5 625

SA Tax payable as if the CFC was a SA resident – R22 500 x 28%= 6300

High tax exemption calculation =R5 625/R6 300 = 89%

Because the 89% is more than the 75% the R22 500 will be exempt from imputation.

The anomaly then arises because CFC 3 did not pay any tax in country Y as a result of the overall group loss. However in performing the high tax exemption, a notional tax of R5 625 is calculated as though the CFC paid tax in its country of resident.

In the absence of the high tax exemption no section 6quat tax rebate would have been granted to the controlled foreign company.

III. Proposal

In view of the above, it is proposed that in calculating the high tax exemption, the CFC will no longer use foreign group losses. The second part of paragraph 2(ii)(bb) of the proviso to section 9D(2A) dealing with group losses will be deleted. However, the CFC will still be able to disregard its own foreign losses in the high tax exemption calculation. The CFC's own foreign losses to be disregarded will be limited to foreign losses arising from foreign tax years ending after that foreign company becomes a CFC.

IV. Effective date

The amendments will come into operation on 1 January 2017

5.3. TAX EXEMPTION OF MULTILATERAL DEVELOPMENT FINANCIAL INSTITUTIONS

[Applicable provisions: New section 10(1)(bC) and sections and 50D of the Act]

I. Background

After 1994, South Africa became a signatory to a number of agreements with multilateral development financial institutions. In this context, a multilateral development financial institution refers to a financial institution created by a group of countries that provides financing and professional advice for the purpose of development.

These institutions have large memberships including both developed donor countries and developing borrower countries. They finance projects in the form of long-term loans at market rates, very-long-term loans (also known as credits) below market rates, and through grants. Multilateral development institutions provide financial assistance to developing countries in order to promote economic and social development. They primarily fund large infrastructure and other development projects and provide loans tied to policy reforms by the government.

In particular, the multilateral development financial institutions which South Africa has signed agreements with include the following; the World Bank, the International Monetary Fund, the African Development Bank, the European Investment Bank, the African Export-Import Bank and the New Development Bank (formerly known as the BRICS Development Bank). The

agreements with these institutions provide for blanket exemptions from all taxes, including income tax, withholding taxes on interest and dividends, value added tax and capital gains tax.

Further, these institutions are also granted diplomatic immunity status in terms of the Diplomatic Immunities and Privileges Act 37, 2001 which gives the Minister of International Relations and Cooperation the power to, inter alia, grant immunities and privileges to any organisation recognised by the Minister of the International Relations and Cooperation

II. Reasons for change

Currently, section 10(1)(bA) of the Act makes provision for exemption from income tax in respect of all receipts or accruals of any institution or body established by a foreign government to the extent that that body or institution is appointed by that government to perform its functions in terms of an official development assistance agreement that is binding in terms of section 231(3) of the Constitution of the Republic of South Africa, 1996 (the Constitution). In addition, such official development assistance agreement must provide that the receipts and accruals of that institution or body are exempt from normal tax. This exemption is also extended to apply to multinational organisations providing foreign donor funding in terms of the official development assistance agreement that is binding in terms of the Constitution.

There is a disconnect between the current tax exemption provisions of the Act and the articles dealing with the tax treatment of these multilateral development financial institutions in the agreements signed by South Africa with these institutions. While these agreements provide for exemption of these multilateral development financial institutions from all taxes, the Act does not have a specific provision enabling the tax exemption of these multilateral developmental financial institutions.

Section 10(1)(bA) of the Act does not cover these multilateral development financial institutions because the application of the provisions of section 10(1)(bA) of the Act is limited only to institutions or bodies appointed by foreign governments to perform functions of such foreign government in South Africa in terms of an official development assistance agreement or to multinational organisation providing foreign donor funding in South Africa in terms of an official assistance development assistance agreement. On the other hand, the agreements signed by South Africa with these multilateral development financial institutions are not regarded as official development assistance agreements, hence they don’t qualify for tax exemption in terms of the current provisions of section 10(1)(bA) of the Act.

The disconnect between the current tax exemption provisions of the Act and the articles dealing with the tax treatment of these multilateral development financial institutions in the agreements signed by South Africa with these institutions also extends to withholding tax on interest, that was introduced on 1 March 2015. According to these agreements, interest paid by South African residents to these multilateral development financial institutions is exempt from withholding tax on interest; however, the Act does not make specific provision for similar exemption in respect of withholding tax on interest.

III. Proposal

In order to take into account the spirit of these multilateral development financial institution agreements and in order to eliminate any potential confusion regarding the tax exemption status of these multilateral development financial institutions, the following is proposed:

a. the current income tax exemption applicable to institutions or bodies appointed by foreign government to perform functions in South Africa in terms of an official development assistance agreement or to multinational organisations providing foreign donor funding in South Africa in terms of an official assistance development assistance agreement, be extended to apply only to the following multilateral development financial institutions that South Africa has signed agreements with, namely, the World Bank, the International Monetary Fund, the African Development Bank, the European Investment Bank, the African Export-Import Bank and the New Development Bank.

b. In view of the fact that the main aim of these multilateral development financial institutions is to provide finance to specified projects in terms of the agreement signed with South Africa, it is proposed that interest paid by South African residents to the multilateral development financial institutions in terms of the agreement should be exempt from withholding tax on interest. The withholding tax on interest exemption will only apply to the following multilateral developmental financial institutions that South Africa has signed agreements with, namely, the World Bank, the International Monetary Fund, the African Development Bank, the European Investment Bank, the African Export-Import Bank and the New Development Bank.

IV. Effective date

- With regard to the amendment in respect of income tax exemption on receipts or accruals of the listed multilateral development financial institutions that South Africa has signed agreements with, the amendment will come into operation on the date of promulgation of the Taxation Laws Amendment Act, 2016.
- On the other hand, with regard the amendment in respect of withholding tax on interest exemption in respect of interest paid by South African residents to the listed multilateral development financial institutions that South Africa has signed agreements with, the amendment is deemed to have come into operation on 1 March 2015 and applies in respect of interest that is paid or becomes due and payable on or after that date.

5.4. EXTENDING THE BAD DEBT DEDUCTION RULE TO EXCHANGE DIFFERENCES ARISING ON FOREIGN CURRENCY DENOMINATED LOAN

[Applicable provision: Insertion of new section 24I(4) of the Act]

I. Background

Section 24I was first introduced in the Act in 1993 to deal comprehensively with all aspects of foreign exchange gains and losses in relation to debts due to or by the taxpayer, as well as forward exchange contracts and foreign currency option contracts. The purpose of this section is

to achieve simplicity, fairness, economic reality, and a realignment of the tax rules with International Financial Reporting Standards.

Section 24I requires that a gain or loss on a foreign exchange transaction be included in or deducted from the income of a taxpayer carrying on a trade within the Republic, if that exchange difference arose from a transaction entered into by that taxpayer in the course of that trade. In essence, the section taxes all gains and losses, whether realised or unrealised relating to any foreign exchange transactions entered into by the taxpayer over the period of the transaction. An exchange difference is determined only in respect of an "exchange item" as defined in section 24I(1).

II. Reasons for change

Currently, exchange differences arising on a foreign currency denominated loan by a South African taxpayer, who is not a money-lender to another person are taken into account in the determination of a taxable income as either an inclusion of deduction.

However, where that loan becomes bad, a taxpayer is not allowed to claim a deduction in terms of section 11(a) of the Act in relation to the exchange gains that were included in the income. The loss reflects a loss of fixed capital rather than floating capital. Further, a taxpayer is not allowed to claim a deduction under section 11(i) of the Act because the amount of the debt, being the foreign currency denominated amount, was not included in income. Consequently, the current tax provisions do not give a taxpayer any relief in relation to irrecoverable amounts on which it has been subjected to tax.

The following examples illustrates this current situation as well as the results of the new section 24I(4).

Example 1:

Facts

Company A, a South African resident, sold R100 stock on credit to Company B, a USA resident on 1 January 2015. Company A has a 31 December year end. The exchange rates on the respective dates were as follows:

1 January 2015: R1=$14

31 December 2015: R1=$16

31 December 2016: R1=$12

The debt was written off as bad debt on 31 December 2016.

Results: Company A

First year of assessment: 31 December 2015

1 January 2015: Gross Income (100*14) R1 400

31 December 2015: Foreign exchange gain [(14-16)*100)] R 200

Second year of assessment: 31 December 2016

Foreign exchange loss [(16-12)*100)] (400)

Deduction under section 11(i) (12*100) (1 200)

In determining Company A's taxable income; the debt fell within the ambit of section 11(i) and the net inclusion in taxable income for both years of assessment of R nil (R1400+R200-R400-R1200) reflects the correct outcome. In this example, there was no anomaly created because the debt was included in income, and as a result, foreign exchange gains and losses arising as a result of that debt are deducted in terms of section 11(i).

Example 2

Facts

Company A, a South African resident advanced a loan of R100 to Company B, a USA resident on 1 January 2015. The loan is of a capital nature from Company A's perspective. At the end of the second year of assessment it was clear Company B would not be able to repay the loan and Company A wrote the loan off as bad on 31 December 2016. The rates at the respective dates were as follows:

1 January 2015: R1=$14

31 December 2015: R1=$16

31 December 2016: R1=$12

Results: Company A

Current section 24I provisions

First year of assessment: 31 December 2015

1 January 2015: No entry in gross income as the loan is of a capital nature for company A

Foreign exchange gain included in income under section 24I(3)(a) [R100 x (14-16)] = R200

Second year of assessment: 31 December 2016

Foreign exchange loss deducted from income under section 24I(3)(a) [R100 x (16-12)] = R400

In this example, Section 11(i) is not applicable as the loan was never included in Company A's income .Company A will not be able to deduct the previous foreign exchange gains included in income of R200. Company A will furthermore, not be able to include in its income the foreign exchange losses deducted from income of R400.

The new amendments to section 24I seek to address this anomaly, and as a result, in applying the new provisions of section 24I(4), the implications to Company A will be as follows:

New Section 24I(4) provisions

Deduction of previous foreign exchange gains included in income under section 24I(4)(a) = R200

Inclusion in income of previous foreign exchange losses deducted from income under section 24I(4)(b) = R400.

Example 3

Facts

Company A, a South African resident advanced a loan of R100 to Company B, a USA resident on 1 January 2015. The loan is of a capital nature from Company A's perspective. Company B repaid R40 of the debt on 31 December 2015. At the end of the second year of assessment it was clear Company B would not be able to repay the balance of the loan of R60. Company A wrote the balance of R60 off as bad on 31 December 2016. The exchange rates at the respective dates were as follows:

1 January 2015: R1=$14

31 December 2015: R1=$16

31 December 2016: R1=$12

Results: Company A

First year of assessment: 31 December 2015

Foreign exchange gain included in income under section 24I(3)(a) on realisation of part of the debt [R40 x (14-16)] = R80

Foreign exchange gain included in income under section 24I(3)(a) on translation of the balance of the debt of R60 [R60 x (14-16)] = R120

Second year of assessment: 31 December 2016

Foreign exchange loss deducted from income under section 24I(3)(a) [R60 x (16-12)] = R240

Deduction of previous foreign exchange gains included in income under section 24I(4)(a) = R120

Inclusion in income of previous foreign exchange losses deducted from income under section 24I(4)(b) = R240*

Section 24I(4) is only applicable to the extent that the debt has become bad and therefore under the new section 24(4)(a) and (b) the deduction from income of current and previous exchange gains included income and the inclusion in income of current and previous exchange losses deducted from income is calculated with reference to the balance of the debt of R60 which went bad. Exchange differences which arose under section 24I on the portion of the debt which has been realised are not relevant under section 24I(4).

Section 11(i) will not be applicable as the loan was never included in Company A's income.

III. Proposal

In order to provide relief in relation to exchange differences that are included in or deducted from income, it is proposed that the provisions of section 24I of the Act be extended to apply to any exchange difference in respect of a debt that has been included in or deducted from income during the year of assessment, provided that the debt has gone bad.

IV. Effective date

The amendments will come into operation on 1 January 2017 and apply in respect of years of assessment ending after that date.

5.5. INTEREST WITHHOLDING TAX WHERE INTEREST IS IRRECOVERABLE

[Applicable provision: Part IVB of Chapter II of the Act: Section 50G of the Act]

I. Background

On 1 March 2015 a withholding tax on interest was introduced. The withholding tax on interest applies in respect of interest paid by a South African resident to or for the benefit of any foreign

person to the extent that the interest is from a South African source. The final withholding tax is levied at a tax rate of 15 per cent of the amount of the interest paid to a foreign person. However, the withholding tax is subject to some exemptions.

The withholding tax on interest rules have deeming provisions and deems interest to be paid on the earlier of the date on which the interest is actually paid or becomes due and payable.

II. Reasons for change

In circumstances where interest withholding tax is paid on interest that becomes due and payable, but the interest subsequently becomes irrecoverable, there is no mechanism for SARS to refund the interest withholding tax already paid. For example, if a foreign person provides unsecured interest-bearing loan to a South African resident, withholding tax on interest is paid monthly on interest that accrues to that foreign person monthly if that interest becomes due and payable monthly. The interest is for the purposes of determining the tax liability therefore deemed to have been paid.

If either the foreign person or the withholding agent pays the tax in respect of the interest that is deemed to have been paid for tax purposes there is currently no mechanism available for the person that paid the tax to obtain relief for the tax paid on interest that becomes irrecoverable at a later stage. This is in contrast to the approach in respect of income tax where, if the foreign person had been a taxpayer in South Africa, that foreign person would have paid income tax on accrued interest. However, the foreign person would have been able to claim a deduction in terms of section 11(i) of the Act in respect of any irrecoverable interest.

III. Proposal

In order to provide relief in cases where interest withholding tax is paid on interest that becomes due and payable, but is not actually paid, it is proposed that the tax be refunded to the person that paid it if that interest becomes irrecoverable.

IV. Effective date

The amendment is deemed to have come into operation on 1 March 2015.

5.6. REPEAL OF THE WITHHOLDING TAX ON SERVICES FEES REGIME

[Applicable provisions: Part IVC of Chapter II and Sections 51A to 51H of the Act]

I. Background

In the 2013 Budget Speech, the Minister announced and introduced a withholding tax on cross-border services. This withholding tax is a final tax in respect of fees payable by a resident to a non-resident for technical, management and consulting services rendered by that non-resident

to a resident. The main aim of the introduction of this withholding tax was to identify and collect revenue from non-resident taxpayers who provide technical, management or consulting services and earned fee income from a South African source. It was also aimed at preventing the potential for the erosion of the South African tax base.

The tax rate for the withholding tax on services is 15 per cent of the gross amount of fees paid to a non-resident (subject to tax treaty relief). The liability to withhold the tax is with the payor of the service fees to or for the benefit of the non-resident taxpayer.

II. Reasons for change

In June 2015, SARS issued a draft public notice listing a reportable arrangement in terms of section 35(2) of the Tax Administration Act No. 28 of 2011 for public comment. This dealt with arrangements in terms of which certain service fees are paid by a resident to a non-resident. On 3 February 2016, SARS issued in Notice 140 of the Government Gazette no 39650 a revised list of reportable arrangements. According to this Notice an arrangement for the rendering of consultancy, construction, engineering, installation, logistical, managerial, supervisory, technical or training services to a South African resident or a non-resident having a permanent establishment in South Africa, in terms of which arrangement a non-resident was, is, or is anticipated to be physically present in South Africa in connection with or for purposes of rendering the services and the expenditure incurred or to be incurred in respect of the services exceeds or is anticipated to exceed R10 million, is a reportable arrangement in terms of the Tax Administration Act provided that it does not qualify as 'remuneration' for employees' tax purposes.

If the reportable arrangement regime were to be applied concurrently with the withholding tax on services regime, it would have resulted in additional administrative functions for SARS and a compliance burden for taxpayers. The two regimes are virtually aimed at achieving the same goal (i.e. identifying and collecting revenue from non-resident taxpayers who provide technical, management or consulting services).

Further, concerns have been raised that the application of withholding tax on services regime will give rise to uncertainty on the application of domestic tax law and limited revenue due to limited taxing rights under tax treaties.

III. Proposal

In view of the above, it is proposed that the withholding tax on services be repealed from the Act. Therefore, payment of certain service fees by South African residents to non-residents will now be dealt with under the provisions of Reportable Arrangements in the Tax Administration Act.

IV. Effective date

The amendment will come into operation on 1 January 2017.

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6. VALUE ADDED TAX

6.1. REVISION OF THE 2014 AMENDMENT RELATING TO NOTIONAL INPUT TAX ON GOODS CONTAINING GOLD

[Applicable provisions: Section 1(1) of the Value-Added Tax Act of 1991 (VAT Act) – proviso (ii) of the definition of “second-hand goods”]

I. Background

In 2014, changes were made in the VAT Act to amend the definition of “second-hand goods” to specifically exclude “gold” and “goods containing gold” from the definition and thereby denying the notional input tax credit on these goods. The policy rationale for the 2014 amendments was to curb fraudulent notional input tax deductions on the acquisition of gold and gold jewellery. The amendment was not intended to have a negative impact on legitimate transactions within the second-hand goods industry.

II. Reasons for change

Concerns have been raised that the 2014 amendments have led to unintended consequences whereby the notional input tax credit on all goods containing gold is denied to vendors that are dealers in second-hand goods. The denial applies where those goods which were acquired are sold either exactly as they were acquired or with minor modifications to make them suitable for resale in essentially the same state, irrespective of whether the gold content is substantial or negligible.

At issue is, for example, when a second-hand dealer purchases a computer from a non-vendor, based on the 2014 amendments, the notional input tax credit is denied because some of the components in the computer contain an element of gold. Another example is when a second-hand dealer purchases an expensive watch from a non-vendor, the notional input tax credit is denied because the watch contains a certain amount of gold. There is an argument that the value of the gold content on the above-mentioned items, i.e. computer and watch, are insignificant compared to the intrinsic value of the items itself. The values of the computer and watch are to a large extent based on the mechanism, the design and the make which are the main intentions for trading with these items, and not the presence of a small fraction of gold in these items.

III. Proposal

In order to address the above-mentioned unintended consequences, it is proposed that the 2014 amendments be revised. In this regard, it is proposed that paragraph (ii) of the definition of “second-hand goods” in section 1(1) of the VAT Act be amended to allow the deduction of the notional input tax credit on goods containing gold, provided that the goods are sold in the same or substantially the same state as when those goods were acquired.

IV. Effective date

The amendments will come into operation on 1 April 2017.

6.2. ALLOWING MUNICIPAL ENTITIES TO ACCOUNT FOR VAT ON THE PAYMENT BASIS WHERE THE SUPPLY IS ONE HUNDRED THOUSAND RAND OR MORE

[Applicable provision: Section 15(2A) of the VAT Act]

I. Background

The VAT Act makes provision for certain persons, including public authorities and municipalities to register and pay VAT on a payments basis. The provisions of the VAT Act require those vendors who are registered on the payments basis to account for VAT on the invoice basis in respect of any supply where the consideration is R100 000 or more. However, only public authorities and municipalities are allowed to deviate from this rule and account for VAT on the payments basis on supplies where the consideration is R100 000 or more.

II. Reasons for change

Municipal entities (envisaged in section 15(2)(a)(iv) of the VAT Act render services similar to municipalities and are regulated under the Municipal Systems Act and the Municipal Finance Management Act. Therefore, there is no policy rationale not to extend the same dispensation, currently available to public authorities and municipalities, to municipal entities.

III. Proposal

It is therefore proposed that section 15(2A) of the VAT Act be amended to allow municipal entities, referred to in section 15(2)(a)(iv) of the VAT Act, to account for VAT on the payment basis in respect of any supply where the consideration is R100 000 or more.

IV. Effective date

The amendments will come into operation on 1 April 2017.

6.3. VAT EXEMPTION IN RESPECT OF IMPORTED GOODS THAT ARE LOST, DESTROYED OR DAMAGED THROUGH NATURAL DISASTERS

[Applicable provision: Schedule 1 of the VAT Act]

I. Background

In terms of Schedule 4 of the Customs and Excise Act 91 of 1964, a taxpayer is exempt from paying customs duty and fuel levy (if applicable) on the importation of goods if those goods are subsequently lost, destroyed or damaged through natural disasters or under such circumstances as the Commissioner deems exceptional.

This relief is applicable to circumstances where the customs duty amount and the fuel levy (if applicable) is not less than R2500 on any single occasion while such goods are in any customs

and excise warehouse, in any appointed transit shed, under the control of the Commissioner, being removed with deferment of payment of duty, under rebate of duty from a place in the Republic to any other place in terms of the provisions of the Customs and Excise Act or being stored in any rebate storeroom (subject to certain provisos, including that the goods did not enter into home consumption).

II. Reasons for change

At issue is the fact that the VAT Act does not have an exemption similar to Schedule 4 of the Customs and Excise Act, in respect of goods that are imported, if those goods, after importation and before being entered for home consumption, are lost, destroyed or damaged through natural disasters or under such circumstances as the Commissioner deems exceptional. This creates uncertainty in the interpretation and application of both the provisions of the Customs and Excise and the VAT Acts.

III. Proposal

In order to remove the ambiguity and provide certainty, it is proposed that Schedule 1 of the VAT Act be aligned to Schedule 4 of the Customs and Excise Act by introducing an exemption from the tax imposed in terms of section 7(1)(b) of the VAT Act, where those goods are lost, destroyed or damaged through natural disasters or under such circumstances as the Commissioner deems exceptional, as contemplated in the Customs And Excise Act, provided that such goods have not yet been entered for home consumption.

IV. Effective date

The amendments will come into operation on 1 April 2017.

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7. CLAUSE BY CLAUSE

CLAUSE 1

Transfer Duty: Amendment to section 2

Sub-clause (a): The proposed amendment aligns the tax charging provisions of all the tax Acts.

Sub-clause (b): The proposed amendment aligns the tax charging provisions of all the tax Acts.

CLAUSE 2

Estate Duty: Amendment to section 4A

The proposed amendment gives SARS the ability to request additional documentation in support of the unutilised abatement allowance between spouses for purposes of calculating the duitable amount of an estate.

CLAUSE 3

Estate Duty: Amendment to section 11

The proposed amendment is consequential and deletes subparagraph (iA) of paragraph (b). This subparagraph (iA) still makes reference to section 3(3)(a)bis which was deleted with effect from 2009.

CLAUSE 4

Estate Duty: Amendment to the First Schedule

Sub-clause (a): The proposed amendment aligns the tax charging provisions of all the tax Acts.

Sub-clause (b): The proposed amendment aligns the tax charging provisions of all the tax Acts.

CLAUSE 5

Income Tax: Amendment to section 1

Sub-clause (a): Definition of paragraph (bA) of "connected person" – The proposed amendment deletes the word "includes" in paragraph (bA) of the definition of "connected person" as a matter of style and consistency.

Sub-clause (b): Definition paragraph (c) of "gross income" – The proposed amendment clarifies that amounts referred to in sections 8B and 8C are specifically excluded in paragraph (c) of the definition of "gross income" so as to avoid possible scenario of double taxation.

Sub-clause (c): Definition of paragraph (eA) of "gross income" – The proposed amendment is consequential and related to the retirement reforms to include amounts referred to in paragraph (d) of the definition of "pension fund" as well as paragraph (b) or (c) of the definition of "provident fund" in paragraph (eA) the definition of "gross income".

Sub-clause (d): Insertion of new paragraph (lC) of the definition of "gross income" – See notes on **CLARIFYING THE TAX TREATMENT OF GOVERNMENT GRANTS**

Sub-clause (e): Definition of “identical security” – See notes on **REVIEW OF TAX IMPLICATIONS ON OUTRIGHT TRANSFER OF COLLATERAL PROVISIONS**

Sub-clause (f): Definition of “identical share” – See notes on **REVIEW OF TAX IMPLICATIONS ON OUTRIGHT TRANSFER OF COLLATERAL PROVISIONS**

Sub-clause (g): Definition of “pension preservation fund” – The proposed amendment in subparagraph (i) of paragraph (b) of the proviso to the definition of “pension preservation fund” proposes to standardise reference to the Pension Funds Act in the Income Tax Act.

Sub-clause (h): Definition of “remuneration proxy” – The proposed amendment clarifies that for purposes of definition of remuneration proxy, the cash equivalent value contemplated in paragraph 9(3) of the Seventh Schedule of the Income Tax Act is only excluded in the application of paragraph 9 of the Seventh Schedule.

Sub-clause (i): Definition of “retirement annuity fund” – See notes on **INCLUSION OF EMIGRATION FOR EXCHANGE CONTROL PURPOSES REQUIREMENT FOR OF WITHDRAWAL FROM RETIREMENT FUNDS BY RESIDENTS**

CLAUSE 6

Income Tax: Amendment to section 5

Sub-clause (a): The proposed amendment aligns the tax charging provisions of all the tax Acts.

Sub-clause (b): The proposed amendment is consequential and deletes now obsolete provisions of subsection (7) due to the amendment to align the tax charging provisions of the all tax Acts.

CLAUSE 7

Income Tax: Amendment to section 6

The proposed amendment corrects a grammatical error and changes the word “shall” to “must”.

CLAUSE 8

Income Tax: Amendment to section 6A

The proposed amendment seeks to correct the anomaly by aligning the opening wording in subsection (1) dealing with medical tax credit provision with the opening wording in section 6 (1) dealing with normal tax rebates.

CLAUSE 9

Income Tax: Amendment to section 6B

The proposed amendment seeks to correct the anomaly by aligning the wording in subsection (2) dealing with additional medical expenses tax credit provision with the opening wording in section 6 (1) dealing with normal tax rebates.

CLAUSE 10

Income Tax: Amendment to section 6quat

Sub-clause (a): The proposed amendment seeks to correct the anomaly by aligning the wording in subsection (1)(f) dealing with rebate or deduction in respect of foreign taxes on income with the opening wording in section 6 (1) dealing with normal tax rebates.

Sub-clause (b): The proposed amendments clarify that amounts deducted in terms of subsection (1C)(b) are deducted from income, and any refunds received or amounts discharged for deductions allowed under subsection (1C)(b) should not be deemed to be an amount of normal tax payable but must be deemed to be an amount of income recovered or recouped under section 8(4)(a).

CLAUSE 11

Income Tax: Amendment to section 7A

The proposed amendment to the definition of "salary" deletes reference to subsection (4) as this subsection was deleted in 1991.

CLAUSE 12

Income Tax: Insertion of new section 7C

See notes on **INTRODUCING MEASURES TO PREVENT ESTATE DUTY AND DONATIONS TAX AVOIDANCE THROUGH TRANSFER OF ASSETS TO A TRUST USING INTEREST FREE LOANS**

CLAUSE 13

Income Tax: Amendment of section 8C

See notes on **ADDRESSING THE CIRCUMVENTION OF RULES DEALING WITH EMPLOYEE BASED SHARE INCENTIVE SCHEMES**

CLAUSE 14

Income Tax: Amendment of section 8E

Sub-clause (a): Proposed amendment of the heading of section 8E - See notes on **ADDRESSING CIRCUMVENTION OF ANTI AVOIDANCE RULES DEALING WITH THIRD PARTY BACKED SHARES**

Sub-clause (b): Proposed insertion of a definition for “equity instrument” in subsection (1) - See notes on **ADDRESSING CIRCUMVENTION OF ANTI AVOIDANCE RULES DEALING WITH THIRD PARTY BACKED SHARES**

Sub-clause (c): Proposed amendment of the definition of “hybrid equity instrument” in subsection (1) - See notes on **ADDRESSING CIRCUMVENTION OF ANTI AVOIDANCE RULES DEALING WITH THIRD PARTY BACKED SHARES**

Sub-clause (d): Proposed amendment of the definition of “hybrid equity instrument” in subsection (1) - See notes on **ADDRESSING CIRCUMVENTION OF ANTI AVOIDANCE RULES DEALING WITH THIRD PARTY BACKED SHARES**

Sub-clause (e): Proposed amendment in subsection (2) - See notes on **ADDRESSING CIRCUMVENTION OF ANTI AVOIDANCE RULES DEALING WITH THIRD PARTY BACKED SHARES**

Sub-clause (f): Proposed insertion of new subsection (2A) - See notes on **REFINEMENT OF THIRD-PARTY BACKED SHARES: PRE-2012 LEGITIMATE TRANSACTIONS AND START-UP COMPAIES**

CLAUSE 15

Income Tax: Amendment of section 8EA

Sub-clauses (a): Proposed amendment of the definition of “enforcement obligation” in subsection (1) - See notes on **ADDRESSING CIRCUMVENTION OF ANTI AVOIDANCE RULES DEALING WITH THIRD PARTY BACKED SHARES**

Sub-clauses (b): Proposed amendment of the definition of “enforcement right” in subsection (1) - See notes on **ADDRESSING CIRCUMVENTION OF ANTI AVOIDANCE RULES DEALING WITH THIRD PARTY BACKED SHARES**

Sub-clauses (c): Proposed insertion of the definition of “equity instrument” in subsection (1) - See notes on **ADDRESSING CIRCUMVENTION OF ANTI AVOIDANCE RULES DEALING WITH THIRD PARTY BACKED SHARES**

Sub-clauses (d): The proposed amendment to the definition of “qualifying purpose” in sub-section (1) – See notes on **REFINEMENT OF THIRD-PARTY BACKED SHARES: PRE-2012 LEGITIMATE TRANSACTIONS AND START-UP COMPAIES**

Sub-clause (e): The proposed amendment to the definition of “qualifying purpose” in sub-section (1) - See notes on **REFINEMENT OF THIRD-PARTY BACKED SHARES: PRE-2012 LEGITIMATE TRANSACTIONS AND START-UP COMPAIES**

Sub-clauses (f): Proposed amendment of the definition of “third party backed share” in subsection (1) - See notes on **ADDRESSING CIRCUMVENTION OF ANTI AVOIDANCE RULES DEALING WITH THIRD PARTY BACKED SHARES**

Sub-clauses (g): Proposed amendment to subsection (2) - See notes on **ADDRESSING CIRCUMVENTION OF ANTI AVOIDANCE RULES DEALING WITH THIRD PARTY BACKED SHARES.**

Sub-clause (h): Proposed insertion of new subsection (2A) - See notes on **REFINEMENT OF THIRD-PARTY BACKED SHARES: PRE-2012 LEGITIMATE TRANSACTIONS AND START-UP COMPANIES**

CLAUSE 16

Income Tax: Amendment of section 8F

Sub-clause (a): Proposed insertion of the definition of “enforcement right” in subsection (1) - The definition of enforcement right is inserted to align the proposed exclusion of third-party backed shares from the re-characterisation rule in sections 8F and 8FA.

Sub-clause (b): Proposed amendment of the definition of “hybrid debt instrument” in subsection (1) - See notes on **HYBRID DEBT INSTRUMENTS SUBJECT TO SUBORDINATION AGREEMENTS**

Sub-clause (c): Proposed amendment of the definition of “instrument” in subsection (1) - See notes on **CROSS-BORDER HYBRID DEBT INSTRUMENTS**

Sub-clause (d): Proposed insertion of the definition of “third-party backed instrument” in subsection (1) - The definition of third-party backed instrument is inserted to align the proposed exclusion of third-party backed shares from the re-characterisation rule in sections 8F and 8FA.

Sub-clause (e): Proposed amendment to subsection (2) - The amendment aims to clarify that when interest is re-characterised to dividends in specie, the dividends tax exemptions continue to be applicable. Of concern is that currently, some dividends tax exemptions are granted depending on the beneficial owner of that dividend. The reliance on beneficial ownership in determining the eligibility for a dividend exemption adds a technical consideration when interest is re-characterised as dividends in specie. This is because the term beneficial owner is defined as the person entitled to the benefit of a dividend attaching to a share. Under the anti-hybrid debt rules, the instruments of concern are debt instruments (albeit that they exhibit certain equity-like features). As such, the mere re-characterisation of the interest yield as dividends in specie does not take into account the operation of the current dividends tax regime and in particular, the provisions dealing with the dividends exemptions which require a dividend to arise in respect of a share. The amendment to regard the dividends in specie as dividends paid in respect of a share, seek to remedy this anomaly.

Sub-clause (f) Proposed insertion of new subsection (3)(e) – The proposed amendment excludes third party backed instrument from the application of this section to ensure that the re-characterisation rule available in section 8EA that re-characterises dividends to income applies

to instruments that meet the definition of third party backed instruments, despite any attempt by a taxpayer to avoid such characterisation by using the provisions of section 8F to retain dividends treatment for the yield of third party backed instruments as a result of the re-characterisation rule of section 8F that re-characterises interest into dividend in specie.

Sub-clause (g) Proposed insertion of new subsection (3)(f) - See notes on **HYBRID DEBT INSTRUMENTS SUBJECT TO SUBORDINATION AGREEMENTS**

CLAUSE 17

Income Tax: Amendment of section 8FA

Sub-clause (a): Proposed amendment of the definition of “instrument” in subsection (1) - See notes on **CROSS-BORDER HYBRID DEBT INSTRUMENTS**

Sub-clause (b): Proposed amendment to subsection (2) - The amendment aims to clarify that when interest is re-characterised to dividends in specie, the dividends tax exemptions continue to be applicable. Of concern is that currently, some dividends tax exemptions are granted depending on the beneficial owner of that dividend. The reliance on beneficial ownership in determining the eligibility for a dividend exemption adds a technical consideration when interest is re-characterised as dividends in specie. This is because the term beneficial owner is defined as the person entitled to the benefit of a dividend attaching to a share. Under the anti-hybrid debt rules, the instruments of concern are debt instruments (albeit that they exhibit certain equity-like features). As such, the mere re-characterisation of the interest yield as dividends in specie does not take into account the operation of the current dividends tax regime and in particular, the provisions dealing with the dividends exemptions which require a dividend to arise in respect of a share. The amendment to regard the dividends in specie as dividends paid in respect of a share, seek to remedy this anomaly.

Sub-clause (c): Proposed amendments to subsections (3)(c)(i) & (ii) correct referencing to the Short-term Insurance Act and Long-term Insurance Act.

Sub-clause (d): Proposed insertion of new subsection (3)(e) – The proposed amendment excludes interest owed in respect of third party backed instrument from the application of this section to ensure that the re-characterisation rule available in section 8EA that re-characterises dividends to income applies to instruments that meet the definition of third party backed instruments, despite any attempt by a taxpayer to avoid such characterisation by using the provisions of section 8FA to retain dividends treatment for the yield of third party backed instruments as a result of the re-characterisation rule of section 8FA that re-characterises interest into dividend in specie.

CLAUSE 18

Income Tax: Amendment of section 9

Proposed amendment to subsection (2)(i) and (3) - See notes on **CLARIFYING SOURCE RULES FOR RETIREMENT ANNUITY FUNDS**

CLAUSE 19

Income Tax: Amendment of section 9C

Proposed amendment to the proviso in subsection (5) - See notes on **INTERACTION BETWEEN REITS AND SECTION 9C**

CLAUSE 20

Income Tax: Amendment of section 9D

Sub-clause (a): Proposed amendment to the proviso in subsection (2) - See notes on **EXEMPTION OF COLLECTIVE INVESTMENT SCHEMES IN SECURITIES FROM CONTROLLED FOREIGN COMPANIES RULES**

Sub-clause (b): Proposed amendment to the further proviso of paragraph (ii)(bb) of subsection (2A): See notes on **ADJUSTING THE CALCULATION FOR HIGH TAX EXEMPTION IN RESPECT OF CONTROLLED FOREIGN COMPANIES**

Sub-clause (c) Proposed deletion of subparagraph (iii) of subsection (9)(d) - See notes on **REPEAL OF THE WITHHOLDING TAX ON SERVICE FEES REGIME**

CLAUSE 21

Income Tax: Amendment of section 9H

Proposed amendments in subsections (3)(c) and (d) remove the incorrect cross references to paragraphs (a)(i) and (a)(ii) and change them to paragraphs (a) and (b).

CLAUSE 22

Income Tax: Amendment of section 9HA

The proposed amendments in subsection (2)(a) and (2)(b)(i)&(ii) are consequential as a result of the introduction of new section 9HA in the Income Tax Act in 2015 and clarify the tax consequences for the surviving spouse regarding allowable deductions and allowances in respect of those assets (e.g. deductions and allowances in respect of mining, farming and

forestry assets) as well as the subsequent capturing of any recoupments in the hands of the surviving spouse.

CLAUSE 23

Income Tax: Amendment of section 10

Sub-clause (a): Proposed insertion of new subsection (1)(bB) - See notes on **TAX EXEMPTION OF MULTILATERAL DEVELOPMENT FINANCIAL INSTITUTIONS**

Sub-clause (b): Proposed amendment to subsection (1)(gC) - See notes on **DISALLOWING THE EXEMPTION FOR A LUMP SUM, PENSION OR ANNUITY FROM A RETIREMENT FUND THAT IS LOCATED WITHIN THE REPUBLIC**

Sub-clause (c): Proposed deletion of subsection (1)(hB) - See notes on **REPEAL OF THE WITHOLDING TAX ON SERVICE FEES REGIME**

Sub-clause (d): Proposed amendment of subsection (1)(k)(i) proviso of paragraph (ii) - See notes on **ADDRESSING THE CIRCUMVENTION OF THE RULES DEALING WITH EMPLOYEE BASED SHARE INCENTIVE SCHEMES**

Sub-clause (e): Proposed amendment to subsection (1)(q)in paragraph (ii) of the proviso for subparagraph (aa) - See notes on **INCREASE ON THRESHOLDS FOR EXEMPTION OF EMPLOYER PROVIDED BURSARIES**

Sub-clause (f): Proposed amendment to subsection (1)(q) in paragraph (ii)(bb)(A) of the proviso - See notes on **INCREASE ON THRESHOLDS FOR EXEMPTION OF EMPLOYER PROVIDED BURSARIES**

Sub-clause (g): Proposed amendment to subsection (1)(q) in paragraph (ii)(bb)(B) of the proviso - See notes on **INCREASE ON THRESHOLDS FOR EXEMPTION OF EMPLOYER PROVIDED BURSARIES**

Sub-clause (h): Proposed insertion on new subsection (1)(t)(xvii) - See notes on **TAX EXEMPTION OF NATIONAL HOUSING FINANCE CORPORATION**

CLAUSE 24

Income Tax: Amendment of section 10A

Sub-clause (a): The proposed addition of paragraph (c) in subsection (7) is a consequential amendment as a result of the removal of the Commissioner’s discretion in order to support self-assessment for Income Tax.

Sub-clause (b): Consequential amendment due to the addition of paragraph (c) in subsection (7) which effectively replaces function of subsection (10).

CLAUSE 25

Income Tax: Amendment of section 10B

The proposed addition of section 10B(6) clarifies that all amounts paid out of all types of previously exempt foreign dividends and amounts paid out in the form of annuity do not qualify for a foreign dividend exemption.

CLAUSE 26

Income Tax: Amendment of section 11

Sub-clause (a): Proposed amendment clarifies position that section 12U is not an additional deduction allowable to any other deduction contemplated in the Income Tax Act.

Sub-clause (b): Proposed amendment in the proviso to paragraph (k) in subparagraph (aa) in paragraph (i)(bb) (B) seeks to correct the ordering rule for calculating allowable deductions in the determination of taxable income and provides that the allowable deduction in terms of section 11(k) be determined before the allowable deduction in terms of section 18A.

Sub-clause (c): Proposed insertion of new paragraph (v) to the proviso to paragraph (k) - See notes on **RETIREMENT FUND CONTRIBUTION DEDUCTION AGAINST PASSIVE INCOME**

CLAUSE 27

Income Tax: Amendment of section 11D

Proposed insertion of new subsection 20 - See notes on **PROVISION FOR EXCEPTION TO THE RESEARCH AND DEVELOPMENT (R&D) INCENTIVE PRESCRIPTION RULES**

CLAUSE 28

Income Tax: Amendment of section 12B

The proposed amendment to paragraph (c) in subsection 2 deletes an obsolete provision.

CLAUSE 29

Income Tax: Amendment of section 12E

Proposed amendment of the definition of “small business corporation” in subsection 4 - See notes on **EXTENDING THE SMALL BUSINESS CORPORATION REGIME TO PERSONAL LIABILITY COMPANIES**

CLAUSE 30

Income Tax: Amendment of section 12H

See notes on **EXTENSION OF THE LEARNERSHIP TAX INCENTIVE**

CLAUSE 31

Income Tax: Amendment of section 12I

See notes on **ADDRESSING POSSIBLE ADMINISTRATIVE AND TECHNICAL ISSUES IN RESPECT OF INDUSTRIAL POLICY PROJECTS IN SECTION 12I**

CLAUSE 32

Income Tax: Amendment of section 12J

Proposed amendment to subsection (3A) - See notes on **REFINING THE ENABLING VENTURE CAPITAL REGIME FOR START-UP VENTURE CAPITAL COMPANIES**

CLAUSE 33

Income Tax: Amendment of section 12P

Sub-clause (a): The proposed amendment to the definition of “government grant” in subsection (1) inserts the word “local” to ensure that grants from all spheres of government in the Republic are considered for the section.

Sub-clause (b): Proposed amendment to subsection (2A)(b) deletes superfluous wording.

CLAUSE 34

Income Tax: Amendment of section 12R

See notes on **CLARIFYING THE TAX RATE APPLICABLE TO SMALL BUSINESS CORPORATIONS LOCATED IN SPECIAL ECONOMIC ZONES**

CLAUSE 35

Income Tax: Amendment of section 12S

Sub-clause (a): Proposed amendment to subsection (1) - See notes on **CLARIFYING THE TAX RATE APPLICABLE TO SMALL BUSINESS CORPORATIONS LOCATED IN SPECIAL ECONOMIC ZONES**

Sub-clause (b): Proposed amendment to section (8) – The proposed amendment corrects referencing to ensure that subsection (8) refers to the provisions related to Assessments in Chapter 8 and not Confidentiality of Information provisions in Chapter 6 of the Tax Administration Act.

CLAUSE 36

Income Tax: Insertion of new section 12U

See notes on **ACCELARATED CAPITAL ALLOWANCE IN RESPECT OF SUPPORTING INFRASTRUCTURE USED IN PRODUCING RENEWABLE ENERGY**

CLAUSE 37

Income Tax: Amendment of section 13

The proposed amendment in subsection (1)(f) removes reference to the Commissioner's discretion in order to support self-assessment for Income Tax.

CLAUSE 38

Income Tax: Amendment of section 13quat

See notes on **URBAN DEVELOPMENT ZONES (UDZ) – ALLOWING ADDITIONAL MUNICIPALITIES TO APPLY FOR THE UDZ TAX INCENTIVE**

CLAUSE 39

Income Tax: Amendment Insertion of section 20

The proposed amendments in subsections (1)(a), (1)(b) and (2A) replaces the word "taxpayer" with the word "person" as a matter of style consistency.

CLAUSE 40

Income Tax: Amendment of section 22

Sub-clause (a): The proposed amendment in subsection (8)(b)(ii) is consequential as a result of the introduction of new section 9HA in the Income Tax Act in 2015 and clarify the tax consequences for the surviving spouse regarding allowable deductions and allowances in respect of those assets (e.g. deductions and allowances in respect of mining, farming and forestry assets) as well as the subsequent capturing of any recoupments in the hands of the surviving spouse.

Sub-clause (b): Amendment of subsection 9(a) to (d) - See notes on **REFINING THE TAX IMPLICATIONS ON OUTRIGHT TRANSFER OF COLLATERAL PROVISIONS**

CLAUSE 41

Income Tax: Amendment of section 23M

The proposed amendment to the heading of section 23M addresses the concern that many taxpayers may not be subject to tax by virtue of treaty protection and treaty relief falling outside Chapter II.

CLAUSE 42

Income Tax: Amendment of section 23N

The proposed insertion of new subsection (5) seeks to clarify that the provision of section 23N do not apply to interests accrued to REITS, long term insurer, pension fund, provident fund or short term insurer if they meet the stipulated requirements in this subsection.

CLAUSE 43

Income Tax: Amendment section 23O

Sub-clause (a): The proposed insertion of the definition of “base cost” in subsection (1) for purposes of section 23O to mean a base cost as defined for capital gains tax purposes in the Act.

Sub-clause (b): The proposed insertion of new subsection (5) to prevent a double reduction of tax attributes in respect of expenditure funded using exempt funding from small business funding entities.

CLAUSE 44

Income Tax: Amendment section 24I

The proposed insertion of paragraph (d) in subsection (1) – See notes on **EXTENDING THE BAD DEBT DEDUCTION RULE TO EXCHANGE DIFFERENCES ARISING ON FOREIGN CURRENCY DENOMINATED LOANS**

CLAUSE 45

Income Tax: Amendment of section 24J

The proposed amendment in paragraph (a) of the definition of "interest" in subsection (1) replaces the word "related" with the word "similar" to clarifies the policy position that this applies to finance charges of the same kind or nature.

CLAUSE 46

Income Tax: Amendment of section 24JB

The proposed amendment in paragraph (a) of the definition of "covered person" in subsection (1) clarify the policy position that the provisions of section 24JB apply only at financial service providers as defined and does not apply to entities conducting treasury operations.

CLAUSE 47

Income Tax: Amendment of section 25

The proposed amendment in subsections (2)(a) and (4) are consequential as a result of the introduction of new section 9HA in the Income Tax Act in 2015 and clarify the tax consequences for the surviving spouse regarding allowable deductions and allowances in respect of those assets (e.g. deductions and allowances in respect of mining, farming and forestry assets) as well as the subsequent capturing of any recoupments in the hands of the surviving spouse.

CLAUSE 48

Income Tax: Amendment of section 25BB

Sub-clause (a): Proposed insertion of new paragraph (e) in the definition of "rental income" in subsection (1) - See notes on **TAX TREATMENT OF REITS - QUALIFYING DISTRIBUTION RULE**

Sub-clause (b): The proposed amendment in subsection (2A) for the words following paragraph (a)(ii) inserts the word "on income" to remove ambiguity and clarify the provision of this paragraph.

Sub-clause (c): The proposed amendment in subsection (2A)(b) clarify that the deduction of foreign tax under paragraph (a) should be limited to the amount of normal tax that is attributable to the interest of the REIT or controlled company. In essence no deduction of foreign withholding tax paid should be allowed if the amounts from which it is withheld are exempt from normal tax.

Sub-clause (d): The proposed amendment to subsection (6)(a) deletes the word "company" as a matter of style and consistency.

Sub-clause (e): The proposed amendment to subsection (6)(c)(i) inserts the words "that is a resident" to remove ambiguity and clarify that the controlled company should be a resident in this regard.

CLAUSE 49

Income Tax: Amendment of section 28

The proposed amendment to subsection (3) - See notes on **FIRST PARTY CELL CAPTIVE ARRANGEMENT'S RESERVING METHODOLOGY FOR SHORT-TERM INSURERS**

CLAUSE 50

Income Tax: Amendment of section 29A

Sub-clause (a): Proposed amendment to the definition of "adjusted IFRS value" in subsection (1) - See notes on **AMENDMENTS TO THE TAX VALUATION METHOD FOR LONG-TERM INSURERES DUE TO THE INTRODUCTION OF SOLVENCY ASSESSMENT AND MANAGEMENT FRAMEWORK**

Sub-clause (b): Proposed amendments to the definition of "risk policy" in subsection (1) clarify the policy intent with respect to the definition of risk policy.

Sub-clause (c): Proposed amendment to the definition of "value of liabilities" in subsection (1) - See notes on **AMENDMENTS TO THE TAX VALUATION METHOD FOR LONG-TERM INSURERES DUE TO THE INTRODUCTION OF SOLVENCY ASSESSMENT AND MANAGEMENT FRAMEWORK**

Sub-clause (d): Proposed amendment to the proviso to subsection (11)(a)(iii) - In cases where the income is not sufficient in the policyholder fund, the transfer deduction relief will not be allowed. However, the policyholder fund is still in a taxable income position and has to pay additional tax. This adverse result, stems from the current wording of section 29A (11)(a)(iii) referring to income as opposed to taxable income. It is proposed that the wording of section 29A(11)(a)(iii) limit the deduction to taxable income in the policyholder funds as opposed to income.

Sub-clause (e): Proposed amendment to subsection (11)(h) - The application of mark-to-market taxation (section 29B) in respect of long-term insurers to real estate assets and other assets was intended not to trigger recoupment of prior depreciation allowances when long-term insurers

immediately recognise all unrealised gains and losses arising before the 1 March 2012 effective date in respect of policyholder funds (i.e. untaxed policyholder fund, individual policyholder fund and company policyholder fund). More-over, going forward, depreciation allowances for real estate assets and other assets were not allowed in respect of years of assessment commencing on or after 1 January 2013.

As stated above that the mark-to-market taxation provisions only apply to assets held by the insurer with respect to policyholder funds and not corporate fund. However, the specific rules for determination of the taxable income derived by an insurer in respect of the individual policyholder fund, the company policyholder fund, the corporate fund and the risk policy fund are confined in section 29A(11). Therefore, section 29A(11)(h) which disallow any deduction by way of an allowance in respect of an asset as defined in the Eighth Schedule inversely affect the corporate fund and the risk policy fund. It is proposed that the provision of section 29A(11)(h) of the Act exclude assets allocated and held in the corporate fund or risk policy fund of an insurer.

Sub-clause (f): The proposed amendment to subsection (12) clarifies that in the "build-up" of the assets allocated to the policyholder funds and risk policy fund payments must also be allocated to the funds. This means a Balance Sheet Approach must be followed in order to comply with the requirements of section 29A(4), (6), (7) and (12) and the definition of "value of liabilities", signifying a shift from the practice of calculating the market value of assets using the Statutory Income Statement as a starting point.

Sub-clause (g): The proposed amendment to subsection (13B)(d)(ii) for the words preceding item (aa) deletes the word "that" as a matter of style and consistency.

Sub-clause (h): Proposed insertion of new subsection (14) to (16) - See notes on **AMENDMENTS TO THE TAX VALUATION METHOD FOR LONG-TERM INSURERES DUE TO THE INTRODUCTION OF SOLVENCY ASSESSMENT AND MANAGEMENT FRAMEWORK**

CLAUSE 51

Income Tax: Amendment of section 30

Sub-clause (a): The proposed amendment to subsection (3)(f) corrects a grammatical error and changes the words "it has" to "those funds have".

Sub-clause (b): Proposed insertion of new item (dd) in subsection (3)(b)(iii) - See notes on **TAX EXEMPTION OF NATIONAL HOUSING FINANCE CORPORATION**

CLAUSE 52

Income Tax: Amendment of section 36

Sub-clause (a): Proposed insertion of new paragraph (eA) to the definition of "capital expenditure" in subsection (11) - See notes on **PROVIDING TAX RELIEF FOR MINING**

COMPANIES SPENDING ON INFRASTRUCTURE FOR THE BENEFIT OF MINING COMMUNITIES

Sub-clause (b): Proposed insertion of definition of "social and labour plan" in subsection (11) - See notes on **PROVIDING TAX RELIEF FOR MINING COMPANIES SPENDING ON INFRASTRUCTURE FOR THE BENEFIT OF MINING COMMUNITIES**

CLAUSE 53

Income Tax: Amendment of section 37D

Sub-clause (a): The proposed amendment to subsection (2) corrects the alignment of this provision so that it applies to all the subparagraphs of paragraph (b).

Sub-clause (b): The proposed amendment to subsection (2)(b)(iv) of the formula updates the percentages to reflect changes made to the capital gains inclusion rate effective 01 March 2016.

CLAUSE 54

Income Tax: Amendment of section 41

The proposed amendment in subsection (1) deletes the definition of "hold" which was linked the concept of shareholder which was removed from the Income Tax Act in 2014 following the introduction of the new Companies Act.

CLAUSE 55

Income Tax: Amendment of section 44

The proposed amendment to paragraph (c)(i) of the definition of "amalgamation transaction" in subsection (1) corrects an oversight in the 2014 changes to the Act that expended on the assets an amalgamated company is allowed to retain when disposing of its assets as part of an amalgamation transaction. Amalgamated companies are required to dispose of all their assets in anticipation for their termination following the amalgamation transaction but are allowed to retain assets to settle any debts incurred by it in the ordinary course of its trade and, as part of the 2014 changes, assets required.

CLAUSE 56

Income Tax: Amendment of section 50D

Proposed insertion of new paragraph (d) in subsection (1) - See notes on **TAX EXEMPTION OF MULTILATERAL DEVELOPMENT FINANCIAL INSTITUTIONS**

CLAUSE 57

Income Tax: Amendment of section 50E

The proposed amendment to subsection (2)(b) inserts the words "or an agreement for the prevention of double taxation" in order to allow exemption granted in terms of the tax treaty from the payment of withholding tax on interest.

CLAUSE 58

Income Tax: Amendment of section 50F

Sub-clause (a): The proposed amendments to subsection (1) insert a requirement that a foreign person liable for any amount of withholding tax on interest must pay that amount of withholding tax and also submit a return in respect of such payment.

Sub-clause (b): The proposed insertion of new subsection (3) makes a requirement for a withholding agent or any person who pays withholding tax on interest in respect of interest that is due and payable, but not yet paid to submit a return.

CLAUSE 59

Income Tax: Amendment of section 50G

See note on **INTEREST WITHHOLDING TAX WHERE INTEREST IS WRITTEN-OFF**

CLAUSE 60

Income Tax: Repeal of Part IVC of Chapter II of Act 58 of 1962

See notes on **REPEAL OF THE WITHHOLDING TAX ON SERVICE FEES REGIME**

CLAUSE 61

Income Tax: Amendment of section 56

Proposed amendment to subparagraphs (i) and (ii) of subsection (1)(o) - See notes on **TAX TREATMENT OF LAND DONATED UNDER LAND-REFORM INITIATIVES**

CLAUSE 62

Income Tax: Amendment of paragraph 1 of the Second Schedule

The proposed amendment to the definition of "public sector fund" in paragraph 1 is a consequential amendment related to the retirement reforms to include in the definition of "public sector fund" funds referred to in paragraph (d) of the definition of "pension fund" as well as paragraph (b) or (c) of the definition of "provident fund".

CLAUSE 63

Income Tax: Amendment of paragraph 4 of the Second Schedule

The proposed amendment to paragraph 4(3) replaces the word "person" with the word" fund" to clarifies that the application must be made by a fund not an individual, as it is a fund that applies for a directive.

CLAUSE 64

Income Tax: Amendment of paragraph 1 of the Sixth Schedule

The proposed amendment to paragraph (b) in the definition of "qualifying turnover" is consequential to the introduction of the small business funding entity regime in 2014. This amendment ensures that amounts received by a micro business from a small business funding entity do not inflate the turnover of the micro business beyond the R1 million threshold and disqualify it from benefitting from the micro business regime.

CLAUSE 65

Income Tax: Amendment of paragraph 7 of the Sixth Schedule

The proposed amendment to subparagraph (b) is consequential to the introduction of the small business funding entity regime in 2014. This amendment ensures that amounts received by a micro business from a small business funding entity do not inflate the turnover of the micro business beyond the R1 million threshhold and disqualify it from benefitting from the micro business regime.

CLAUSE 66

Income Tax: Insertion of paragraph 2A of the Seventh Schedule

The proposed insertion of new paragraph 2A of the Seventh Schedule provides clarity that for purposes of the application of fringe benefit tax, a partner is deemed to be an employee of a partnership.

CLAUSE 67

Income Tax: Amendment of paragraph 7(4) for the words preceding paragraph (a) of the Seventh Schedule

The proposed amendment to paragraph 7(4) of the Seventh Schedule clarifies the meaning of definition of the term "private travel" so as to remove ambiguity.

CLAUSE 68

Income Tax: Amendment of paragraph 9 of the Seventh Schedule

Sub-clause (a): The proposed amendment to subparagraph (2) includes reference to subparagraph 3C for purpose of determination of the cash equivalent of the value of taxable benefit derived from the occupation of the residential accommodation.

Sub-clause (b): The proposed amendment to subparagraph (5) corrects the reference to subparagraph (3) instead of subparagraph (3)(a) and ensures gender neutrality in the wording of the provision.

CLAUSE 69

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

Sub-clause (a): Proposed amendment to paragraph (a) of the definition "retirement funding income" in subparagraph (1): - See notes on **USING THE CORRECT DEFINITION OF INCOME FOR THE FORMULA TO DETERMINE THE FRINGE BENEFIT FOR DEFINED BENEFIT CONTRIBUTIONS AND ELIMINATING A POTENTIAL LOOPHOLE**

Sub-clause (b): Proposed amendment to paragraph (a) of the definition "retirement funding income" in subparagraph (1) - See notes on **USING THE CORRECT DEFINITION OF INCOME FOR THE FORMULA TO DETERMINE THE FRINGE BENEFIT FOR DEFINED BENEFIT CONTRIBUTIONS AND ELIMINATING A POTENTIAL LOOPHOLE**

CLAUSE 70

Income Tax: Amendment of paragraph 11 of the Eighth Schedule

Sub-clause (a): Proposed amendment to subparagraph 2(h) -- See notes on **REVIEW OF TAX IMPLICATIONS ON OUTRIGHT TRANSFER OF COLLATERAL**

Sub-clause (b): Proposed amendment to subparagraph (2)(n) - See notes on **REVIEW OF TAX IMPLICATIONS ON OUTRIGHT TRANSFER OF COLLATERAL**

CLAUSE 71

Income Tax: Amendment of paragraph 38 of the Eighth Schedule

The proposed insertion of new subparagraph (2)(f) aims to prevent a double taxation problem that exists between section 37D and the Eighth Schedule. Section 37D grants a person an allowance of 4% a year over 25 years for land declared as a nature reserve but this deduction is reduced by the taxable capital gain that would have arisen at the time of donation. Thus in effect SARS is recovering the taxable capital gain over 25 years. The problem that arises is that the granting of the rights to the government for 99 years is an actual disposal under paragraph 11 and the proceeds would be determined under paragraph 38 by virtue of the donation.

CLAUSE 72

Income Tax: Amendment of paragraph 43 of the Eighth Schedule

The proposed amendment in subparagraph (5)(b) is consequential as a result of the introduction of new section 9HA in the Income Tax Act in 2015 and clarify the tax consequences for the surviving spouse regarding allowable deductions and allowances in respect of those assets (e.g. deductions and allowances in respect of mining, farming and forestry assets) as well as the subsequent capturing of any recoupments in the hands of the surviving spouse.

CLAUSE 73

Income Tax: Amendment of paragraph 47 of the Eighth Schedule

The proposed amendment to words following subparagraph (b) clarifies that the amount of R2 million (primary residence exclusion) is not apportioned and it is the capital gain or loss that should be apportioned.

CLAUSE 74

Income Tax: Amendment of paragraph 49 of the Eighth Schedule

The proposed amendment to words following subparagraph (b) clarifies that the amount of R2 million (primary residence exclusion) is not apportioned and it is the capital gain or loss that should be apportioned.

CLAUSE 75

Income Tax: Amendment of paragraph 50 of the Eighth Schedule

The proposed amendment to subparagraph (b) replaces the word “beneficiary” with the word “special trust” to clarify that the special trust owns the property not the beneficiary.

CLAUSE 76

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

See notes on **TAX TREATMENT OF LAND DONATED UNDER LAND-REFORM INITIATIVES**

CLAUSE 77

Income Tax: Insertion of new paragraph 64D of the Eighth Schedule

See notes on **TAX TREATMENT OF LAND DONATED UNDER LAND-REFORM INITIATIVES**

CLAUSE 78

Income Tax: Amendment of paragraph 66 of the Eighth Schedule

The proposed amendment to subparagraph (1)(d) corrects a cross-reference to the source rules in section 9 by inserting a reference to section 9(2)(j). It ensures that immovable property situated in South Africa or any interest or right of whatever nature to or in such property contemplated in paragraph 2 of the Eighth Schedule will qualify as a replacement asset.

CLAUSE 79

Income Tax: Amendment of paragraph 76B of the Eighth Schedule

The proposed addition of the proviso to subparagraph (1) ensures that the market value rule works properly as current legislation did not take into account that shares trade ex div during the five business days preceding the record date. The amendment now ensures that the ruling price of that share at the close of business on the record date increases by the value of the distribution.

CLAUSE 80

Income Tax: Amendments of paragraph 4 of Part I of the Ninth Schedule

Sub-clause (a): The proposed amendment to subparagraph (c) replaces the words “adult basic education and training” with “adult education and training”, which is a correct referencing used in Higher Education and Training Laws Amendment Act, 2010.

The proposed amendment to subparagraph (d) replaces the word “further” with “continuing”, which is a correct referencing used in Further Education and Training Colleges Amendment Act, 2013.

Sub-clause (b): Proposed insertion of new subparagraphs (p) and (q) - See notes on **TAX EXEMPTION OF PUBLIC BENEFIT ORGANISATIONS PROVIDING INDUSTRY BASED EDUCATION AND TRAINING ACTIVITIES**

CLAUSE 81

Customs and Excise Act: Insertion of new section 119B

The proposed insertion of new section 119B introduces a general anti-avoidance provision to the customs and excise legislative framework in order to enhance, facilitate and coordinate enforcement and compliance efforts for customs duties and excise taxation. This anti avoidance provision is in line with similar provisions in other indirect taxes, for example section 73 of the VAT Act.

CLAUSE 82

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 83

Value-Added Tax Act: Amendment to Section 1

Sub-clause (a): The proposed amendment to subparagraph (ix) of the definition of “enterprise” in subsection (1) corrects punctuation.

Sub-clause (b): Proposed amendment to subparagraph (ii) of the definition of “second-hand goods” in subsection (1) _ See notes on **REVISION OF THE 2014 AMENDMENT RELATING TO NOTIONAL INPUT TAX ON GOODS CONTAINING GOLD**

CLAUSE 84

Value-Added Tax Act: Amendment to Section 7

The proposed amendment align the tax charging provisions of all the tax Acts.

CLAUSE 85

Value-Added Tax Act: Amendment to Section 15

Proposed amendment to subsection (2A) - See notes on **ALLOWING MUNICIPAL ENTITIES TO ACCOUNT FOR VAT ON THE PAYMENT BASIS WHERE THE SUPPLY IS R100 000 OR MORE**

CLAUSE 86

Value-Added Tax Act: Repeal of Section 77

The proposed amendment is consequential and deletes now obsolete provisions of section 77 due to the amendments made in section 7 aligning tax charging provisions of the all tax Acts.

CLAUSE 87

Value Added Tax Act: Amendment of Schedule 1

Proposed insertion of new item 412.09 Goods Lost, Destroyed or Damaged - See notes on **VAT EXEMPTION IN RESPECT OF IMPORTED GOODS THAT ARE LOST, DESTROYED OR DAMAGED THROUGH NATURAL DISASTERS**

CLAUSE 88

Skills Development Levies Act: Amendment to Section 3

The proposed amendment aligns the tax charging provisions of all the tax Acts.

CLAUSE 89

Unemployment Insurance Contributions Act: Amendment to Section 6

The proposed amendment aligns the tax charging provisions of all the tax Acts.

CLAUSE 90

Securities Transfer Tax Act: Proposed amendment to definition of “collateral arrangement” and “lending arrangement” in subsection (1) - See notes on **REFINING THE TAX IMPLICATIONS ON OUTRIGHT TRANSFER OF COLLATERAL PROVISIONS**

CLAUSE 91

Securities Transfer Tax Act: Amendments to sections 2 and 3

The proposed amendments align the tax charging provisions of all the tax Acts.

CLAUSE 92

Mineral and Petroleum Resources Royalty Act: Amendments to section 3

The proposed amendments align the tax charging provisions of all the tax Acts.

CLAUSE 93

Employment Tax Incentive Act: Amendments to section 1

Proposed amendment clarifies the amount of hours worked - See notes on **EXTENSION OF THE EMPLOYMENT TAX INCENTIVE**

CLAUSE 94

Employment Tax Incentive Act: Amendments to section 4

Proposed amendment clarifies the amount of hours worked - See notes on **EXTENSION OF THE EMPLOYMENT TAX INCENTIVE**

CLAUSE 95

Employment Tax Incentive Act: Amendments to section 7

Sub-clauses (a) – (i): Proposed amendments clarifies administrative issues - See notes on **EXTENSION OF THE EMPLOYMENT TAX INCENTIVE**

Sub-clause (j): Proposed amendment clarifies the amount of hours worked - See notes on **EXTENSION OF THE EMPLOYMENT TAX INCENTIVE**

Sub-clause (k): Proposed amendments impose a cap on the level of claims - See notes on **EXTENSION OF THE EMPLOYMENT TAX INCENTIVE**

CLAUSE 96

Employment Tax Incentive Act: Amendments to section 9

Proposed amendments addresses back-dated claims - See notes on **EXTENSION OF THE EMPLOYMENT TAX INCENTIVE**

CLAUSE 97

Employment Tax Incentive Act: Amendments to section 12

Proposed amendment extends the incentive - See notes on **EXTENSION OF THE EMPLOYMENT TAX INCENTIVE**

CLAUSE 98

Taxation Laws Amendment Act, 2013: Amendment to section 13

The proposed amendment postpones the effective date for sections 8F(3)(b)(ii) and 8F(3)(c)(ii) from 1 January 2016 to 1 January 2018.

CLAUSE 99

Taxation Laws Amendment Act, 2013: Amendment to section 15

The proposed amendment postpones the effective date for section 8FA(3)(b)(ii) and 8FA(3)(c)(ii) from 1 January 2016 to 1 January 2018.

CLAUSE 100

Taxation Laws Amendment Act, 2013: Amendment to section 62

The proposed amendment postpones the effective date of the amendments made to section 23M from 1 January 2016 to 1 January 2018.

CLAUSE 101

Taxation Laws Amendment Act, 2014: Amendment to section 47

Proposed amendment deletes paragraph (a) of the definition of “Adjusted IFRS value in subsection (1) and reference to paragraph (a) in subsection (2) – see notes on **AMENDMENTS TO THE TAX VALUATION METHOD FOR LONG TERM INSURERS DUE TO THE INTRODUCTION OF SOLVENCY ASSESSMENT AND MANAGEMENT FRAMEWORK**

CLAUSE 102

Taxation Laws Amendment Act, 2015: Amendment to section 63

The proposed amendment clarifies that the effective date dealing with changes in respect of the transitional tax issues resulting from the regulation of hedge funds is 1 January 2016 and applies in respect of years of assessment ending on or after that date.

The proposed amendment clarifies that the effective date dealing with changes in respect of debtor's allowance relating to trade debts is 1 April 2015.

CLAUSE 103

Taxation Laws Amendment Act, 2015: Amendment to section 103

The proposed amendment clarifies that the effective date for this provision applies in respect of any asset reacquired as a result of the cancellation or termination of an agreement during any year of assessment commencing on or after that date.

CLAUSE 104

Taxation Laws Amendment Act, 2015: Amendment to section 104

The proposed amendment clarifies that the effective date for this provision applies in respect of any asset reacquired as a result of the cancellation or termination of an agreement during any year of assessment commencing on or after that date.

CLAUSE 105

Taxation Laws Amendment Act, 2015: Amendment to section 108

The proposed amendment clarifies that the effective date for this provision applies in respect of any asset reacquired as a result of the cancellation or termination of an agreement during any year of assessment commencing on or after that date.

CLAUSE 106

Taxation Laws Amendment Act, 2015: Amendment to section 128

The proposed amendment corrects the effective date in respect of consequential amendments to the definitions of "connected persons" in paragraph (b) and "shareholder" in paragraph (h) of subsection (1) of the VAT Act from 1 April 2016 to 1 April 2012 (which is the date in which the definition of shareholder was removed from the Income Tax Act).

CLAUSE 107

Short title and commencement