REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

TAXATION LAWS AMENDMENT BILL, 2018

17 January 2019

[W.P. – ‘18]

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1. INCOME TAX: INDIVIDUALS, SAVINGS AND EMPLOYMENT

1.1 CLARIFYING THE TAX TREATMENT OF FUNDS MANAGED BY BARGAINING COUNCILS

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

I. Background

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

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

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

II. Reasons for change

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

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

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

Employer contributions to funds administered by Bargaining Councils for the benefit of employees should constitute a taxable fringe benefit in the employee's hands and be subject to PAYE withheld by employers. The value of the taxable fringe benefit should be the contribution made by the employer on behalf of the employee. In the event that bulk contributions are made by the employer on behalf of employees to the funds administered by the Bargaining Councils and the employer is unable to attribute specific contributions to specific employees, the taxable fringe benefit is to be calculated in respect of the total contributions paid by the employer divided by the number of employees on behalf of which the contributions are paid. The above taxable fringe benefit

provisions should not be applicable to the extent that the contribution is being made to a pension or provident fund as the taxation of those contributions is already specifically catered for in the Act.

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

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

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

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

III. Proposal

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

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

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

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

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

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

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

IV. Effective date

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

1.2 ADDRESSING ANOMALIES IN RESPECT OF MEDICAL TAX CREDITS

[Applicable provision: Section 6A of the Act]

I. Background

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

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

II. Reasons for change

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

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

III. Proposal

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

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

IV. Effective date

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

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

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

I. Background

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

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

II. Reasons for change

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

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

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

III. Proposal

In order to accelerate the Government's policy of providing housing, it is proposed that the relief from triggering a taxable benefit be extended to apply to a low interest or interest free loan with a value not exceeding R450 000 provided by an employer to a low-income earning employee with a remuneration proxy not exceeding R250 000, provided the loan is granted solely for the acquisition of residential accommodation. In order to avoid any abuse, it is further proposed that the connected person exclusion similar to the exclusion in the current paragraph 5(3A) of the Seventh Schedule be added.

IV. Effective date

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

1.4 TAX TREATMENT OF TRANSFERS OF ACTUARIAL SURPLUS BETWEEN RETIREMENT FUNDS

[Applicable provision: Paragraph 2(*l*) of the Seventh Schedule to the Act]

I. Background

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

II. Reasons for change

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

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

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

III. Proposal

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

IV. Effective date

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

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

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

I. Background

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

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

II. Reasons for change

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

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

III. Proposal

In order to promote Government's policy of a uniform approach on the tax treatment of all retirement funds, it is proposed that the tax treatment of different types of preservation fund withdrawals be aligned to allow members of all preservation funds to be able to access and

withdraw the full value of their post-tax retirement benefits upon emigration or repatriation on expiry of the work visas.

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

IV. Effective date

The amendments come into operation on 1 March 2019.

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

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

I. Background

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

II. Reasons for change

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

III. Proposal

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

IV. Effective date

The amendments come into operation on 1 March 2019.

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2. INCOME TAX: BUSINESS (GENERAL)

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

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

I. Background

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

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

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

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

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

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

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

c) A debt is converted into shares.

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

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

the debt benefit determined to be reduced by any increase in the market value of the shares held by a creditor in another company that forms part of the same group of companies as the debtor company, provided that the increase is attributable solely to the implementation of the conversion of debt into equity.

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

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

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

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

II. Reasons for change

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

A. Changes to the terms and conditions

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

B. Substitution of debt

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

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

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

III. Proposal

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

D. Definition of a "concession or compromise"

A new definition of a "*concession or compromise*" is proposed. Under this revised definition, circumstances under which the debt relief rules will apply will be limited to realisation events. In terms of the new definition, there will be no regard to changes in the terms and conditions of taxpayers' debt arrangements unless they result in a realisation event. Furthermore, the rules for the conversion or exchange of debt for shares will be limited to interest incurred by a person that has not been paid and that is subsequently converted to or exchanged for shares.

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

a) The cancellation or waiver of a debt;

b) When a debt is extinguished by way of a redemption of the debt claim by the person owing that debt or by any person that is a connected person in relation to that person

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

d) When an interest-bearing debt owed by a company to a person is settled by way of a conversion or exchange for shares in that company or by applying the proceeds from shares issued by that company. However, the debt relief rules will only apply in the case of debt conversions to or exchanges for shares if the amount being converted or exchanged represents an amount of interest incurred by the person owing the debt. This will be achieved by including in the legislation an exclusion from the application of the rules of amounts owed that do not represent an amount of interest incurred.

A. Definition of a "debt benefit"

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

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

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

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

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

company after the conversion exceeds the market value of the effective interest held prior to that conversion.

IV. Effective date

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

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

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

I. Background

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

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

II. Reasons for change

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

III. Proposal

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

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

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

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

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

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

The anti-avoidance rules dealing with dividend stripping will, in essence, apply in respect of any disposal of shares by a resident company in terms of a transaction that is not a deferral transaction if that company received an extraordinary dividend within 18 months of the date of that disposal or as consequence of that disposal. That company will, as a result, have to recognise as income or proceeds from the disposal of those shares (as the case may be), in the year of assessment of that disposal. However, if the dividend that qualifies as an extraordinary dividend is received by or accrues to the resident company in a subsequent year of assessment, such amount must be taken into account when determining the tax liability of the resident company in that subsequent year of assessment.

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

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

Application of the claw back rules: scenario 1

Exempt dividends that are received by or accrued to a person in respect of shares prior to their acquisition, in terms of a deferral transaction, by a resident company will for purposes of applying the dividend stripping rules be treated as having been received by or having been accrued to the company:

- that person disposed of those shares in terms of a deferral transaction;
- that person was a connected person in relation to that company at any time within a period of 18 months prior to the disposal by that company of those shares; and
- those dividends were received by or accrued to that person within that period of 18 months.

Application of the claw back rules: scenario 2

A second claw back rule applies in respect of shares (hereinafter referred to as new shares) acquired by a company in terms of a deferral transaction in return for or by virtue of holding other shares (hereafter referred to as old shares). An exempt dividend that was received by or that accrued to that company in respect of the old shares within a period of 18 months prior to the disposal, by that company, of the new shares in terms of a transaction that is not a deferral transaction will for purposes of applying the dividend stripping rules be treated as having been received by or having accrued to that company in respect of the new shares.

IV. Effective date

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

2.3 CLARIFYING SPECIFIC ANTI-DIVIDEND STRIPPING RULES REGARDING PREFERENCE SHARES

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

I. Background

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

II. Reasons for change

Subsequent to the 2017 amendments, taxpayers have raised concerns that the rules around preference shares are vague and therefore need to be clarified. As a starting point, clarity in the

form of a definition in the legislation of what constitutes a preference share for purposes of the anti-dividend stripping rules was requested.

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

III. Proposal

In terms of the proposed substitution of paragraph (*a)* of the definition of extraordinary dividend. an "extraordinary dividend" will mean, in relation to a preference share, the amount of any dividend received or accrued exceeding the amount that would have otherwise accrued with respect to that share if it was determined with respect to the considerations for which that share was issued by applying a non-compounding rate of interest of 15 per cent per annum**.**

It is, furthermore, proposed that a definition of preference share be inserted. This definition is referenced to the current definition of "preference share" in section 8EA which provides that a preference share is any share other than an equity share or a share that is an equity share any dividend or foreign dividend in respect of that is determined with reference to a specified rate of interest or the time value of money.

IV. Effective date

The amendments are deemed to have come into operation on 19 July 2017 and apply in respect of disposals on or after that date.

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

[Applicable provision: Section 24O of the Act]

I. Background

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

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

II. Reasons for change

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

Concerns have been raised as to when that test to determine whether a company qualifies as an operating company should be applied for example, the consequences for a shareholder company are not clear if a company in which it holds shares receives or accrues a large exempt dividend during a year of assessment. In such an instance, the company is likely to not qualify as an operating company after receiving or accruing that exempt dividend. This results in a number of uncertainties, which include:

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

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

III. Proposal

In order to address these concerns, it is proposed that amendments be made to the Act to clarify that –

a) An acquirer company must determine whether its qualifies for the special interest deduction in respect of its debt to acquire the shares of the acquired company at–

   i. the end of the acquirer company's year of assessment, in the case of shares that are still held by the acquirer company in the acquired company at the end of that year; and

ii. the date of disposal, in the case of shares in the acquired company that are disposed of during a year of assessment.

b) In making the abovementioned determination, the acquirer company must make the determination of whether the acquired company is an operating company with reference to the immediately preceding year of assessment of that acquired company.

IV. Effective date

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

2.5 CLOSING OF A LOOPHOLE IN DEBT RELIEF RULES

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

I. Background

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

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

II. Reasons for change

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

A. Ordering rules - Donations tax exclusion

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

B. Ordering rules - CGT exclusion

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

III. Proposal

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

A. Ordering rules - Donations tax exclusion

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

B. Ordering rules - CGT exclusion

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

IV. Effective date

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

2.6 ADDRESSING TAX AVOIDANCE THROUGH THE USE OF COLLATERAL ARRANGEMENTS

[Applicable provision: Section 64EB of the Act]

I. Background

The Act provides relief in respect of the borrowing or outright transfer of listed shares, or local or foreign government bonds in terms of securities lending or collateral arrangements. As a result, if a listed share, or local or foreign government bond is transferred as collateral for purposes of providing security in respect of amounts owed, there are no income tax, capital gains tax and securities transfer tax implications provided that identical shares or bonds are returned to the transferor by the transferee within a limited period of 24 months from the date on which the collateral arrangement was entered into.

II. Reasons for change

It has come to Government's attention that some schemes, similar to the dividend conversion schemes addressed in 2012 using securities lending arrangements, involve are using collateral arrangements for the benefit of foreign shareholders of local listed shares. Dividends that would otherwise be subject to dividend tax are in terms of these schemes converted into payments that are exempt from dividend tax. For example, a foreign shareholder takes out a loan with a South African resident company and transfers South African listed shares as collateral during the period of the loan. The resident company receives the dividend in respect of those shares tax free (company to company exemption) and pays an amount (a manufactured dividend) based on the dividend received by that resident company to that foreign shareholder, free of dividends tax.

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

III. Proposal

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

a) Expand the anti-avoidance provisions of section 64EB to also apply to dividend conversion schemes using collateral arrangements;

b) Amend the wording of section 64EB which currently applies to arrangements implemented in respect of shares after the announcement or declaration of a dividend in respect of those shares to cover dividend conversion schemes implemented prior to the announcement or declaration of a dividend.

IV. Effective date

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

2.7 ADJUSTING THE DIAMOND EXPORT LEVY LIMITS

[Applicable provision: Sections 8 and 9 of the Diamond Export Levy Act]

I. Background

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

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

a) R3 billion in section 8(1)(b), being the total gross sales limit for medium producers (USD 425 million on enactment date, at 7.05 ZAR to USD, being the exchange rate at enactment date); and

b) R20 million in section 9(a), being the total gross sales limit threshold for small producers (USD 2,8 million on enactment date, at 7.05 ZAR to USD, being the exchange rate at enactment date).

II. Reasons for change

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

III. Proposal

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

a) The gross sales ceiling for small producers be changed to USD 2.2 million; and

b) The gross sales ceiling for medium producers be changed to USD 295 million.

IV. Effective date

The amendments come into operation on the date of promulgation of the Taxation Laws Amendment Act, 2018.

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

[Applicable provisions: Sections 10(1)(*z*L) and 23(*o*)(iii) of the Act]

I. Background

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

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

II. Reasons for change

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

III. Proposal

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

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

IV. Effective date

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

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

3.1 EXTEND REIT PROVISIONS TO PROPERTY COMPANIES LISTED ON NEWLY LICENCED SOUTH AFRICAN EXCHANGES

[Applicable provision: Section 1 of the Act]

I. Background

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

II. Reason for change

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

III. Proposal

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

A. Listing requirements of the licensed exchanges

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

IV. Effective date

The amendment come into operation on the date of promulgation of the Taxation Laws Amendment Act of 2018.

3.2 TAX TREATMENT OF DOUBTFUL DEBTS

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

I. Background

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

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

II. Reasons for change

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

III. Proposal

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

A. Taxpayers applying International Financial Reporting Standard (IFRS) 9 for financial reporting purposes

If a taxpayer is applying IFRS 9 for financial reporting purposes to determine a loss allowance relating to impairment in respect of debt excluding lease receivables as defined in IFRS 9 the following should be allowed as a deduction:

i. 40 per cent of -

- the IFRS 9 loss allowance relating to impairment that is measured at an amount equal to the lifetime expected credit loss be allowed as a deduction, and
- amounts of bad debts that have been written off for financial accounting purposes as bad debts but the amounts written off do not meet the requirements of section 11(i) of the Act to qualify for a deduction. However,

the allowance for these non-deductible written of amounts is not intended to cover partial write off of debt.

ii. 25 per cent of the difference between the IFRS 9 loss allowances relating to impairment and the IFRS 9 loss allowance in respect of which 40 per cent tax allowance is determined be allowed as a deduction.

B. Taxpayers not applying IFRS 9 for financial reporting purposes

If a taxpayer is not applying IFRS 9 for financial reporting purposes, it is proposed that an age analysis of debt be used, the following should be allowed as a deduction:

i. 40 per cent of the face value of doubtful debts that are at least 120 days past due date be allowed as a deduction, and

ii. 25 per cent of the face value of doubtful debts that are at least 60 days past due date, but excluding doubtful debts that are at least 120 days past due date, be allowed as a deduction.

Example 1 - Application of 60 and 120 -day rule

- If a debtor fails to make full payment for 60 days after due date of an amount that is payable. The debtor is 60 days in arrears and the full debt becomes doubtful then 25 per cent of the debt is allowed as a doubtful debt under section 11(*j*) of the Act. However, the 25 per cent calculation will exclude the doubtful debts mentioned below that are at least 120 days past due date.

- If a debtor fails to make full payment for 120 days after due date of an amount that is payable the debtor is 120 days in arrears and the full debt becomes doubtful then 40 per cent of the debt is allowed as a doubtful debt under section 11(*j*) of the Act.

C. Application for a SARS directive for a higher percentage of a doubtful debt allowance

In order to ensure that non-bank taxpayers also have the ability to obtain a tax deduction for a third category of doubtful debts that is broadly comparable to amounts that are in default for banks under section 11(*j*A) it is proposed that provision be made for a taxpayer to apply to SARS for a higher percentage of doubtful debts falling in the first categories (40 per cent) as described above. SARS may then issue a section 11(*j*) directive to that particular taxpayer that the above-mentioned 40 per cent be increased to a percentage not exceeding 85 per cent after taking into account the following proposed set of criteria:

- the history of a debt owed to that taxpayer, including the number of repayments not met, and the duration of the debt;

- steps taken to enforce repayment of the debt;

- the likelihood of the debt being recovered;

- any security available in respect of that debt;

- the criteria applied by the taxpayer in classifying debt as bad; and

- such other considerations as the Commissioner may deem relevant.

IV. Effective date

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

3.3 TAX ISSUES RESULTING FROM THE INSURANCE ACT

[Applicable provision: Section 28 of the Act]

I. Background

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

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

II. Reasons for change

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

III. Proposal

The above-mentioned changes brought by the Insurance Act necessitate changes to be made in the tax treatment of short term insurers. As a result, it is proposed that a foreign reinsurer that is a long-term or short-term insurer that conducts insurance business through a branch of that foreign reinsurer as envisaged in, section 6 of the Insurance Act, be deemed to be a short-term insurer for purposes of section 28 of the Act.

IV. Effective date

The amendments are deemed to have come into operation on 1 July 2018 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 REVIEW OF VENTURE CAPITAL COMPANY RULES

[Applicable provision: Section 12J of the Act]

I. Background

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

II. Reasons for change

A. Administrative and technical issues

It has come to Government's attention that the following administrative issues and technical aspects pose an impediment to further uptake of the VCC tax incentive regime.

Investment income threshold test

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

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

Controlled company test

Paragraph (*b*) of the definition of qualifying company in section 12J defines a "qualifying company" as a company that is not a "controlled group company" in relation to a group of companies. This implies that a "controlled group company" is a company that has a corporate shareholder that holds directly or indirectly, at least 70 per cent of the shares in that company. This "controlled

company test" in the definition of "qualifying company ensures that at a minimum, there is more than 30 per cent independent shareholding in a qualifying company apart from the VCC. However, the current policy intent of section 12J is ambiguous in whether the controlled company test only applies between VCC's and the target qualifying company or if any other interest in the qualifying company (directly or indirectly outside the VCC investment) will influence the outcome of the relevant test.

Connected Person Test - Withdrawal of VCC Status

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

B. Closure of abusive schemes

Concerns have been raised by various stakeholders, including reports in the public domain regarding abusive tax structures using the current VCC regime or investment structures outside the policy intent when the VCC regime was introduced. Several unacceptable structures have been identified, including the so-called "targeted" VCC structures. Typically, these structures could be used to give any investor the ability to invest in their own businesses / private projects / personal opportunities with the benefit of both the participation and voting rights in the underlying qualifying company.

The policy intent behind VCC's has always clearly been to create a pooling mechanism for investors to collectively channel funds into SMME's and junior mining companies that are battling to get financing. In return each VCC shareholder would, as a tool to mitigate investment risk associated with SMME's and junior mining companies, receive an upfront deduction equal to the investment amount into the VCC.

III. Proposal

A. Administrative and technical issues

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

Investment income test

It is proposed that paragraph (*f*) of the definition of qualifying company in section 12J be amended to allow for the 20 per cent investment income test to be applied for the first time during any year of assessment of that qualifying company that ends after the expiry of a period 36 months from the date of acquisition of shares by the VCC in the qualifying company and every year of assessment after that.

Controlled company test

The current provisions of paragraph (*b*) of the definition of qualifying company in section 12J dealing with the controlled company test unintentionally creates practical uncertainty in whether the legislation intended to include shareholders outside of the VCC frame-work in the controlled company test. It is proposed that amendments be made to paragraph (*b*) of the definition of qualifying company in section 12J to clarify the policy intent that the controlled company test is only to be applied within the VCC frame-work.

Connected Person Test-Withdrawal of VCC Status

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

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

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

B. Closure of abusive schemes

In an attempt to close the various abusive schemes using the current VCC regime, it is proposed that amendments be made to limit the abuse of:

a) trading between a VCC investor that invested in a VCC company and a qualifying company in which that VCC takes up shares. It is proposed that any amount received or accrued by the qualifying company from any transactions between a VCC shareholder (together with connected persons) be limited to not more than 50 per cent of the aggregate amount received or accrued from the carrying of a trade. In addition, it is proposed that this limitation only be applied after a period of 36 months from the date that the VCC acquires an interest in the qualifying company.

b) the VCC shareholder having beneficial control through shares in a VCC or participation or voting rights in the underlying qualifying company:

   I. It is proposed that no shareholder may hold, directly or indirectly, more than 20 per cent of the shares of any class in a VCC. To ensure that VCC's have sufficient time to source enough investors per class of share, it is proposed that the maximum holding test only be applied in respect of a class of shares at the end of any year of assessment following a period of 36 months from the date of issue of that class of shares by that VCC.

      It is also proposed that shares issued by the VCC to VCC managers for carried interest purposes (services in respect of the incorporation, marketing, management or administration of a VCC or qualifying company held by the VCC) be excluded from the concept of a venture capital share. Such shares will, therefore, not qualify for a VCC deduction and will not be subject to the maximum holding test.

   II. In addition, it is proposed that VCC shareholders (together with connected persons) may hold no more than 50 per cent of participation or voting rights in the underlying company: and

c) a business being broken up into several different segments which essentially replicates the existing business where either the current shareholders or existing financiers get the benefit of an upfront deduction which they would not have otherwise been entitled to. It is proposed that a qualifying company may not carry on any trade through a business acquired from an investor in the VCC or from a person that is a connected person in relation to that investor.

IV. Effective date

The proposed amendments have different effective dates that are detailed in TLAB 2018. It is however important to note that the maximum holding test will come into operation on 24 October 2018 and will apply only in respect of shares issued on or after that date.

4.2 EXTENDING THE DISTRIBUTION PERIOD FOR SMALL BUSINESS FUNDING ENTITIES

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

I. Background

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

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

II. Reasons for change

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

III. Proposal

In order to better assist small business funding entities that are providing funding to SMMEs, it is proposed that section 30C of the Act be amended so that small business funding entities be required to distribute or incur the obligation to distribute 25 per cent of all amounts received or accrued in respect of assets held, other than any amount in respect of the disposal of any of those assets, during a tax year within 12 months of the end of that tax year.

IV. Effective date

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

4.3 REVIEWING THE WRITE-OFF PERIOD FOR ELECTRONIC COMMUNICATION CABLES

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

I. Background

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

With regard to electronic communications cables referred to in paragraph (c) of the definition of affected asset in section 12D(1) owned by the taxpayer and, the write-off period is currently 15 years. On the other hand, with regard to electronic communication cables referred to in that section not owned by the taxpayer but the taxpayer, is leasing them at a certain premium or consideration as referred to in paragraph (aa) of the proviso to section 11(*f*), the write-off period is currently the lesser of the number of years over which the taxpayer is entitled to use the electronic cables or 25 years. Further, with regard to electronic cables not owned by the taxpayer but the taxpayer is leasing them at a certain premium, the premiums are not included in the income of the lessor and those electronic cables are located outside the territorial waters of South Africa as contemplated in paragraph *(dd)* of the proviso to section 11(*f*) the write off period is currently 15 years.

II. Reasons for change

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

III. Proposal

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

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

b) The write-off period in respect of electronic cables referred to in paragraph (c) of the definition of affected asset in section 12D(1) owned by the taxpayer be reduced to 10 years which will

be effected by amending the current write-off period in section 12D(3)(c);

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

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

e) The condition in respect of electronic cables not owned by the taxpayer but the taxpayer is leasing those electronic cables at a certain premium, the premiums are not included in the income of the lessor and those electronic cables are located outside the territorial waters of South Africa as contemplated in paragraph (dd) of the proviso to section 11(f), should be reduced from a right of use of 15 years or more to ten years or more.

IV. Effective date

The proposed amendments will come into operation on 1 April 2019 and in the case of amendments to section 12D apply in respect of assets acquired or brought into use on or after that date.

4.4 REVIEW OF INTERNATIONAL SHIPPING RULES

[Applicable provision: Section 12Q of the Act]

I. Background

With effect from 1 April 2014, government introduced a new regime providing tax relief for qualifying South African shipping companies. The policy rationale for this regime was to make South Africa more competitive (as other countries were introducing tonnage tax or exempting international transport shipping income altogether) and to attract ships to be flagged under the South African register. In order to qualify for this relief, the company at issue must be a resident and must operate one or more South African ships that are utilised in international shipping. A South African ship is a ship registered in South Africa in terms of the Ship Registration Act No. 58 of 1998.

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

II. Reasons for change

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

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

III. Proposal

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

IV. Effective date

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

4.5 EXTENSION OF EMPLOYMENT TAX INCENTIVE SCHEME

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

I. Background

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

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

II. Reasons for change

A. Review of the ETI

A second review of the ETI was concluded this year. The review indicated that (i) youth employment is significantly higher as a result of the ETI; (ii) there has been no evidence of displacement for low wage earners between the ages of 30 – 35 years; (iii) the ETI has been used to fund induction, firm readiness, formal trading and the boosting of graduate programmes.

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

B. Constitutional Court Ruling

Following recent amendments to the Labour Relations Act No. 66 of 1995 ("Labour Relations Act") which states that clients of Temporary Employment Service providers ("TES") have to hire contractors who earn below R205,433 annually after three months, the Constitutional Court held that dual employment provisions will not apply (i.e. only a single employer will be recognised – this being the client).

As a result of the contractual agreement entered into between TES's and their clients, where the TES remains responsible for the payment of remuneration to the contractor, the current wording of the Employment Tax Incentive Act would exclude both the TES and their client from the eligibility to claim the incentive. Amendments to the Employment Tax Incentive Act are therefore required to ensure that the policy intent is reflected in the act, and that the ETI can be claimed by the employer who pays remuneration. The level of remuneration is also the base for the calculation of the incentive.

III. Proposal

In view of the above, it is proposed that the end of the window period for the ETI regime should be extended for a further 10 years, from 28 February 2019 to 28 February 2029, with an interim report on its performance to be published after 3 years. Further to the above, it is also proposed that the Employment Tax Incentive Act be amended to ensure that the claim is determined by payment of remuneration.

IV. Effective date

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

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5. INCOME TAX: INTERNATIONAL

5.1 CLARIFICATION OF THE TREATMENT OF AN AMOUNT DEEMED TO BE A DIVIDEND IN SECTION 31 OF THE ACT

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

I. Background

A. Definition of dividend in section 1 of the Act

The definition of dividend in section 1 of the Act means any amount transferred or applied by a company that is a resident of South Africa for the benefit of or on behalf of any person in respect of any share in that company. An amount transferred or applied includes a distribution made by that company or consideration for the acquisition of any share in that company. The definition contains three exclusions, namely, amounts resulting in a reduction of contributed tax capital of the company, where the company transfers shares in that company and a general repurchase as describes in the definition by a listed company of its own shares on the JSE.

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

In 2015, amendments were made to section 31 of the Act to make provision for a transfer pricing secondary adjustment. The adjustment is deemed to be a dividend consisting of a distribution of an asset *in specie* (dividend *in specie*) declared and paid by the resident company to the non-resident connected person. The deemed dividend *in specie* is currently subject to dividends tax at a rate of 20 per cent subject to the provisions of the relevant tax treaty.

II. Reason for change

Section 64D of the Act contains a definition of “dividend” for purposes of Dividends Tax. This definition refers to certain dividends and foreign dividends as defined in section 1 of the Act.

In the context of the reference to: “in respect of any share in that company” in the definition of dividend a “share” is defined in the Act as any unit into which the proprietary interest in a company is divided. In general, the meaning of a “share” describes a share in a company as a bundle or conglomerate of personal rights that entitles the holder thereof to an interest in the company, its assets and dividends. However, in certain instances, the deemed dividend *in specie* that results from a transfer pricing adjustment in the context of intercompany mispricing does not relate to a “share” as defined.

However, an amount deemed as a dividend *in specie* as a result of a transfer pricing secondary adjustment in terms of section 31, in some limited circumstances, already constitute a dividend as defined in section 1 of the Act.

III. Proposal

It is proposed that clarity should be provided in the Act that an amount deemed as a dividend *in specie* as a result of a transfer pricing secondary adjustment in terms of section 31 of the Act is only a dividend for the purposes of dividend tax and must be excluded from the definition of dividend in section 1 of the Act.

An amendment to section 64D of the Act is then required to include an amount deemed as a dividend *in specie* as a result of a transfer pricing secondary adjustment in terms of section 31 of the Act, as a dividend subject to dividends tax.

IV. Effective date

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

5.2 REVERSING EXCHANGE DIFFERENCE FOR EXCHANGE ITEMS DISPOSED AT A LOSS

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

I. Background

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

II. Reason for change

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

III. Proposal

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

IV. Effective date

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

5.3 RULES ADDRESSING THE USE OF TRUSTS TO AVOID TAX IN RESPECT OF CONTROLLED FOREIGN COMPANIES

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

I. Background

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

II. Reason for change

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

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

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

III. Proposal

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

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

In determining the amount that should be included as taxable income in terms of section 7(8)(*a*) of the Act, in the hands of a resident who made a donation, settlement or other disposition to a foreign trust that holds shares in a foreign company, it is proposed that the participation exemption as contemplated in section 10B(2)(*a*) of the Act in respect of foreign dividends should be disregarded, in respect of foreign dividends paid by that foreign company if that resident holds or can exercise, either alone or together with any person or persons that are connected persons in relation to that resident, more than 50 per cent of the total participation rights or voting rights in that foreign company, The rule will not apply in respect of a foreign dividend that is derived from

an amount that must be included in the income of or attributed as a capital gain to that resident or to any person that is a connected person in relation to that resident.

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

In determining the amount that should be included as taxable income in terms of section 25B(2A) of the Act, in the hands of a resident who acquires a vested right in a foreign trust that holds shares in a foreign company, it is proposed that the participation exemption as contemplated in section 10B(2)(*a*) of the Act in respect of foreign dividends should be disregarded in respect of foreign dividends paid by that foreign company if that trust holds or can exercise, either alone or together with any person or persons that are connected persons in relation to that trust, more than 50 per cent of the total participation rights or voting rights in that foreign company, The rule will not apply in respect of a foreign dividend that is derived from an amount that must be included in the income of or attributed as a capital gain to that resident or to any person that is a connected person in relation to that resident.

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

In determining the amount that should be attributed in terms of paragraph 72 of the Eighth Schedule to the Act, as a capital gain to a resident who has made a donation, settlement or other disposition to a person who is not a resident it is proposed that the participation exemption as contemplated in paragraph 64B of the Eighth Schedule to the Act must be disregarded in respect of an amount derived from the disposal by the person who is not a resident, of shares in a foreign company if-

- that person holds or can exercise, either alone or together with any person or persons that are connected persons in relation to that person, more than 50 per cent of the total participation rights or voting rights in that foreign company;
- the resident who made the donation, settlement or other disposition or any person that is a connected in relation to that resident is a connected in relation to the person who is not a resident; and
- the amount derived from that disposal is not included in the income of or attributed as a capital gain to the resident who made the donation, settlement or other disposition or to a resident who is a connected person in relation to the resident who made the donation, settlement or other disposition.

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

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

- that trust holds or can exercise, either alone or together with any person or persons that are connected persons in relation to that trust, more than 50 per cent of the total participation rights or voting rights in that foreign company; and

- the amount derived from that disposal is not included in the income of or attributed as a capital gain to the resident to whom an amount is attributed in terms of paragraph 80, or to a resident who is a connected person in relation to that resident.

IV. Effective dates

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

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

b. The proposed amendments to section 25B will come into operation on 1 March 2019 in respect of any years of assessment commencing on or after that date;

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

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

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6. VALUE ADDED TAX

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

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

I. Background

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

II. Reason for change

It has come to Government's attention that some vendors (for example collection agents or banks) that buy the debt book in terms of the above-mentioned arrangement then attempt to claim a further VAT deduction if they write off all or part of this debt in future. This results in a double VAT

deduction, which is against the intention of the legislation, as seen in the definition of "face value of a debt transferred" in the Explanatory Memorandum to the Taxation Laws Amendment Bill, 1997.

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

III. Proposal

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

IV. Effective dates

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

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7. CLAUSE-BY-CLAUSE

CLAUSE 1

Income Tax: Amendment to section 1

Paragraph (a): Definition of "company" – See notes on **EXTENDING REIT PROVISIONS TO PROPERTY COMPANIES LISTED ON NEWLY LICENCED SOUTH AFRICAN EXCHANGES.**

Paragraph (b): Definition of "dividend" – See notes on **CLARIFICATION OF THE TREATMENT OF AN AMOUNT DEEMED TO BE A DIVIDEND IN SECTION 31 OF THE ACT**

Paragraph (c): Definition of "financial instrument" – The proposed insertion of cryptocurrency in the definition of "financial instrument" seeks to clarify that cryptocurrency is a financial instrument and would therefore not be a personal use asset for capital gains tax purposes.

Paragraph (d): Insertion of the new definition of "Financial Sector Conduct Authority" – The proposed insertion of the definition of "Financial Sector Conduct Authority" is a consequential amendment due to the transformation of the Financial Services Board into the Financial Sector Conduct Authority as a result of the coming into effect of the Financial Sector Regulation Act of 2017 on 1 April 2018.

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

Paragraph (f): Definition of "identical share" – The proposed amendments correct a grammatical error and change the following words; "that" to "a" and "Listing" to Listings".

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

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

Paragraph (i): Definition of "official rate of interest" – The proposed amendment seeks to rectify the definition of official rate of interest by subjecting both paragraphs (*a*) and (*b*) of the definition to the proviso.

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

Paragraph (k): Definition of “pension fund” –

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

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

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

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

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

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

Paragraph (q): Paragraph (*b*) *of the* proviso to the definition of “provident fund”- The proposed amendments to subparagraph (ii) of paragraph (*a*) of the proviso to the definition of “provident fund” take into account the policy intent explained in the Explanatory Memorandum on the Taxation Laws Amendment Bill 2017 for permitted transfers between to a retirement annuity.
Paragraph (r): Paragraph (*a*)(v) of the proviso to the definition of “provident preservation fund” - See notes on **TAX TREATMENT OF TRANSFERS TO PENSION PRESERVATION OR PROVIDENT PRESERVATION FUNDS AFTER REACHING NORMAL RETIREMENT AGE BUT BEFORE RETIREMENT DATE.**

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

Paragraph (t): Proviso to paragraph (*c*) of the definition of “provident preservation fund” - See notes on **ALIGNMENT OF TAX TREATMENT OF WITHDRAWALS FROM PRESERVATION**

FUNDS UPON EMIGRATION OR REPATRIATION ON EXPIRY OF WORK VISA; and see notes on **TAX TREATMENT OF TRANSFERS TO PENSION PRESERVATION OR PROVIDENT PRESERVATION FUNDS AFTER REACHING NORMAL RETIREMENT AGE BUT BEFORE RETIREMENT DATE**

Paragraph (u): Definition of "REIT" – See notes on **EXTENDING REIT PROVISIONS TO PROPERTY COMPANIES LISTED ON NEWLY LICENCED SOUTH AFRICAN EXCHANGES**

Paragraph (v): Definition of "relative" – The proposed amendment to the definition of relative updates the definition to be gender neutral and updates other words as a matter of style and consistency.

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

Paragraph (x): Definition of "retirement interest" - see notes on **TAX TREATMENT OF TRANSFERS TO PENSION PRESERVATION OR PROVIDENT PRESERVATION FUNDS AFTER REACHING NORMAL RETIREMENT AGE BUT BEFORE RETIREMENT DATE**

CLAUSE 2

Income Tax: Amendment to section 3

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

CLAUSE 3

Income Tax: Amendment to section 5

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

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

CLAUSE 4

Income Tax: Amendment to section 6

The proposed amendments to section 6 are consequential amendments to align all the provisions of the Act to amendments made to the tax charging provisions of the Act in 2016.

CLAUSE 5

Income Tax: Amendment to section 6A

Sub-clauses (a) – (e) See notes on **ADDRESSING ANOMALIES IN RESPECT OF MEDICAL TAX CREDITS**
Sub-clause (f): The proposed addition of subsection (5) is a consequential amendment to align all the provisions of the Act to amendments made to the tax charging provisions of the Act in 2016.

CLAUSE 6

Income Tax: Amendment to section 6B

The proposed addition of subsection (5) is a consequential amendment to align all the provisions of the Act to amendments made to the tax charging provisions of the Act in 2016.

CLAUSE 7

Income Tax: Amendment of section 6*quat*

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

CLAUSE 8

Income Tax: Amendment of section 7

See notes on **RULES ADDRESSING THE USE OF TRUSTS TO AVOID TAX IN RESPECT OF CONTROLLED FOREIGN COMPANIES**

CLAUSE 9

Income Tax: Amendment of section 7C

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

CLAUSE 10

Income Tax: Amendment of section 7D

The proposed amendment of section 7D clarifies that the deemed interest that must be determined at a specified rate of interest under the Act must be calculated daily as simple interest.

CLAUSE 11

Income Tax: Insertion of section 7F

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

CLAUSE 12

Income Tax: Amendment of section 8E

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

CLAUSE 13

Income Tax: Amendment of section 8EA

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

CLAUSE 14

Income Tax: Amendment of section 8F

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

CLAUSE 15

Income Tax: Amendment of section 8FA

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

CLAUSE 16

Income Tax: Amendment of section 9

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

CLAUSE 17

Income Tax: Amendment of section 9C

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

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

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

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

CLAUSE 18

Income Tax: Amendment of section 9D

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

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

Sub-clauses (c) and (d): The proposed amendment to the further proviso to subsection (2A) seeks to renumber and reword paragraph (ii)(*cc*) as paragraph (iii). The rule should not deal with foreign tax payable but with hypothetical normal tax payable.

CLAUSE 19

Income Tax: Amendment of section 9HA

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

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

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

CLAUSE 20

Income Tax: Insertion of section 9HB

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

CLAUSE 21

Income Tax: Insertion of section 9J

The proposed insertion of section 9J is as a result of the insertion of the provisions dealing with "interest of non-resident persons in immovable property" that are also available in paragraph 2(2) of the Eighth Schedule to the Act in the main body of the Act and extends the source rule to immovable property held directly or in some instances held indirectly as trading stock.

CLAUSE 22

Income Tax: Amendment of section 10

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

Paragraph (b): The proposed amendment to section 10(1)(*h)*(i) is grammatical in nature.

Paragraph (c): The proposed amendment to paragraph (ii) of the proviso to section 10(1)(*q*A) corrects regarding cross reference by replacing Fourth Schedule with Seventh Schedule.

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

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

CLAUSE 23

Income Tax: Amendment of section 10B

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

Sub-clause (b): The proposed addition of subsection (7) is a consequential amendment to align all the provisions of the Act to amendments made to the tax charging provisions of the Act in 2016.

CLAUSE 24

Income Tax: Amendment to section 10C

The proposed amendment to subsection (2) seeks to clarify that the current year's contributions for section 11F of the Act must not be taken into consideration in determining the section 10C

exemption. This thereby prevents any circular application that could arise from considering the current year's contributions as the section 10C exemption occurs before the section 11F deduction.

CLAUSE 25

Income Tax: Amendment of section 11

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

Paragraph (e): The proposed amendment to paragraph (*j*) – See notes on **TAX TREATMENT OF DOUBTFUL DEBTS**

Paragraph (f): The proposed amendment to paragraph (*jA*) is a consequential amendment to 2017 amendments dealing with the exclusion of controlling companies and clarify the policy intent that any holding company as defined in the Banks Act is not eligible for the allowance in section 11*(jA)*.

Paragraph (g): The proposed amendment to paragraph (*l*) clarifies the policy intent relating to retirement annuity funds which will complete the full circle of amendments to the employee deduction under section 11F and payroll deductions under paragraph 2(4) of the Fourth Schedule of the Act to be in line with the taxable benefit under paragraph 2(*h*) of the Seventh Schedule of the Act and to follow the overall purpose to allow employers to get their deduction related to contributions to an approved retirement fund under section 11(*l*) of the Act.

Paragraph (h): The proposed amendment to paragraph *(n*B*)* seeks to clarify that paragraph (*nB*) applies to amounts under both paragraphs (*c*A) and (*c*B) of the definition of gross income in section 1 of the Act that are refunded. This is a consequential amendment as a result of restraint of trade amendments made in 2014, that inserted paragraph (*c*B) *in* the definition of gross income in section 1 of the Act.

Paragraph (i): The proposed amendment to paragraph (*o*)(i) deletes obsolete references to sections 11B, 14 and 14*bis*, which have all been repealed.

CLAUSE 26

Income Tax: Amendment of section 11F

Paragraph (a): The proposed amendment to subsection (2)(*a*) deletes the word "or" and moves it to subsection (2)(*b*).

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

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

Paragraph (d): The proposed amendment to subsection (3)(*c*) is to clarify that the excess retirement fund contributions for a previous year must be reduced by the amounts that were taken into account in determining the amounts that are exempt under section 10C.

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

CLAUSE 27

Income Tax: Amendment of section 12C

The proposed amendments correct the spelling of the word “hotel keeper” and aligns it with the definition in section 1 of the Act.

CLAUSE 28

Income Tax: Amendment of section 12D

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

CLAUSE 29

Income Tax: Amendment of section 12J

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

CLAUSE 30

Income Tax: Amendment of section 12N

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

CLAUSE 31

Income Tax: Amendment of section 12Q

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

CLAUSE 32

Income Tax: Amendment of section 12T

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

CLAUSE 33

Income Tax: Amendment of section 13*bis*

Sub-clauses (a) and (c): The proposed amendments correct the spelling of the word “hotel keeper” and aligns it with the definition in section 1 of the Act.

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

CLAUSE 34

Income Tax: Amendment of section 13*quat*

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

CLAUSE 35

Income Tax: Amendment of section 18A

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

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

Paragraph (d): The proposed amendment to subsection (3A)(*d*) seeks to update the CGT inclusion rates of the formula that indirectly takes into account the capital gain charge and recoupment that should have arisen had a deemed disposal occurred upon donation.

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

CLAUSE 36

Income Tax: Amendment of section 19

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

Paragraphs (e) - (j) – See notes on **CLOSING A LOOPHOLE IN DEBT RELIEF RULES**

CLAUSE 37

Income Tax: Amendment of section 20A

The proposed amendment provides that assessed losses relating to cryptocurrencies are ring-fenced.

CLAUSE 38

Income Tax: Amendment of section 22B

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

Paragraphs (b) and (c) - See notes on **CLARIFYING SPECIFIC ANTI-DIVIDEND STRIPPING RULES REGARDING PREFERENCE SHARES**

CLAUSE 39

Income Tax: Amendment of section 23

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

CLAUSE 40

Income Tax: Amendment of section 23G

The proposed amendment to subsection (2)(*b*) is of a textual nature.

CLAUSE 41

Income Tax: Amendment of section 23M

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

CLAUSE 42

Income Tax: Amendment of section 23N

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

CLAUSE 43

Income Tax: Amendment of section 24I

Paragraph (a): The proposed amendment to subsection (4) – See notes on **REVERSING EXCHANGE DIFFERENCES FOR EXCHANGE ITEMS DISPOSED OF AT A LOSS**

Paragraph (b): The proposed amendment to subsection (7)(*a*)(ii) seeks to delete the reference to section 11*(gA)* of the Act since that section does not apply to expenditure incurred during years of assessment commencing on or after 1 January 2004.

CLAUSE 44

Income Tax: Amendment of section 24JB

The proposed amendment to subsection (2A) is a consequential amendment as a result of the amendments made in 2017 relating to the refinement to the taxation of financial assets and liabilities due to changes in the accounting standard and making reference to IFRS 9. The amendment provides that the subsection applies to financial instruments issued during any year of assessment commencing on or after 1 January 2018.

CLAUSE 45

Income Tax: Amendment of section 24L

The proposed amendment to subsection (3) reflects the policy intent that a premium or like consideration, other than of a capital nature, to be included in gross income over the term of an option contract.

CLAUSE 46

Income Tax: Amendment of section 24O

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

CLAUSE 47

Income Tax: Amendment of section 25

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

CLAUSE 48

Income Tax: Amendment of section 25B

Paragraph (a) The proposed amendment to subsection (2A)(*a*) replaces the word "arose" with the words "consist of or is derived, directly or indirectly" and clarify wording for ease of application.

Paragraph (b) Proposed amendments to subsection (2B) - See notes on **RULES ADDRESSING THE USE OF TRUSTS TO AVOID TAX IN RESPECT OF CONTROLLED FOREIGN COMPANIES**

CLAUSE 49

Income Tax: Amendment of section 25BB

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

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

CLAUSE 50

Income Tax: Amendment of section 28

See notes on **TAX ISSUES RESULTING FROM THE INSURANCE ACT**

CLAUSE 51

Income Tax: Amendment of section 29A

The proposed amendment to the proviso to subsection (15) replaces the word "disclosed" with the word "recognised" in order to align the wording with the rest of the section.

CLAUSE 52

Income Tax: Amendment of section 30C

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

CLAUSE 53

Income Tax: Amendment of section 37D

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

Sub-clauses (b) and (c): The proposed amendments to subsection (2) seek to clarify that the condition to be applied relates to the lower of market value and municipal value

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

CLAUSE 54

Income Tax: Amendment of section 41

Paragraph (a): Proposed insertion in section 41(2) of the reference to section 25BB(4) dealing with taxation of REITS, is to give effect to the policy intention that following a reorganisation transaction a REIT is not allowed to claim a building allowance as contemplated in section 25BB(4)

Paragraph (b): Proposed deletion from section 41(2) of the reference to section 22B and paragraph 43A of the Eighth Schedule - See notes on **CLARIFICATION OF THE INTERACTION BETWEEN THE ANTI-AVOIDANCE RULES DEALING WITH DIVIDEND STRIPPING AND CORPORATE RE-ORGANISATION RULES**

CLAUSE 55

Income Tax: Amendment of section 42

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

Sub-clause (b): The proposed amendment to subsection (3)(*a*)(ii)(*bb*) clarifies the policy intention that there should be no complete exemption as a result of the transfer of any asset to a REIT or controlled company in respect of which allowances were previously claimed. Relevant recoveries, recoupments and inclusions in income should apply in the acquiring company.

Sub-clause (c): The proposed amendment to subsection (3A) seeks to correct a reference to paragraph *(c)* of the definition of “qualifying interest”.

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

CLAUSE 56

Income Tax: Amendment of section 44

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

Paragraph (b): The proposed amendment to subsection (3)(*a*)(ii)(*bb*) clarifies the policy intention that there should be no complete exemption as a result of the transfer of any asset to a REIT or controlled company in respect of which allowances were previously claimed. Relevant recoveries, recoupments and inclusions in income should apply in the acquiring company.

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

CLAUSE 57

Income Tax: Amendment of section 45

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

Paragraph (b): The proposed amendment to subsection (3)(*a*)(ii)(*bb*) clarifies the policy intention that there should be no complete exemption as a result the transfer of any asset to a REIT or controlled company in respect of which allowances were previously claimed. Relevant recoveries, recoupments and inclusions in income should apply in the acquiring company.

CLAUSE 58

Income Tax: Amendment of section 47

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

Paragraph (b): The proposed amendment to subsection (3)(*a*)(ii)(*bb*) clarifies the policy intention that there should be no complete exemption as a result the transfer of any asset to a REIT or controlled company in respect of which allowances were previously claimed. Relevant recoveries, recoupments and inclusions in income should apply in the acquiring company.

CLAUSE 59

Income Tax: Amendment of section 50D

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

CLAUSE 60

Income Tax: Amendment of section 64D

Paragraph (a): Definition of “dividend” – See notes on **CLARIFICATION OF THE TREATMENT OF AN AMOUNT DEEMED TO BE A DIVIDEND IN SECTION 31 OF THE ACT**

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

CLAUSE 61

Income Tax: Amendment of section 64EB

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

CLAUSE 62

Income Tax: Amendment of section 64F

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

Sub-clause (b): The proposed amendment to subsection (1) updates the wording as a matter of style and consistency.

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

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

CLAUSE 63

Income Tax: Amendment of section 64J

The proposed deletion of section 64J is an amendment to repeal the transitional measure when Dividends Tax was introduced. The transitional measure ceased to operate on 1 April 2015.

CLAUSE 64

Income Tax: Amendment of paragraph 12 of the First schedule

The proposed amendment seeks to delete an obsolete reference.

CLAUSE 65

Income Tax: Amendment of paragraph 6 of the Second Schedule

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

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

CLAUSE 66

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

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

CLAUSE 67

Income Tax: Amendment of paragraph 2 of the Fourth schedule

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

CLAUSE 68

Income Tax: Amendment of paragraph 1 of the Sixth Schedule

The proposed amendment is a technical correction, to recognise that foreign dividends are also earned as investment income.

CLAUSE 69

Income Tax: Amendment to paragraph 2 of the Seventh Schedule

Paragraph (a): The proposed amendment to subparagraph *(l)* – See notes on **TAX TREATMENT OF TRANSFERS OF ACTUARIAL SURPLUS BETWEEN RETIREMENT FUNDS**

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

CLAUSE 70

Income Tax: Amendment of paragraph 11 of the Seventh Schedule
See notes on **REMOVING TAXABLE BENEFIT IN RESPECT OF LOW INTEREST OR INTEREST FREE LOANS GRANTED TO LOW-INCOME EMPLOYEES FOR LOW-COST HOUSING**

CLAUSE 71

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

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

CLAUSE 72
Income Tax: Amendment of paragraph 12E of the Seventh Schedule

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

CLAUSE 73
Income Tax: Amendment of paragraph 1 of the Eighth Schedule

Sub-clause (a): The proposed amendment provides that all events, acts, forbearances or operation of law that are treated as the disposal of an asset under the Act are disposals for purposes of the Eighth Schedule to the Act.

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

CLAUSE 74
Income Tax: Amendment of paragraph 2 of the Eighth Schedule

The proposed deletion of the words "other than as trading stock" in subparagraph 2(*a*) of the Eighth Schedule brings the wording dealing with an interest of non-resident persons in immovable property situated in the Republic more in line with the principle embodied in the latest updates of the UN/OECD Model Tax Conventions.

CLAUSE 75
Income Tax: Amendment of paragraph 5 of the Eighth Schedule

The proposed addition of subparagraph (3) is a consequential amendment to align all the provisions of the Act to amendments made to the tax charging provisions of the Act in 2016.

CLAUSE 76
Income Tax: Amendment of paragraph 10 of the Eighth Schedule

Sub-clause (a): The proposed addition of subparagraph (1) is consequential upon the addition of subparagraph (2).

Sub-clause (b): The proposed addition of subparagraph (2) is a consequential amendment to align all the provisions of the Act to amendments made to the tax charging provisions of the Act in 2016.

CLAUSE 77
Income Tax: Amendments to paragraph 12A of the Eighth Schedule

Paragraphs (a) – (d) and (i): See notes on **REFINEMENT OF RULES DEALING WITH CONVERSION OF DEBT INTO EQUITY AND ARTIFICIAL REPAYMENT OF DEBT**

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

CLAUSE 78

Income Tax: Amendment of paragraph 35 of the Eighth Schedule

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

CLAUSE 79

Income Tax: Amendment of paragraph 39 of the Eighth Schedule

The proposed addition of subparagraph (5) seeks to ensure that capital losses resulting from the redemption of shares held by persons connected to the company are ring-fenced. This is achieved by treating redeemed shares as having been disposed of by the holder of those shares to the company in which those shares were held.

CLAUSE 80

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

Paragraph (a): The proposed amendment to subsection (1) is of a textual nature.

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

Paragraphs (c) and (d) - See notes on **CLARIFYING SPECIFIC ANTI-DIVIDEND STRIPPING RULES REGARDING PREFERENCE SHARES**

CLAUSE 81

Income Tax: Amendment of paragraph 45 of the Eighth Schedule

The proposed addition of subparagraph (1A) is a consequential amendment to align all the provisions of the Act to amendments made to the tax charging provisions of the Act in 2016.

CLAUSE 82

Income Tax: Amendment of paragraph 55 of the Eighth Schedule

The proposed amendment is a consequential amendment and related to 2014 amendments that resulted in the replacement of “severe illness” with the word “illness” since the term illness includes both concepts.

CLAUSE 83

Income Tax: Amendment of paragraph 57 of the Eighth Schedule

The proposed addition of subparagraph (7) is a consequential amendment to align all the provisions of the Act to amendments made to the tax charging provisions of the Act in 2016.

CLAUSE 84

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

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

CLAUSE 85

Income Tax: Repeal of paragraph 67 of the Eighth Schedule

The proposed deletion of paragraph 67 from the Eighth Schedule (dealing with "*transfer of assets between spouses*") is as a result of the provisions of this paragraph being incorporated in sections 9HB and 25(4) in the main Act which include disposals of trading stock and livestock and produce.

CLAUSE 86

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

See notes on **RULES ADDRESSING THE USE OF TRUSTS TO AVOID TAX IN RESPECT OF CONTROLLED FOREIGN COMPANIES**

CLAUSE 87

Income Tax: Amendment of paragraph 80 of the Eighth Schedule

In the determination of a capital gain attributed to a resident in respect of a disposal by a trust that is not a resident, a rule is proposed that a capital gain is to be determined by that trust as if it had been a resident. Also see notes on **RULES ADDRESSING THE USE OF TRUSTS TO AVOID TAX IN RESPECT OF CONTROLLED FOREIGN COMPANIES**

CLAUSE 88

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 89

Value Added Tax Act: Amendment of section 1

The proposed amendments seek to replace the words "South Africa" with "the Republic" as a matter of style and consistency.

CLAUSE 90

Value Added Tax Act: Amendment to section 2

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

CLAUSE 91

Value-Added Tax Act: Amendment of section 22

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

CLAUSE 92

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

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

CLAUSE 93

Diamond Export Levy Act: Amendment of section 8

See notes on **ADJUSTING DIAMOND EXPORT LEVY LIMITS**

CLAUSE 94

Diamond Export Levy Act: Amendment of section 9

See notes on **ADJUSTING DIAMOND EXPORT LEVY LIMITS**

CLAUSE 95

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

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

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

Paragraph (c): The proposed amendments to subsection (3)(*a*) and (*b*) the phrase ["without regard to expenditure incurred"] is replaced by the phrase "after deducting any expenditure actually incurred". These amendments seek to provide clarity to both taxpayers and SARS regarding the meaning of the tax base for purposes of calculating the royalty (the tax base is gross sales after deducting expenditure actually incurred in respect of transport, insurance and handling of the disposed unrefined mineral resource or the disposed refined mineral resource).

CLAUSE 96

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

The proposed amendments are of a textual nature.

CLAUSE 97

Mineral and Petroleum Resources Royalty Act: Amendment of section 8

The proposed amendment corrects a grammatical error.

CLAUSE 98

Taxation Laws Amendment Act, 2013: Amendment of section 13

The proposed amendment postpones the effective date of amendments to sections 8F(3)*(b)*(ii), 8F(3)*(c)*(ii) and 8F(3)*(d)* from 1 January 2019 to 1 January 2020.

CLAUSE 99

Taxation Laws Amendment Act, 2013: Amendment of section 15

The proposed amendment postpones the effective date of amendments to sections 8FA(3)*(b)*(ii), 8FA(3)*(c)*(ii) and 8FA(3)*(d)* from 1 January 2019 to 1 January 2020.

CLAUSE 100

Taxation Laws Amendment Act, 2013: Amendment of section 62

The proposed amendment postpones the effective date of amendments to section 23M from 1 January 2018 to 1 January 2020.

CLAUSE 101

Employment Tax Incentive Act, 2013: Amendment of section 1

The word "directly" is deleted in order to give effect to the policy rationale for the incentive.

CLAUSE 102

Employment Tax Incentive Act, 2013: Amendment to Section 12

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

CLAUSE 103

Taxation Laws Amendment Act, 2015: Amendment to section 3(1)(*f*)

Paragraph (a): The proposed amendment seeks to correct the Taxation Laws Amendment Act that incorrectly substituted subparagraph (*bb*).

Paragraphs (b) and (c): The proposed amendment deletes the reference to Insurance Act 2016 as the correct reference is Insurance Act 2017 as inserted by clause 1(1)(*h*).

CLAUSE 104

Taxation Laws Amendment Act, 2015: Amendment of section 13

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

CLAUSE 105

Taxation Laws Amendment Act, 2015: Amendment of Section 16

The proposed amendment seeks to correct the Afrikaans text of section 16(1)(*f*) of the Taxation Laws Amendment Act, 2015.

CLAUSE 106

Taxation Laws Amendment Act, 2015: Amendment of section 18

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

CLAUSE 107

Taxation Laws Amendment Act, 2015: Amendment of section 52

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

CLAUSE 108

Taxation Laws Amendment Act, 2015: Amendment of section 53

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

CLAUSE 109

Taxation Laws Amendment Act, 2015: Repeal of section 78

The proposed amendment seeks to repeal this section with effect from 8 January 2016 as it represents an amendment to the incorrect Schedule to the Act.

CLAUSE 110

Revenue Laws Amendment Act, 2016: Amendment of Section 1

Paragraphs (a) and (b): The proposed amendments seek to provide for the postponement of the implementation date in relation to the annuitisation requirements for provident funds until 1 March 2021.

Paragraph (c): The proposed amendment seeks to provide for the postponement of the tabling of a report date in relation to the annuitisation requirements for provident funds until 31 August 2020.

CLAUSE 111

Revenue Laws Amendment Act, 2016: Amendment of Section 3

The proposed amendment seeks to provide for the postponement of the implementation date in relation to the annuitisation requirements for provident funds until 1 March 2021.

CLAUSE 112

Taxation Laws Amendment Act, 2016: Amendment of section 29

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

CLAUSE 113

Taxation Laws Amendment Act, 2016: Amendment of section 50

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

CLAUSE 114

Taxation Laws Amendment Act, 2017: Amendment of section 46

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

Paragraph (b): The proposed amendment seeks to apply amendments relating to the risk policy fund of long term insurers with effect from 1 January 2016, when the five fund approach for the taxation of long term insurers was introduced.

CLAUSE 115

Taxation Laws Amendment Act, 2017: Amendment of section 105

The proposed amendment seeks to correct references to sections in respect of “Bargaining Council tax relief” in Part II of the Taxation Laws Amendment Act of 2017.

CLAUSE 116

The short title of the Act is the Taxation Laws Amendment Act, 2018.