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**THE CHAIRPERSONS OF THE
PORTFOLIO COMMITTEE ON FINANCE
(PCOF) AND THE SELECT COMMITTEE
ON FINANCE (SCOF)**

**COMMENTS ON REPRESENTATIONS TO THE JOINT SITTING OF THE
PCOF AND SCOF ON THE REVENUE LAWS AMENDMENT BILL, 2002
(the Bill)**

1 Introduction

As indicated to you during the hearings on the above-mentioned Bill, the National Treasury and SARS wish to respond as follows to the various points raised by commentators on their submissions on the Bill.

2 Consultation

SARS and the National Treasury placed the draft Bill on their websites on 14 October 2002 and invited all interested parties to comment before 23 October 2002. A large number of commentators were simultaneously informed that the draft legislation was available for comment. In addition, the draft Bill is the product of comments from interested parties received throughout the year.

Commentators expressed their disappointment about the short time made available to comment on the draft Bill. In this regard an undertaking was given to you that in future draft legislation will be made available to the Portfolio Committee at least 10 working days before the informal briefing. Over 40 submissions were received containing comments on the Bill.

3 Responses to specific issues raised during the representations on the draft Bill – 25 and 29 October 2002

3.1 MARKETABLE SECURITIES TAX ACT 32 OF 1948

Section 3 – Exemptions

The exemption from marketable securities tax should apply irrespective of whether an election has been made and the sworn affidavit should also be permitted where an election is not made.

(PricewaterhouseCoopers)

An exemption will be granted where an asset is transferred in terms of any of the defined transactions irrespective of whether an election was made or not and irrespective of whether the assets transferred contain built in gain or built in loss.

Effective date of the amendments to this section should be 1 October 2001.

(PricewaterhouseCoopers)

Accepted to the extent the amendment substitutes the exemption of a company with an exemption to any person. As a result all parties receiving shares in an unbundling company will be exempt from MST/UST from 1 October 2001. The effective date of the rest of the amendments will be 6 November 2002 (the date of tabling of the Bill).

3.2 TRANSFER DUTY ACT 40 OF 1949

3.2.1 Where transfer duty is payable in terms of the new provisions stamp duty should not be paid on the portion of the dutiable value of the shares represented by the fair value of the property owned by the company.

(SAICA; PricewaterhouseCoopers; Werksmans)

An exemption will be proposed for stamp duty payable on transfer of shares to the extent the share transaction is subject to transfer duty under the new rules. We agree that the transaction should, as far as possible, be on par with a direct transfer of immovable property.

- 3.2.2 **The proposed amendments ignore the reality of the legal persona of the entities and constitute an attack on a perfectly legal and commercially justifiable way of acquiring property.**
(SACOB)

We consider it to be extremely unfortunate that these amendments were made public only 10 days after the expiry of the grace period for removing primary residences from such vehicles and strongly recommend that this be rethought.
(Ernst & Young)

These transactions are purposefully designed to avoid *inter alia* transfer duty. The impact on the transfer duty base is significant and it is necessary to intervene and protect the tax base. For this reason the Minister of Finance announced in his 2002 Budget Review that many individuals seek to avoid transfer duty by keeping property in various entities and that measures would be introduced to curb this practice. Taxpayers should not be able to use the artifice of paper wrappers to disguise otherwise taxable transactions.

- 3.2.3 **Different tax rates will apply in respect of transfers which are identical other than by reference to the nature of the transferor.**
(PricewaterhouseCoopers)

This is not the case as the tax rate is determined by the nature of the person who acquires the property.

- 3.2.4 **Transfer duty should only be imposed on the transfer of shares/members interests in a 'residual property company' and on the change of beneficiaries of a discretionary trust which owns residential property in regard to 'vehicles' that acquire residences after a certain future date.**
(Law Society of the Cape of Good Hope)

Not accepted, as this would unfairly benefit future purchasers of residential property entities. The current owners of these entities have generally already benefited from the avoidance of transfer duty when they acquired their interests in these entities. We see no reason to preserve tax avoidance schemes that serve little or no economic purpose into the indefinite future.

- 3.2.5 **Guest houses and Bed and Breakfast establishments, owned in corporate limited liability vehicles, which constitutes an important segment of the tourism and hospitality industry are disadvantaged by the new provisions.**
(Ernst & Young)

The draft has been modified to accommodate guesthouses. The Bill exempts guest houses with five or more units regularly rented

to five or more persons (i.e. guesthouses engaged in meaningful business activities).

3.2.6 Transfer duty is payable on the value attributable to the acquisition of a share or member's interest in a residential property company.
(Werksmans)

Transfer duty is payable on the gross value of the underlying property in the company or close corporation. This approximates the result that would be achieved if the underlying property were sold directly.

By deciding that liabilities are to be ignored in the determination of the fair value of a company or close corporation, the tax authorities convey the impression that certain types of taxpayers are to be unfairly prejudiced.
(SACOB)

Not accepted. Transfer duty typically applies on a gross basis. The rules in respect of the disregarding of liabilities maintain this treatment.

3.2.7 Section 3 – By whom, when and to whom duty is payable

Remove the provisions placing joint and several liability on the counter party to a transaction in respect of the other party's tax liability.
(PricewaterhouseCoopers)

Not accepted. These provisions are based on the current recovery provisions for donations tax purposes. Additional enforcement measures are required in this instance because transfers of this kind are not subject to recording by the Deeds Office.

Add a provision to give the public officer, company, trust or trustee a right of recovery against the purchaser, as it could be construed that if the purchaser does not pay within the prescribed period, he has no further liability or obligation to anyone with regard to the transfer duty.
(SAICA; Werksmans)

Accepted. A right of recovery will be provided for.

3.2.8 Section 9 - exemptions

Allow a one year period to unwind the property without transfer duty/CGT implications.
(Harry Joffe)

The window period for unwinding existing corporate structures should be extended from 30 September 2002 to 31 March 2003.
(PricewaterhouseCoopers)

Not accepted. Transfer duty is payable by the purchasers of property and will be payable by the purchaser of a residential property company. Unwinding the corporate structure will not affect the imposition of transfer duty on the purchaser. This can be distinguished from the situation with respect to CGT since converting an indirect interest in a primary residence to a direct interest enables the seller's use of the primary residence exclusion.

This exemption should also apply to company formations in section 42.
(PricewaterhouseCoopers)

Not accepted. Section 42 is designed only to facilitate the formation of active businesses. Under current law the transfer duty will apply only if property is not a taxable supply to the acquiring company for VAT purposes (section 9(15) of the Transfer Duty Act). This is unlikely in the formation of an active business.

3.2.9 In the event of a substitution of two or more of the beneficiaries of a discretionary trust in circumstances which would constitute a "transaction", would the aggregate transfer duty payable be limited to the fair market value of the property owned by the trust?
(Sonnenberg Hoffmann Galombik)

The draft legislation provides for transfer duty to be imposed in respect of each beneficiary who acquires a contingent right to the residential property. As no beneficiary has a clear right to the underlying property, apportioning the value of the property on a principled basis is impossible. As the rights are contingent, apportionment could be subject to abuse by inflating the number of contingent beneficiaries. The aggregate transfer duty is, therefore, not limited to the fair market value of the property.

3.2.10 Transfer duty should not be levied pursuant to the new paragraphs to the definition of "transaction" in addition to the current paragraphs of the definition.
(Sonnenberg Hoffmann Galombik)

Transfer duty is imposed only once per transaction and no credit is granted for transactions previously entered into.

- 3.2.11 **A shareholder who has acquired the shares in a “residential property company” and paid transfer duty in respect thereof and subsequently decides to liquidate the company and distribute the property to the shareholder should be exempt from transfer duty on the transfer of the property to the extent of the transfer duty paid on the acquisition of the shares.**

(Sonnenberg Hoffmann Galombik)

Not accepted. The transfer of the property from the company represents a transaction distinct from the acquisition of the shares. The double imposition of the duty can be avoided by acquiring the property directly instead of acquiring the shares in the residential property company.

- 3.2.12 **Would the transfer of shares in a share block company which falls within the ambit of “residential property company” be subject to transfer duty?**

(Sonnenberg Hoffmann Galombik)

The transfer of the shares will be subject to transfer duty. The imposition of transfer duty in this instance restores neutrality between transactions involving shares in share block companies and other residential property.

- 3.2.13 **The definition of “fixed property” in the VAT Act should also be amended to include the items included in the new definition of property.**

(Sonnenberg Hoffmann Galombik)

This aspect will be further investigated.

- 3.2.14 **Does “liability” in the definition of “fair value” refer only to financial liabilities or also e.g. to a long term lease which may substantially reduce the value of the property?**

(Sonnenberg Hoffmann Galombik)

The provisions will be reworded to make it clear that both loan liabilities and leases are excluded in determining fair value.

3.3 INCOME TAX ACT 58 OF 1962

- 3.3.1 Section 1 – definition of “average rate of exchange”

The average rate of exchange will be cumbersome to calculate as in most cases the taxpayer will be required to determine the exchange rate for each day of the year.

(Banking Council; PricewaterhouseCoopers)

The average exchange rates determined by banking institutions may

be used. The Bill has been modified to allow the averaging of daily, weekly or monthly rates to simplify compliance.

It is not clear how the weighted average spot rate is to be calculated. More detail would be appreciated.

(SAICA)

The provisions of the definition dealing with the weighted average spot rate will be reworded to provide more clarity.

It is proposed that the Commissioner's discretion to approve any other rates be retained in order to ease the administrative burden of compliance and to maintain a degree of flexibility.

(Banking Council)

Not accepted. Objective criteria are necessary in order to maintain transparency. The Bill has been modified to allow the averaging of daily, weekly or monthly rates to simplify compliance.

The weighted average exchange rate can be interpreted to in essence allow for a spot rate translation as an option besides the daily averaged spot rate.

(Sanlam)

This statement is true.

Daily transaction data is not always available to calculate a daily weighted average. It would be preferable to allow a weighted average of daily, weekly or monthly rates to be used provided the interval is consistently applied.

(Old Mutual)

Accepted. See above.

Define spot rate to facilitate interpretation of the definition of the average exchange rate.

(Old Mutual)

The definition of average exchange rate will be expanded to clarify which rates are to be used to calculate the average rate.

The use of an annual average rate is a significant departure from the accounting treatment.

(Ernst & Young)

The application of the average rate will result in a smoothing effect during periods of fluctuation of exchange rates.

3.3.2 Section 1 – definition of “controlled foreign company”

What is the effective date of the particular amendment?

(SAICA; PricewaterhouseCoopers)

The amendment will apply in respect of years of assessment ending on or after the date of promulgation of the Revenue Laws Amendment Act, 2002.

3.3.3 Section 1 – definition of “dividend”

The Bill does not state an effective date but the EM is clear that it is 1 January 2003.

(SAICA; PricewaterhouseCoopers; D Meyerowitz)

The amendment will apply to dividends declared from 1 January 2003.

It is difficult to understand what is meant by profits from the disposal of an asset being *attributable* to a capital gain. The definition of “capital gain” was only introduced with effect from 1 October 2001.

(SAICA; Ernest Mazansky; PricewaterhouseCoopers)

The change to paragraph (a) can be interpreted in two ways:

(1) Capital profits derived from the disposal of assets at any time attributable to the gain as determined by its pre-valuation date value; or

(2) Capital profits derived from the disposal of assets before 1 October 2001.

(D Meyerowitz)

There is a distinction between profits for accounts purposes and accounting profits on the disposal of an asset which gives rise to a capital loss. Under the current wording such profits would not be included within “dividend” irrespective of when the disposal took place. Is this the intention?

(PricewaterhouseCoopers)

The use of the term “capital gain” could be misinterpreted and if the intention is to include capital gains in terms of the Eighth Schedule specific reference should be made to that Schedule.

(Deloitte & Touche Taxation Services)

The distribution of profits of a capital nature in respect of assets acquired before 1 October 2001 which will become subject to the secondary tax on companies, are profits determined on the basis as if the company acquired the assets disposed of after 1 October 2001 on that date. The rule is designed only to tax gains economically accruing on or after 1 October 2001.

3.3.4 Section 1 – definition of “financial instrument”

What is the effective date as it is deleted from the Eighth Schedule with effect from 1 October 2001?

(Banking Council; PricewaterhouseCoopers)

The effective date of the deletion of the definition from the Eighth Schedule and its insertion in section 1 is the date of promulgation of this Act.

3.3.5 Section 1 – definition of “listed company”

Replace the word “share” with the word “securities. Securities is defined and used in the Stock Exchanges Control Act.

What is the effective date?

(PricewaterhouseCoopers)

The concept of “depository receipt in respect of a share” will be added to the definition. The effective date is the date of promulgation of this Act.

3.3.6 Section 1 – definition of “retirement fund employment”

What is the effective date?

(PricewaterhouseCoopers)

The date is not relevant as the amendment relates to the deletion of a reference to a repealed provision.

3.3.7 Section 1 - definition of “resident”

The phrase “regularly commutes to and from the Republic” creates difficulties of interpretation which could defeat the physical presence test.

(Ernest Mazansky)

The word “commutes” is a bit vague as it usually refers to travelling between home and work regularly. The relaxation of the days test should also apply for section 10(1)(o).

(SAICA)

Recommended that the reference to “main dwelling” be replaced by a reference to a person who is ordinarily resident outside the Republic.

(Ernst & Young)

The proposed amendment has been withdrawn. The view is held that the provisions of the relevant tax treaties should be relied on. Tax treaties should be fully effective in this regard. South Africa has tax treaties with all of its neighbours except for Mozambique which is in progress.

3.3.8 Section 1 – definition of “special trust”

The requirement that the trust be created solely for persons who are alive at the date of death of the testator should be changed to primarily or mainly. It is also suggested that there is little room for abuse if the testator’s spouse is treated as a qualifying beneficiary.

(Ernst & Young)

Not accepted. This aspect is not contained in the Bill under consideration.

3.3.9 Section 1 - definition of “trading stock”

What is the effective date for this amendment?

(SAICA; PricewaterhouseCoopers)

The effective date is 19 July 2000

3.3.10 Section 1

Include a cross reference to “qualifying statutory rate” as defined in section 9E(1).

(PricewaterhouseCoopers)

Accepted.

Adopt one definition of “foreign currency” for purposes of, for example, section 24I and paragraphs 43 and 84 of the Eighth Schedule.

(Old Mutual)

It will not be possible to introduce a single definition as the different definitions serve different purposes.

3.3.11 Section 3 – Exercise of powers and performance of duties

Why are certain discretions subject to objection and appeal, but others are not? The right of objection and appeal under section 23H(2), which allows the exercise of discretion in terms of limiting certain deductions, should also be included here.

(PricewaterhouseCoopers)

There are a number of discretions which are specifically not made subject to objection and appeal which are generally exercised in favour of the taxpayer, for example, extensions for the submission of annual tax returns in terms of section 66(1) of the Income Tax Act. The matter was cleared with the State Law Advisor.

The failure to subject the exercise of each and every discretion in the revenue acts to an internal objection and appeal procedure, does not conflict with the constitutional right to just administrative action in terms of s 33 of the Constitution, 1996 (Act No. 108 of 1996) as read with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000 - "the AJA"). The AJA prescribes how the powers that are given to administrators by other laws must be exercised, and gives members of the public the right to challenge administrative action that does not follow these rules and principles. For example, the Constitutional Court in the case of METCASH TRADING LTD v COMMISSIONER, SOUTH AFRICAN REVENUE SERVICE, AND ANOTHER 2001 (1) SA 1109 (CC) confirmed the constitutionality of certain provisions of the Value Added Tax Act, 1991, which provisions conferred discretionary powers on the Commissioner without subjecting such powers to internal objection and appeal, on the basis that whenever the Commissioner exercised discretionary powers conferred upon him, this constituted an administrative action which was reviewable in terms of the principles of administrative law and the Constitution.

Section 33 of the Constitution and the AJA does not prescribe that all current and new legislation must be amended to give effect to the right to just administrative action, for example by ensuring that all discretionary powers are subject to an internal objection and appeal process. This was the purpose of enacting the AJA which provides for a review of such powers.

In the case of section 23H(2) the exercise by the Commissioner is currently subject to objection and appeal in terms of section 23H(4).

3.3.12 Section 6quat – Rebate in respect of foreign taxes on income

Offshore tax losses should be allowed to be carried forward for the purposes of foreign tax rebate provision, as the Income Tax Act is designed mainly to subject taxable income to tax, and the current system will result in legitimate deductions being disallowed.

(Banking Council)

This aspect was not dealt with in the Bill under consideration. However, the proposal is inconsistent with an effective tax regime. Currently, all worldwide income arising before the effective date is ignored. Should taxpayers be taxed on pre-effective date income?

Will a credit be granted in respect of all federal, state, provincial and city taxes payable on income?

(SAICA; PricewaterhouseCoopers)

That is the case. This is based on an internationally accepted practice.

It is recommended that excess foreign tax credits should be allowed to be carried back to previous years of assessment.
(Ernst & Young)

This recommendation has been fully debated in years past. No reason exists to create carry backs for foreign tax credits when no such regime exists for assessed losses. Carry backs create complex administrative issues by reopening the assessments of prior tax years.

The conversion of foreign taxes actually paid at the average exchange rate may create an unfair effect and be to the disadvantage of the taxpayer. If the average exchange rate is worse than the spot rate, the taxpayer would only obtain a tax credit for the average amount and not the amount physically paid. If it is better, the taxpayer will then obtain an unfair advantage.

(SAICA; PricewaterhouseCoopers)

The introduction of the average exchange rate translation rule has the effect that exchange rate risk is shared between the taxpayer and the fiscus.

3.3.13 Section 7 – when income is deemed to have accrued or to have been received

The reference to “foreign entity” must not be changed to “foreign company” as some foreign charities would not qualify as foreign companies. Rather refer to a non-resident entity which is similar to a PBO.

(Ernest Mazansky)

Accepted.

3.3.14 Section 8 – allowances paid to employees

Define or expand upon the word stationed.

(SAICA)

“Stationed” is an accepted government term which means the place where a person is assigned to work.

It is preferable that the changes to the deemed daily expenses in respect of subsistence costs take effect from 1 March 2003 so that it does not affect allowances paid by employers to employees since 1 March 2002.

(SAICA)

Not accepted. The changes are designed to assist taxpayers.

3.3.15 Section 9 – amounts deemed to have accrued from sources within the Republic

In what circumstances would the CGT source rules come into play, in particular, in light of the fact that, pursuant to section 26A of the ITA, taxable capital gains are included in “taxable income” and not “gross income”.

(Sonnenberg Hoffmann Galombik)

The source concept is relevant in determining the amount of a foreign tax credit which may be utilised by a taxpayer against the taxpayer's normal tax liability

A foreign asset (other than fixed property) which is not linked to a foreign permanent establishment and is located in a country which does not have a tax treaty with South Africa is disposed of. The resident would not be able to claim relief in terms of section 6quat for foreign tax incurred on the capital gain as the capital gain is deemed to be from a South African source.

(Sanlam)

Correct. Foreign equity instruments are affected by this rule. The source rules were modelled along OECD practice. Foreign residents generating gains on South African shares are exempt from tax (i.e. South Africa surrenders its taxing jurisdiction). South African residents should receive the same benefits abroad.

3.3.16 Section 9A – blocked foreign funds

Insert “or taxable income” after gross income so as to also cover capital gains.

Accepted.

3.3.17 Section 9D – net income of controlled foreign companies

Amendments should not apply with retrospective effect.

(Banking Council)

The amendments relating to CFC's will apply to years of assessment of taxpayers ending on or after the date of promulgation.

3.3.18 Section 9D - definition of “business establishment”

Is the definition with regards to aircraft intended to be so restrictive, i.e. “operated solely within the country the plane is based in”?

(SAICA)

Requirement of “transportation within a single country” appears impractical. All vessels and aircraft operated by a CFC outside SA should create a business establishment for such CFC.

(SAICA; PricewaterhouseCoopers)

As international transport is a mobile business it can be conducted anywhere in the world and can, therefore, not be considered to constitute a business establishment. The intention is not to incentivise these types of businesses.

Will “carrying on the operations/activities” of mining, construction and farming be satisfied by the use of an agent or subcontractor?

(SAICA; PricewaterhouseCoopers)

This is an interpretation aspect which should be dealt with in the administration and application of the Income Tax Act.

3.3.19 Section 9D - definition of “controlled foreign company”

The exception to the “less than 5% shareholder exclusion rule” where more than 50% of participation rights are held by connected resident persons would be to the detriment of residents who do not qualify as these connected persons.

(Ernest Mazansky; PricewaterhouseCoopers)

No relaxation of this exception is being considered.

The words “which is a controlled foreign entity in relation to that foreign company” in the proviso to the definition of CFC should be replaced with the words “any other company in which such foreign company has an interest”.

(PricewaterhouseCoopers)

Accepted.

It is recommended that the definition be amended to refer to South African residents acting in collusion or in concert.

(SAICA) PricewaterhouseCoopers)

Not accepted. Residents who act independently may also have a CFC in terms of the definition of CFC. Current law, similarly, does not restrict the meaning of CFC to situations involving residents acting in collusion or in concert. It has always been the intent to treat the income of foreign companies in which South African residents have more than 50% of the participation rights as subject to section 9D.

3.3.20 Section 9D – definition of “foreign financial instrument holding company”

Ordinary current accounts utilised for receiving money and paying expenses, rather than investment accounts should be excluded.

(Ernest Mazansky; PricewaterhouseCoopers)

Not accepted. The greater than 50% test is generous and should deal with cash balances. An exception of the kind proposed would effectively nullify the rule.

At what date is the test to be made whether a company is a foreign financial instrument holding company or not?

(Ernest Mazansky)

The test should be applied on the date before disposal of an asset or the date when amounts are received.

The requirement that the foreign company must be a “bank, insurer, dealer or broker with a licence of registration that allows that foreign company to operate in the same manner as a company that mainly conducts business with clients who are residents in the foreign country” may affect the international competitiveness of controlled foreign companies. The requirements relating to transactions with clients from the general public or more than 50% of income from trading activities with unconnected persons, should ensure that the business is of appropriate substance.

(Banking Council)

It is proposed that the words “that is a bank, insurer, dealer or broker” be deleted.

(Sanlam)

Not accepted. The policy is to assist companies conducting legitimate banking and similar activities and not those entities who may be involved in harmful tax practices, which operates in a ring-fenced tax regime or conduct mobile businesses. The policy is not designed to promote passive offshore investments, even if these investments are held by a “treasury” subsidiary.

3.3.21 Section 9D – definition of “foreign tax year”

It is unclear what would be a “foreign tax year” where the foreign company is not subject to income tax and does not have any official annual period of financial reporting to the Government of its country of incorporation. Would the annual period of financial reporting include annual reporting to the company’s shareholder?

(SAICA)

The proposed wording allows the period of financial reporting to shareholders to determine the foreign tax year under these circumstances.

3.3.22 Section 9D – imputation of net income

How should the situation treated where the foreign company remains a CFC as defined for the entire tax year, but the participation rights held by a SA resident are increased or decreased or are sold by one SA resident to another SA resident during the course of the year?

(SAICA; PricewaterhouseCoopers)

Is it intended that where there is a transfer of a CFC to another SA resident that there should be apportionment between the residents?

(Ernst & Young)

The principle of looking to a resident's participation rights only at the last day of the foreign tax year is unfair due to imputation relating to the period before a resident acquired participation rights in the CFC during the foreign tax year.

(Sanlam)

The net income of a CFC will be apportioned between residents who hold participation rights in the CFC on the last day of the foreign tax year of the CFC. Holdings prior to that date are ignored due to administrative practice. This policy is also used in a number of other countries for calculating CFC income.

What is the reason for referring to section 25B in the list of sections in respect of which a CFC is deemed to be a resident?

(Ernest Mazansky)

The section is referred to in order to tax a CFC in terms of section 25B (2A) when the CFC acquires a vested right in the capital of a non-resident trust. Otherwise, taxpayers could ignore the offshore trust assets merely by interposing a CFC.

The treatment of a CFC as a resident should be extended to the exemptions from tax on foreign dividends. The intention was always that CFC's should enjoy the same exemptions as residents.

(PricewaterhouseCoopers)

Accepted, CFC's will be treated as residents for all purposes of section 9E.

Would daily imputation be possible on the basis that section 9D accrual takes place daily and that imputation is based on the taxpayer's participation rights on the specific day?

(Sanlam)

Daily imputation is not possible as the structure of section 9D only allows for annual imputation. CFC income can only be truly taken into account at year end if foreign tax credits and other adjustments are to be fully considered.

The taxable income of the CFC will be taxed in SA and in addition any non-arms length transactions will be adjusted in the CFC's taxable income and be taxed in SA without a corresponding adjustment in the SA "holding" company. This will amount to economic double taxation.

(SAICA)

In the case of an interest free loan between two CFC's where interest is deemed to have accrued, will it mean that the recipient of the loan will be granted a deemed deduction for the interest?

(SAICA)

A corresponding adjustment is possible where the Commissioner applies the provisions of section 31.

It is illogical that transactions entered into between two South African resident companies are not subject to transfer pricing provisions but similar transactions entered into between two CFC's are subject to transfer pricing provisions.

(SAICA)

CFCs are partially taxable as a result of the exemptions contained in section 9D(9) and stricter anti-avoidance provisions are therefore required.

Sections 9D(2A)(c) and 9D(9)(fA) should be amended to the effect that transfer pricing rules will not be applied to transactions between CFC's.

(PricewaterhouseCoopers)

Transactions outlined in terms of the exemption in section 9D(9)(fA) should be excluded from the definition of international agreement in section 31.

(Banking Council; Werksmans)

Accepted, an appropriate amendment will be introduced. As a matter of clarification current law was intended to reach this result though the use of the concept "of a similar nature".

It will not be possible to determine whether a company is a foreign financial instrument holding company if it does not form part of the group of companies.

(Ernest Mazansky)

Provisions will be changed in order to clarify the application thereof.

Exclusion of amounts from a foreign financial instrument holding company goes too far. This will render business establishment exemption nugatory.

(Ernest Mazansky)

In general, the CFC provisions have been liberalised although a tougher stance was taken as far as mobile financial services companies utilising ring-fenced harmful tax practices are concerned.

The net income of a CFC should be translated using the average exchange rate determined in relation to the foreign tax year of the CFC in order not to create unusual results where an average rate is applied to an amount that is accumulated over a different period.

(Old Mutual)

Not accepted. The policy rationale is that the average exchange rate for the tax year of the resident should be used in order to match the foreign tax credit conversion rules and to ease the administration of the provisions. All of a taxpayer's foreign currency transactions, except for exchange items in terms of section 24I, are translated on the same basis even if from a CFC.

3.3.23 Section 9D(9)(f) – inter CFC dividends

The deletion will have the effect of double counting dividends declared between two CFC's. A reduction of net income of a CFC is not permitted. It will be included in that CFC's net income for purposes of section 9D and it will also be included in the income of the CFC who receives the dividend if this paragraph is deleted.

(Banking Council)

The current position of the foreign dividend only attracting tax when the dividend is received by the South African holding company has been altered and has the effect of triggering income tax earlier than would currently be the case.

(SACOB)

The exemption should remain in force.

(PricewaterhouseCoopers)

The paragraph will be modified to prevent double taxation of foreign dividends by granting an exemption for certain foreign dividends.

3.3.24 Section 9E – taxation of foreign dividends

Definition of “foreign dividend” – it would be far more equitable if the amendment applied to capital gains realised on or after the date of promulgation.

(SAICA)

The changes to the amendment have been discussed under the definition of dividend.

Allow a company by way of a directors’ or shareholders’ decision to distribute dividends from profits derived from a specific form of income.

(Banking Council; SAICA; PricewaterhouseCoopers)

Not accepted. Allowing taxpayers to choose specific forms of income (i.e. all exempt income first) would effectively eviscerate section 9E.

Section 9E(8): Clarify whether the designated country list will remain the same and that perceived abuses will be dealt with by way of the Minister’s discretion. Should this be the case concern has been raised that such a discretion does not provide certainty as to the application of the designated country exemption.

(Sonnenberg Hoffmann Galombik)

A revised designated country list should be published without delay to give SA taxpayers certainty and to allow them the opportunity to plan foreign investments.

(Ernst & Young)

The discretion granted to the Minister to exclude certain types of income in designating countries precipitates the high level of tax uncertainty already in existence in the country.

(SAICA; PricewaterhouseCoopers)

The current designated country list is still in effect, but is currently under review. If an updated list is to be published, any changes to the countries listed will only apply from a prospective date. The ability to exclude certain forms of income from the list permits the designation of countries that would otherwise fail the tests for designation in respect of limited aspects of their tax systems.

The removal of subsection (9) means that approval granted or not granted by the Commissioner in terms of 9E(7)(c) will no

longer be subject to objection and appeal.
(Banking Council)

The right to object and appeal has been moved to section 3 of the Income Tax Act, 1962.

3.3.25 Section 9G – taxable income in respect of foreign equity instruments

Where a currency no longer exists, the average rate during the year in which the expenditure was incurred should be used.
(SAICA)

Accepted.

Allow taxpayers to use the exchange rate at the date of purchase instead of the average rate.
(PricewaterhouseCoopers)

Not accepted. The new rules should be applied consistently for the translation of amounts in foreign currency.

3.3.26 Section 24F – taxable income of film owners

It is proposed that additional items be added in the definition of ‘marketing expenditure’.
(National Film and Video Foundation)

The production of any publicity or promotional material is already covered by paragraph (b) of the definition of marketing expenditure.

The production of sub-titles and sound recordings form part of the production cost of a film.

Insert the word ‘copyright’ before the word ‘patent’ at each reference.
(National Film and Video Foundation)

Accepted.

3.3.27 Section 24I – Gains and losses on foreign exchange transactions

It is not clear which currency will constitute the local currency of a resident whose financial reporting currency is in USD as the resident will comply with both paragraphs of the definition of local currency.
(Ernst & Young)

The definition of “local currency” will be clarified.

Section 24I, in its present form is aligned with generally

accepted accounting practice (GAAP) and therefore should not be changed. It would be preferable to adopt the same approach as is required by GAAP in order to facilitate administration, improve the relationship between accounting profit and taxable income and determine the gain or loss from the foreign currency exposure for the financial year.

(Old Mutual)

It would not be a good idea to replace the spot rate with the average exchange rate as it would defeat the object of section 24I and would have a severe impact on the accounting disclosure.

(P J Nel)

As the spot rate and not the average rate is used for accounting purposes, the use of the average rate for purposes of section 24I will lead to substantial timing differences, an administrative burden and complicated deferred tax computation.

(SAICA; PricewaterhouseCoopers)

No changes are proposed to the exchange rates to be used for purposes of section 24I.

The commencement date for section 24I(10) must be retroactive to 1/10/2001 in order to substitute the old provisions and not to prejudice taxpayers.

(Anne Pappenheim; Ernst & Young)

Accepted.

Is the intention to provide deferral to residents or CFC's being treated as residents transacting with any company within the same controlled group? If so, the deferral does not currently apply to transactions where the resident or the CFC being treated as a resident transacts with the ultimate controlling company.

Has any consideration been given to providing relief in respect of the intervening years?

(Sonnenberg Hoffmann Galombik)

Noted. This aspect is to be considered in future.

Foreign exchange differences on inter-group loans between CFC's are exempt. However, exchange differences in respect of realised inter-group loans between residents and other companies in the group of companies are subject to tax.

(Deloitte & Touche Taxation Services)

This aspect will be further investigated.

“Realised” should be defined with reference to a transactions which involves a third party or cash settlement, failing which the unrealised gain in the case of a conversion of equity loans to share capital could be deferred until the cash flows match the tax consequence.

(Deloitte & Touche Taxation Services)

Not accepted. The realisation of an exchange item cannot be delayed until the realisation of the equity shares into which the exchange item was converted.

It is recommended that taxpayers who acquired assets prior to the amendment of section 24l(11) must be given the opportunity to elect whether they would want that section to apply as a result of the fact that the assets were denominated in a foreign currency and it is likely that Rand proceeds will be earned on the sale of the assets.

(SAICA; PricewaterhouseCoopers)

Not accepted. The amendment is consistent with the amendments to paragraph 43 of the Eighth Schedule to the Income Tax Act.

3.3.28 Section 25D – determination of taxable income in foreign currency

South Africans are not allowed to use a reporting currency other than Rand for tax purposes. Thus effectively always exposing South African companies to tax if they have non-Rand denominated loans even though for reporting purposes it does not recognise any foreign exchange difference. This is in contrast to controlled foreign entities and foreign permanent establishments where the concept of a reporting currency is recognised in the Bill.

(Deloitte & Touche Taxation Services)

The South African currency is the Rand. The use of a foreign currency for reporting on South African business is not to be encouraged and would lead to the inconsistent treatment of taxpayers based on the reporting currency they have selected.

3.3.29 Section 41 – corporate restructuring rules

Definition of “allowance asset” – in order to avoid all capital assets from falling within the meaning of the definition add the words: “other than a deduction or allowance in calculating any capital gain or loss on its disposal.”

(PricewaterhouseCoopers)

Although the base cost is deducted from proceeds on disposal of the asset technically it is not the capital asset which qualify for a

deduction.

Definition of “domestic financial instrument holding company”

–

It is unclear at what stage the 50% test should be performed.

(PricewaterhouseCoopers)

Accepted. The test will be determined immediately before the disposal.

Cash in bank should be excluded in order not to penalise companies retaining working capital.

(PricewaterhouseCoopers)

Not accepted. See previous discussion.

Definition of “equity share capital” – provision should be made for companies which do not have an equity share capital, e.g. SA branches of foreign companies.

(PricewaterhouseCoopers)

The intention is not to grant relief for branches. It is not clear why special rules are required to deal with reorganisations of businesses that are not companies. Branches can be moved within a single company tax-free without the benefit of special rules.

Definition of “qualifying interest” – the listed company requirement contained in para (a) should be amended to “Public company”.

(Matthew Lester)

The guiding principle is that transactions on the JSE Securities Exchange are to be facilitated.

A 10% threshold for unlisted shares may be more appropriate.

(PricewaterhouseCoopers)

The view is held that an interest of more than 25% in accordance with Company law is required to have a meaningful interest in a company. This policy was established last year.

In applying the liquidation steps a foreign country may not necessarily require directors to submit a statement that the company has ceased carrying on business.

(Ernest Mazansky)

Accepted, provision will be made for this situation.

In the absence of regulations issued by the Minister what will be the approach of SARS be to a taxpayer electing to obtain

approval.
(PricewaterhouseCoopers)

In the absence of regulations, no formal binding rulings can be given.

It is submitted that the new corporate restructuring rules shall come into operation on the date of promulgation and that the new provisions shall apply in respect of any transaction entered into on or after the date of promulgation.
(SAICA)

The effective date has been accelerated. The provisions will apply in respect of disposals on or after the date of tabling of the Bill.

The extension of the intra-group relief to non-resident transferors is welcomed, but should be extended to corporate relief generally.
(SAICA)

The original policy is to restrict these measures to resident companies. Domestic reorganisations are the highest priority.

We believe that there is a need for allowing rollover relief for group reorganisations that fall below the 75% ownership threshold and that broadly based reorganisation relief should be introduced as was done in the UK.
(SAICA; PricewaterhouseCoopers)

The original policy, which is unchanged, is to restrict the relief to groups of companies where unilateral control can be exercised. The policy for the percentage thresholds was set and debated last year.

It is proposed that the corporate restructuring rules be expanded to include share incentive trusts.
(Sanlam)

This proposal is totally outside the scope of the Budget announcements.

Please consider relief under corporate restructuring rules to all relevant transactions between a resident company and a non-resident company where a resident remains the beneficial owner of the shares in the non-resident company.
(Ernst & Young)

The extension of the corporate reorganisation provisions to non-resident companies will add complexity to the tax system and should not be done at this stage.

It is not clear why there are no STC exemptions in the case of amalgamation transactions, intra-group transactions and liquidation distributions.

(Ernst & Young)

Provision has been made for an STC exemption for amalgamation transactions. Intra-group transactions and liquidation distributions may make use of the group relief for STC purposes contained in sections 64B(5)(f) and 64C.

The strict criteria of Part III are particularly unfriendly towards the whole concept of black economic empowerment.

(Werksmans)

Issues relating to black economic empowerment needs to be studied as part of a bigger project. The concept BEE is not statutorily defined.

3.3.30 Section 42 – company formations

Where multiple assets are transferred for shares some assets may be of such a value that whole shares are not attributable to their value. Provision should be made for “an equity share or part thereof”.

(PricewaterhouseCoopers)

Accepted.

What would be the case where the base cost exceeds the market value?

(SAICA)

A loss will be immediately triggered for CGT purposes, but that loss may be subject to the clogged loss rules.

The time when the joint election is to be made by the parties is not specified.

(SAICA)

The Commissioner, will in terms of section 41(6), prescribe the form in which particulars of any election exercised in Part III must be submitted.

Is there a real need for the awkward market value over base cost condition which results in no rollover relief and recoupments where the condition is not met.

(P Meinel)

The original policy, which has not changed, allows rollover gains to duplicate but not losses which must be triggered on disposal of a loss asset.

Section 42(3) refers only to section 24C. No reference is made to sections 11(i), 11(j) and 24.

(Ernest Mazansky; SAICA; Ernst & Young)

The definition of “allowance asset” includes trade debtors qualifying for the bad debts, doubtful debts and hire purchase debtors’ allowances.

Allow an equity share or asset acquired in terms of a formation transaction to be disposed of within 18 months in terms of an amalgamation transaction.

(Ernest Mazansky)

Circumstances where the disposal of an asset within 18 months will not be treated as the disposal of trading stock should include further company formation transactions, share-for-share transactions and amalgamation transactions.

(PricewaterhouseCoopers)

Not accepted, as the effective interest of the equity shareholder can be reduced to 25 per cent or less as a result of an amalgamation transaction or any of the other transactions mentioned above.

The section 42(8) requirement of bringing in debt on disposal unnecessarily complicates the record-keeping. The old formulation of using the cost excluding the debt portion is much simpler.

(Ernest Mazansky)

The new definition will match the rules contained in paragraph 76 of the Eighth Schedule. These complexities are required to preserve the effective date rules.

It is not clear when the test to determine whether more than 50% of the market value of certain assets is attributable to allowance assets or trading stock should be performed and to which assets the test should apply.

(PricewaterhouseCoopers)

Accepted, the rule will be clarified. The test is applied on disposal of the equity shares and determines the cumulative assets transferred until the date of disposal of the equity shares.

The deletion of the provisions to govern a South African subsidiary taking over the activities of a branch (former section 28bis) is most unfortunate.

(Ernest Mazansky)

These provisions were not consistent with the original policy as the rolling over of losses is unacceptable.

This section is not prevented from applying to the disposal of assets where all the receipts and accruals of the acquiring company are exempt from tax in section 10 as is the case in sections 44, 45 and 47.

(Banking Council)

These transactions are not specifically prevented as the view is held that a transfer to such an exempt company should not arise as a practical matter.

An exclusion from financial instruments which may not be transferred is required in respect of equity shares in a controlled group company in relation to a transferor company where the controlled group company is not a domestic or foreign financial instrument holding company.

(PricewaterhouseCoopers)

Formation transactions were not designed to deal with the transfer of group shares.

The situation should be addressed where an asset is disposed of at loss within a period of 18 months.

(Banking Council)

The loss on assets with built in losses is triggered on formation. Further losses after the formation transaction are allowed without any ring-fence limitations.

In the case of group restructurings to avoid messy cross holdings it may be necessary to effect multi-tier rollovers and the prevention thereof could adversely impact upon commercial transactions. The subsection preventing multi-tier rollovers should be deleted.

(PricewaterhouseCoopers)

If adopted, it would be possible to go below the more than 25% threshold. The basic rules will be further refined in future.

The limitation to 18 months should only apply where the majority of assets that were part of the original transaction are disposed of within that period.

(PricewaterhouseCoopers)

The proposed regime will be very difficult for taxpayers to follow and for SARS to administer. The current system is based on an asset per asset transfer.

3.3.31 Section 43 – share-for-share transactions

What is the rationale for making the provisions of the section mandatory?

(PricewaterhouseCoopers)

This feature of the current system will be reviewed at a later stage. At the present stage the regime needs to be mandatory for administrative reasons.

Why is there a distinction between situations where the shareholder disposing of the shares in a listed company holds more than 25% of the shares of the acquiring company after the share-for-share transaction and where he holds less than 25%?

(Ernst & Young)

The distinction from a policy perspective is that the more than 25% shareholding constitute a meaningful interest from a company law perspective.

How would the acquiring company know if the person who disposed of the share held it as a capital asset or as trading stock in order to apply section 43(2)(c)?

(Ernest Mazansky)

This test is applied in a closely held situation where the qualifying interest exceeds 25% and it would not be difficult to obtain the information.

Where a target company is a listed company the acquiring company will have to determine from the shareholders of the target company whose shares will be acquired whether the market value exceeds the base cost/cost and what the shareholders' intention (capital/revenue) were with respect to the shares.

(Sanlam)

This transaction falls outside the reorganisation rules. The case study raises the question of what the base cost of assets acquired for the issue of shares is. Further review is necessary in this regard.

Where the target company is not a listed company, the acquiring company will inherit the previous shareholder's base

cost and will be bound by any valuation of the shares determined by that shareholder. It is submitted that it is unacceptable that the acquiring company should be bound by a choice made by a third party.

(SAICA)

The acquiring company is allowed to use fair value but is not bound to do so.

Section 43(3) requires the base cost to be attributed to the proceeds otherwise than by way of shares to be calculated on a pro-rata basis as proportion of the full consideration. How is full consideration to be determined?

(Ernest Mazansky)

This provision will be reworded to refer to the market value of total consideration.

The exclusion of transactions during the period of 18 months during which the required interest in the acquiring company should be held must cover company formation transactions, further share-for-share transactions and amalgamation transactions.

(PricewaterhouseCoopers)

Allow an equity share acquired in terms of a share-for-share transaction by an acquiring company to be disposed of within 18 months in terms of an amalgamation transaction or an unbundling transaction.

(Ernest Mazansky)

Not accepted, as the effective interest of the acquiring company in the equity shares of the target company can be reduced to below the required interest as a result of the transactions mentioned above. The exceptions to the 18 month rule were limited to prevent tax avoidance transactions.

This section is not prevented from applying to the disposal of assets where all the receipts and accruals of the acquiring company are exempt from tax in section 10 as is the case in sections 44, 45 and 47.

(Banking Council)

These transactions are not specifically prevented as the view is held that a transfer to such an exempt company should not arise as a practical matter.

The requirement that the acquiring company's holding in the target company be attained through any offer made on the same terms is too restrictive and should be relaxed by

allowing any offer made on what is considered by the Commissioner to be similar terms.

(PricewaterhouseCoopers)

Not accepted. This rule is only intended to address public offers in terms of section 440 of the Companies Act.

3.3.32 Section 44 – Amalgamation transactions

Does an amalgamation transaction require that the shareholder of the amalgamated company acquire shares in the resultant company?

(Deloitte & Touche Taxation Services)

Yes, the section has been changed to reflect this requirement.

Instead of referring to an amalgamation, conversion or merger it would be simpler to define the scope of the transactions in terms of section 311 of the Companies Act.

(SAICA)

The rule is designed to cover a wider variety of transactions than section 311. The rule could cover conversions under the Unit Trust Control Act and mergers under section 228 of the Companies Act.

The section envisages a joint election by two companies, but is required to be expanded to cover shareholders of the amalgamated company in the case of a share exchange.

(SAICA)

The amalgamation rules have been made mandatory.

An election can not be made in respect of the disposal of an asset which constitutes a financial instrument which does not fall under any of the exclusions. An amalgamation transaction is defined as a transaction in terms of which all the assets have to be transferred. It is therefore not possible to exclude financial instruments from the transaction and then make the election in respect of the remaining assets.

(Ernst & Young)

The election has been dropped as it would not have been administrable.

It is not clear whether the shareholders in an amalgamated company are required by section 44 to hold a qualifying interest in the resultant company subsequent to an amalgamation transaction.

(Banking Council)

As is the case for the share-for-share transactions, a qualifying interest of more than 25% is required only for unlisted amalgamations.

An amalgamation is treated as a rollover event for local collective investment schemes. Foreign collective investment schemes should be treated similarly.

(Association of Unit Trusts)

Not accepted. From a policy perspective, only domestic reorganisations are incentivised.

We see no possible justification for restricting the availability of losses against growth in value of assets arising after such assets have been transferred to the resultant company.

(PricewaterhouseCoopers)

It is not allowed in order to avoid loss trafficking transactions.

The circumstances where a person may during the period of 18 months from the amalgamation transaction hold less than the qualifying interest in the resultant company should include the entering into of a company formation transaction, share-for-share transaction and further amalgamation transactions.

(PricewaterhouseCoopers)

Not accepted, as the effective interest of the acquiring company in the equity shares of the target company can be reduced to below the required interest as a result of the transactions mentioned above. The exceptions to the 18 month rule during which certain transactions are not allowed were limited to reduce the potential for tax avoidance transactions.

In section 44(4)(b)(i) it is unreasonable to tax the trading stock acquired separately. What happens if a stationery business is purchased – how will the purchaser be able to differentiate between stationery acquired as a result of the amalgamation transaction and other stationery? Section 103(2) should deal with tax avoidance transactions.

(Ernest Mazansky)

This aspect will be reviewed at a later stage due to the various forms of trading stock.

In section 44(8)(a)(ii) shares in controlled companies should be excluded. In an amalgamation transaction there may be subsidiaries which are taken over.

(Ernest Mazansky; PricewaterhouseCoopers)

Accepted. The Bill has been modified to reflect this reality.

How should the steps to liquidate, wind up or deregister be applied to companies which cannot liquidate or deregister, e.g. branches of foreign companies.

(PricewaterhouseCoopers)

Not accepted. The intention is not to grant relief for branches. It is not clear why special rules are required to deal with reorganisations of businesses that are not companies. Branches can be moved within a single company tax-free without the benefit of special rules.

Provide that the acquisition or disposal of any asset in respect of the liquidation of the amalgamated company shall be deemed not to be a dividend for purposes of STC.

(Ernst & Young; PricewaterhouseCoopers)

Accepted. An STC exemption will be provided for.

No relief is provided for companies with inter-group debt, which will be defined as financial instruments.

(SAICA)

Accepted, relief is provided for debt between companies forming part of a group of companies.

Should the terms amalgamation, conversion, merger or similar scheme not be defined?

(SAICA; Ernst & Young)

Terms should not be defined. These terms are not defined in the Companies Act and the scope of the relief measure may be reduced by defining specific transactions.

It is a requirement that one company disposes of all of its assets and transfers all of its obligations to another company and it must be questioned whether this will achieve the desired result in that it does happen in transactions of this sort that certain liabilities are excluded from the merger and the seller is obliged to settle certain specified liabilities.

(SAICA)

The reference to obligations which must be transferred has been deleted.

3.3.33 Section 45 – Intra-group transactions

The situation where a capital asset is acquired as trading stock has not been addressed.

(Banking Council)

This was intentional in order not to reduce the amount of tax to be collected on the built in profit of the asset if it was held as trading stock but subsequently sold as a capital asset. The rules are the same as a change of intent by a single taxpayer. See paragraph 12 of the Eighth Schedule.

A finite time limit must be applied for the requirement that the transferor and transferee must form part of any group of companies. A period of 5 years is suggested.

(SAICA; PricewaterhouseCoopers)

Not accepted. Even though the transferee company gives consideration to the transferor company equal to the market value of the asset transferred the tax value is rolled over. Once the group breaks up the transferor company gets the economic benefit of realising gains on transfer of the asset but does not bear the tax thereon.

Why does the exclusion of equity shares in a controlled group company in relation to the transferor company not extend to shares held in companies other than controlled group companies. These other companies could form an integral part of the business transferred as a going concern.

(Ernst & Young)

The intra-group rules were not designed to accommodate transfers of financial instruments as a general matter.

It should be stated that the test to determine whether a company is a domestic or foreign financial instrument holding company should be applied at the date of transfer.

(PricewaterhouseCoopers)

The test should be applied immediately before the transfer of the assets.

Provide that an acquisition or disposal of any asset in terms of an intra-group transaction shall be deemed not to be a dividend for purposes of STC.

(Ernst & Young; PricewaterhouseCoopers)

Not accepted. Intra-group transactions and liquidation distributions may make use of the group relief for STC purposes contained in sections 64B(5)(f) and 64C.

3.3.34 Section 46 – Unbundling transactions

It is unnecessarily restrictive to require more than 50% of the unlisted unbundled company's equity shares must be held by the unbundling company. Also take into account shares held

by other group companies to determine whether or not more than 50% is held.

(Ernest Mazansky)

Not accepted. The percentage threshold was fully debated last year. Unbundling transactions should only apply where parties have meaningful control.

Why must the unlisted distributable shares distributed by a listed unbundling company be listed within 12 months?

(PricewaterhouseCoopers)

The unlisted unbundled company can be used to avoid tax. It is not apparent that there is any business reason for transactions under these circumstances other than the avoidance of tax.

The tax burden of limiting the relief where non-resident shareholders acquire more than 5% of the distributable shares falls on the unbundling company and not the non-resident shareholder. The threshold of 5% is too low and should be increased to 10%. The extent of the tax exposure can only be determined once the unbundling becomes effective.

(Dianne Dobson; Gencor; Werksmans)

We believe the denial of an unbundling relief in respect of a non-resident holding in excess of 5% of the unbundling company is too restrictive. The limit should be increased to 10%, which is the holding level generally accepted in international double taxation agreements as well as section 9E at the level at which a holding company becomes more than a portfolio company.

(Remgro)

Not accepted. The 5% level has been selected as it is internationally common practice to disclose interests of 5% and greater. In addition the likelihood of tax avoidance is greater, STC is forfeited and it is a cause for concern that companies are moving offshore.

An unbundling transaction where the unbundling company is an unlisted company could only take place where the holding company owns 100% of the shares in the unbundling company unless there are multiple shareholders who form part of the same group which, we submit, would be uncommon.

(KPMG)

Not correct. A shareholding of more than 50 per cent in an unlisted company is the required percentage in the definition of unbundling transaction.

Only the transfer of allowances in accordance with section 24C is catered for. It is unclear why the new section does not cater for the transfer of allowances under sections 11 (l), 11(j) and 24 of the Income Tax Act.

(SAICA)

The definition of “allowance asset” includes trade debtors qualifying for the bad debts, doubtful debts and hire purchase debtors’ allowances.

Provide that an acquisition or disposal of any asset in terms of an unbundling transaction shall be deemed not to be a dividend for purposes of STC.

(PricewaterhouseCoopers)

These provisions will be reworded.

An unbundling company should have the option to do an unbundling either in terms or outside the section.

(Werksmans)

Not accepted. This feature of the current system will be reviewed at a later stage. At the present stage the regime needs to be mandatory for administrative reasons.

3.3.35 Section 47 – definition of liquidation distribution

Allow relief on liquidation where a group of companies hold at least 75% of the equity shares of a liquidating company.

(Ernest Mazansky)

Not accepted. The intension is to limit the complexity of the system as far as possible. Inclusion of group ownership rules can only be achieved on a gradual basis.

We do not see that any capital gain to the extent that it is attributable to the period of ownership of the holding company of less than 18 months should be ring fenced.

(PricewaterhouseCoopers)

Accepted.

When is it envisaged that a holding company would dispose of an asset to the liquidating company in a liquidation?

(PricewaterhouseCoopers)

The provision has been reworded to refer to a “share” of the liquidated company instead of an asset.

3.3.36 Section 56 – donations tax exemptions

Clarify that donations tax shall not be payable where assets are transferred from one taxpayer to another in accordance with the corporate restructuring rules.

(SAICA; Werksmans)

Retain a donations tax exemption for intra-group transactions.

(Sanlam)

An exemption will be provided to the extent that the disposal is deemed to be a dividend in terms of the provisions of section 64C.

3.3.37 Section 64B – Secondary Tax on Companies

The current proposal results in both CGT and STC potentially applying and therefore increases the effective CGT on capital profits earned by companies. There should be relief for capital profits on the disposal of residential property to its sole shareholder during the window period. If STC is imposed on gains realised after 1 October 2001, provision should be made to exclude unrealised gains in respect of assets held on that date.

(Old Mutual)

The amount which should be subject to STC is profits of a capital nature distributed other than so much of such profits as is equal to any amount included therein which qualifies as a capital gain. The amount should be net of capital losses and tax on the capital gains.

(Ernest Mazansky)

It would be far more equitable if STC only applied to capital gains which accrue from the date of promulgation or tabling.

(SAICA)

The amendment should apply from a future date and ideally should only take effect once the Collective Investment Schemes Control Act has been in operation for a period of time thereby allowing the property unit trust sector to restructure their affairs without incurring STC on capital profits that would otherwise become payable on the winding up of the fixed property companies currently owned by the property unit trust.

(The Association of Property Unit Trusts)

Will the proposed taxation of profits of a capital nature on liquidation apply to dividends distributed after the date of promulgation of the Act or after 1 January 2003 as set out in the explanatory memorandum?

(D Meyerowitz; Sonnenberg Hoffmann Galombik)

Will STC be attributable to the portion of the capital gain which is deemed to have arisen after 1 October 2001 or to the full gain which accrued after 1 October 2001?

(Ernst & Young; Sonnenberg Hoffmann Galombik)

Reconsider the proposal to subject capital profits on liquidation to STC or alternatively allow taxpayers to value capital reserves which arose before 1 October 2001 and that such reserves not bear STC.

(Carel Vosloo)

Realised or unrealised capital gains which arose before 1 October 2001 and which are declared as dividends on or after 1 January 2003 should be excluded.

(Theo van Wyk; PricewaterhouseCoopers)

The distribution of profits of a capital nature in respect of assets acquired before 1 October 2002 which will become subject to the secondary tax on companies, are profits determined on the basis as if the company acquired the assets disposed of after 1 October 2001 on that date. The rule is designed only to tax gains economically accruing on or after 1 October 2001 which are distributed as a dividend from 1 January 2003.

Relating specifically to the inclusion of the dividends declared out of profits of a capital nature on liquidation, what would the creditor ranking be for the payment of tax liable as a result?

(COSATU)

The ranking of tax debt on liquidation is after the amounts payable to employees of the employer.

A special lower rate of STC should be imposed on capital gains distributed as the legislation is not consistent with the philosophy behind STC nor with CGT.

(Werksmans)

This statement is not correct. Dividends declared in the ordinary course of business have triggered STC since 1993 whether they were declared from profits of a capital or revenue nature.

3.3.38 Section 64C – Certain amounts distributed deemed to be dividends

In terms of the JSE listings requirements a share trust may hold up to a maximum of 20% of shares in a company in contrast with the 10% limit in the draft legislation.

(SAICA; PricewaterhouseCoopers)

Accepted.

Section 64B(5)(f) contains some technical difficulties in respect of a deemed dividend loan.

(Ernst & Young)

These difficulties have been addressed by amending section 64C.

3.3.39 Section 79B – withdrawal of assessments

The proposed section should contain reference to the sections regulating the manner in which documents are to be served on taxpayers.

(SAICA)

This is not necessary as the definition of “assessment” in section 1 and section 106 of the Income Tax Act already deal with these aspects.

The section should also specify the consequences of the withdrawal of the assessment.

(SAICA)

The wording is also clarified that withdrawals will only apply where an assessment has been issued to the wrong taxpayer or in respect of the wrong year of assessment.

3.3.40 Eighth Schedule – paragraph 2 – application

The term “attributable” is uncertain and not defined. Clarity is needed as to what exactly will constitute an asset being “attributable” to a permanent establishment.

(Banking Council)

The word “attributable” is already used in more than 20 sections and paragraphs in the Income Tax Act and Schedules to the Act and a definition is not considered necessary. Its application depends on the facts and circumstances of the specific case.

3.3.41 Eighth Schedule – paragraph 12 – events treated as disposals and acquisitions

Where the debtor is insolvent, or liquidated or there is a compromise in terms of section 311 of the Companies Act the proposed change will create a tax burden which although imposed on the debtor will effectively have to be borne by the creditor.

(D Meyerowitz)

The paragraph imposes the CGT on the debtor who enjoys the benefit of the reduction of his or her debt. An alternative would be to ignore

the benefit to the debtor and not allow the creditor to claim the loss but this ignores the fact that the debtor enjoys the benefit and is open to manipulation when the creditor is a non-resident. In most insolvency cases the debtor has assessed losses for tax purposes and would not pay tax.

The term “full consideration” must be defined. The term “face value” is uncertain and must be defined or guidelines must be given as to how to calculate the face value of a debt
(Banking Council)

The term “full consideration” is not used in the proposed paragraph 12(5) and the face value of a debt is the amount owing by the debtor to the creditor. “Face value” is a commonly accepted and known concept.

The symmetry between paragraph 12(5) and paragraph 56 could also be achieved by relieving the debtor of the charge to tax if the creditor is denied the loss. Parties ought to be able to elect jointly for the form of symmetrical treatment they prefer.
(Deloitte and Touche)

If the present basis of symmetry between paragraphs 12(5) and 56 was changed it would allow manipulation when the creditor was a non-resident.

3.3.42 Eighth Schedule – paragraph 24 – base cost of a person who became a resident on or after valuation date

The opening wording of subparagraphs (2) and (3) should be aligned.
(PricewaterhouseCoopers)

The necessary amendments will be made.

The timing of deemed disposal on becoming a resident to be clarified.
(PricewaterhouseCoopers)

In terms of paragraphs 12(4) and 13(1)(g), the time of deemed disposal and reacquisition at market value is the day immediately before the person becomes a resident.

3.3.43 Eighth Schedule – paragraph 29 – market value on valuation date

Clause 1 proposes changes to items (a) and (b) of subparagraph (4) and the insertion of item (c), however, subparagraph (4) has no existing items (a) and (b).
(PricewaterhouseCoopers)

Items (a) and (b) of subparagraph (4) were introduced by the Taxation Laws Amendment Act, No 30 of 2002.

3.3.44 Eighth Schedule – paragraph 30 – time-apportionment base cost

The amendment does not deal with the equitable apportionment of the gain which arises as a result of the application of the formula in paragraph 30(2) and the fact that selling costs fall within the definition of the base cost in paragraph 20.

(Deloitte & Touche Taxation Services)

The time apportionment base cost utilises a simple apportionment of gains or losses using nominal costs and proceeds to arrive at a valuation date value of an asset. Adjusting weightings to take account of time value of money, which would generally be to the advantage of taxpayers, or adjusting the apportionment basis to reflect the compound nature of gains or losses, which would generally be to the disadvantage of taxpayers, would add significantly to the complexity of the system. It would also require the splitting of the pre-valuation date expenditure incurred in respect an asset as discussed in the next comment.

Expenditure incurred to acquire or improve an asset incurred in more than one year prior to 1 October 2001 triggers the 20 year maximum figure for “N” in the formula. Applying differential time-apportionment to each item of expenditure is more logical and simple.

(Deloitte and Touche Taxation Services)

The current provision was introduced after public comment on the current approach and two others, similar to that now proposed by Deloitte and Touche, was explicitly requested in the Draft Taxation Laws Amendment Bill, 2001 released on 2 March 2001. The majority of commentators supported the current approach.

In unbundlings, rationalisations prior to the corporate rules the acquisition date of the “new share” should be regarded as the date on which the “original share” was acquired.

(PricewaterhouseCoopers)

In the case of rationalisations the legislation provided that the transferor company and the transferee company are deemed to be one and the same company and assets transferred would have the original acquisition expenditure and date of acquisition.

In the case of unbundlings paragraph 76(3) provides that an asset distributed to a shareholder must be treated as if it was acquired for its market value on the date the distribution was approved.

If there is any portion of allowances still remaining to be claimed on the pre-valuation date element of the expenditure on an asset, subparagraph (2) is activated and the possible benefit of being able to use subparagraph (3) and (4) seems to be lost.

(P Meinel)

Subparagraph (2) will not prevent the application of subparagraphs (3) and (4) in these circumstances.

3.3.45 Eighth Schedule – Paragraph 32 – base cost of identical assets

The wording after the new item (d) should be amended to cater for the insertion of that item.

(SAICA, Old Mutual)

The necessary amendment will be made.

3.3.46 Eighth Schedule – paragraph 32 – base cost of identical assets

Consider removing the requirement that the section 24J instruments should be listed before qualifying as a separate class.

(Sanlam)

Not accepted. This would be inconsistent with the requirements in respect of other identical assets.

3.3.47 Eighth Schedule – paragraph 42 – short-term disposals and acquisitions of identical instruments

The paragraph does not deal with the situation where the buyer acquires the financial instrument as trading stock. Sections 11(a) and 22 should be amended to grant appropriate relief to the buyer in that situation.

(Ernst & Young)

This aspect is not dealt with in the Bill under consideration. The issue raised needs to be reviewed.

3.3.48 Eighth Schedule – paragraph 43 – Assets disposed of or acquired in foreign currency

Throughout section 43 the expenditure incurred is to be translated at the average rate in the year of assessment when the expenditure was incurred. This will cause great administrative inconvenience for the taxpayer and SARS and it would be more suitable to use the spot rate.

(Old Mutual, P Meinel)

The averaging system is integral to the new regime. See above.

It will be unworkable to maintain records of assets in multiple currencies and then to constantly alter the translation rate to reflect the average rate for the year in which that asset is acquired. The proposals would result in average rates being applied twice and may result in the interaction with section 24I causing duplication or omission of foreign exchange differences.

(Old Mutual)

Many of the criticism raised can be addressed by the weighted average method. Section 24I will remain under the spot rate system. Lastly the complexity raised is overstated. Taxpayers can merely determine all their income in foreign currency over the year and only translate at the yearend.

The proviso to subparagraph (4) seems superfluous. A foreign exchange gain or loss will be taken into account in determining taxable income if S24I applies, the CGT consequences seem to be irrelevant.

(P Meinel)

Section 24I exchange items are also within the ambit of paragraph 43.

As a result of the deletion of paragraph 43(3), paragraph 43(4) can be renumbered 43(3).

(SAICA, PricewaterhouseCoopers)

As the whole paragraph has not been substituted, subparagraph (3) is left blank to provide the history of the subparagraph.

3.3.49 Eighth Schedule – paragraph 53 – Personal-use assets

Policies which are excluded from CGT in terms of paragraph 55 should be excluded from the list of assets which are specifically identified as not being personal-use assets.

(SAICA)

In terms of the amendment to paragraph 53 long-term insurance policies are specifically identified as assets that are not personal-use assets and policies which comply with the requirements of paragraph 55 will be excluded from CGT. It is, therefore, not necessary to refer to the policies which will be excluded in terms of paragraph 55 in paragraph 53.

3.3.50 Eighth Schedule – paragraph 55 – long-term assurance

Why do you not include policy taken out by that person over his own (that person's) life and then ceded, and that person paid no premiums whilst other person was the beneficial owner?

(Hugo van Zyl)

It is not possible to cater for all eventualities and in these circumstances the exclusion in subparagraph (1)(a) could possibly be used if the person was nominated and no amount was paid to the original beneficial owner to make it a second hand policy.

Conforming and non-conforming policies should not have different CGT treatments.

(Harry Joffe)

The provisions of section 11(w) and the regulations issued in terms of that section were introduced to prevent abuse which was taking place with employer owned policies taken out on the lives of employees. It was for this reason that a concession was made and these policies which were ceded to employees were not treated as second hand policies for CGT purposes. Non conforming policies do not have to meet any of the requirements laid down in section 11(w) and there is no justification for ignoring the fact that they are second hand policies. The effect will be that only the build up in the value of the policy after it is ceded to the employee will be subject to CGT.

The amendment only applies to buy and sell arrangements set up to cover death of a partner. Some are set up to cover severe disability and illness as well and should also be exempt.

(Harry Joffe)

An amendment will be made to cater for disability and serious illness.

3.3.51 Eighth Schedule – paragraph 63 – exempt persons

The proposed wording of the amendment could potentially exempt all persons who receive exempt income.

(PricewaterhouseCoopers)

The wording of the amendment will be changed.

3.3.52 Eighth Schedule – paragraph 74 – definition of “share”

The definition does not include a participatory interest in a portfolio comprised in any collective investment scheme.

(SANLAM)

The proposal to amend the definition of “company” in paragraph 74 to include a unit portfolio contemplated in paragraph (e) of the definition

of “company” in section 1 has been withdrawn. Therefore it is no longer necessary to include a participatory interest in the definition of “share”.

3.3.53 Eighth Schedule – paragraph 76 – distribution of cash or assets in specie received by shareholder

It is proposed that the method of accounting for capital distributions made by companies to shareholders be changed from being deducted from the base cost of the share to being added to proceeds when the asset is sold. Concern is expressed that making the change retrospectively would detrimentally affect the timing of the taxation of the capital distributions already received by shareholders.

(SAICA, Old Mutual)

The amendment is not intended to change the timing of the taxation which will occur when the share is finally disposed as in the past. The wording of the proposed amendment will be clarified.

3.3.54 Eighth Schedule – paragraphs 84 to 95 – foreign currency

Will such assets be disposed of at market value? Was it the intention of the legislator that a possible CGT liability be incurred on such a disposal of foreign currency assets?

(Banking Council)

Yes, currency gains are intended to be determined and taxed.

Paragraph 11 deals with involuntary disposals by way of theft, etc. Expropriation is also catered for. Then why are similar types of losses in respect of foreign currency assets disallowed?

(P Meinel)

Only foreign currency gains and losses are disregarded in terms of paragraph 94. It would be unfair to tax an individual on an unrealized gain or to allow a notional currency loss. Where, for example, a \$100 note is lost foreign currency gains and losses in respect of that foreign currency asset are treated consistently.

In order to make it clear that Part XIII only applies to transactions on or after valuation date should those words not be added to paragraph 85?

(SAICA)

It will be clarified that Part XIII will come into operation on 1 March 2003 and applies in respect of years of assessment commencing on or after that date.

3.4 CUSTOMS AND EXCISE ACT 91 OF 1964

3.4.1 Section 18 – goods in bond

This provision will have a negative impact on small and micro businesses in the transport industry which have the obligation to establish a bond/guarantee to cover the duty exposure of the goods he is carrying. An alternative measure should be found.

(SACOB)

In section 64D provision is made for subcontracting and for the Commissioner to accept security from any other person in respect of goods carried by a licensed remover of goods which address the concerns raised. A clearing and forwarding firm having the capacity to provide security to the Commissioner on behalf of smaller licensed removers of goods in bond who cannot themselves afford to provide such security may do so.

3.4.2 Section 44 – liability for duty

The provision for interruption of the running period for the termination of liability could create the possibility for extended refunds to taxpayers, substantial delays in getting final judgements and may not encourage SARS to bring the matter to finality speedily.

(SAICA; SACOB)

These provisions will be deleted as they require further consideration.

3.4.3 Section 50 – disclosure of information

The constitutionality of the amendment allowing the Commissioner to divulge information to non-customs and excise related conventions and agreements may be questioned. The power to disclose information could be abused without any recompense or action against SARS.

(SAICA; SACOB)

The Commissioner is only authorised to disclose information in accordance with any international agreement or convention as contemplated in section 231 of the Constitution. Conditions and limitations can be imposed for those purposes. In respect of the question of the Constitutionality of such disclosure it needs to be stated that such information may only be disclosed where it is evident that the international, regional or national public interest outweighs the potential harm of the relevant person. Where information is required to be disclosed under international agreements, other than Customs cooperation agreements, particulars of individuals are, except in circumstances of criminal activities, rarely required.

3.4.4 Section 50A – joint international and land border post administration

Where South Africa's customs personnel are more effectively trained, the lack of expertise by other authorities on South Africa's borders may open the flood gates for smuggled/grey products. It is suggested that a high level of training be undertaken prior to the establishment of single border posts.
(SAICA; PricewaterhouseCoopers)

Any international agreement concerning joint one-stop border posts which will become part of Customs law as contemplated in section 49 of the Act, will precede any such joint border administration. Annexure II of the SADC Trade Protocol, for example, makes provision for customs co-operation within SADC. The International Trade Administration Act, 2002, and the new SACU agreement will require closer customs co-operation within SACU. Particulars and details of such co-operation will be negotiated in such agreements and prescribed in the rules to the Act.

3.4.5 Section 64F – licensing of distributors of mineral fuels

A special refund provision will need to be made in the Sixth Schedule to the Act for the refunding as opposed to the rebating of the duties when goods are exported from the SACU.
(SAICA)

Schedule No. 6 provides for rebates and refunds for both excisable and fuel levy goods. The amendment proposes to provide for those circumstances where an existing licensed manufacturing warehouse sells and distributes its products through a related trading company. It is a consequence of the Duty at Source initiative and the question of existing small and new entrants is only relevant in circumstances where such persons or firms licence as manufacturing warehouses under the Act.

3.4.6 Section 75 – duty refunds

SACOB is concerned at the discretionary powers given to the Commissioner to determine, based on circumstances, whether or not evidence is reasonably sufficient to allow a duty refund. The retroactive implementation from 1 October 2002 is unacceptable and results in an inequitable situation.
(SACOB)

The proposal is to the advantage of refund applicants who would not otherwise qualify for refunds as the Commissioner may now consider other information as sufficient. Retroactivity is to the date of implementing Duty at Source for the tobacco industry. The basic

principle in duty at source is that the duty on excisable goods is assessed and payable when such goods leave the manufacturing warehouse and as a consequence refunds and set-off against accounts are provided for. The initiative further provides for the licensing of warehouses solely for export.

3.4.7 Section 99 – liability of agent for obligations imposed on principal

The constitutionality of this provision is questioned and we believe that SARS is increasingly shifting the administrative burden onto taxpayers which require taxpayers to be totally familiar with very complex tax legislation or face stiff penalties for non-compliance. We believe it is critically important for SARS to improve their staff's knowledge of these laws.

(SAICA)

It seems unreasonable that the agent must prove that all reasonable steps were taken, that the agent exercised reasonable care and that the agent is held fully responsible for all obligations imposed on the importer/manufacturer.

(SACOB)

The changes will have a profound and negative impact on the long established and internationally recognised relationship between Agent and Principal and will have the effect of encouraging illicit trade and criminal activity. Provision should be made for the acceptance of appointment of an agent.

(South African Association of Freight Forwarders)

Provisions essentially similar to those now proposed in the amendment existed in the Act since 1964 and have never caused concern previously. In a regulatory system based on a self-reporting and self-assessing system, like the Customs and Excise Act, the Commissioner is totally reliant on the information supplied by the declarant on the bill of entry either personally or by its duly authorised agent. This has always been accepted and the proposal does not increase either the liability of agents or the administrative burden. The purpose is to clarify their responsibilities and when they cease. Rules of conduct and qualification for agents are prescribed in many other administrations. Where agents are granted exceptional privileges under accreditation it is considered reasonable that they should exercise the necessary care in conforming to specific prescribed standards of conduct when participating in those activities for which the Act provides. It is agreed that training is essential both for officers and agents.

3.4.8 Section 105 – Interest

Interest rates fixed by the Minister may be percentage

points above prime. Parameters must be described within which the interest rate may be set.

(SACOB)

This section cannot prescribe the parameters as the Minister determines the interest rate under the provisions of the Public Finance Management Act, 1999.

3.4.9 Section 114 – Security for debts to the State

This amendment places the customs debtor in a less flexible position since the debtor will not be able to protect the goods by merely maintaining a small credit against its higher value.

(SAICA)

The lien of this section will in terms of paragraph (a)(vii) serve as security for the liquid amount of the right, title or interest of the person indebted to the state in the goods, subject to a credit agreement.

3.5 STAMP DUTIES ACT 77 OF 1968

No provision is made for an exemption from issue duty for transactions which qualify for relief provided in section 42 of the Income Tax Act.

(Sonnenberg Hoffmann Galombik)

The original issue of shares in all the corporate restructuring transactions should be exempt from stamp duty.

(Sanlam)

This is a Budget issue and will be considered at a later date.

4 GENERAL

4.1 Monetary limits

It is hoped that the process to review the monetary limits will continue particularly insofar they relate to the retirement fund industry.

(SAICA)

This aspect does not form part of the Bill under consideration.

4.2 Retrospective amendments

It is unfortunate in our view that certain amendments are retrospective bearing in mind that certain amendments take effect from 1 October 2001. The Republic of South Africa

Constitution Act, 1996, does not contain a prohibition on retrospective fiscal amendments as is the case in certain overseas countries where retrospective fiscal amendments are statutorily prohibited.

(SAICA)

Retrospective taxation measures generate a high level of uncertainty for business and taxpayers in general. The proposed changes to the distribution of capital profits after 1 October 2001 on liquidation and of changes to section 9D have retrospective application.

(SACOB)

The retroactive amendments were discussed with the State Law Advisor. The remaining retroactive amendments are in favour of taxpayer or clarify the provisions of the Act.

4.3 Regulations

The following regulations have not yet been issued thereby resulting in uncertainty for taxpayers.

- **Section 9E(8) – designated countries**

The Minister of Finance designated a number of countries on 1 September 2000. Any change to the list of designated countries will apply on a prospective basis.

- **Section 10(1)(d) – Ministerial conditions for approval**

The Minister has not yet prescribed conditions by way of regulation. The process of consultation on the requirements continues. No exemptions in terms of section 10(1)(d)(iii) or (iv) are presently being approved. Where an organisation is exempt in terms of the repealed provisions the old exemption will apply until such time as the Commissioner informs the organisation of his decision in terms of the new legislation.

- **Section 30(3)(a) – Ministerial conditions for approval**

The Minister has already prescribed conditions in the legislation (see section 30(3)(b)). The Minister is not obliged to prescribe further conditions, but has the right should he wish to do so.

- **Section 30(3)(e) – reporting requirements may be determined by the Commissioner**

Provision for reporting requirements will be contained in the Income Tax Return for Exempt Organisations. This is a separate income tax return developed specifically for exempt organisations.

- **Section 107A – the Minister may prescribe procedures for objections, appeals and hearings before a tax court**
- **Section 107B – Minister may by regulation prescribe circumstances under which the Commissioner may waive any claims**

The amendments to these sections have not yet been promulgated. The draft rules were released for public comment on 1 November 2002.

- **Welfare organization - list of activities for VAT purposes**

Regulations in this regard are currently being developed.

4.4 Technical amendments

A large number of suggestions for improvements to the Bill were made by commentators which are not matters of principle, but merely drafting issues. These aspects have been considered and mostly incorporated in the Bill.

Prepared by SARS and the National Treasury