REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

TAXATION LAWS AMENDMENT BILL, 2015

4 December 2015

[W.P. – '15]

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1. INCOME TAX: INDIVIDUALS, SAVINGS AND EMPLOYMENT

1.1. CLOSING A LOOPHOLE TO ENSURE A CONSISTENT TAX TREATMENT ON ALL RETIREMENT FUNDS

[Applicable provision: Section 1 of the definition of ‘pension fund’]

I. Background

The Taxation Laws Amendment Act, 2013 included amendments to the taxation of contributions to retirement funds and the requirements to purchase an annuity upon retirement for those retirement funds. Members of provident funds and provident preservation funds who are under the age of 55 on 1 March 2016 would be required to purchase an annuity with two-thirds of the value of their pension at retirement for contributions that were made after 1 March 2016, subject to the *de-minimis* threshold (however there would be no requirement to purchase an annuity on the amounts, and the growth on those amounts, that were in the provident or provident preservation fund as at 1 March 2016). Members over the age of 55 would not be required to purchase an annuity upon retirement.

II. Reasons for change

Extensive public consultations were held, including dedicated sessions with labour unions before the promulgation of the 2013 Taxation Laws Amendment Act. The retirement related reforms were initially scheduled to be implemented on 1 March 2015. At the request of some members of the Labour Constituency at NEDLAC during 2014, the retirement related reforms in the 2013 Taxation Laws Amendment Act were postponed by a year to 1 March 2016, to allow for further consultations between Government and NEDLAC. The process for consultation had not been concluded in time for the 2015 Taxation Laws Amendment Bill. As a result, after the 2015 Taxation Laws Amendment Bill was tabled in Parliament on 27 October 2015, the Minister of Finance requested that the Standing Committee of Finance consider amendments to the Bill on the retirement reforms.

III. Proposal

After consideration of the comments received, Government proposes to proceed with the broader objective of retirement reforms (as approved in the 2013 Taxation Laws Amendment Act) to ensure more equity across income groups. As a result, the following provisions are proposed with effect from 1 March 2016:

(a) Contributions by both employers and employees to pension, provident and retirement annuity funds will qualify for a tax deduction, capped at a lesser of: 27.5% of the greater of taxable income or remuneration; or R350 000 per annum.

(b) On the other hand, contributions <u>by employers</u> to pension, provident and retirement annuity funds on behalf of employees will become a taxable fringe benefit in the hands of the employee.

(c) The requirement to purchase an annuity will apply to all members, including pension, provident and retirement annuity funds. This implies that on retirement, members will be required to take one third of their retirement benefit as a lump sum and the two thirds of their retirement benefit will be paid to them every month as an annuity until they die.

(d) However, vested rights are preserved and those members over 55 years are exempted from the requirement to annuitise.

(e) In turn, the *de minimis* threshold is increased from R75 000 to R247 500. This effectively means that members of pension, provident and retirement annuity funds who do not have a retirement benefit exceeding R247 500 at retirement will not be required to annuitise. Only members who have a retirement benefit of R247 500 will be required to annuitise.

In addition to this, the legislation proposes further consultation by the Minister of Finance within two years of the implementation of the retirement reforms. The legislation proposes that the Minister of Finance, after consulting with the relevant stakeholders, review the impact and implementation of the retirement reforms and table the report on the review in Parliament not later than 30 June 2018.

IV. Effective date

The proposed amendments will come into operation on 1 March 2016 and apply in respect of years of assessment commencing on or after that date.

1.2. CLOSING A LOOPHOLE TO AVOID ESTATE DUTY THROUGH EXCESSIVE CONTRIBUTIONS TO RETIREMENT FUNDS

[Applicable provision: Section 3 of the Estate Duty Act]

I. Background

Prior to 2008 there was a limitation that individuals with a retirement annuity fund would be required to retire (purchase an annuity) before they reached the age of 70, however this was removed in the 2008 Taxation Laws Amendment Act. The intention here was to allow individuals to work beyond the regular retirement age and still contribute to their retirement.

In the same year, the Estate Duty Act was amended to exclude lump sum retirement assets from the dutiable portion of the estate upon death (pension annuities were already exempt). The explanatory memorandum stated that the amendment was intended to “alleviate financial difficulties that a family may face upon the death of the family’s income provider” and that the change was “in line with Government’s efforts to promote long-term retirement savings”.

II. Reasons for change

These two amendments opened up an opportunity for individuals to use retirement annuity contributions to avoid estate duty. Contributions to retirement annuity funds that did not receive a deduction, since they were above the deductibility limit, could pass to the estate upon death (without being subject to the retirement lump sum tax tables) and could then pass to the beneficiaries of the estate free from estate duty.

Although it would be more difficult to actively plan, the same route for avoidance of estate duty could potentially exist for contributions to provident funds or pension funds that were above the deductibility limits.

III. Proposal

To limit the practice of avoiding estate duty through retirement contributions it is proposed that contributions that were made on or after 1 March 2015 to a retirement fund that did not receive a deduction should be included in the dutiable part of the estate for estate duty purposes.

Contributions that did not receive a deduction which have been included as part of any lump sums payouts to the retirement fund member or that have been used to offset the tax liability for annuity payments to the retirement fund member will not be included in the dutiable value of the estate (to avoid any potential double counting).

IV. Effective date

The proposed amendments will come into operation on 1 January 2016 and apply in respect of the estate of the person who dies on or after that date and apply in respect of contributions made on or after 1 March 2015.

1.3. WITHDRAWAL FROM RETIREMENT FUNDS BY NON RESIDENTS

[Applicable provision: Paragraph (*b*)(*x*)(*dd*) of the definition of "retirement annuity fund" in section 1]

I. Background

Expatriates who move to South Africa for a fixed term of employment often contribute to a retirement annuity fund to continue saving for retirement in a tax efficient manner. These expatriates may during the term of their fixed employment contract in South Africa, become tax residents in South Africa by application of the physical presence test. Some of the expatriates may stay in South Africa for a short period of time and do not qualify as residents for tax purposes in terms of the physical presence test nor are they regarded as resident by the South African Reserve Bank for exchange control purposes. At the end of the fixed term contract or expiry of the work visa, these expatriates would normally leave South Africa. When these expatriates leave South Africa they intend to withdraw their lump sum contributions from their retirement annuity fund.

II. Reasons for change

The current provisions do not allow for expatriates to withdraw a lump sum from their retirement annuity when they cease to be tax resident and leave South Africa or when they leave South Africa at the expiry of the work visa. The definition of "retirement annuity fund" in section 1(b)(x)(dd) provides for a lump sum payment of benefits where the member emigrated from the country and that emigration is recognized by the South African Reserve Bank for the purposes of exchange control.

This definition only caters for South African nationals who emigrate to another country. When expatriates cease to be tax resident and/or leave South Africa after the term of the fixed

employment contract, or when they leave South Africa at the expiry of their work visa, they are not regarded as having emigrated by the South African Reserve Bank for the purposes of exchange control. As a result, they are not entitled to receive a lump sum payment from their retirement annuity funds.

III. Proposal

It is proposed that the definition of "retirement annuity fund" in section 1(b)(x)(dd) be amended to allow for expatriates to withdraw a lump sum from their retirement annuity fund if one of the two criteria is met:

1. when the expatriates cease to be tax resident and leave South Africa; or
2. when the expatriates leave South Africa at the end of their work visa.

IV. Effective date

The proposed amendments will come into effect from 1 March 2016 and apply in respect of years of assessment commencing on or after that date.

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1.4. REMOVING ANOMALIES FOR INCOME AND DISPOSALS TO AND FROM DECEASED ESTATE

[Applicable provisions: New section 9HA, sections 22(8)(*b*), 25,and paragraphs 40, 41 and paragraph 67 of the Eighth Schedule]

I. Background

Various provisions are contained in the Act that governs the tax treatment of the assets of a natural person upon and subsequent to their death. Section 25 makes provision for any income received or accrued and expenses incurred by the deceased estate for the benefit of ascertained heirs and legatees to be deemed to be income received or accrued or expenses incurred by those heirs and legatees. This approach was adopted in 1961 and was based on the premise that revenue gains and losses would not be triggered for the deceased person upon death, but that such revenue gains and losses could be taxed in the deceased estate or in the hands of an heir or legatee. The result of these provisions is that the deceased estate is treated as a conduit in respect of the income received by it if it has been derived for the immediate or future benefit of an ascertained heir or legatee.

Under this approach, the heir or legatee's tax consequences are determined with reference to the income received by and accrued to the deceased estate, which can be netted against the related deductible expenses or allowances that would otherwise have been allowed in determining the taxable income of the deceased estate.

Upon the introduction of capital gains tax, a new approach was adopted in 2001. In this regard, paragraph 40 of the Eighth Schedule treats a deceased person as having disposed of all his or her assets (barring some assets such as those bequeathed to a surviving spouse) for a consideration equal to the market value of those assets on the date of death. All capital gains and losses are therefore recognised in the deceased hands. The deceased estate is treated as

having acquired those assets at that market value and is subsequently subject to tax as a separate entity in respect of gains and losses from any disposals of assets it may thereafter undertake to persons other than the heirs or legatees of the deceased person.

II. Reasons for change

There is a mismatch between the application of the provisions dealing with capital gains tax and section 25 of the Act which results in anomalies and interpretational difficulties. The presence of the earlier provisions in section 25, in effect, allows for an heir or legatee to claim a deduction in respect of expenses not incurred by him or her. This goes against the fundamental principle underlying the Act, which requires a person to have actually borne the expense in order to be able to claim a deduction in respect of that expense. Secondly, section 25 may in some instances be negatively affected by the upfront taxation of accrued income that often does not coincide with the pay-out of monies from the deceased estate.

III. Proposal

The amendments proposed seek to align all the rules applying in respect of deceased person and deceased estates with the approach adopted in 2001. This will be achieved by moving the relevant rules to the main body of the Act. As such, a new exit charge upon death and a revised version of section 25 will now give effect to the rules currently contained in paragraphs 40 and 41 of the Eighth Schedule and will subject to tax all the gains and losses of the deceased person. In addition, roll over rules will be provided for in respect of assets inherited by a deceased person's spouse that are currently embedded in paragraph 67 of the Eighth Schedule.

In principle, gains and losses of whatever nature will, in terms of the unified rules, be triggered on a person's death with the current exceptions being preserved. Subsequently, income received by or accrued to the deceased estate will be taxed in the hands of the deceased estate and roll-over relief will be provided in respect of transfers from the deceased estate to any heir or legatee. As a rule, the legislation will allow for the deceased estate to be treated as a "natural person" (as defined in section 1 of the Act) for tax purposes. Some of the exemptions applicable to a natural person, excluding rebates contemplated in section 6, section 6A and section 6B, will apply to the deceased estate.

IV. Effective date

The proposed amendments will come into operation on 1 March 2016 and apply in respect of a person who dies on or after that date.

1.5. MEDICAL TAX CREDITS AS PART OF PAYE AND PROVISIONAL TAX: EMPLOYEES OVER 65 YEARS

[Applicable provisions: Section 6B (3) and paragraph 9(6) of the Fourth Schedule]

I. Background

Following the Minister's announcement in the 2011 Budget, the incentive regime for medical aid contributions and other qualifying expenses was changed from a deduction method to a tax credit method. This amendment in the tax system was done in phases. Individuals under the

age of 65 were migrated to the tax credit system from the 2012/13 year onwards, while individuals aged 65 years and older were only migrated from the 2014/15 year onwards.

II. Reasons for change

Currently, the additional medical expenses tax credit from qualifying medical expenses, and fees that exceed three times the credit for those over the age of 65, are not incorporated in the monthly PAYE and provisional tax calculations but rather are claimable on assessment at the end of the year. Employees over the age of 65 are experiencing a decrease in their take-home pay throughout the year as a result of the move to medical tax credits. Although they may claim back some of these amounts on assessment after the end of the tax year, these individuals experience cash flow difficulties through the year.

III. Proposal

In order to alleviate this burden, it is proposed that medical tax credits related to medical scheme contributions by those over 65 be taken into account for both monthly PAYE and Provisional tax computation.

IV. Effective date

The proposed amendments will come into operation on the date of promulgation.

1.6. BURSARY AND SCHOLARSHIP EXEMPTION FOR BASIC EDUCATION: GRADE R TO 12

[Applicable provision: Section 10(1)(*q*)(*bb*)]

I. Background

In 1 March 2013, changes were made in section 10(1)(q) to exempt all bona fide bursaries awarded by an employer to an employee from income, subject to certain limitations. Section 10(1)(q)(ii)(bb) sets different limits on the exemptions on bursaries for NQF 1 to 4 and NQF 5 to 10 qualifications as set out in the National Qualifications Framework Act, 2008, in respect of bursaries or scholarships granted to relatives of employees. The intention of the amendment was to increase the level of the exemption and cover both basic and further education.

II. Reasons for change

Item A of subparagraph (bb) of paragraph (ii) of section 10(1)(q) makes provision for the exemption of the first R10 000 of a bursary or scholarship granted to the relatives of employees in respect of qualifications to which an NQF level 1 up to and including 4 has been allocated by SAQA under the NQF Act. This implies that the exemption applies to qualifications that begin at NQF level 1. Under the NQF Act, NQF level 1 begins at grade 9. Grades R to 8 do not qualify as receiving an NQF level. Effectively, the 2013 amendments inadvertently excluded grades R to 8, which is most of basic education from qualifying for the bursary or scholarship exemption.

III. Proposal

In order to remove the anomaly created by the 2013 amendments, it is proposed that changes be made to section 10(1)(q) to expand the exemption to include grades R to 8 as intended.

IV. Effective date

The proposed amendments will be deemed to have come into operation from 1 March 2013 and apply in respect of year of assessment commencing on or after the date.

1.7. CLARIFICATION OF THE INTERACTION BETWEEN TAXATION OF SHARE INCENTIVE TRUSTS, TIME OF DISPOSAL RULES AND ATTRIBUTION OF GAINS TO TRUST BENEFICIARY RULES

[Applicable provisions: Paragraph 11(2)(j), new paragraph 13 (1)(a)(iiB), new paragraph 64C, paragraph 80(1) and new paragraph 80(2A) of the Eighth schedule]

I. Background

Over the years, a number of changes have been made in the Income Tax Act to accommodate the employee share incentive trusts. These share incentive trusts function as a warehousing vehicle in terms of which the trust acquires shares and hold these shares within the trust for future distribution to qualifying employee beneficiaries.

II. Reasons for change

There is an anomaly in the interaction between taxation of share incentive trusts in section 8C and time of disposal as well as attribution of capital gains to beneficiaries in the 8th schedule. It has come to our attention that paragraph 11(2)(j) of the Eighth schedule has been misinterpreted to mean that there is no disposal event at all by a trust in respect of an equity instrument.

III. Proposal

The amendment seeks to address the anomaly that the disposal of an equity instrument by the trust to the qualifying beneficiary constitutes a non-event for capital gains tax purposes in terms of paragraph 11(2)(j) of the 8th schedule. The clarification sought by the amendment is to defer the recognition of the capital gain in the trust when an employee share trust disposes of shares to an employee until the equity instrument is unrestricted and vests for purposes of section 8C. In particular, five amendments are proposed in this regard.

a. The first amendment is the deletion of paragraph 11(2)(j) of the 8th schedule. The reason for the deletion of this paragraph is to correct the misinterpretation that there is no disposal event at all by a trust.

b. The second amendment is the insertion of new paragraph 13 (1)(a)(iiB) of the 8th schedule which deals with the time of disposal of an equity instrument by the trust to the

qualifying employee beneficiary. The intention of this provision is to ensure that the granting of the restricted instrument by a trust to a qualifying employee beneficiary constitutes a time of disposal event. The capital gains tax implications are deferred and/or postponed until such time the equity instrument is free from restrictions and vests in the hands of a qualifying employee beneficiary for the purposes of section 8C.

c. The third amendment deals with the insertion of the new paragraph 64C of the 8th schedule, which makes provision to disregard any capital gain or capital loss determined in respect of disposal of the restricted instrument by a taxpayer to a connected person as contemplated in subsection (4)(a), (5)(a) or (5)(c) of section 8C.

d. The fourth amendment changes paragraph 80(1) of the 8th schedule to clarify that any gain as a result of this transaction will remain taxable in the trust and will not be attributed to the qualifying employee beneficiary. However, where a qualifying employee beneficiary becomes entitled to a cash amount instead of shares, the qualifying employee beneficiary will have a section 8C gain (on the basis that the beneficial interest in the trust is a section 8C equity instrument). Where the trust then dispose of shares and vests the profit in the hands of the employee, the capital gain will be attributed to the employee in terms of paragraph 80(2).

e. The last amendment is the insertion of the new paragraph 80(2A) of the 8th schedule which clarifies that where the trust disposes of shares and vests the profit in the hands of qualifying employee beneficiary, then the provisions of paragraph 80(2) will not apply if such amount is to be taken into account in the hands of qualifying employee beneficiary for the purposes of section 8C.

IV. Effective date

The proposed amendments will come into operation on 1 March 2016 and apply in respect of years of assessment commencing on or after that date.

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2. INCOME TAX: BUSINESS (GENERAL)

2.1. DEBT-FINANCED ACQUISITIONS OF CONTROLLING SHARE INTERESTS

[Applicable provision: Section 24O]

I. Background

Debt is often used to fund business acquisitions, which can be achieved by either purchasing the business assets of a target company or by purchasing the shares in that target company. The interest expense incurred by a purchaser when using debt to finance the acquisition of a business can only be deducted from income to the extent that such interest expense is incurred in the production of income.

As a defined term, “income” encompasses those amounts that are received by or are accrued to a person and are not exempt from tax. As such, interest incurred in respect of debt used to fund share acquisitions (as opposed to income producing assets) will not be deductible as the shares produce exempt dividend income. To overcome this preclusion from getting an interest deduction on debt financed share acquisitions, taxpayers often entered into multiple step transactions in order to obtain interest deductions by using debt-push-down structures.

Following the suspension of debt-deferred intra-group transactions in 2012, it was determined by Government that these debt-push-down structures were not a threat to the fiscus. It was concluded that the real danger to the fiscus was the use of excessive debt to fund debt-push-down structures. Further, the fact that interest associated with direct share acquisitions is not deductible while interest associated with indirect debt-financing through the use of tax-deferred debt-push-down structures is deductible created a contradiction in the law. As a result, a special deduction was introduced in 2012 to accommodate these debt-push-down structures. This special deduction provides for an interest deduction in respect of debt used to acquire controlling share interests in operating companies.

II. Reasons for change

The introduction of the special interest deduction in respect of debt-financed acquisitions of controlling share interests was aimed at removing the need to implement multiple step debt-push-down structures. These debt-push-down transactions involved –

a. the acquisition by an acquiring company of all of the shares of a target company using a temporary loan.

b. followed by the acquiring company (or a newly established subsidiary of the acquiring company) entering into a tax-deferred acquisition of the business assets of the target company via a tax-deferred section 45 intra-group transaction. Under this step, the business assets of the target company were acquired using long-term debt-financing.

c. finally, the some of the long-term debt proceeds were then used by the acquiring company (or distributed by the newly established company to the acquiring company) to repay the bridging loan.

As a result, the interest on the long-term debt that was used to acquire the business assets of the target company became deductible.

Currently, the special interest deduction is available when a company acquires the shares in an operating company and at the end of the day of that acquisition the company becomes a controlling group company (i.e. holds more than 70 per cent of the shares) in relation to that operating company. The special deduction may be claimed by the acquiring company only for the period that is remains a controlling group company in relation to the operating company. A company can be an operating company in one of two ways. These are: (1) a company that carries on business continuously, and in the course or furtherance of that business provides goods or services for consideration and (2) a company that is a controlling group company in relation to such a company.

The requirements to qualify for the special interest deduction, seek to mimic the conditions present in a tax-deferred debt-push-down structure. Specifically, it has always been intended that the special deduction should only be available to share acquisitions that would have

otherwise qualified for an interest deduction had they been structured by way of a tax-deferred debt-push-down structure. These include:

a. the requirement that the target company should be a continuously productive company that generates income through its income producing assets; and

b. the share acquisition should result in the acquirer becoming a controlling group company in relation to the target company, and such shareholding should remain in place for a foreseeable future as is the case when entering into a tax-deferred section 45 transaction.

However, it has been noted that the policy intention to accommodate these tax-deferred debt-push-down structures is not clearly expressed in the text of the current legislative provisions, which may lead to the abuse of the special deduction. Of great concern is the potential of allowing a full interest deduction on the acquisition of a controlling group company in relation an income producing company that derives a large portion of its value from the non-income producing fellow subsidiaries of an income producing company. In addition, the indirect acquisition of an operating company through its controlling group company can be abused to obtain an interest deduction on the shares acquisition of a minority stake in an operating company.

Debt-drop-down acquisitions in companies that do not generate income and the acquisition of minority shareholdings in income producing operations would not have qualified for the tax-deferred debt-push-down structures that the special interest deduction is intended for. This is because an interest deduction can only be claimed in respect of debt used to acquire income producing assets and section 45 only provides for a tax deferral in instances where the acquirer becomes a controlling group company in relation to the target company at the end of the day of the intra-group transaction.

III. Proposal

To align the current special interest deduction in respect of debt used to acquire controlling share interests to the underlying policy objectives the following is proposed:

A. Amendment to the definition of an operating company

It is proposed that an operating company should, in providing goods and services, generate amounts that constitute income in its hands in order to counter schemes where a full interest deduction is claimed for minimal income producing operations. An operating company's receipts and accruals in a year of assessment will now be required to consist of at least 80 per cent income generated from carrying on business continuously through the sale of goods or the rendering of services. In addition, a controlling group company in relation to an operating company will no longer be automatically considered as an operating company.

B. Amendment of the definition of an acquisition transaction

It is proposed that an acquisition transaction for purposes of the special interest deduction will now encompass the acquisition of an equity share by a company in–

1. an operating company, which thereafter becomes a controlling group company in relation to that operating company and they form part of the same group of companies as defined in section 41(1); or

2. a controlling group company in relation to an operating company that forms part of the same group of companies as defined in section 41(1) as that operating company. Similarly, it will also be required that the acquiring company should as a result of the acquisition transaction, become a controlling group company in relation to that controlling group company and form part of the same group of companies as defined in section 41(1).

C. Share interests qualifying for a special interest deduction

In order to limit the special interest deduction to share acquisitions in income generating operating companies, it is proposed that share interests that qualify for the special interest deduction should be determined with reference to the effective shareholding of the acquired company in an operating company.

In this regard, share interests that qualify for the special interest deduction will be determined as follows:

1. In the instance of a direct acquisition of equity shares in an operating company, the qualifying share interest will be those acquired equity shares in that operating company. As such, interest on debt used to fund the direct acquisition of equity shares in an operating company will be deductible subject to the provisions of section 23N.

2. In the instance of an indirect acquisition of equity shares in an operating company (i.e. the acquisition of the equity shares in a controlling group company in relation to an operating company), the qualifying interest will be determined with reference to the value of such equity shares that is derived from the underlying operating companies with which the controlling group company acquired forms part of the same group of companies as defined in section 41(1). In such an instance the interest on only the portion of debt used to fund such a qualifying share interest will be deductible subject to the provisions of section 23N.

However, as a way to accommodate bona fide and non-erosive indirect acquisitions of largely productive operations, where at least 90 per cent of the value of the equity shares of a holding company that is being acquired is derived from an equity share held by that company in an operating company, 100 per cent of the interest expense will be allowed on debt use to acquire the equity share of such a company.

D. Redetermination of share interests qualifying for a special interest deduction

It is proposed that where future reorganisations of any of the operations that were taken into account in determining the share interests qualifying for a special interest deduction are undertaken, a redetermination of the share interest qualifying should be done. Only the interest on the portion of debt used to fund the redetermined qualifying share interest will be deductible as if the acquisition transaction was entered into on the date of that reorganisation event.

In this respect, it is proposed that a redetermination of the qualifying share interest for purposes of the special interest deduction should be redetermined when –

1. a controlling group company ceases to be a controlling group company in relation to any operating company;
2. an operating company ceases to be an operating company; or
3. any company ceases to form part of the group of companies as defined in section 41(1) in relation to an operating company or a controlled group company in relation to an operating company.

E. Consequential amendments to interest limitation provisions

In order to align the proposed scenarios under which an acquisition transaction may be entered into with the interest limitation provisions that limit the interest deductions arising in respect of reorganisation and acquisition transactions, amendments in those provisions will be made. These will align the definition of an acquisition transaction for purposes of those provisions with the proposed definitions discussed in points (1) and (2) above.

IV. Effective date

The proposed amendments will come into operation on 1 January 2016 and apply in respect of years of assessment ending on or after that date.

2.2. ANTI-AVOIDANCE RULE IN RESPECT OF ASSET FOR SHARE TRANSACTIONS

[Applicable provision: Section 42(5)]

I. Background

As a mechanism to encourage corporate restructuring, section 42 provides roll-over relief when assets giving rise to income or capital gains are transferred to a company in exchange for the issue of shares in that company. In this respect, the provision requires that assets transferred and acquired by a company, must retain their nature in the hands of the company subsequent to the transfer (i.e. trading stock must be held as trading stock and capital assets must be held as capital asset by the company). However, no requirement is placed on the nature of the equity shares in the hands of the transferor.

This provision has an anti-avoidance measure (subsection (5) of section 42) aimed at preventing the tax arbitrage achieved by a transferor selling allowance assets and trading stock tax-free in terms of an asset-for-share transaction and shortly thereafter selling the equity shares acquired as a result as capital assets. As a result, the transferor who acquires equity shares and disposes of those equity shares within 18 months of an asset-for-share transaction is treated as having disposed of those equity shares as trading stock where the equity shares were acquired by the transferor in exchange for assets whose market value is mainly attributable to allowance assets and trading stock.

II. Reasons for change

The intention of the roll-over provisions in the Act is aimed at tax deferral and not to alter the tax consequences involved in a restructuring. Subsection (5) of section 42 was intended to prevent the abuse of the roll-over provisions that seeks to alter the tax treatment arising on the disposal of assets which is dependent on the nature of those assets.

However, the current wording of this anti-avoidance provision creates unintended anomalies and potentially converts the nature of the equity shares to assets held as trading stock.

III. Proposal

In order to remove these unintended anomalies, it is proposed that the current wording in subsection (5) of section 42 should be amended to clarify that the anti-avoidance provision only seeks to include as gross income, the consideration received by the transferor on the disposal of the equity shares previously acquired in terms of an asset-for-share transaction in the circumstances contemplated under that provision.

IV. Effective date

The proposed amendments will come into operation on the date of promulgation.

2.3. ADDRESSING THE PROBLEM OF RETURN OF CAPITAL AFTER A TAXPAYER HAS HELD A SHARE FOR THREE YEARS

[Applicable provisions: Section 9C(1) of the definition of “qualifying share” and section 9C(2)]

I. Background

Prior to the introduction of section 9C, the gains realised on the sale of equity shares were either taxed as ordinary income or capital gains depending on the facts and circumstances. However, the facts and circumstances test proved problematic and in order to provide a more equitable treatment section 9C was introduced in 2007.

II. Reasons for change

Section 9C provides that any amount, other than a dividend, received or accrued in respect of a qualifying share will be deemed to be of a capital nature. This provided taxpayers with the certainty that if they hold equity shares for a period of at least three continuous years, the gains and losses on disposal will be of a capital nature regardless of intention.

A. Disposal

The current policy intent currently requires an equity share to be disposed, including a deemed disposal under paragraph 12 of the Eighth Schedule, before the section can be applied. The section is silent as to what a disposal is or its meaning, leading to possible misinterpretation. It is also argued that the current paragraph 12 reference with regard to a deemed disposal is misplaced since the insertion of section 9H.

B. Return of capital

It has been submitted to National Treasury that the current legislation does not address the issue of a return of capital, other than cash, received on qualifying shares.

The term ‘return of capital’ is not a new concept to the Act e.g. a return of capital by a company by way of a distribution will result in a reduction of base cost of the equity shares held by the shareholder to the extent that the return of capital made by the company is greater than the base cost of the equity shares.

On a basic application of the Act, any return of capital, other than cash, on equity shares held by a taxpayer would be subject to facts and circumstances test e.g. any return of capital, other than cash, would be revenue in nature in the hands of a share dealer. However through the application of section 9C on the underlying equity shares the facts and circumstances test becomes blurred.

C. Expenses

If a share trader incurs any debt to purchase equity shares with a term longer than three years, the share trader would benefit from an interest deduction even after the equity share is deemed to be capital in nature. This provides the taxpayer with the unintended benefit of an allowable expenditure on an equity share that is of a capital nature which is contrary to current tax practice in the Act. The legislation does allow for a recoupment of all expenses upon disposal of the qualifying share but due to the possible timeframe before a qualifying share is disposed it is proposed that the legislation be tightened to close the unintended anomaly against prevailing tax policy.

III. Proposal

A. Meaning of the term disposal for purposes of section 9C

The meaning of the term “disposal” in respect of an equity share that has been held for a period of at least three years should be clarified to mean disposal as defined in paragraph 1 of the Eighth Schedule as well as a disposal as contemplated in section 9H.

B. Removal of the definition of “qualifying share”

To ensure clarity, the definition of “qualifying share” will be removed and relevant consequential amendments will be made in section 9C to more clearly reflect the policy intent that (a) any amount received or accrued (including a return of capital) and (b) that any expenses incurred in respect of an equity share that has been held for a period of at least three years will be deemed to be of a capital nature.

C. Return of capital or expenses incurred in respect of an equity share

A return of capital on equity shares held for a period of at least three years will be treated as a capital receipt. Any expenditure that is incurred in respect of an equity share that has been held for a period of at least three years will be deemed be of a capital nature and will not be deductible. It is important to note that the tax deductible expenditure incurred in relation to the

equity share prior to being held for a period of at least three years will still be subject to recoupment upon disposal.

IV. Effective date

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

2.4. REMOVING POTENTIAL ANOMALIES ARISING FROM CANCELLATION OF CONTRACTS

[Applicable provisions: Paragraphs 3, 4, 11, 20 and 35 of the Eighth Schedule]

I. Background

The cancellation of any contract is regarded as a disposal for capital gains tax purposes as contemplated in the Eighth Schedule.

The tax treatment of such cancellation will be determined by a facts and circumstances test to draw a distinction between whether the contract was cancelled in the same year of assessment in which the contract was entered into or if that contract was cancelled in the subsequent year of assessment in which the contract was entered into.

The Eighth Schedule further makes the distinction between the taxpayers involved in the contract and the two distinctive separate tax events – the original owner that initially disposes of an asset to another person and the new owner that obtains the asset from the original owner, but that is deemed to dispose of the asset back to the original owner upon the cancellation of the contract.

A. Same year cancellation

When a contract is entered into and cancelled in the same year, the Eighth Schedule contains distinct adjustment rules with the intention too effectively from a taxation point of view, put the taxpayers in a zero tax position as if they never entered into the transaction.

B. Subsequent year cancellation

However, from a tax event perspective if the cancellation of a contract occurs in a subsequent year to when it was entered into, in summary, based on the application of current legislation, the original owner will have a deemed capital loss equal to the proceeds received in the year of disposal while the base cost in the year of the original disposal is treated as capital gain in the year of cancellation. The intended policy effect was to reverse the previous year's capital gain on the asset as an aggregate capital loss in the year of cancellation.

II. Reason for change

At issue is the anomaly relating to the base cost of the asset in the hands of the original owner that arises when a contract is cancelled in either the current or subsequent year of assessment which can be subject to abuse. This is especially prevalent between connected persons.

A. *Same year cancellation*

The current adjustment rules as contemplated in the Eighth Schedule is flawed in that it allows a reduction of the proceeds in the hands of the original owner to the value of the amount that has been repaid or has become repayable to the person to whom the asset was sold. This has a netting effect on the amount of proceeds effectively reducing it to nil. However, the base cost of the asset in the hands of the original owner is unaffected resulting in a possible capital loss in the hands of the original owner.

The disposal of the asset in the hands of the new owner as a result of the subsequent cancellation of the contract is also subject to the current adjustment rules that would give rise to the same tax effect as the normal disposal rules as contemplated in the Eighth Schedule had they been applied. In lieu of anomalies faced by the original owner it is clear that current adjustment rules need to be amended and streamlined to allow for greater simplification and effectiveness of the legislation.

B. *Subsequent year cancellation*

The normal application of the provisions of the Eighth Schedule relating to the disposal (and acquisition) will apply to both parties of the transaction on a cancellation in a subsequent year. The original owner, specifically reacquiring the asset either at the actual amount incurred to obtain or in this case reacquire the asset (the amount refunded) or at the value of the asset exchanged for the re-acquisition of the original asset (market value of the debt asset cancelled). This could give the original owner the unintended benefit of a step-up in base cost purely through the working of the legislation without actually having paid or given up any economic benefit/value in the chain of ownership change as the previous year's gain is netted off through a capital loss in the original owner's hands during the year of cancellation. The provisions of the Eighth Schedule that further provides for the capital loss equal to the capital gain in the year of cancellation could also result in decreased capital.

III. Proposal

A. Same year cancellation

To amend the anomaly of a capital loss on the disposal and subsequent cancellation of a contract in the hands of the original owner in the same year of assessment it is proposed that a disposal and subsequent cancellation of a contract in the hands of the original owner be specifically excluded from a disposal as contemplated in the Eighth Schedule. This will have the effect that no capital gain/loss calculation will be required and that the base cost in the hands of the original owner will be the exact same amount as it was prior to entering into the contract.

B. Subsequent year cancellation

It is proposed that if a contract is cancelled in a subsequent year of assessment to which it was entered into, that certain amendments are made to the Eighth Schedule to ensure a more equitable outcome of the cancellation of the contract within the tax frame.

C. Base cost

Insertion of a new paragraph that effectively limits the base cost of the asset reacquired in the hands of the original owner to an amount equal to the base cost of that asset prior to entering

into the relevant contract on the disposal of the asset that has subsequently been cancelled. To reflect actual economic value / expenses incurred post entering into the contract, the base cost of the asset reacquired will take into account any subsequent expenditure incurred by the new owner as allowed under paragraph 20 of the Eighth Schedule.

IV. Effective date

The proposed amendments come into operation on 1 January 2016 and apply in respect of disposals made during any year of assessment commencing on or after that date.

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

3.1. EXTENSION OF MURABAHA AND SUKUK TO LISTED ENTITIES

[Applicable provisions: Section 24JA(1) and (7)]

I. Background

In 2010, enactments were made in the Taxation Laws Amendment Act of 2010 recognising diminishing musharaka, mudaraba and murabaha as forms of Islamic finance equivalent to traditional finance entailing interest. These forms of Islamic finance were to be offered by banks. Subsequently in 2011, the changes were made to the Act to introduce sukuk as another form of Islamic finance limited to Government. However, sukuk financing arrangements has been extended to public entities with effect from 1 April 2015.
In Islamic finance, a murabaha is an unconditional contract of sale between buyer and seller where the goods, cost price, mark-up and payment date are all clearly defined and agreed upfront.

Generally, sukuk which is often referred to as “Islamic bond” means a claim similar to that represented by a trust certificate. The claim stems from the fact that the certificate represents a beneficial ownership interest in the underlying asset generating the cash flow.

II. Reasons for change

Although Sharia compliant financing arrangements have been introduced in stages, it has always been the Government’s intention to ensure that these financing arrangements are accessible to other entities as well as an additional source to raise capital.

III. Proposal

It is proposed that the current legislation in respect of murabaha and sukuk be extended to cover companies listed on a South African exchange.

IV. Effective date

The proposed amendments will come into operation on 1 January 2016 and apply to years of assessment commencing on or after that date.

3.2. ALLOWING REITS TO DEDUCT TAX DEDUCTABLE DONATIONS

[Applicable provision: Insertion of a new subsection (2A)(c)of section 25BB]

I. Background

The Act provides for a deduction in respect of any bona fide donations made to –

i. a public benefit organisation (PBO) approved by the Commissioner;

ii. an entity which has been approved by the Commissioner as being exempt;

iii. any public benefit organisation approved by the Commissioner under (i) above which provides funds or assets to any PBO, institution, board or body contemplated in section 18A(1)(a); or

iv. the government, any provincial administration or municipality to be used for the purpose of any activity contemplated in Part II of the Ninth Schedule of the Act.

The deduction in respect of all qualifying bona fide donations is limited to 10 per cent of the taxpayer's taxable income as determined before that deduction. The donation must be supported by an official receipt issued under section 18A by the PBO, institution, board or body or the government, provincial administration or municipality concerned. Any amount of the qualifying donation that exceeds the 10 per cent limit may be carried forward to the following year for a deduction but will also be subject to the 10 per cent limit in the following year.

Some Real Estate Investments Trust ("REITs") or controlled companies make donations in order to promote local communities in areas where a REIT or its controlled company's buildings are situated. These deductions are no longer effectively deductible by virtue of the 10 per cent net income limitation under section 18A as a result of a special tax dispensation for REITs.

Section 25BB(2)(b) provides that a REIT or a controlled company that is a resident must deduct "qualifying distributions" made by it during the year of assessment which does not exceed its taxable income for that year of assessment excluding taxable capital gains which is included in terms of section 26A. In essence, a REIT or a controlled company is granted a deduction in respect of any of its rental income that it distributes to its shareholders or pays as interest to its investors.

II. Reason for change

Due to the current wording of section 25BB(2)(b), a REIT or a controlled company has no or little taxable income after the deduction of a "qualifying distribution" since REITs and controlled companies in practice distribute the majority (if not all of) their rental income to their shareholders, very minimal levels of taxable income is expected in any given year after the deduction of a "qualifying distribution". As such, a REIT or controlled company will have a very low or no limit for a section 18A qualifying donation deduction. This presents a disincentive for these entities as they do not benefit from a deduction when they fund projects that uplift the surrounding communities.

Example 1:

Under the current legislation if a REIT or controlled company has a taxable income (before taking into account deductions under qualifying distributions) of R

20 million, which includes a taxable capital gain of R1 million under section 26A, it can distribute qualifying distributions of R19 million. If it distributes the whole amount of R19 million, it will have R1 million capital gains as taxable income. Since section 18A provides that a REIT or a controlled company of a REIT may only distribute 10% of its taxable income before allowing a deduction under section 18A, the REIT or controlled company's section 18A deduction will be limited to R100 000. The REIT or controlled company will have to pay tax on R900 000.

Example 2:
If the REIT or controlled company has taxable income of R20 million but no taxable income under section 26A, it distributed R19 million under section 25BB(2) and made a donation of R1 million to a section 18A organisation, its deduction under section 18A will still be limited to R100 000 since it may only claim a deduction of 10% of its taxable income before making the section 18A donation. The REIT or controlled company will still have to pay tax on the R900 000. The tax of R252 000 (R900 000 x 28%) will probably be funded out of capital of the REIT or controlled company.

III. Proposal

It is therefore proposed that a REIT or a controlled company should be allowed to determine their limit for a section 18A deduction with reference to its taxable income before taking into account its deduction in respect of a qualifying distribution but after taking into account the deductions contemplated in section 2A(a) and (b).

IV. Effective date

The proposed amendments will come into operation on 1 January 2016 and will apply in respect of years of assessment commencing on or after that date.

3.3. ALLOWING REITS TO DEDUCT FOREIGN TAXES PAID BY FOREIGN VESTING TRUSTS

[Applicable provision: Insertion of subsection (2A)(a) in section 25BB]

I. Background

South African ("SA") residents are taxed on their world-wide income. However, SA residents are entitled to tax credit (i.e. rebates) against SA normal tax in respect of foreign sourced income proved to be payable. On the other hand, non-residents are only subject to tax on the basis of income earned from sources within or deemed to be within SA.

A foreign tax credit is provided in terms of section 6quat and applies if the following requirements are met:

i. income received or accrued to SA resident from a non-SA source;

ii. proportional amount in terms of controlled foreign company;

iii. taxable capital gain from a non-SA source;

iv. any amount referred to item (i) or (ii) above that is attributable to the resident in terms of section 7 of the Act;

v. any foreign capital gain that is attributable to the resident in terms of paragraphs 68 to 72 or paragraph 80 of the Eight Schedule;

vi. any of the amounts listed in the first three items above that represents capital of any non-resident trust is included in the income of that resident in terms of section 25B(2A) of the Act or is taken into account in determining the resident's aggregate capital gain or capital loss in terms of paragraph 80(3) of the Eighth Schedule.

However, in the case of a REIT or a controlled company which is a beneficiary of a foreign vesting trust, the income of the foreign vesting trust will automatically be included in the income of the REIT or a controlled company and the REIT or controlled company will not be entitled to tax credit or rebates.

II. Reasons for change

As stated above the REIT or controlled company is not entitled to a rebate or deduction applicable in section 6quat because the current provisions of section 25BB(2) does not make provision for a REIT or a controlled company to claim rebates or deduction in respect of foreign taxes on income.

III. Proposal

It is proposed that a REIT or controlled company will be entitled to claim a deduction equal to the section 6quat amount of tax paid by a foreign vesting trust to a foreign government which is in proportion to the interest of the REIT or controlled company in such foreign vesting trust. It is important that the claim for foreign tax credits in this regard only caters for circumstances where a REIT or a controlled company invests in a flow through foreign entity (foreign vesting trust) and does not cater for situations where the foreign entity is not a flow through entity.

> ***Example:***
> A South African REIT invests in a foreign vesting trust situated in a foreign country (Country A) and holds property in country A. The foreign vesting trust earns rental income in country A on the properties it owns. The foreign vesting trust pays corporate tax in respect of rental income in country A. In terms of the proposed amendment, as the foreign vesting trust is a flow through entity, foreign taxes paid by the foreign vesting trust in Country A in respect of rental income will qualify for a deduction in terms of the new section 25BB(2A)(a).

IV. Effective date

The proposed amendments will come into operation on 1 January 2016 and will apply in respect of years of assessment commencing on or after that date.

3.4. ALLOWING REITS TO DEDUCT FOREIGN WITHHOLDING TAXES ON DISTRIBUTIONS MADE BY FOREIGN VESTING TRUSTS

[Applicable provision: Insertion of subsection (2A)(b) in section 25BB]

I. Background

Currently, a REIT or controlled company as defined in section 25BB(1) is not allowed to claim a deduction in respect of foreign withholding taxes paid on distributions made by a foreign vesting trust to such REIT or controlled company. This is due to the fact that the REIT or controlled company is not directly carrying on a trade in respect of the distributions made by a foreign vesting trust to it. The REIT or a controlled company is receiving a passive income.

II. Reasons for change

The withholding taxes paid by a foreign vesting trust in respect of distributions made to a REIT or controlled company will have an impact on the REIT or controlled company taxable income as it will ultimately reduce the actual taxable income received by such REIT or a controlled company.

III. Proposal

It is proposed that changes be made to the legislation by inserting a new section 25BB(2A)(b) to allow a REIT or a controlled company to deduct foreign withholding tax paid in respect of distributions made to it by a foreign vesting trust situated in a foreign country.

Example

A South African REIT invests in a foreign vesting trust situated in a foreign country (Country A) and holds property in country A. The foreign vesting trust earns rental income in country A on the properties it owns. The foreign vesting trust pays corporate tax in respect of rental income in country A. On a six monthly basis, the foreign investment trust distributes income to the REIT in South Africa. The income distributed to the REIT in South Africa is subject to a 15 per cent withholding tax in Country A and the foreign investment trust distributes the income to the REIT in South Africa net of Country A 15 per cent withholding tax rate.

In terms of the new section 25BB(2A)(a), corporate foreign taxes paid by the foreign vesting trust in Country A in respect of rental income will qualify for a deduction. In turn, according to the proposed amendment, foreign withholding taxes paid in the rate of 15 per cent by the foreign investment trust in respect of income distributed to a REIT in South Africa will qualify for a deduction in terms of the new section 25BB(2A)(b).

IV. Effective date

The proposed amendments will come into operation on 1 January 2016 and will apply in respect of years of assessment commencing on or after that date.

3.5. REPEAL OF FINANCIAL INSTRUMENT REQUIREMENT ON AMOUNTS TO BE INCLUDED IN THE INCOME OF A REIT

[Applicable provision: Section 25BB(3)]

I. Background

Currently, section 25BB(3) makes provision for any amount received by or accrued by a REIT or controlled company in respect of a financial instrument to be included in the income of that REIT or controlled company. The policy rationale for the provisions of section 25BB(3) was to achieve neutrality in tax treatment of amounts received or accrued in respect of financial instruments and the deductible on-distributions of those amounts by the REIT and controlled company. In the absence of this provision, exempt dividends or partially taxed foreign dividends could have resulted in a full deduction when on-distributed.

II. Reasons for change

The meaning of the term “financial instrument” in the current provisions of section 25BB(3) is too wide and it has an unintended consequence of including the repayment of the capital amount advanced as a loan by a REIT or controlled company.

III. Proposal

It is proposed that the provisions of section 25BB(3) be repealed. Moreover, the requirement in the definition of “qualifying distribution” in section 25BB(1) that at least 75% of a gross income of a REIT or controlled company must be rental income, will ensure that a REIT or controlled company mainly invest in immovable property, REITs, controlled companies or property companies.

IV. Effective date

The proposed amendments are deemed to have come into operation on 1 April 2013 and apply in respect of years of assessment commencing on or after that date.

3.6. TRANSITIONAL TAX ISSUES RESULTING FROM THE REGULATION OF HEDGE FUNDS

[Applicable provisions: Sections 41(1), 42(1), 42(3A), insertion of a new paragraph (*bB*) of subsection (14) of section of 44 and section 64D]

I. Background

In the 2015 Budget Review, the Minister of Finance made an announcement and on the same day declared the business of hedge funds to be Collective Investment Schemes (CIS) with effect from 1 April 2015. In terms of Government Gazette No 38503 of 25 February 2015, the managers of all hedge funds must within 6 months from 1 April 2015, lodge with the Registrar of Collective Investment Schemes (who is the Executive Officer of the Financial Services Board (FSB)) an application to register as a manager to operate a hedge fund in accordance with the Collective Investment Schemes Control Act.

The FSB will not require a hedge fund to dispose of undesirable assets and reinvest the proceeds in assets of another class prior to its approval by the FSB as a CIS. Undesirable assets may be disposed of after the structure of the hedge fund has been accepted by the FSB and the hedge fund is regulated as a CIS.

II. Reason for change

The regulation of some declared CISs has an unintended transitional tax consequence. The tax consequence results from tax arising on the disposal by holder of an interest in a hedge fund to a trading vehicle which is acceptable to and approved by the FSB.

III. Proposal

In order to allow for effective regulation of a CIS that is approved by the FSB, the transitional tax amendments listed below are proposed in the corporate re-organisations rules to allow the holder of interest in a hedge fund to dispose of its interest to a portfolio of a hedge fund collective investment scheme on a tax neutral basis. As a result, no capital gains tax, normal tax or Securities Transfer Tax will arise on the transfer of the assets by the holder of an interest in the hedge fund to the portfolio of a hedge fund collective investment scheme due to the roll-over relief provided by the proposed changes in the corporate reorganisations provisions.

A. Disposal of an interest in a hedge fund

1. Definitions of “company” and “equity share” in section 41

It is proposed that the definitions of ‘company’ and ‘equity share’ in section 41 be amended to include a portfolio of a hedge fund collective investment scheme.

2. Definition of “qualifying interest” in section 42

Paragraph (b) of the definition of the term “qualifying interest” in section 42(1) will be amended to include any equity share held in a portfolio of a hedge fund collective investment scheme.

3. Asset for share transaction in section 42

The proviso to paragraph (a)(ii) of the definition of “asset for share” transaction in section 42(1) will be amended to provide that the capital/revenue intention test will not apply where assets are transferred to a portfolio of a hedge fund collective investment scheme. As a result, section 42 could be used to unwind unregulated hedge funds even in the case of partnerships. The partner could dispose of its interest in the partnerships to the portfolio of a hedge fund collective scheme in exchange for a participatory interest in the portfolio of a hedge fund collective investment scheme. Thus, when a partner disposes of its interest in an unregulated hedge fund, the partnership is dissolved.

4. Other consequential amendments in section 44 (amalgamation transaction)

Certain consequential amendments are made in section 44 dealing with amalgamation transactions in order to allow for the tax neutral amalgamation of two portfolios into a single portfolio.

B. Changes to the definition of "regulated intermediary" in section 64D

Currently, in terms of section 64G(2)(c) a company that declares and pays dividends is not required to withhold dividends tax if it pays such dividends to a regulated intermediary. The regulated intermediary has an obligation to withhold dividends tax in this regard. It is proposed that the withholding tax regime applicable to collective investment scheme in securities should be granted to portfolio of hedge funds collective investment schemes and that the definition of regulated intermediary in section 64D be expanded to include a portfolio of hedge fund collective investment schemes.

IV. Effective date

The proposed amendments will be deemed to have come into effect on 1 April 2015.

3.7. SECURITIES TRANSFER TAX AND CAPITAL GAINS TAX IMPLICATIONS ON COLLATERAL ARRANGEMENTS

[Applicable provisions: Sections 1, 9C(4), 22(4B) and (9), and paragraph 11(2)*(n)* of the Eighth Schedule, Sections 1 and 8(1)*(u)* of the Securities Transfer Tax Act]

I. Background

Most debt agreements involve the usage of collateral, more specifically the use of equity going forward as the demand for liquid assets is increasing due to higher capital and liquidity requirements. The provision of collateral can take two forms, namely, (i) pledge (no transfer of beneficial ownership with no tax implications) and (ii) outright transfer (out and out cession of beneficial ownership with tax implications).

II. Reasons for change

In 1996, a specific tax dispensation for Securities Lending Arrangements (as currently defined in the Act) was made in the Act and the Stamp Duties Act (subsequently incorporated in the Securities Transfer Tax Act). As a result, the event of granting collateral by way of a pledge for securities lending is currently not subject to income tax and securities transfer tax because it does not involve the actual transfer of beneficial ownership. The specific tax dispensation for Securities Lending Arrangements is limited and effectively allows for the deferral of securities transfer tax for a limited period of 12 months.

On the other hand, when an outright transfer of collateral is executed during a securities lending transaction, equity securities are subject to both income tax and securities transfer tax, due to the fact that the outright transfer of collateral involves the actual transfer of beneficial ownership.

Regulatory changes applying to the financial sector have necessitated the urgent review of the tax treatment of collateral. Effectively the regulatory changes will result in financial sector participants especially the banking and pension fund industries having to:

- meet more stringent capital requirements e.g. Liquidity Coverage Ratio under Basel III for the banking sector; and

- hold collateral posted to the pension fund in the name of the said pension fund under Regulation 28.

The benefits of an outright transfer of collateral have been identified by the financial sector industry as:

- assistance to the financial sector industry in meeting regulatory changes and demands;

- increase in availability of high quality liquid assets which directly increases market liquidity;

- reduction of transaction costs and market pricing because of the ability to rehypothecate collateral and reduce tax costs; and

- making South Africa more attractive as an investment destination.

III. Proposal

In order to minimize the negative effects on business practices and market liquidity, the following amendments are proposed:

A. Securities Transfer Tax Exemption for 12 months and Capital Gains Tax exemption if shares are returned within 12 months

It is proposed that a similar tax dispensation as applies to Securities Lending Arrangements be introduced for the outright transfer of collateral and that no income tax and securities transfer tax implications arise for collateral arrangements for a duration of up to 12 months. Similar to securities lending arrangements listed shares will not be allowed to be provided as collateral for longer than 12 months. This implies that the concept of "rolling collateral" will not be allowed. The 12-month limit will assist to avoid scenarios of sales disguised as collateral transactions or transactions where the collateral is used against rolling debt positions that are designed to keep an collateral position open for longer than 12 months.

B. Listed shares

The proposed exemption for the outright transfer of collateral will only apply to the instruments listed in paragraph (a) of "security" as defined in the Securities Transfer Tax Act that is listed on an exchange. As a matter of clarification, the new proposed definition of "listed shares" will include depository receipts.

C. Identical Share

To ensure that the wording of the Act correctly reflects the policy intent that the return of collateral of the same kind and of the same or equivalent quantity and quality means a share of the same class in the same company as that share originally transferred in terms of a collateral arrangement, it is proposed that a definition of "identical share" be inserted in section 1 of the Act.

D. Amendments to the provisions relating to trading stock in section 22

It is proposed that consequential amendments be made by inserting a new subsection (4A) and additional paragraphs in subsection (9) of section 22 relating to the amounts to be taken into account in respect of values of trading stock in respect of collateral arrangements.

E. Definition of Collateral Arrangement

It is proposed that a definition of a collateral arrangement reflecting the above-policy intent be inserted in section 1 of the Securities Transfer Tax Act.

F. Corporate re-organisation impact

The definitions of "identical share" and "collateral arrangement" will also acknowledge the impact of an amalgamation transaction as envisaged in section 44 on the inability of a party to a collateral arrangement to return a share of the same class in the same company as that share originally transferred in terms of a collateral arrangement.

IV. Effective date

The proposed amendments come into operation on 1 January 2016 and apply in respect of collateral arrangements entered into on or after that date.

3.8. REFINEMENTS TO SECURITIES LENDING ARRANGEMENTS

[Applicable provisions: Sections 1, 9C(4) and 22(4A)]

I. Background

In 1996, a specific tax dispensation for Securities Lending Arrangements (as currently defined in the Act) was made in the Act and the Stamp Duties Act (subsequently incorporated in the Securities Transfer Tax Act). As a result, the event of granting collateral by way of a pledge for securities lending is currently not subject to income tax and securities transfer tax because it does not involve the actual transfer of beneficial ownership. The specific tax dispensation for Securities Lending Arrangements is limited and effectively allows for the deferral of securities transfer tax for a limited period of 12 months.

In 2015, the Minister of Finance made an announcement in the Budget to review the tax implications of an outright transfer in beneficial ownership of collateral and subsequently ensure the limitation on the use of collateral arrangements in possible tax avoidance schemes. As a result, amendments have been made in the 2015 Taxation Laws Amendment Bill (TLAB) so that the tax dispensation of collateral arrangement is similar to that of securities lending arrangement. Consequently, no capital gains tax and Securities Transfer Tax implications arise in instances where shares are provided on an out and out basis to the extent that identical

shares are returned to the borrower by the lender within twelve months from the date that the collateral arrangement was entered into.

II. Reasons for Change

The proposed amendments to the 2015 TLAB provides similar tax dispensation on securities lending arrangement and collateral arrangement. The 2015 amendments necessitated the introduction of the concept 'identical share" for 'collateral arrangements' to ensure that the concept of 'collateral arrangement' correctly reflects the original policy intent in securities lending arrangements as it relates to the return of securities used as collateral, being of the same kind and of the same or equivalent quantity and quality. The legislation now clearly imitates the policy that the return of collateral of the same kind and of the same or equivalent quantity and quality means a share of the same class in the same company as that share transferred as collateral barring the impact of an amalgamation transaction as envisaged in section 44.

However, there is no similar definition in the Act regarding the concept of "identical share" on securities lending arrangements.

III. Proposal

As the proposed, the tax dispensation regarding collateral arrangement is similar to that of securities lending arrangements; it is proposed that the current provisions in the securities lending arrangements should be updated to be similar to the new provisions contained in the proposed tax dispensation on collateral arrangements.

A. Identical Security

It is proposed that a definition of "identical security" similar to "identical share" contained in collateral arrangement be inserted in section 1 and as a consequential replaces the concept of "the same kind and of the same or equivalent quantity and quality" as used for securities lending arrangements to now match a similar use as in collateral arrangements.

B. Lending Arrangement definition consequential

Similar to collateral arrangement, the definition of "lending arrangement" in the Security Transfers Tax Act will also be amended to acknowledge the impact of an amalgamation transaction as envisaged in section 44 on the inability of a party to a lending arrangement to return a share of the same class in the same company as that share originally transferred in terms of that lending arrangement.

IV. Effective Date

The proposed amendments will come into operation on 1 January 2016 and apply to any securities lending arrangement entered into on or after that date.

3.9. TAX ISSUES RESULTING FROM INTRODUCTION OF THE SAM BASIS FOR SHORT TERM INSURERS

[Applicable provisions: Sections 28(3), and section 28(7) to (11)]

I. Background

Section 28(3)(a) allows a deduction for reserves calculated in terms of section 32(1)(a) of the Short-term Insurance Act in respect of outstanding claims reserve (OCR) and claims incurred but not yet reported (IBNR).

Section 28(3)(b) allows a deduction for reserves in respect of unearned premium provisions (UPP) calculated in accordance with section 32(1)(b) of the Short-term Insurance Act and contains a provision that the reserve for a cash back bonus must be based on the regulatory regime for short-term insurance.

Controlled foreign companies (CFCs) engaged in offshore short-term insurance can deduct reserves related to the carrying on of a short-term insurance business outside South Africa. The nature of these deductions is similar to the deductions available for local insurers. In order for a CFC to get this deduction, the amounts must be required by the short-term insurance law of the country in which the CFC is subject to tax by virtue of residence, domicile or place of effective management. In addition, these amounts must be consistent with the liabilities under section 32 of the Short-Term Insurance Act as if incurred in South Africa.

II. Reasons for change

A. Introduction of SAM

The Financial Services Board will introduce the Solvency Assessment and Management ("SAM") framework in 2016, which will replace the regulatory regime for short-term insurers and long-term insurers. SAM is a risk-based supervisory framework, with the primary objective of improving policyholder protection and contributing to financial stability. The SAM framework requires the insurer to invest in a manner that is appropriate to the nature of its liabilities and make provision for certain reserves to be kept.

The SAM framework however recognises all future income on a policy upfront and is therefore not suitable as a basis for calculating tax where the Act only includes gross income when it is received by or accrued to a taxpayer.

In addition, the concept of IBNR will no longer exist under the SAM regime as future reported claims are captured within the expected future claims cash flows.

B. New Insurance Act

In 2016 a new Insurance Act will also be promulgated and will replace certain sections of the Short-term Insurance Act and the Long-term Insurance Act. The introduction of the new Insurance Act will therefore repeal the current provisions of section 32(1) of the Short-term Insurance Act, which currently regulate deductions that are allowed under section 28(3) of the Act.

C. IFRS 4

Currently, most countries that apply Solvency II which is equivalent to SAM use either IFRS or their country's accounting standards as the basis for determining the tax liability.

III. Proposal

A. Deductions in terms of new section 28(3)

It is proposed that amendments should be made to section 28(3) so that a short-term insurer may claim deductions in terms of the new section 28(3) of the Income Tax Act, that were recognised as liabilities for purposes of IFRS relating to:

1. claims (meaning claims reported but not yet paid (OCR)and claims incurred but not reported (IBNR)
2. premium;

Due to the proposed treatment of cash-back bonus going forward (see below), the term "unearned premium" will be changed to "premium".

Deductions that will be allowed relating to (a) OCR and (b) IBNR will be the net amount after the short-term insurer had reduced the amount recognised in accordance with IFRS in respect of amounts recoverable under policies of reinsurance and further reduced by deferred acquisition cost.

B. Treatment of cash-back bonus

A premium provision, known as cash-back bonus which was included as unearned premium provisions for regulatory purposes under Board Notice 169 of 2011 will be allowed as a deduction as part of the amounts recognised as liabilities relating to "premium", as premium already include cash-back bonus. The deletion of the word "unearned" in the term "unearned premium" will remove any uncertainty as to whether cash-back bonus can be claimed or not.

C. Treatment of amounts received from the owner of a cell in a cell captive insurance

In the case of third party cell captive arrangements, it could also be argued that the cell owner is merely recapitalising the cell as it would have recapitalised any of its business operations when the operations were making losses. As a result, this is not necessary a reinsurance. Therefore, it is proposed that all amounts treated as reinsurance for IFRS and which relates to amounts receivable from the cell owner must be disregarded.

D. CFC conducting short-term insurance business outside the Republic

It is proposed to delete subsections 7 to 11 of section 28 as they are now irrelevant. These provisions were intended to effect equity between local short-term insurer and offshore short term insurer using section 32 of the Short-Term Insurance Act as a basis. With the coming into effect of SAM, section 32 of the Short Term Insurance Act will no longer be applicable.

It is therefore proposed that a resident who holds a qualifying participation in a CFC needs to determine the CFC's net income for the purposes of proportional inclusion in their own income (section 9D(2) read with section 9D(2A)). This entails performing a full South African taxable income calculation. Therefore, CFC conducting short-term insurance business outside the Republic will be treated as a resident for purposes of determining the CFC's net income.

IV. Effective date

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

3.10. INCLUDING MICRO-INSURANCE BUSINESS IN THE TAXATION OF SHORT TERM INSURANCE BUSINESS

[Applicable provisions: Sections 1 (Insurance Act definition) and section 28]

I. Background

The Insurance Act, 2016 that will come into operation during 2016 introduced the provisions of micro-insurance business that will be supervised by the Financial Services Board. Micro-insurance is intended to cater for the low-income population such that good value and low cost products that are appropriate to the needs of low-income consumers are issued by a variety of market players.

Insurers registered under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) or the Short-term insurance Act, 1998 (Act No. 53 of 1998) may offer the products of micro-insurance business. According to the draft Insurance Bill, micro-insurance business may be conducted in the following classes and sub-classes of insurance business in the non-life insurance business (short-term insurance):

i. Motor;
ii. Property;
iii. Agriculture;
iv. Consumer Credit; and
v. Accident and Health –

in respect of which the aggregate value of the insurance obligations under the policy do not exceed the maximum amounts prescribed.
In addition, micro-insurance business may be conducted in the following classes and sub-classes of insurance business in life insurance business (long-term insurance):

i. Risk;
ii. Credit Life; and
iii. Funeral –

in respect of which the aggregate value of the insurance obligations relating to each insured under the policy do not exceed the maximum amounts prescribed.

II. Reasons for change

The provisions of the Act specifically cater for short-term insurance and long-term insurance separately. As specified in the draft Insurance Bill, micro-insurance business may conduct business as a short-term insurer or long-term insurer. This compels a change in the Act to be aligned with the draft Insurance Bill.

III. Proposals

It is proposed that micro-insurance business as defined in the Insurance Act, 2016 be deemed to be a short-term insurer for purposes of the Act.

IV. Effective date

The proposed amendments will come into operation on the date on which an insurer qualifies as a micro insurer as defined in the Insurance Act 2016 and apply to years of assessment ending on or after that date.

3.11. REFINEMENT TO RISK INSURANCE BUSINESS OF LONG TERM INSURERS

[Applicable provisions: Section 29A(1) and insertion of new subsection (13B) in section 29A]

I. Background

The 2014 Taxation Laws Amendment Act introduced a fifth fund known as the risk policy fund ("RPF") in which risk policies issued by the long-term insurer during the year of assessment commencing on or after 1 January 2016 should be located. A risk policy is defined as a policy issued by the insurer during any year of assessment of that insurer commencing on or after 1 January 2016 under which the benefits payable cannot exceed the amount of premiums receivable, except where the policy benefits are solely payable due to death, disablement, illness or unemployment and excludes a contract of insurance in terms of which annuities are being paid.

II. Reason for change

A. Definition of Risk Policy

Some insurers are of the opinion that the current definition of "risk policy" is too restrictive as the word "solely" in the current definition seem to exclude pre-dominantly life products which have small investment benefits (e.g. policy that has savings element).

B. Once-off election

Some long-term insurers are encountering challenges with regard to risk policies on accounting systems and internal processes where the insurers amongst others have to:

1. for accounting purposes, distinguish between premiums that are received for risk business prior and post years of assessment commencing on or after 1 January 2016;

2. amend systems to allow the separation of risk business prior and post years of assessment commencing on or after 1 January 2016.

III. Proposal

A. Definition of Risk Policy

It is proposed that the current definition of "risk policy" be amended to provide that benefits cannot exceed the amount of premiums receivable, except where all or substantially the whole of the policy benefits are payable due to death, disability, illness or unemployment and excludes a contract of insurance in terms of which annuities are being paid.

B. Once-off election

It is further proposed that all long-term insurers should be granted a once-off election, to move all its existing risk policies or a class of policies that share substantially similar contractual rights and obligations that would have constituted risk policies if it was issued prior to 1 January 2016, to the risk policy fund without triggering any negative tax consequences. The election must be exercised by the long-term insurer in the tax return for the year of assessment ending on or after 31 December 2015. Once the election has been made, the long term insurer will not be allowed to opt out of the election.

If the long-term insurer elects to move all its existing risk or a class of policies that share substantially similar contractual rights and obligations to the risk policy fund it must transfer assets and liabilities with regard to that policies from any of the three policyholder funds, namely the untaxed policyholder fund, individual policyholder fund and the company policyholder fund to the risk policy fund. The transfer of the assets must be made at the value determined at the end of the previous year of assessment.

This transfer of assets and liabilities in respect of existing risk policies from the policyholder funds to the risk policy fund will be exempt from tax.

Where capital assets are disposed of by a policyholder fund to the risk policy fund the policyholder fund will be deemed to have disposed of the assets at the base cost thereof at the date of the disposal. The policyholder fund that disposes of the assets and the risk policy fund that acquired the assets will be deemed to be the same person with regard to the date of acquisition of the assets and the value of the assets. Roll-over relief will therefore apply with regard to the risk policy fund. The same principles will apply *mutatis mutandis* where the assets that are disposed of by the policyholder fund to the risk policy fund is trading stock.

IV. Effective date

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

3.12. LIMITATION OF UNWARRANTED RELIEF FROM TAXATION IN RESPECT OF FOREIGN REINSURANCE BY LONG TERM INSURERS

[Applicable provisions: Section 29A(11)(g)]

I. Background

In 2014, amendments were made to the legislation so that premiums and reinsurance claims received and claims and reinsurance premiums paid shall be disregarded: Provided that where a reinsurance claim is received by or accrues to an insurer in respect of a reinsurance policy (other than a policy that would have constituted a risk policy had it been concluded on 1 January 2016) entered into between that insurer and a person other than a resident, there must be included in the gross income of the policyholder fund associated with that reinsurance policy an amount equal to that reinsurance claim less the aggregate amount of reinsurance premiums incurred or paid in terms of that reinsurance policy which relates to that reinsurance claim.

II. Reason for change

The reference to reinsurance claims in the 2014 wording of section 29A(11)(g) created further loopholes. It has come to our attention that the 2014 changes created a further loophole as some long term insurers were no longer referring to "reinsurance claims" but just to "claims" in order to avoid the application of the provisions of section 29A(11)(g).

III. Proposal

It is proposed to change the wording of subsection 11(g) and the proviso to this subsection to refer to both claims and premiums in respect of policies entered into between the insurer and a non-resident and premiums and reinsurance claims received in respect of a policy entered into between the insurer and a non-resident**.** Premiums and claims/ reinsurance claims in respect of risk policies will however still be excluded from this provision.

IV. Effective date

The proposed amendments will come into operation on 1 January 2016 and apply in respect of years of assessment commencing on or after that date.

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4. INCOME TAX: BUSINESS (INCENTIVES)

4.1. URBAN DEVELOPMENT ZONES – ALLOWING FOR THE DEMARCATION OF ADDITIONAL UDZS PER QUALIFYING MUNICIPALITY

[Applicable provision: Section 13*quat*]

I. Background

In 2003, the Minister of Finance introduced the Urban Development Zone (UDZ) tax incentive for investment in 16 designated inner cities. The UDZ tax incentive was designed to encourage property investment in central business districts and to address dereliction and dilapidation, and to promote investment in urban renewal. The incentive is in the form of an accelerated depreciation allowance applicable on the value of new buildings and improvements to existing buildings in the qualifying municipalities demarcated as UDZs. In 2013 the window period for the UDZ incentive was extended from 31 March 2014 to 31 March 2020.

II. Reason for Change

Currently, the legislation only allows municipalities with a population of more than two million people to demarcate two areas as UDZs. The amalgamation of various municipalities over the years has highlighted the need to extend the demarcation of more UDZ areas per municipality.

III. Proposal

In order to make the UDZ incentive more accessible, it is proposed that municipalities that have a population of at least one million persons or more should be allowed to demarcate more than one UDZ area. Where a municipality has a population of less than one million persons, the Minister of Finance will have discretion by notice in the Gazette to approve a municipality to demarcate more than one UDZ area. Municipalities using this provision will at a minimum still be subject to the demarcation criteria as set out in section 13quat.

IV. Effective Date

The proposed amendments will come into operation on 1 January 2016.

4.2. EXTENDING THE WINDOW PERIOD AND INTRODUCING A COMPLIANCE PERIOD FOR THE INDUSTRIAL POLICY PROJECT TAX INCENTIVE REGIME

[Applicable provision: Section 12I]

I. Background

In 2008, the Industrial Policy Project (IPP) tax incentive was introduced to support investment in manufacturing assets that would improve the productivity of the manufacturing sector. The incentive is fully available for new industrial policy projects as well as expansion or upgrading of existing projects. The incentive takes the form of an immediate additional allowance for an industrial policy project as determined according to the type (greenfield or brownfield) and status (qualifying or preferred). The incentive offers support for both capital investment and training,

with qualification for the incentive based on regulatory criteria reviewed by an adjudication committee constituted in terms of section 12I.

The qualifying criteria for industrial policy projects are stipulated in sections 12I(7) to (10). These criteria will determine whether projects will significantly contribute to South Africa's Industrial Policy Programme. Section 12I (10) makes provision for the qualifying criteria to be determined by regulations. These regulations may be issued by the Minister of Finance in consultation with the Minister of Trade and Industry. Approved industrial policy projects are also required to report annually to the adjudication committee on the progress of the IPP in terms of the qualifying criteria. A project/company must also report on the progress of spending on training as a percentage of the project's annual wage bill for a six year period starting from the date of project approval.

Since its inception in 2008, there has been a significant uptake for the programme. Data from the Department of Trade and Industry (DTI) indicates that by the end of March 2015, a cumulative 52 projects have been supported and approved with an investment value of R48 billion. In 2014, changes were made in the Income Tax Act to reduce the monetary threshold for greenfield projects from R200 million to R50 million in order to give small businesses opportunity to partake in the programme.

II. Reason for change

Engagement with relevant stakeholders has revealed that there is uncertainty regarding the timeframes with respect to compliance with all the requirements of section 12I (specifically the scoring criteria), the end date for annual progress reports in terms of section 12I(11) and the additional training allowance benefit period contained in sections 12I(4) and (5).

The current provisions of section 12I compel approved industrial policy projects to comply with all qualifying criteria in every year of the stipulated timeframe. Few, if any, projects are able to comply with all the criteria in every year of assessment. Amendments are therefore necessary to reflect that compliance with the scoring criteria will be assessed only at the end of the compliance period. Subsection (7)(a)(iv) referring to skills development and improved energy efficiency will be deleted as it is duplicated in subsection (8). Skills development and improved energy efficiency remain prerequisites of industrial policy projects for the purposes of section 12I, as reflected in the requirements of subsection (8) and the prescribed regulations [Regulation No. R. 639 (Government Gazette No. 33385 – 23 July 2010)]. In addition, requiring reporting on the training expenditure incurred for six years arguably places an onerous compliance burden on qualifying projects.

After consultation with the DTI and other stakeholders, it was decided to extend the 12I window period to align it to the window period of the Manufacturing Competitiveness Enhancement Programme (MCEP). These two programmes are seen as being complementary, with MCEP for investments up to R50 million and 12I catering for projects above R50 million. With the programmes running concurrently up to 2017, this would avoid periods where there is no incentive available for larger investors.

III. Proposal

In order to address the above-mentioned issues, the following is proposed:

A. Compliance Period

It is proposed that the inclusion of a specific period to allow projects time to comply with the requirements of section 12I, called a "Compliance Period", would resolve the issues highlighted above.

The Compliance Period means the period commencing from the year of assessment following the year in which assets have been brought into use, and ends in the third year of assessment. It thus allows a full three year period for the project/company to comply with the section 12I requirements, and annual progress reports must be submitted from the date of approval until the end of the Compliance Period. It should be clear that compliance with the section 12I requirements will therefore only be evaluated at the end of the Compliance Period.

The compliance period will be aligned with the additional training allowance benefit period so as to reduce the compliance burden in terms of reporting. The training allowance could then be claimed from when the assets are brought into use and would end (along with the reporting requirement) at the end of the Compliance Period. To cater for projects needing to train staff prior to bringing assets into use, these projects would be allowed to claim the allowance from the beginning of the financial year which is one year prior to the assets being brought into use.

The intention of introducing the Compliance Period is not to replace the additional investment allowance benefit period, but to complement it. The four year additional investment allowance benefit period as defined in the Regulations should be left unchanged as it defines the period in which a project/company must bring assets into use.

The objectives and benefits of the Compliance Period are:

- to define the timeframe during which the project/company has to comply with each of the conditions/criteria;

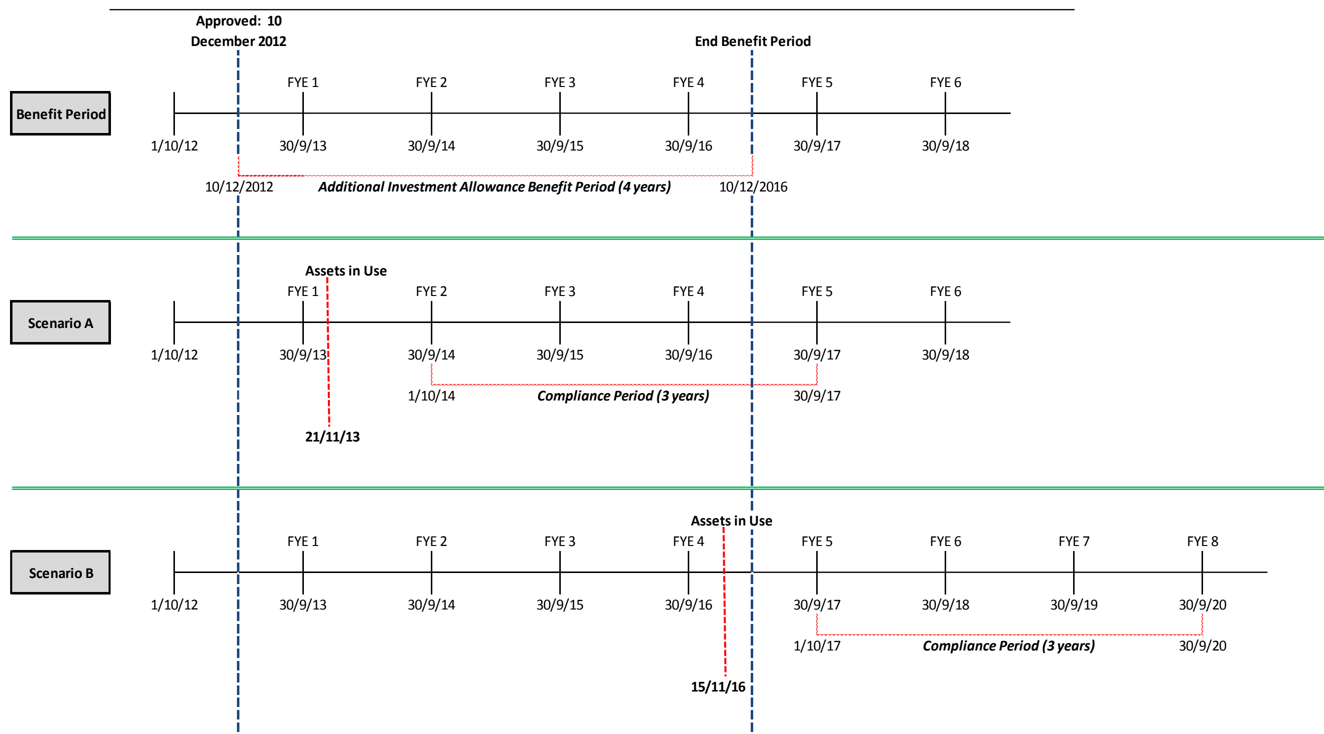
- to define the end of the period when the project/company is required to submit the last annual progress report.

- to define the base period for claiming and reporting in terms of the additional training allowance.

- the Compliance Period will coincide with the financial year of the project/company.

- the Compliance Period is dynamic according to the date the project/company brings assets into use, while the additional investment allowance benefit period is static.

The illustration below shows examples of when a project brings assets into use early (Scenario A) and close to the end (Scenario B) of the additional investment allowance benefit period. In terms of the training allowance benefit period with respect to scenario B for example, the allowance can be claimed from (and reporting will commence on) 1 October 2015, i.e. the beginning of the financial year which is one year prior to the assets being brought into use.



B. Extending the window period for IPP

Any application for approval of a project must be made before 31 December 2015. Despite this cut-off period, the programme will be extended given the impact it has had since its inception. It is therefore proposed that the window period for IPP should be extended from 31 December 2015 to 31 December 2017.

IV. Effective date

1. The proposed amendments regarding the “Compliance Period” will be deemed to have come into operation on 8 January 2009.
2. The proposed amendments regarding the “Training Allowance Benefit Period” will come into operation on 1 January 2016.
3. The proposed amendment regarding the extension of section 12I window period will come into operation on 1 January 2016.

4.3. FURTHER ALIGNMENT OF THE TAX TREATMENT OF GOVERNMENT GRANTS

[Applicable provisions: Sections 10(1)(*zI*) and 12P]

I. Background

In 2013, a unified system for the tax treatment of government grants was introduced. Under this unified system, a list of government grants was included in the Act under the Eleventh Schedule. This list includes grants provide at the national level as well as those provided at the provincial level pursuant to a provincial budget process. In addition, a specific provision setting out the tax treatment of government grants was introduced in section 12P with reference to the list of government grants in the Eleventh Schedule.

Under section 12P, the listed grants and any other government grants that are identified by the Minister of Finance by notice in the Gazette are exempt from normal tax. In addition, a comprehensive set of anti-double-dipping rules applies to these exempted government grants. The anti-double-dipping rules ensure that the use of exempt government grants are not abused and used as a means of achieving a further net tax reduction that can be used against any other income of the government grant recipient that would otherwise be taxable. The anti-double-dipping rules deny a deduction of any expenditure that is funded by the government grant recipient using an exempt government grant.

II. Reasons for change

The tax treatment of government grants provided for Public Private Partnerships (PPP) is not aligned to the specific provision of section 12P. The provisions regulating PPP grants contained their own limitations rules for purposes of an exemption. The specific limitation rule in section 10(1)(zI) currently applicable to PPP grants provides that a PPP grant is only eligible for an exemption to the extent that the PPP grant was expended by the recipient to fund improvements on land or to buildings. This limitation was introduced to support the country's infrastructure development by curbing any circular reduction of allocated funds back to the fiscus.

The policy position with all government grants is that exempt government grants should not be used to fund expenditure in respect of which a deduction can be claimed against other income of the government grant recipient. In this regard, the anti-double-dipping rules contained in the section 12P regulating the tax treatment of government grants apply. As such, there is a need to subject PPP grants to the anti-double-dipping rules contained in section 12P.

III. Proposal

It is proposed the exemption for PPP grants should be moved from section 10(1)(zI) and be included in the provisions of section 12P of the Income Tax Act. As a result, PPP grants will be exempt from tax in terms of section 12P and be subject to the specific anti-double-dipping provisions contained in that section.

IV. Effective date

The proposed amendments come into operation on 1 January 2016 and apply in respect of grants received or expenditure incurred on or after that date.

4.4. DEPRECIATION ALLOWANCE IN RESPECT OF TRANSMISSION LINES OR CABLES USED FOR ELECTRONIC COMMUNICATIONS OUTSIDE SOUTH AFRICA

[Applicable provisions: Item (B) of sub-paragraph (*dd*) of the proviso to paragraph (f) of section 11]

I. Background

In 2009, amendments were made following international precedent in respect of how international submarine telecommunications cables are treated for tax depreciation purposes. Cable systems are often built and owned by a few parties who may grant the right of use to this system to a third party through an 'Indefeasible Right of Use' (IRU). The IRU provides the grantee with the right to use the capacity of the submarine cable without ownership. IRU holders are generally required to contribute an upfront capital premium and on-going amounts for the operation and maintenance of the cable during its economic life.

In 2014, changes were made to section 12D to reduce the write-off period for telecommunication lines and cables used within South Africa from 20 years to 15 years.

II. Reason for change

It has become necessary to review the period over which the right of use of submarine lines or cables used for the transmission of electronic communications are depreciated for two main reasons; namely, improvements in technology and damages to the cables over time. This damage could be caused by commercial fishing trawlers or ship's anchors, and natural disasters experienced in other parts of the world e.g. earthquakes and sub-sea landslides.

The use of fibre optics in submarine lines is beneficial; however, fibre optic cabling is also not immune to wear and tear. Cable route damage is often inflicted by third parties during activities like fishing, etc. Such damage has a medium to long-term effect, increasing the fibre stress levels and / or bending radius and normally results in the introduction of additional fibre joints that further degrade the cable's transmission capabilities.

Given the technological advances and shorter economic life of the affected assets, IRUs entered into at present are typically for shorter durations than when this provision was initially enacted. Industry practice is to write off the right of use of submarine lines or cables over approximately 15 years.

III. Proposal

In order to align the tax treatment for writing down the right of use of submarine lines or cables with international practice and to move towards the most suitable expected economic life of such assets, it is proposed that the write-off period should be reduced from 20 years to 15 years.

IV. Effective date

The proposed amendment will come into operation on 1 April 2016.

4.5. SPECIAL ECONOMIC ZONES ANTI-PROFIT SHIFTING PROVISION

[Applicable provision: Section 12R]

I. Background

In 2013, a special tax incentive regime for the new Special Economic Zones (SEZ) was introduced in the Income Tax Act. The SEZ regime was introduced to provide more focused support for businesses operating within designated zones by extending on the value-added tax and customs duty incentives that were already available to enterprises operating within Industrial Development Zones (IDZs) and including income tax incentives and the employment tax incentive.

For income tax purposes, a qualifying company under the new SEZ regime will benefit from an accelerated depreciation allowance on capital structures (buildings) and, in certain circumstances, will be subject to a reduced corporate tax rate of 15 per cent instead of the current 28 per cent.
To qualify for these income tax incentives, a company should:

- be tax resident in South Africa;
- operate within a designated SEZ;
- carry on business through a fixed place of business situated within a designated SEZ; and
- have not less than 90 per cent of its income being derived from the carrying on of a business or rendering of services within one or more SEZs.

II. Reason for change

In order to qualify for income tax incentives, one of the requirements is that a company should not have less than 90 per cent of its income derived from the carrying on of business or provision of services within SEZ. This requirement is aimed at ensuring that business profits qualifying for the lower business tax rate should arise from the productive activities of the qualifying company.

There is still a risk that profits may be artificially shifted from fully taxable connected persons to the qualifying company.

III. Proposal

To counter the potential shift of profits by connected person to benefit from the lower income tax benefits available to companies operating within an SEZ, it is proposed that an anti-avoidance measure be introduced. It is proposed that a company be disqualified from the SEZ income tax incentives if more than 20 per cent of its deductible expenditure incurred or income arises from transactions with connected persons.

Due to the fact that transactions between resident and non-resident connected persons are subject to transfer pricing rules, in order to ensure that there is no “doubling-up” of anti-avoidance measures, this anti-avoidance measure will only be applicable to transactions with connected persons that are resident or transactions with connected non-residents that are attributable to a permanent establishment of those non-residents in South Africa.

IV. Effective date

The proposed amendments will come into operation on the date on which the Special Economic Zones Act, 2014 (Act No.16 of 2014) comes into operation.

4.6. ACCELERATED CAPITAL ALLOWANCES FOR MANUFACTURING ASSETS GOVERNED BY SUPPLY AGREEMENTS

[Applicable provisions: Sections 12C and insertion on new paragraph (*bA*) to sub-section (1) of section 12C]

I. Background

As part of Government's plans to diversify the South African economy through, inter alia, increased productivity in the South African manufacturing sector, an accelerated wear and tear allowance is available to support investment in manufacturing assets.

The allowance is available for machinery and plant used in the process of manufacture in the instance that (1) the taxpayer that owns the machinery and plant uses such machinery and plant himself in a process of manufacture and (2) in the instance that the taxpayer that owns the machinery and plant leases out the machinery and plant to another person who then uses such machinery and plant in a process of manufacture.

Subsequent to the introduction of the accelerated capital allowances, it was commonplace for taxpayers to acquire machinery and plant for the purpose of leasing them out at very low rentals. The resulting accelerated capital allowances on these leased assets generated large assessed losses, which were used to shield other non-related taxable income from taxation. To curb such abuse, limitations were introduced 1984 to limit these deductions for lessors of assets for which accelerated capital allowances are granted.

As a result, currently the accelerated capital allowances that a lessor may claim in respect of leased assets are limited to the rental income generated by those assets. Any excess of the capital allowances not allowed because of the limitation is carried forward to the next year of assessment where, subject to again to the limitation in the next year.

II. Reason for change

Manufacturers sometimes outsource parts of their manufacturing operations in order to secure the supply of components used in the assembly process of manufactured products. In addition, these arrangements help manufacturers to establish and maintain the supply of spare parts over the life of the manufactured products.

The arrangements are governed by a supply agreement between the manufacturer and the component supplier who in substance acts as agent for the manufacturer. Under the supply agreement –

- the manufacturer supplies the manufacturing assets necessary to manufacture the components and/or spare parts to the components supplier by delivering these manufacturing assets to the premises of the components supplier;

- the components supplier undertakes to use the manufacturing assets to manufacture the components and/or spare parts for the manufacturer;
- ownership of the manufacturing assets is all times reserved to the manufacturer;
- a rental is not payable by the component supplier to the manufacturer for the use of the manufacturing assets; and
- the component supplier is compensated by the manufacturer for the production of the necessary components and/or spare parts.

Given that no rental is received by the manufacturer under these arrangements, it may be argued that the impact on the manufacturer is that the incentive that was intended to promote its investment in manufacturing assets is not available as a result of the limitation rule.

Conversely, it may be argued that no lease arrangement exists under such supply agreements as the manufacturer makes the manufacturing assets available to the components supplier without requiring payment from the component supplier for the use of the manufacturing assets. Under this argument, the manufacturer is again precluded from benefiting from the incentive as the manufacturer would neither be letting the manufacturing assets to the components supplier nor be directly using those manufacturing assets in a process of manufacture.

III. Proposal

In order to adapt the accelerated capital allowances requirements to accommodate this type of business model, it is proposed that the accelerated capital allowances should be granted where manufacturing assets that are owned by a taxpayer are made available to a components supplier under a supply agreement for no consideration for the benefit of the manufacturer's processes. In order not to nullify the current provisions of section 23A, which governs the limitation of section 12C allowances in respect of rental manufacturing assets, the proposed incentive will only be for the benefit of taxpayers in the Automotive Industry who receive grants as contemplated in the Eleventh Schedule.

IV. Effective date

The proposed amendments will come into operation on 1 January 2016 and apply in respect of years of assessment ending on or after that date.

4.7. DEPRECIATION ALLOWANCES FOR RENEWABLE ENERGY MACHINERY

[Applicable provisions: Sections 12B(1)(*h*)(*ii*) and new section 12B(2)]

I. Background

The current and projected national shortage of electricity in the foreseeable future will inconvenience South Africans and constrain economic activity. Government is working on short-term interventions to limit the impact of electricity shortages on the economy, to ensure scarce supply can be directed to economic sectors that drive growth and job creation. Initiatives include

efforts to encourage investment in cleaner energy forms to reduce our greenhouse gas (GHG) emissions and to broaden our energy sources. Current legislation does allow for accelerated depreciation allowances for renewable energy in the forms of solar, wind, biomass and hydro of less than 30 MW.

II. Reason for change

Solar is however classified as a single concept within the current legislation without delineating it into its different forms e.g. solar photovoltaic (solar PV) or concentrated solar power (solar CSP). To accelerate and incentivise development of solar PV, there is consideration to further enhance the accelerated depreciation allowance for solar PV. Solar PV is favoured because of its low environmental and water consumption impact, economies of scale and efficiencies of learning accumulated over time within the South African solar PV renewable energy industry. This has led to an increase in the number of applications within the Renewable Energy Independent Power Producers Procurement Programme for solar PV which also led to a decrease in the average bidding price whilst the average size of projects has also been increasing with each bidding round.

Embedded solar PV

Consultations with representatives of Industry indicated that the proposed enhanced accelerated depreciation impact would be minimal on large-scale projects with a generation capacity of over 1 000 kW or 1 MW compared to the small-scale embedded solar PV projects. This is because large-scale solar PV projects require supporting infrastructure like roads, transmission lines etc. which can be excluded from the asset base for taxation purposes. However, embedded solar PV generation does not require such infrastructure hence is better placed to benefit from the accelerated depreciation incentive. Therefore it is proposed to improve the current incentive to increase uptake of small-scale embedded solar PVs to ease the pressure off the national electricity grid as the embedded solar PV generators become energy self-sufficient.

III. Proposal

It is therefore proposed to enhance the accelerated depreciation incentive for small scale embedded solar PV renewable energy with a generation capacity not exceeding 1 000 kW or 1 MW from the current 3 year period (50% allowance in year 1; 30% allowance in year 2 and 20% allowance in year 3) to a 1 year period of 100% allowance.

IV. Effective date

The proposed amendments will come into operation on 1 January 2016 and will apply in respect of the years of assessment commencing on or after that date.

4.8. ADJUSTMENT OF ENERGY SAVINGS TAX INCENTIVE

[Applicable provision: Section 12L]

I. Background

In 2009, Government announced the energy efficiency savings tax incentive and implementation took place in November 2013 following promulgation of the relevant regulations. Section 12L

makes provision for taxpayers to claim an allowance for energy efficiency savings resulting from investments in energy efficiency measures and process adjustments deemed to be in the production of income.

The main aim of this incentive is to encourage the uptake of energy efficiency measures that result in improvements in energy use and contribute towards reduced greenhouse gas emissions.

The monetary value of the allowance that can be claimed by taxpayers is calculated at 45 cents per kilowatt hour or kilowatt hour equivalent of energy efficiency savings.

II. Reasons for change

Given the current energy challenge and to further address the need to improve energy consumption, it has become necessary to revisit the energy efficiency savings rates.

Industry has raised concerns regarding the actual benefit value of the incentive in the first year of operation as it relates to both the high upfront costs of capital and, possibly, compliance costs incurred in the measurement and verification of savings to obtain an energy efficiency savings certificate as described in the relevant regulation. Also, since the introduction of the incentive in 2009, the rate of 45 c/kWh has not been adjusted and is deemed insufficient to incentivise energy efficiency projects.

III. Proposal

It is proposed that the amount of the allowance to be claimed by taxpayers in respect of energy efficiency savings be increased from 45 cents per kilowatt hour to 95 cents per kilowatt hour or kilowatt hour equivalent of energy efficiency savings.

IV. Effective date

The proposed amendments will be deemed to come into operation on 1 March 2015 and applies in respect of years of assessment commencing on or after that date.

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5. INCOME TAX: INTERNATIONAL

5.1. RELAXING CAPITAL GAINS TAX RULES APPLICABLE TO CROSS ISSUE OF SHARES AND INTRODUCING COUNTER MEASURES FOR TAX-FREE CORPORATE MIGRATIONS

[Applicable provisions: Section 9H, paragraphs 11(2)(*b*) and 64B(1)(*b*) of the Eighth Schedule]

I. Background

A. Prior to 2013

Prior to 2013, the issue of shares by a company was not considered to be a disposal for capital gains tax purposes. It was envisaged that this would be tax neutral to encourage company

formations and would increase foreign investment in and capitalisation of South African resident companies.

However, it came to Government's attention that certain types of investments by non-residents could have resulted in the tax-free exit of resident companies. Ultimately, the transactions of concern initially involved a strategy to gain foreign control of a resident company through the tax-free issue of shares by the resident company to a non-resident in exchange for shares in a non-resident company.

Secondary to this step, the resident company would be stripped of its foreign operations free of tax by relying on the participation exemption (under paragraph 64B of the Eighth Schedule) on the disposal by a resident of its shares in its foreign operations (including shares acquired through the preceding tax-free cross-issue of shares). Added to this, the dividends participation exemption (under section 10B(2)(a)) would exempt any foreign dividends being channeled through the resident company in the intervening period from income tax.

Finally, the tax residence of the resident company would in some instances be shifted offshore through a shift in the place of effective management which, in any case, resulting in a much lower exit charge arising at this stage given the preceding asset realisation and low level of unrealised gains in the assets at the time of ceasing to be a South African tax resident.

B. 2013 Amendments

In an attempt to counter the abovementioned concerns, in 2013 paragraph 11(2)(b) of the Eighth Schedule was amended. As a result, the issue of shares by a resident company is currently not exempt from capital gains tax where shares are issued to any person in exchange, directly or indirectly, for shares in a foreign company. The introduction of this exception was aimed at dealing with the initial step of these transactions that involved the issue of shares in exchange for shares in a foreign company.

II. Reasons for change

As stated previously, the introduction of the exception under paragraph 11(2)(b) of the Eighth Schedule was aimed at preventing the potential tax free corporate migrations that took advantage of the tax free transfer of the control of a resident company and the participation exemptions. However, it has come to the attention of Government that the 2013 amendments to paragraph 11(2)(b) of the Eighth Schedule are too broad and impact on transactions that broaden the South African economy and by implication the tax base through the acquisition of foreign entities in exchange for the issue of shares and undermines the expansion of South African multinationals.

As the current wording of paragraph 11(2)(b) of the Eighth Schedule refers to the direct or indirect acquisition of shares in a foreign company, the application of the provisions of paragraph 11(2)(b) of the Eighth Schedule has unintended consequences on the asset for share transactions covered by section 42. This may result in the company issuing the shares (transferee company) under a section 42 asset-for-share transaction not being able to benefit from the intended capital gains tax relief envisaged under the roll-over provisions.

Finally, it has been identified that the current ambit of the participation exemption in respect of the disposal of shares in a non-resident company by residents is open to abuse. In the 2003 Budget Review, the then Minister of Finance announced the intention to allow the tax free

repatriation of foreign dividends back to South Africa. This type of dividend exemption (which is known as the participation exemption) often exists alongside the tax free sale of foreign shares as profits from the sale of shares merely represent retained dividends. It was in this context and for this intention that the participation exemption in respect of the disposal of shares in a non-resident company was introduced.

Whilst it was intended that the disposal of foreign shares should not be subject to tax in order to allow for the envisaged tax free repatriation of capital, it is of concern that non-resident connected persons in relation to South African foreign controlled companies use this exemption to strip resident companies of their holdings in foreign operations and may oftentimes keep the resident company tax resident in South Africa while embarking on this base erosion strategy.

III. Proposal

In order to reverse the unintended consequences of the 2013 amendments to paragraph 11(2)(b) of the Eighth Schedule, without losing sight of the initial policy intent to counter untaxed corporate migrations out of South Africa, the following changes are proposed:

Reversal of the 2013 amendment

It is proposed that the 2013 amendments to paragraph 11(2)(b) of the Eighth Schedule be reversed. The issue of shares by a South African resident company as consideration for the acquisition of shares in a foreign company will no longer be subject to capital gains tax. For purposes of reversing the unintended consequences of the 2013 amendment, it is proposed that this amendment should be reversed retrospectively from the date of its introduction, i.e. in respect of shares issued on or after 1 April 2014.

A. Counter measures for tax free corporate migrations out of South Africa

A two-pronged approach will be adopted to counter the identified base erosion strategies that use the participation exemption to strip resident companies of unrealised gains in shareholdings in foreign operations. This approach will include:

1. The denial of participation exemption on disposals to connected persons

In the first instance, as a mechanism to counter tax-free disposals of the foreign operations of resident companies to their non-resident connected persons, it is proposed that disposals of foreign shares by South African residents to connected persons should not benefit from the participation exemption. As a result, it is proposed that an amendment be effected to paragraph 64B of the Eighth Schedule and that any disposal of shares in a foreign company by a resident to a connected person will be subject to capital gains tax.

2. The claw-back of participation exemption benefits on a change of tax residence

B. Claw-back of capital gains benefits

It is proposed that upon a change of tax residence as envisaged in section 9H, any capital gains benefits enjoyed by a South African resident during the three year period before ceasing to be a South African tax resident will be subjected to tax.

As such, capital gains disregarded in terms of paragraph 64B of the Eighth Schedule that were determined in respect of disposals by a resident of its shares in foreign companies during the abovementioned three year period will be clawed back. In this regard, the aggregate of such disregarded capital gains will not be allowed to be taken into account in determining the net capital gain or assessed capital loss of the resident, but will be included in the taxable income of the resident at the companies' inclusion rate.

C. Claw-back of participation exemption on foreign dividends

Similarly, the participation exemption on foreign dividends enjoyed by a South African resident during the three year period before ceasing to be a South African tax resident will be subjected to tax upon exit.

As a result, foreign dividends that were exempt in terms of only section 10B(2)(a) during the abovementioned three year period will be subject to tax. Such foreign dividends will be subject to tax, as is the current policy on foreign dividends, at an effective tax rate of 15 per cent.

It is proposed that the abovementioned proposed two pronged approach aimed at countering tax free corporate migrations should be applied retrospectively from the date of the release for public comment of the first batch of the draft Taxation Laws Amendment Bill of 2015, i.e., 5 June 2015.

IV. Effective date

A. Amendments to paragraph 11(2)(b) of the Eighth Schedule

The proposed amendments to paragraph 11(2)(b) will be deemed to have come into operation on 1 April 2014 and apply in respect of shares issued, cancelled or options granted on or after that date.

B. Amendments to section 9H and paragraph 64B(1)(b) of the Eighth Schedule

The proposed amendments to section 9H and paragraph 64B(1)(b) of the Eighth Schedule will be deemed, respectively, to have come into operation on 5 June 2015 and apply in respect of any person that ceases to be a resident or any controlled foreign company that ceases to be a controlled foreign company in relation to a resident on or after that date. Further, the provisions will apply in respect of any person that becomes a headquarter company during years of assessment commencing on or after that date (5 June 2015).

5.2. WITHDRAWAL OF SPECIAL FOREIGN TAX CREDITS FOR SERVICES FEES SOURCED IN SOUTH AFRICA

[Applicable provision: Sections 6*quin* and 6*quat*(1C) and (1D)]

I. Background

In 2011, a special foreign tax credit for service fees was introduced. This foreign tax credit applies to foreign withholding taxes imposed in respect of service fees from a South African source (i.e. services rendered in South Africa by a South African resident to a foreign resident). This special tax credit applies on an income-by-income basis.

The introduction of this special tax credit was intended to operate as some form of a relief from double or potential double taxation on cross-border services for South African multinational companies that render services to their foreign subsidiaries. The concern was that revenue officials in some treaty partner countries that have withholding tax on fees in their domestic law ignored tax treaty provisions when funds were paid by their residents to South African resident companies in respect of services rendered to their residents. Although these countries, in terms of their tax treaties with South Africa, do not have the right to tax service fees, they still imposed withholding tax on services (i.e. management, consultancy and technical fees) rendered by South African residents to their residents.

II. Reasons for change

The special tax credit regime is a departure from international tax rules and tax treaty principles in that it indirectly subsidies countries that do not comply with the tax treaties. South Africa is the only country in the world that provides for this kind of tax concession. Effectively, it encourages treaty partners not to abide by the terms of the tax treaty in respect of the taxation of fees and thus give them taxing rights over income that is not sourced in those countries. Consequently, it defeats the whole purpose of the tax treaty.

While the enactment of this relief was well intended, it has resulted in a significant compliance burden on the South African Revenue Service. Some taxpayers are also exploiting this relief by claiming it even for other income such as royalties and interest that are not intended to be covered by this special tax credit.

Further, the Davis Tax Committee Interim Report on Action 6: "Preventing Treaty Abuse" in its discussion of section 6quin "Base erosion resulting from South Africa giving away its tax base" states that "South Africa has effectively eroded its own tax base as it is obliged to give credit for taxes levied in the paying country.

III. Proposal

In view of the above, it is proposed that the special tax credit for service fees be withdrawn. All tax treaty disputes should be resolved by competent authorities of the respective countries through mutual agreement procedure available in the tax treaties as a mechanism to resolve disputes. As a concession, in order to mitigate double tax faced by South African taxpayers in doing business with the rest of Africa, amendments will be made to the current provisions of section 6quat(1C) and (1D) to allow for a deduction in respect of foreign which are paid or proved to be payable without taking into account the option of the mutual agreement procedure under tax treaties.

IV. Effective date

The proposed amendments will come into operation on 1 January 2016 and applies in respect of years of assessment commencing on or after that date.

5.3. REINSTATEMENT OF THE CONTROLLED FOREIGN COMPANY DIVERSIONARY INCOME RULES

[Applicable provision: Section 9D]

I. Background

A. *Diversionary income rules prior to 2011*

Prior to 2011, controlled foreign company ("CFC") provisions contained three sets of diversionary income rules.

The first set of diversionary rules were known as CFC inbound sales. These rules applied to the sale of goods by the CFC to any connected South African resident. An exemption exists if:

- the CFC purchased those goods from an unconnected person in the same country of residence of the CFC; or
- the CFC is engaged in the creation, extraction, production, assembly, repair or improvement of goods that involves more than minor assembly or adjustment, packaging, repackaging and labelling; or
- the CFC sells a significant quantity of goods of the same or similar nature to unconnected persons at comparable prices, after taking into account whether the sales are wholesale or retail, volume discounts and other geographical differences such as location costs of delivery or the same; or
- similar goods are purchased by the CFC mainly within the country in which the CFC is resident from unconnected persons in relation to that CFC

The second set of diversionary rules was known as CFC outbound sales. These rules applied to the sale of goods by the CFC to a foreign resident or to unconnected South African residents where those goods were initially purchased from connected South African residents. An exemption exists if:

- those goods purchased by the CFC from a connected South African resident amounts to an insignificant portion of the total goods ; or
- the CFC is engaged in the creation, extraction, production, assembly, repair or improvement of goods that involves more than minor assembly or adjustment, packaging, repacking, and labelling; or
- the products are sold by the CFC to unconnected persons for physical delivery to customers' premises situated in the country in which the CFC is resident; or
- the same or similar products are sold by the CFC mainly to unconnected persons for physical delivery to customers' premises in the country in which the CFC is resident

The third set of diversionary rules was known as CFC connected services rules. These rules applied when the CFC performs services to a connected South African resident. An exemption exists if the services are performed outside South Africa and:

- such services relate directly to the creation, extraction, production, assembly, repair or improvement of goods and the goods are used outside South Africa; or

- such services relate directly to the sale or marketing of goods of South African connected persons and those goods are sold to persons who are not connected persons in relation to that CFC for physical delivery to a customer's premises situated in the country in which the CFC is resident; or

- such services are rendered mainly in the country of residence of the CFC for the benefit of customers that have premises situated in that country; or

- no deduction is allowed of any amount paid by that connected person to that CFC in respect of the services.

B. *Diversionary income rules after 2011*

In 2011, changes were made to the diversionary income rules. The diversionary rules in respect of the CFC outbound sale of goods were completely abolished. The rationale for removing these rules was that the transfer pricing rules could be applied as an alternative.
In addition, the 2011 amendments narrowed the diversionary rules in respect of the CFC inbound sale of goods. The exemption in respect of income from the CFC inbound sale of goods only applies if:

- the CFC is located in a high tax jurisdiction; or

- the income from the sale of goods is attributable to the activities of a permanent establishment of the CFC.

However, diversionary rules in respect of CFC connected services rules were retained.

II. Reasons for change

While transfer pricing rules can be applied to prevent the shifting of income offshore through the sale of goods and services, the CFC diversionary rules are more expedient in preventing shifting of profits offshore through these transactions. The removal of diversionary rules in respect of the CFC outbound sale of goods CFC resulted in the CFC rules being less effective in immediately addressing profit shifting by South African resident companies. Transfer pricing auditing processes by their nature often take long to be finalised and therefore relying on transfer pricing solely leaves the South African tax base vulnerable to base erosion practices.

In addition, the narrowing of the diversionary rules in respect of the CFC inbound sale of goods limited the scope of effective application of these rules.

III. Proposal

In view of the above, it is proposed that:

- the diversionary rules in respect of the CFC outbound sale of goods that were removed by the 2011 Taxation Laws Amendment Act be reinstated in their pre 2011 form.

- the old diversionary rules in respect of the CFC inbound sale of goods that were changed by the 2011 Taxation Laws Amendment Act be reinstated in their pre 2011 form.

IV. Effective Date

The proposed amendments will come into operation on 1 January 2016 and applies in respect of foreign tax years of controlled foreign companies ending during years of assessment commencing on or after that date.

5.4. REVISION OF THE DEFINITION OF IMMOVABLE PROPERTY

[Applicable provisions: Section 35A; and paragraphs 2(2), 64B (1), (2) and (4) of the Eighth Schedule)

I. Background

The term “immovable property” is defined in paragraph 2 (2) of the Eighth Schedule to include any interest or right of whatever nature of a person to or in immovable property situated in South Africa. An interest in immovable property includes any equity shares held by a person in a company or ownership or the right to ownership of a person in any other entity or a vested interest of a person in any assets of any trust.

For tax treaty purposes, the term “immovable property” is defined with reference to the definition in the law of the contracting country in which the property is situated (i.e. in terms of the law of the source country).

According to paragraph 2 of Article 6 of the Organisation of Economic Cooperation and Development (OECD) Model Tax Treaty the term “immovable property” shall include, inter alia, the rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for working of, or the right to work, mineral deposits, sources and other natural resources.

II. Reasons for change

The current definition of the term “immovable property” in paragraph 2 (2) of the Eighth Schedule does not include the right to mine or prospecting or right to work mineral deposits and other natural resources. South Africa has over 73 tax treaties in force and it is important that the definition of immovable in paragraph 2(1) of the Eighth Schedule is as closely aligned with the definition of immovable property in the OECD Model Tax Treaty as possible in order to order avoid any possible anomalies.

III. Proposal

In order to eliminate anomalies, it is proposed that the definition of the term “immovable property” in paragraph 2 (2) of the Eighth Schedule should be aligned with the definition of the

term “immovable property” in paragraph 2 of Article 6 of the OECD Model Tax treaty to include the right to variable payments or fixed payment as consideration for the working of or right to work mineral deposits, sources and other natural resources.

IV. Effective date

The proposed amendments will come into operation on 1 January 2016 and will apply in respect of years of assessment commencing on or after that date.

5.5. DEFINITION OF INTEREST FOR WITHHOLDING TAX PURPOSES

[Applicable provision: Section 50A]

I. Background

Currently, the Act does not contain the general definition of the term ‘interest’. Section 50A, dealing with withholding tax on interest also does not contain a definition of the term ‘interest’. The only definition of interest contained in the Act is found in section 24J and only for the purposes of that section.

For the purposes of section 24J, interest is defined as including, inter alia, the gross amount of any interest or related finance charges, discount or premium payable or receivable in terms of or in respect of a financial arrangement, irrespective of whether or not such amount is calculated with reference to a fixed rate of interest or variable rate of interest, or payable or receivable as a lump sum or unequal installments during the term of the financial arrangement. For the purposes of the source rules (see section 9(2)(b) and hybrid instruments rules (see sections 8F(1) and 8FA(1), the term ‘interest’ is defined with reference to the definition of the term in section 24J.

In terms of common law (see CIR v Genn & Co Ltd 1955 (3) SA 293 (A); ITC 1496 53 SATC 229 and ITC 1588 57 SATC 148), interest is defined as consideration paid for the use of money.

For tax treaty purposes, the term ‘interest’ is defined in Article 11 as income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits and in particular, income from government securities and income from bonds and debentures, including premiums and prizes attaching to such securities, bonds or debentures.

II. Reasons for change

The definition of the term ‘interest’ is clear for the purposes of section 24J, hybrid instruments rules and source rules. However, the lack of general definition of the term interest in the Act and in section 50A, withholding tax on interest, creates uncertainty. Part of this uncertainty stems from the fact that it is not clear whether, for withholding tax on interest purposes, the term ‘interest’ means interest as defined in section 24J or common law meaning the term. This lack of definition makes it difficult to determine which amounts are included in the concept of interest for the purposes of the withholding tax on interest.

III. Proposal

In order to remedy the uncertainty described above, it is proposed that the for the purposes of withholding tax on interest, the term ‘interest’ will be defined in section 50A with reference to paragraphs (a) or (b) of the definition of “interest” under section 24J(1).

IV. Effective Date

The proposed amendments will come into operation 1 March 2016 and applies in respect of interest that is paid or that becomes due and payable on or after that date.

5.6. REVISION OF THE DEFINITION OF FOREIGN PARTNERSHIP

[Applicable provisions: Section 1 of the Income Tax Act]

I. Background

A number of jurisdictions offer investors the option of using a form of enterprise that combines the benefit, for their members, of limited liability with flow-through treatment for tax purposes. These entities combine, in effect, the characteristics of a partnership and a company. The profits of these entities are taxed in the hands of the members and not that of the entity. The tax treatment being, in essence, similar to that of a limited partnership formed and carried on in South Africa.

In 2010, amendments were made in the Income Tax Act to exclude a “foreign partnership” from the definition of a “company”. The main aim of this amendment was to align the tax treatment in South Africa with the tax dispensation applying in the country of its formation or establishment. According to the 2010 amendments, an entity will in terms of the current Income Tax Act definition of a “foreign partnership” be regarded as being fiscally transparent in its country of origin if tax on income is levied only on its members, and not levied at entity level. The entity will then qualify as a foreign partnership and be taxed in the same manner as a limited partnership irrespective of whether it qualifies, in that jurisdiction, as a separate legal entity.

II. Reasons for Change

It has come to Government’s attention that entities can be fiscally transparent at national level, but such entity is subject to a tax on income at municipal level in respect of a business enterprise carried on by it. Effectively, the entity is subject to tax at entity level only in respect of its income that is subject to the municipal tax. An entity the total income of which is, at national level, subject to tax in the hands of its members only, may therefore fail to qualify as a “foreign partnership” as it will not meet the requirement of not being liable for or subject to any tax on income in its country of origin. The entity may, as a result, be subject to disparate tax dispensations in South Africa and its country of origin. This may give rise to various anomalies and possibilities for cross-border tax arbitrage.

III. Proposal

It is proposed that amendment be made to the definition of “foreign partnership” to align the income tax treatment of the entity in South Africa with its income tax treatment, at national level, in its country of origin and exclude any taxes levied at municipal or local authority level or a comparable authority in the country of origin. The harmonised treatment of these entities should

provide greater clarity and assist in curbing the use of these entities for purposes of cross-border tax arbitrage.

IV. Effective Date

The proposed amendments will be deemed to have come into operation on 31 December 2015 and applies in respect of years of assessment ending on or after that date.

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6. VALUE ADDED TAX

6.1. ENTERPRISE SUPPLYING COMMERCIAL ACCOMMODATION: MONETARY THRESHOLD ADJUSTMENTS

[Applicable provisions: Section 1(1): Definition of “commercial accommodation” and proviso (ix) to the definition of “enterprise”]

I. Background

Under current law, the definition of commercial accommodation in section 1 of the Value Added Tax Act (VAT Act) contains a monetary threshold of R60 000. In terms of the definition, where the annual total receipts from the supply of commercial accommodation exceeds or is reasonably expected to exceed R60 000 in a period of 12 months, then the supplies will be deemed to be that of commercial accommodation. This monetary threshold distinguishes between the supply of a dwelling and the supply of commercial accommodation.

In turn, proviso (ix) to the definition of enterprise states that where these supplies do not exceed the R60 000 threshold or cannot be reasonably expected to exceed the threshold in any 12 month period, then the supplies will not be deemed to have been made in the course of an enterprise.

II. Reasons for change

The monetary threshold available in the definition of commercial accommodation is similar to the monetary threshold available in the definition of enterprise. This creates a misunderstanding in the interaction of the two definitions. In addition, this monetary threshold was last adjusted in 2003 from R48 000 to R60 0000.

III. Proposal

In order to remove the misunderstanding, it is proposed that the monetary threshold should be contained in one definition, that is, in proviso (ix) of the definition of “enterprise” in section 1 of the VAT Act and be removed from the definition of “commercial accommodation” in section 1 of the VAT Act. In addition, it is proposed that the monetary threshold be adjusted from R60 000 to R120 000.

IV. Effective date

The proposed amendments will come into operation on 1 April 2016.

6.2. ZERO RATING: GOODS DELIVERED BY A CARTAGE CONTRACTOR

[Applicable provision: Section 11(1)(*m*)(ii)]

I. Background

The South African Value Added Tax (VAT) system is destination based, which means that only the consumption of goods and services in the Republic is taxed at the standard rate. VAT is therefore levied at the standard rate on the supply of goods or services in the Republic as well as on the importation of goods into the Republic unless an exemption or exception applies. Subject to certain requirements, VAT may be levied at the zero rate. Based on the above, the supply of movable goods in terms of a sale or instalment credit agreement to a customs controlled area enterprise or an Industrial Development Zone (IDZ) operator is subject to VAT at the zero rate, subject to, amongst others, the goods being delivered by a registered cartage contractor whose "main activity" is that of transporting of goods.

II. Reasons for change

SARS Interpretation Note 30 (Issue 3) provides for the requirements that need to be adhered to and prescribes the documentary proof that must be obtained and retained by a vendor in order to levy VAT at the zero rate on a supply of movable goods under a sale or instalment credit agreement where those goods are consigned or delivered to a recipient at an address in an export country. According to the Interpretation Note, the term "cartage contractor" is defined as a person whose "activities include" the transportation of goods. This has a wider application than the VAT Act's current requirement. In addition, the Act requires that a cartage contractor be registered for VAT but the SARS Interpretation Note 30 (Issue 3) does not have this requirement.

III. Proposal

In order to align the VAT Act with the SARS Interpretation Note 30 (Issue 3), it is proposed that the word "main activity" in section 11(1)(m)(ii) be changed to "activities include" to allow for the zero rating of goods delivered by a registered contractor whose activities include that of transportation of goods. Further section 11(1)(m)(ii) of the VAT Act will be amended to remove the requirement for the cartage contractor to be registered for VAT.

IV. Effective date

The proposed amendments will come into operation from 1 April 2016.

6.3. ZERO RATING OF SERVICES: VOCATIONAL TRAINING

[Applicable provision: Section 11(2)(*r*)]

I. Background

Currently, the VAT system makes provision for zero rating of vocational training of employees in South Africa if certain requirements are met. These requirements include, inter alia, that the vocational training must be provided to an employee of a non-resident employer, the non-resident employer must have its place of business outside the Republic, and the non-resident employer must not be registered as vendor in terms of the VAT Act. Although the training occurs in South Africa, the services are only consumed once the employee utilises the newly acquired skills at the employer's place of business outside South Africa.

II. Reasons for change

One of the requirements for zero rating of vocational training in section 11(2)(r) is that such training must be supplied to employees in respect of an employer who is not resident in South Africa. The words "for an employer who is not resident" implies that for zero rating to apply, a contractual relationship must exist between the person supplying the vocational training services and the employer. As a result, this section does not cater for a situation where the vocational training is subcontracted by a non-resident supplier to a third party vendor in South Africa.

III. Proposal

It is proposed that the section 11(2)(r) be amended to ensure that vocational training is zero rated to include instances where the training is provided through a third party vendor for the benefit of an employer who is not resident in South Africa. In order to clarify the policy intent a proviso has been introduced in section 11(2)(r) to exclude situations where the employer contracts with a vendor or resident to provide the training and this vendor or resident further sub-contracts the services to another vendor.

IV. Effective date

The proposed amendments will come into operation from 1 April 2016.

6.4. TIME OF SUPPLY: CONNECTED PERSONS (UNDETERMINED AMOUNTS)

[Applicable provisions: New proviso to Section 9(2)(*a*) and Section 10(4)(*a*)]

I. Background

Section 9(4) of the VAT Act provides that where goods are supplied (other than in terms of an installment credit agreement or a rental agreement) and the consideration for the supply of such goods is not determined at the time the goods are appropriated, the supply of the goods is deemed to take place at the time when payment for the supply is due or is received, or an invoice relating to the supply of goods is issued, whichever is the earlier. However, this rule does not apply to connected persons. With regard to connected persons, a special time of supply rule available in section 9(2)(a) applies. Where the supplies are made between connected persons and the consideration for the supply cannot be determined when the goods are appropriated, VAT is payable when the goods are removed or are made available or when the services are performed, whichever is the earlier.

II. Reasons for change

If the supply is between connected persons, then the provisions of section 9(2)(a) apply. These rules trigger output tax when the goods are removed or when the services are rendered. Where the value of goods cannot be determined when the goods are removed or services rendered, then the amount of the output tax payable cannot be calculated. This leads to an impractical situation of making the provisions of the VAT Act difficult to implement.

III. Proposal

It is proposed that the following amendments be made in the VAT Act to make provision for the time of supply between connected persons in instances where the recipient vendor is fully taxable and where the recipient is partially taxable.

- Recipient vendor fully taxable

It is proposed that a new proviso be inserted to section 9(2)(a) of the VAT Act that renders the provisions of section 9(2)(a) not to apply to connected persons who are fully taxable and where the consideration cannot be determined at the time the supply is deemed to be made.

- Recipient vendor partially taxable

It is proposed that an amendment be made to section 10(4)(a) to deem the consideration to be the open market value in instances where the supply is between connected persons and the consideration cannot be determined at the time of the supply. In instances where the open market value is difficult to quantify at the time of supply, the taxpayer may make an application to the Commissioner in terms of Section 3(4) for approval of an alternative method of determination.

IV. Effective date

The proposed amendments will come into operation from 1 April 2016.

6.5. SABC VAT ACCOUNTING METHOD

[Applicable provision: Section 15(2)(*a*)]

I. Background

The South African Broadcasting Corporation (SABC) Ltd., a Public Finance Management Act (PFMA) Schedule 2 major public entity, derives its revenue from advertising, sponsorships, grants and television license fees. In terms of the Broadcasting Act No. 4 of 1999, anyone who acquires a television set or possesses or uses a television set or any device capable of receiving a broadcast television signal must have a valid TV license and pay their annual television

license fee. The SABC issues notices of renewal 2 months prior to the expiry of the TV license. These notices are viewed as tax invoices.

Under normal VAT rules, the SABC should account for output tax on the earlier of an issued invoice (i.e. on issued TV license notices) or payment made for the supply. However, there is a high level of non-payment of TV license fees by television owners. The VAT requirement to account for output tax on an invoice basis on the revenue it might not be able to collect, places a significant financial constraint on the SABC.

II. Reasons for change

Due to the high level of non-payment of TV license fees and the resulting financial constraint on the SABC, the proposal is to afford the SABC an option to request to be allowed to account for VAT output on a payment basis. The major benefit of adopting the payments basis is that a vendor will account for output tax only when payment for the supply is received. However, input tax incurred may be deducted only to the extent that payments of consideration for the supplies have been made by the vendor.

III. Proposal

It is proposed that the SABC be allowed to apply to the South African Revenue Services (SARS) Commissioner to account for VAT on the payments basis, if it chooses (i.e. it is not obliged to so). However, in exercising this option, the SABC will have to operate its entire business on a payment basis.

IV. Effective date

The proposed amendments will come into operation on 1 April 2016.

6.6. REPEALING THE ZERO RATING FOR THE NATIONAL HOUSING PROGRAMME

[Applicable provisions: Sections 8(23) and 11(2)(*s*)]

I. Background

The current section 11(2)(s), read together with section 8(23), makes provision for the zero-rating of services supplied to a public authority or municipality to the extent of any payment made to or on behalf of that vendor in terms of a national housing programme contemplated in the Housing Act, 1997 (Act No. 107 of 1997).

The Housing Act, 1997, specifically section 4(3)(g), empowers the Minister of Human Settlements (then Housing) to institute and finance national housing programmes. Further, in terms of section 4(3)(d), the Minister of Finance may allocate funds for national housing programmes to provincial governments, including funds for national housing programmes administered by municipalities. The Housing Act, 107 of 1997 defines national housing programmes as any national policy framework to facilitate housing development, including, but not limited to, any housing assistance measures referred to in section 3(5) or any other measure or arrangement to-

1. assist persons who cannot independently provide for their own housing needs;
2. facilitate housing delivery; or
3. rehabilitate and upgrade existing housing stock, including municipal services and infrastructure;

In section 3(5)(a) the Housing Act provides for the Housing Subsidy Scheme as one of the housing assistance measures deemed to be national housing programmes instituted by the Minister. There are also a variety of housing programmes to provide housing assistance to poor households in a variety of forms. The department was responsible for identifying the projects that qualified for zero-rating under the Housing Subsidy Scheme. To this effect, vendors would be informed of the zero-rated status of the projects and on that basis zero-rate the supplies of services to any public authority or local authority to the extent of any payment in terms of the Housing Subsidy Scheme. However, it has been administratively difficult to implement the VAT provision effectively due to the variations in the programmes and the legislative interpretation by various role-players involved in the implementation of the housing programme.

As a consequence, the VAT Act was amended in 2010 to provide for the Minister of Finance to issue Regulations specifying the projects that will qualify for the zero rated status. It was anticipated that the development of regulations would remedy the administrative difficulties identified previously by providing clarity and simplifying the application of the VAT concessions. To the contrary, it was not as simple as anticipated and it would have not resolved all the problems being experienced with the administration of the zero-rating provision. The main difficulty was that the national housing programme had a number of variations which were going to create practical difficulties relating to administration and implementation of the zero-rating provision. The variations were largely due to the fact that programmes were more holistic programmes which include rental stock (i.e. exempt supply of dwellings), community developments and many other facilities. The Regulations were therefore not promulgated.

II. Reasons for change

Though the policy was well intended, the administrative complexities of applying the zero-rate provision to the various housing programmes has made it difficult for all the stakeholders to have a common understanding and application of the provision.

III. Proposal

It is proposed to abolish the current provisions of zero-rating for the supply of goods and services in terms of the national housing programme contemplated in the Housing Act, 1997.

IV. Effective date

The proposed amendments will come into operation on 1 April 2017.

CLAUSE BY CLAUSE

TRANSFER DUTY

CLAUSE 1

Transfer Duty: Amendment to section 2

This amendment corrects a grammatical error and changes the word *"reduced"* to *"altered".*

ESTATE DUTY

CLAUSE 2

Estate Duty: Amendment to section 3

See notes on **CLOSING A LOOPHOLE TO AVOID ESTATE DUTY THROUGH EXCESSIVE CONTRIBUTIONS TO RETIREMENT FUNDS**

INCOME TAX ACT

CLAUSE 3

Income Tax: Amendment to section 1

Sub-clause (a): Definition of *"collateral arrangement*": See notes on **SECURITIES TRANSFER TAX AND CAPITAL GAINS TAX IMPLICATIONS ON COLLATERAL ARRANGEMENTS**

Sub-clause (b): Amendment to paragraph (iii) of paragraph (e) of the definition of *“company”*. This amendment corrects a grammatical error by changing the word *“listing”* to *“listings”*.

Sub-clause (c): Definition of “*connected person*” - Amendment excludes specific reference to collective investment schemes in securities or a portfolio of collective investment scheme in property and a reference will be made only to a portfolio of collective investment scheme.

Sub-clause (d): Definition of *“connected person”* - Amendment excludes specific reference to collective investment schemes in securities or a portfolio of collective investment scheme in property and a reference will be made only to a portfolio of collective investment scheme.

Sub-clause (e): Definition of *“connected person”* - Amendment excludes specific reference to collective investment schemes in securities or a portfolio of collective investment scheme in property and a reference will be made only to a portfolio of collective investment scheme.

Sub-clause (f): Definition of *“connected person”* - Amendment excludes specific reference to collective investment schemes in securities or a portfolio of collective investment scheme in property and a reference will be made only to a portfolio of collective investment scheme.

Sub-clause (g): Definition of *“foreign partnership*” - See notes on the **REVISION OF THE DEFINITION OF FOREIGN PARTNERSHIP**

Sub-clause (h):

- Definition of *“identical security”* - See notes on **REFINEMENTS TO SECURITIES LENDING ARRANGEMENTS**

- Definition of *“identical share”* - See notes on **SECURITIES TRANSFER TAX AND CAPITAL GAINS TAX IMPLICATIONS ON COLLATERAL ARRANGEMENTS**

Sub-clause (i): Insertion of the definition of “*Insurance Act*, *2016”*. In order to avoid repetition of the full citation of acts referred to in the Income Tax Act, it is proposed that the Insurance Act, 2016 be defined.

Sub-clause (j): Definition of “*maatskappy*” – The proposed amendment in paragraph (f) of the definition corrects a spelling error in the Afrikaans text.

Sub-clause (k): Definition of *“pension fund”* – See notes on **PHASING IN THE REQUIREMENT TO PURCHASE AN ANNUITY FOR PROVIDENT FUNDS**

Sub-clause (l): Definition of “*pension fund*” – See notes on **PHASING IN THE REQUIREMENT TO PURCHASE AN ANNUITY FOR PROVIDENT FUNDS**

Sub-clause (m): Amendment to the definition of "*pension fund"* removes reference to the Commissioner's discretion.

Sub-clause (n): Definition of *"pension fund"* - See notes on **CLOSING A LOOPHOLE TO ENSURE CONSISTENT TAX TREATMENT ON ALL RETIREMENT FUNDS AS PART OF RETIREMENT REFORMS**

Sub-clause (o): Definition of *"pension fund"* - **PHASING IN THE REQUIREMENT TO PURCHASE AN ANNUITY FOR PROVIDENT FUNDS**

Sub-clause (p): Definition of *"pension fund"* - See notes on **PHASING IN THE REQUIREMENT TO PURCHASE AN ANNUITY FOR PROVIDENT FUNDS**

Sub-clause (q): Definition of *"pension preservation fund"* - See notes on **PHASING IN THE REQUIREMENT TO PURCHASE AN ANNUITY FOR PROVIDENT FUNDS**

Sub-clause (r): Definition of *"pension preservation fund"* - See notes on **PHASING IN THE REQUIREMENT TO PURCHASE AN ANNUITY FOR PROVIDENT FUNDS**

Sub-clause (s): Definition of "*pension preservation fund"* - **CLOSING A LOOPHOLE TO ENSURE CONSISTENT TAX TREATMENT ON ALL RETIREMENT FUNDS AS PART OF RETIREMENT REFORMS**

Sub-clause (t): Definition of "*pension preservation fund"* - See notes on **PHASING IN THE REQUIREMENT TO PURCHASE AN ANNUITY FOR PROVIDENT FUNDS**

Sub-clause (u): Definition of "*provident fund"* - See notes on **PHASING IN THE REQUIREMENT TO PURCHASE AN ANNUITY FOR PROVIDENT FUNDS**

Sub-clause (v): Definition of "*provident fund"* - See notes on **PHASING IN THE REQUIREMENT TO PURCHASE AN ANNUITY FOR PROVIDENT FUNDS**

Sub-clause (w): Definition of *"provident preservation fund"* - See notes on **PHASING IN THE REQUIREMENT TO PURCHASE AN ANNUITY FOR PROVIDENT FUNDS**

Sub-clause (x): Definition of *"provident preservation fund"* - See notes on **PHASING IN THE REQUIREMENT TO PURCHASE AN ANNUITY FOR PROVIDENT FUNDS**

Sub-clause (y): Definition of *"provident preservation fund"* - See notes on **PHASING IN THE REQUIREMENT TO PURCHASE AN ANNUITY FOR PROVIDENT FUNDS**

Sub-clause (z): Definition of *"provident preservation fund"* - See notes on **PHASING IN THE REQUIREMENT TO PURCHASE AN ANNUITY FOR PROVIDENT FUNDS**

Sub-clause (zA): Amendment to the definition of "*remuneration proxy"* corrects a circular reference in the calculation of the fringe benefit for residential accommodation.

Sub-clause (zB): Definition of "*retirement annuity fund"* – See notes on **CLOSING A LOOPHOLE TO ENSURE CONSISTENT TAX TREATMENT ON ALL RETIREMENT FUNDS AS PART OF RETIREMENT REFORMS**

Sub-clause (zC): Definition of *"retirement annuity fund"* - See notes on **PHASING IN THE REQUIREMENT TO PURCHASE AN ANNUITY FOR PROVIDENT FUNDS**

Sub-clause (zD): Definition of *"retirement annuity fund"* - See notes on **WITHDRAWAL FROM RETIREMENT FUNDS BY NON RESIDENTS**

Sub-clause (zE): Amendment to the definition of "*spouse"* removes reference to the Commissioner's discretion.

CLAUSE 4

Income Tax: Amendment to section 6

Sub-clause (a): Amendment to subsection (1). Currently, the opening words of section 6(1) read as follows: *"There shall be deducted from normal tax"*. The opening words of section 6(1) referred to above create confusion as tax payable should already be the final amount payable. It is proposed that the wording of section 6(1) should be amended to correct the anomaly.

Sub-clause (b): This amendment proposes to delete obsolete provision relating to Standard Income Tax on Employees.

CLAUSE 5

Income Tax: Amendment to section 6B

Amendment corrects alignment in the Afrikaans text.

CLAUSE 6

Income Tax: Amendment to section 6*quat*

See notes on **WITHDRAWAL OF SPECIAL FOREIGN TAX CREDITS FOR SERVICE FEES SOURCED IN SOUTH AFRICA**

CLAUSE 7

Income Tax: Amendment to section 6*quin*

See notes on **WITHDRAWAL OF SPECIAL FOREIGN TAX CREDITS FOR SERVICE FEES SOURCED IN SOUTH AFRICA**

CLAUSE 8

Income Tax: Amendment to section 8

Amendments remove reference to the Commissioner's discretion.

CLAUSE 9

Income Tax: Amendment to section 8F

Sub-clause (a): This amendment proposes to correct the current legislation to correctly reflect the original policy intent by deleting reference to *"from the end of the year of assessment"* in paragraph (c) of the definition of "hybrid debt instrument".

Sub-clause (b): Definition of "*interest"* - The amendment updates reference to the definition of interest in section 8F and makes reference to section 24J(1) instead of section 24J.

CLAUSE 10

Income Tax: Amendment to section 8FA

Definition of *"interest*" – Amendment updates reference to the definition of interest in S8FA and makes reference to section 24J(1) instead of section 24J.

CLAUSE 11

Income Tax: Amendment to section 9

Definition of *"interest"* - The amendment removes reference to the following words: *"or deemed interest as contemplated in section 8E(2)"* and clarifies that it is interest as contemplated in section 24J(1).

CLAUSE 12

Income Tax: Amendment to section 9C

Sub-clause (a): Insertion of the definition of *"disposal":* See notes on **ADDRESSING THE PROBLEM OF RETURN OF CAPITAL AFTER A TAXPAYER HAS HELD A SHARE FOR THREE YEARS**

Sub-clause (b): Amendments to the definition of *"equity share"* - See notes on **ADDRESSING THE PROBLEM OF RETURN OF CAPITAL AFTER A TAXPAYER HAS HELD A SHARE FOR THREE YEARS**

Sub-clause (c): Deletion of the definition of "*qualifying share*" - See notes on **ADDRESSING THE PROBLEM OF RETURN OF CAPITAL AFTER A TAXPAYER HAS HELD A SHARE FOR THREE YEARS**

Sub-clause (d): See notes on **ADDRESSING THE PROBLEM OF RETURN OF CAPITAL AFTER A TAXPAYER HAS HELD A SHARE FOR THREE YEARS**

Sub-clause (e): See notes on **ADDRESSING THE PROBLEM OF RETURN OF CAPITAL AFTER A TAXPAYER HAS HELD A SHARE FOR THREE YEARS**

Sub-clause (f): See notes on **ADDRESSING THE PROBLEM OF RETURN OF CAPITAL AFTER A TAXPAYER HAS HELD A SHARE FOR THREE YEARS**

Sub-clause (g): See notes on **REFINEMENTS TO SECURITY LENDING ARRANGEMENTS**

Sub-clause (h): See notes on **SECURITIES TRANSFER TAX AND CAPITAL GAINS TAX IMPLICATIONS ON COLLATERAL ARRANGEMENTS**

Sub-clause (i): See notes on **ADDRESSING THE PROBLEM OF RETURN OF CAPITAL AFTER A TAXPAYER HAS HELD A SHARE FOR THREE YEARS**

Sub-clause (j): Amendment replaces the word *"identical"* with the following words *"of the same class"* in order to provide clarity and be in line with policy intent.

Sub-clause (k): See notes on **ADDRESSING THE PROBLEM OF RETURN OF CAPITAL AFTER A TAXPAYER HAS HELD A SHARE FOR THREE YEARS**

CLAUSE 13

Income Tax: Amendment to section 9D

See notes on **REINSTATEMENT OF THE CONTROLLED FOREIGN COMPANY DIVERSIONARY INCOME RULES**

CLAUSE 14

Income Tax: Amendment to section 9H

See notes on **RELAXING CAPITAL GAINS TAX RULES APPLICABLE TO CROSS ISSUE OF SHARES AND INTRODUCING COUNTER MEASURES FOR TAX FREE CORPORATE MIGRATIONS**

CLAUSE 15

Income Tax: Insertion of section 9HA

See notes on **REMOVING ANOMALIES FOR INCOME AND DISPOSAL TO AND FROM DECEASED ESTATES**

CLAUSE 16

Income Tax: Amendment to section 10

Sub-clause (a): Amendments to subsection (1)(gI) clarify the provisions of this section by adding the following words *"any person insured in terms of that policy of insurance"*.

Sub-clause (b): Amendment to subsection (1)(j) removes reference to the Commissioner's discretion.

Sub-clause (c): Amendments to subsection (1)(l) corrects Afrikaans text to align it with internationally accepted terminology.

Sub-clause (d): Amendments to subsection (1)(q) – See notes on **BURSARY AND SCHOLARSHIP EXEMPTION FOR BASIC EDUCATION: GRADE R TO 12**.

Sub-clause (e): Amendment to subsection (1)(k)(gg): The amendment removes the words *"of the same kind and of the same or equivalent quality"* and replaces them with *"identical shares"* in order to provide clarity in line with the introduction of the new definition of *"identical shares"* in section 1 of the Act and in line with the policy intent.

Sub-clause (f): Amendment to subsection (1)(k)(hh): The amendment removes the words *"of the same kind and of the same or equivalent quality"* and replaces them with *"identical shares"* in order to provide clarity in line with the introduction of the new definition of "*identical shares*" in section 1 of the Act and in line with the policy intent.

Sub-clause (g): Amendment to subsection (1)(k)(hh): In 2013, subsection (1)(k)(hh) was introduced to counter mismatches from various dividends/derivatives mismatches. As a result, dividends received or accrued to a company will no longer be exempt if used as an offset against deductible financial payments, for example dividend amount applied to cover a deductible payment owe in respect of a share derivative. It is proposed that amendments be made to subsection (1)(k)(hh) by inserting a proviso to ensure that the provisions of this paragraph only apply to deny an exemption to the extent that the dividend exceeds the deductible expenditure.

Sub-clause (h): Amendment to subsection (1)(nB) removes reference to the Commissioner's discretion.

Sub-clause (i): Insertion of paragraph (y) in subsection (1) reinstates the repealed provision of section 10(1)(y) in the Income Tax Act to allow the Minister of Finance to identify in the *Government Gazette* government grants to be tax exempt, more especially the Business Process Services government grant that was erroneously never gazetted. In order to identify a government grant in the *Government Gazette* (as

secondary legislation) the enabling provision should be present in the Income Tax Act (as primary legislation).

Sub-clause (j): Deletion of subsection (1)(zI) - See notes on **FURTHER RE-ALIGNMENT OF THE TAX TREATMENT OF GOVERNMENT GRANTS**

CLAUSE 17

Income Tax: Amendment to section 10A

Deletion of subsection 8: Amendment deletes obsolete provisions.

CLAUSE 18

Income Tax: Amendment to section 11

Sub-clause (a): Amendment to paragraph (e) removes reference to the Commissioner's discretion.

Sub-clause (b): Deletion of paragraph (iii) of the proviso to paragraph (e) - The proposed amendment deletes obsolete provisions.

Sub-clause (c): Amendments to paragraphs (v), (vii) and (ix) of the proviso to paragraph (e) remove reference to the Commissioner's discretion.

Sub-clause (d): Amendments to paragraphs (bb) and (cc) of the proviso to paragraph (f) remove reference to the Commissioner's discretion.

Sub-clause (e): Amendments to paragraph (dd)(B) of the proviso to paragraph (f) – See notes on **DEPRECIATION ALLOWANCE IN RESPECT OF TRANSMISSION LINES OR CABLES USED FOR ELECTRONIC COMMUNICATIONS OUTSIDE SOUTH AFRICA**

Sub-clause (f): Amendments to paragraphs (i) and (iii) of the proviso to paragraph (g) removes reference to the Commissioner's discretion.

Sub-clause (g): Amendments to subparagraph (A) of paragraph (aa) of the proviso to paragraph (gA) removes reference to the Commissioner's discretion.

Sub-clause (h): Amendments to paragraph (bb) of the proviso to paragraph (gA) remove reference to the Commissioner's discretion.

Sub-clause (i): Amendments to paragraph (j) removes reference to the Commissioner's discretion.

Sub-clause (j): Amendments to paragraph (aa) of the proviso to paragraph (o) delete reference to paragraph (iv) of the proviso paragraph (e) as paragraph (iv) of the proviso paragraph (e) was deleted in 2010.

Sub-clause (k): Deletion of paragraphs (cc) and (dd) of the proviso to paragraph (o) - Amendment deletes obsolete provisions.

CLAUSE 19

Income Tax: Amendment to section 12B

Sub-clause (a): Amendment to subparagraph (ii) of subsection (1)(*h*): See notes on **DEPRECIATION ALLOWANCE FOR RENEWABLE ENERGY MACHINERY**

Sub-clause (b): Amendment to subsection 2: See notes on **DEPRECIATION ALLOWANCE FOR RENEWABLE ENERGY MACHINERY**

Sub-clause (c): Amendments to subsection (4): Deleting reference to section 12(1) and section 27(2)(d) as both these subsections were deleted in 1991.

Sub-clause (d): Amendments to subsection (6): Deleting reference to section 12(1) and section 27(2)(d) as both these subsections were deleted in 1991 and removing reference to the Commissioner's discretion.

CLAUSE 20

Income Tax: Amendment to section 12C

Sub-clause (a): Amendments to paragraphs (a) and (b) of subsection (1) removes reference to the Commissioner's discretion.

Sub-clause (b): Insertion of new paragraph (bA) of subsection (1) - See notes on **ACCELERATED CAPITAL ALLOWANCES FOR MANUFACTURING ASSETS GOVERNED BY SUPPLY AGREEMENTS**

Sub-clause (c): Amendments to paragraph (c) of the proviso to subsection (1) removes reference to the Commissioner's discretion.

CLAUSE 21

Income Tax: Amendment to section 12E

Amendments to paragraph (b) of subsection (1) removes reference to the Commissioner's discretion.

CLAUSE 22

Income Tax: Amendment to section 12I

See notes on **EXTENDING THE WINDOW PERIOD AND INTRODUCING A COMPLIANCE PERIOD FOR THE INDUSTRIAL POLICY PROJECT TAX INCENTIVE REGIME**

CLAUSE 23

Income Tax: Amendment to section 12J

In 2008 the Venture Capital Regime (VCC) was introduced in the Income Tax Act to encourage retail investment in VCCs that are mainly directed toward investments in smaller businesses and junior mining companies. In order to qualify as a VCC, a company must meet certain requirements. In 2014, changes were made to the Income Tax Act to allow the 20% rule to be applied to the total subscription monies received together with any capital gains on any disposal of a qualifying share held at assessment every year after the 36 month period.

However, it has been noted that the policy intention regarding the above-mentioned rule has not been clearly expressed in the text of the current legislative provisions of section 12J(6A). It is proposed that changes be made in subsection (6A) in order to align the provisions of the Income Tax Act with the policy intent.

CLAUSE 24

Income Tax: Amendment to section 12L

See notes on **ADJUSTMENT OF ENERGY SAVINGS TAX INCENTIVE**

CLAUSE 25

Income Tax: Amendment to section 12O

Amendment removes anomalies by clarifying the interaction between section 12O [film incentives] and section 23(f) [allowable deductions not allowed in determining taxable income].

CLAUSE 26

Income Tax: Amendment to section 12P

See notes on **FURTHER RE-ALIGNMENT OF THE TAX TREATMENT OF GOVERNMENT GRANTS**

CLAUSE 27

Income Tax: Amendment to section 12Q

Currently, the definition of "South African Ship" in section 12Q mistakenly refers to a ship which is registered in accordance with section12Q of the Ship Registration Act. However, this section deals with the registration of property in a ship. It is proposed that an amendment be made so that the definition of "South African Ship" in section 12Q refers to a ship which is registered in accordance with Part 1 of Chapter 4 of Ship Registration Act, 1998.

CLAUSE 28

Income Tax: Amendment to section 12R

See notes on **SPECIAL ECONOMIC ZONES (SEZ) ANTI-PROFIT SHIFTING PROVISION**

CLAUSE 29

Income Tax: Amendment to section 12T

In 2015, Tax Free Investment was introduced in the Income Tax Act to encourage savings by exempting any amount received or accrued in respect of tax free investment. The definition of Tax Free Investment includes any financial instrument or policy owned by a natural person or the deceased estate or insolvent estate.

However, the current provisions in subsection 12T(2) regarding the exemption from Tax Free Investments only refers to natural person and does not refer to deceased estate or insolvent estate. In order to align the provisions of section 12T(2) with the definition of Tax Free Investment, it is proposed that amendments be made to section 12T(2) to include deceased estate or insolvent estate.

CLAUSE 30

Income Tax: Amendment to section 13

Amendments to paragraphs (b), (d) and (dA) of subsection (1) remove reference to Commissioner's discretion.

CLAUSE 31

Income Tax: Amendment to section 13*bis*

Sub-clause (a): Amendments to subparagraph (ii) of subsection (1)(*d*) delete reference to paragraph (a) or (b) as both these paragraphs were deleted with effect from 1 January 2014.

Sub-clause (b): Amendments to subsection (5): The current wording in subsection (5) refers to the old wording in the Income Tax Act. Therefore it is proposed that the current wording in subsection (5) be replaced with the new wording which is similar to the wording in section 13*quin*(6).

CLAUSE 32

Income Tax: Amendment to section 13*quat*

Amendments to subsection (6)(*a*), (7)(*b*), (7)(*c*) and the insertion of subsection (7)(*bA*): See notes on **URBAN DEVELOPMENT ZONES (UDZ) – ALLOWING FOR THE DEMARCATION OF ADDITIONAL UDZS PER QUALIFYING MUNICIPALITY**

CLAUSE 33

Income Tax: Amendment to section 15

Amendments to paragraphs (i) and (ii) of the proviso to paragraph (b) to remove reference to Commissioner's discretion.

CLAUSE 34

Income Tax: Amendment to section 18A

Amendments to subsection (5C) remove reference to Commissioner's discretion.

CLAUSE 35

Income Tax: Amendment to section 19

Amendment to subsection (7) updates wording as a matter of style consistency.

CLAUSE 36

Income Tax: Amendment to section 20C

Currently, the definition of *"royalty"* in section 20C mistakenly refers to section 49D(b) instead of section 49D(c). It is proposed that an amendment be made so that the definition of *"royalty*" in section 20C refers to section 49D(c).

CLAUSE 37

Income Tax: Amendment to section 22

Sub-clause (a): Amendments to paragraph (a) of subsection (1) remove reference to Commissioner's discretion.

Sub-clause (b): Amendments to subparagraph (iii) of subsection (3)(a) replaces the word "*less"* with the words *"reduced by*" as a matter of style consistency.

Sub-clause (c): Amendments to paragraph (b) of subsection (4A) - See notes on **REFINEMENTS TO SECURITIES LENDING ARRANGEMENTS**

Sub-clause (d): Insertion of a new subsection (4B) - See notes on **SECURITIES TRANSFER TAX AND CAPITAL GAINS TAX IMPLICATIONS ON COLLATERAL ARRANGEMENTS**

Sub-clause (e): Deletion of subsection (5A): Amendment deletes superfluous provisions.

Sub-clause (f): See notes on **REMOVING ANOMALIES FOR INCOME AND DISPOSAL TO AND FROM DECEASED ESTATES**

Sub-clause (g): See notes on See notes on **REFINEMENTS TO SECURITIES LENDING ARRANGEMENTS**

Sub-clause (h): See notes on See notes on **SECURITIES TRANSFER TAX AND CAPITAL GAINS TAX IMPLICATIONS ON COLLATERAL ARRANGEMENTS**

Sub-clause (i): See notes on See notes on **REFINEMENTS TO SECURITIES LENDING ARRANGEMENTS**

Sub-clause (j): See notes on **SECURITIES TRANSFER TAX AND CAPITAL GAINS TAX IMPLICATIONS ON COLLATERAL ARRANGEMENTS**

Sub-clause (k): See notes on **SECURITIES TRANSFER TAX AND CAPITAL GAINS TAX IMPLICATIONS ON COLLATERAL ARRANGEMENTS**

CLAUSE 38

Income Tax: Amendment to section 23H

Amendments to subsection (2) remove reference to Commissioner's discretion.

CLAUSE 39

Income Tax: Amendment to section 23K

Deletion of paragraph (c) of subsection (10): Amendment deletes superfluous provisions.

CLAUSE 40

Income Tax: Amendment to section 23N

Amendments to the definition of paragraph (a) and (b) of *"acquisition transaction"* in subsection (1). Amendments are consequential amendments to section 24O. See notes on **DEBT-FINANCED ACQUISITIONS OF CONTROLLING SHARE INTERESTS**

CLAUSE 41

Income Tax: Amendment to section 24

Amendments to subsection (2) remove reference to Commissioner's discretion.

CLAUSE 42

Income Tax: Amendment to section 24C

Amendments to subsections (1) and (2) remove reference to Commissioner's discretion.

CLAUSE 43

Income Tax: Amendment to section 24D

Amendments to subsections (1) and (2) remove reference to Commissioner's discretion

CLAUSE 44

Income Tax: Amendment to section 24I

Sub-clause (a): Deletion of the definition of *"premium or discount on a forward exchange contract"* in subsection (1): Amendment deletes obsolete provisions

Sub-clause (b): Amendments to the definition of *"ruling exchange rate"* in subsection (1).

The current wording in the definition of *"ruling exchange rate"* refers to the following words *"for accounting purposes in returns of Generally Accepted Accounting Practices"*. It is proposed that the reference to GAAP should be replaced with reference to International Financial Reporting Standards, which is similar to wording in section 24I(10A)(a)(ii)(aa).

Sub-clause (c): Amendments in subsection (7) delete reference to section 37E as section 37E was deleted in 2008.

Sub-clause (d): Amendments to the proviso in subsection (7) remove reference to Commissioner's discretion.

Sub-clause (e): Amendments to subsection (10) in the Afrikaans text corrects wording to match current IFRS terminology.

CLAUSE 45

Income Tax: Amendment to section 24JA

See notes on **EXTENSION OF MURABAHA AND SUKUK TO LISTED ENTITIES**

CLAUSE 46

Income Tax: Amendment to section 24O

See notes on **DEBT-FINANCED ACQUISITIONS OF CONTROLLING SHARE INTERESTS**

CLAUSE 47

Income Tax: Amendment to section 24P

Amendments to subsections (1) and (2) remove reference to Commissioner's discretion.

CLAUSE 48

Income Tax: Amendment to section 25

See notes on **REMOVING ANOMALIES FOR INCOME AND DISPOSAL TO AND FROM DECEASED ESTATES**

CLAUSE 49

Income Tax: Amendment to section 25A

Amendments to subsection (1) remove reference to Commissioner's discretion.

CLAUSE 50

Income Tax: Amendment to section 25BB

Sub-clause (a): Definition of *"qualifying distribution"* in subsection 1. Amendments gives alteration to the definition of qualifying distribution in relation to a new REIT or controlled company that was inactive prior to the company being a REIT or controlled company.

Sub-clause (b):

- Insertion of new subsection (2A)(a) - See notes on **ALLOWING REITS TO DEDUCT FOREIGN TAXES PAID BY FOREIGN VESTING TRUST**
- Insertion of new subsection (2A)(b) – See notes on **ALLOWING REITS TO DEDUCT FOREIGN WITHHOLDING TAXES ON DISTRIBUTIONS MADE BY FOREIGN VESTING TRUST**
- Insertion of new subsection (2A)(c) – See notes on **ALLOWING REITS TO DECUCT TAX DEDUCTIBLE DONATIONS**

Sub-clause (c): Deletion of subsection (3) – See notes on **REPEAL OF FINANCIAL INSTRUMENT REQUIREMENTS ON AMOUNTS TO BE INCLUDED IN THE INCOME OF A REIT**

Sub-clause (d): Amendment to subsection (6) updates wording such that it is clear that the amount is deemed to be either a dividend or foreign dividend depending on the resident status of the property company incurring the interest.

CLAUSE 51

Income Tax: Amendment to section 27

Amendments to paragraph (g) of subsections (2) remove reference to Commissioner's discretion.

CLAUSE 52

Income Tax: Amendment to section 28

Sub-clause (a): Definition of *"short term insurance business"* in subsection (1) - See notes on **INCLUDING MICRO-INSURANCE BUSINESS IN TAXATION OF SHORT TERM INSURANCE BUSINESS**

Sub-clause (b): Definition of *"short term insurer"* in subsection (1): See notes on **INCLUDING MICRO-INSURANCE BUSINESS IN THE TAXATION OF SHORT TERM INSURANCE BUSINESS**

Sub-clause (c): Definition of *"short term policy"* in subsection (1): See notes on **INCLUDING MICRO-INSURANCE BUSINESS IN THE TAXATION OF SHORT TERM INSURANCE BUSINESS**

Sub-clause (d): Amendment of subsection (3): See notes on **TAX ISSUES RESULTING FROM INTRODUCTION OF THE SAM BASIS FOR SHORT TERM INSURERS**

Sub-clause (e): Deletion of subsections (7),(8),(9),(10) and (11): See notes on **TAX ISSUES RESULTING FROM INTRODUCTION OF THE SAM BASIS FOR SHORT TERM INSURERS**

CLAUSE 53

Income Tax: Amendment to section 29A

Sub-clause (a): Negative liability means the amount by which the expected present value of future premiums exceeds the expected present value of future benefits and expenses.

Sub-clause (b): Definition of *"risk policy"* in subsection (1) - See notes on **REFINEMENT TO RISK INSURANCE BUSINESS OF LONG TERM INSURERS**

Sub-clause (c): It is also proposed to amend the definition of "value of liabilities". This definition will apply to both policyholder funds and the risk policy fund. The definition of "value of liabilities" will mean the "adjusted IFRS value" (as calculated per definition depending on which fund is involved) plus expenditure allocated that has not been paid by that fund at the last day of that year of assessment and which has not been taken into account in determining adjusted IFRS value.

Sub-clause (d): Amendments to item (C) of the formula in subsection (11)(a)(ii)(bb) – The amendment clarifies the referencing.

Sub-clause (e): Amendment to the proviso to subsection 11(g) – See notes on **LIMITATION OF UNWARRANTED RELIEF FROM TAXATION IN RESPECT OF FOREIGN REINSURANCE BY LONG TERM INSURERS**

Sub-clause (f): Insertion of new subparagraph (13B) - See notes on **REFINEMENT TO RISK INSURANCE BUSINESS OF LONG TERM INSURERS**

CLAUSE 54

Income Tax: Amendment to section 30

The amendment in subsection (5A)(b) corrects grammatical error and changes the word "*become*" to "*becomes*".

CLAUSE 55

Income Tax: Amendment to section 30C

The amendment in subsection 1 extends the definition of *"Small Business Funding Entity"* to include a non-profit company as defined in section 1 of the Companies Act. The inclusion of a *"non-profit company*" in the definition of Small Business Funding Entity is in line with other definitions in section 30A (Recreational clubs) and section 30B (Associations).

CLAUSE 56

Income Tax: Amendment to section 31

The amendment in subparagraph (ii) of subsection (3)(b) corrects grammatical error and inserts the word *"a"* before the word donation in that sentence.

CLAUSE 57

Income Tax: Amendment to section 35A

The current wording is problematic in that it states that a purchaser does not need to withhold tax from a deposit *"until the agreement for that disposal has been entered into"*. The deferral should not be based on when the agreement is entered into since this could result in tax having to be withheld from deposits in respect of sales that are subject to suspensive conditions which may never be fulfilled. It is proposed that the wording *"been entered into"* be removed and be replaced with *"become unconditional"*.

CLAUSE 58

Income Tax: Amendment to section 38

Amendments remove reference to Commissioner's discretion

CLAUSE 59

Income Tax: Amendment to section 40C

Amendment clarifies that this provision only applies to the issue of shares and not distributions to shares.

CLAUSE 60

Income Tax: Insertion of section 40E

Amendment switches off the CGT exit charge when a CFC becomes a foreign partnership as a consequential amendment to the definition of "*foreign partnership*" in section 1.

CLAUSE 61

Income Tax: Amendment to section 41

Sub-clause (a): Definition of *"company*" in subsection (1) - See notes on **TRANSITIONAL TAX ISSUES RESULTING FROM THE REGULATION OF HEDGE FUNDS**

Sub-clause (b): Definition of *"equity share"* in subsection (1) - See notes on **TRANSITIONAL TAX ISSUES RESULTING FROM THE REGULATION OF HEDGE FUNDS**

CLAUSE 62

Income Tax: Amendment to section 42

Sub-clause (a): Amendments in proviso to paragraph (a)(ii) of the definition of *"asset for share"* in subsection (1) - See notes on **TRANSITIONAL TAX ISSUES RESULTING FROM THE REGULATION OF HEDGE FUNDS**

Sub-clause (b): Amendments to the definition of "*qualifying interest*" in subsection (1) - See notes on **TRANSITIONAL TAX ISSUES RESULTING FROM THE REGULATION OF HEDGE FUNDS**

Sub-clause (c): Amendments in subsection (3)(c) - The debtor's allowances granted in terms of section 24 relate to trade debts. For purposes of the re-organisation rules, such debts are considered allowance assets in respect of which allowances may be enjoyed by the transferee and have, as a result, always qualified for roll-over treatment. This amendment is purely meant to clarify this position.

Sub-clause (d): Amendments to the proviso to subsection (3A) - See notes on **TRANSITIONAL TAX ISSUES RESULTING FROM THE REGULATION OF HEDGE FUNDS**

Sub-clause (e): Amendments in subparagraph (b) of subsection (5) - See notes on **ANTI-AVOIDANCE RULE IN RESPECT OF ASSET FOR SHARE TRANSACTIONS**

CLAUSE 63

Income Tax: Amendment to section 44

Sub-clause (a): Amendments in subsection (3)(b) - The debtor's allowances granted in terms of section 24 relate to trade debts. For purposes of the re-organisation rules, such debts are considered allowance assets in respect of which allowances may be enjoyed by the transferee and have, as a result, always qualified for roll-over treatment. This amendment is purely meant to clarify this position.

Sub-clause (b): Insertion of new paragraph (bB) of subsection (14) - See notes on **TRANSITIONAL TAX ISSUES RESULTING FROM THE REGULATION OF HEDGE FUNDS**

CLAUSE 64

Income Tax: Amendment to section 45

Sub-clause (a): Amendments in subsection (3)(b) - The debtor's allowances granted in terms of section 24 relate to trade debts. For purposes of the re-organisation rules, such debts are considered allowance assets in respect of which allowances may be enjoyed by the transferee and have, as a result, always qualified for roll-over treatment. This amendment is purely meant to clarify this position.

Sub-clause (b): Amendment in paragraph (c) of subsection (3A) – In 2012, section 45(3A) of the Income Tax Act was amended to clarify that the section also applies to cross-border intra-group transactions. However, subparagraph (c) of this section was inadvertently not amended, which creates anomalies. It is proposed that this subparagraph be amended to clarify that the provisions of this section refer to the same group of companies as defined in section 1 of the Act.

CLAUSE 65

Income Tax: Amendment to section 46

Amendment updates the reference by referring to subsection (1) of section 25BB and refers to REIT or a controlled company as defined in section 25BB(1).

CLAUSE 66

Income Tax: Amendment to section 47

Amendments to subsection (3)(b) - The debtor's allowances granted in terms of section 24 relate to trade debts. For purposes of the re-organisation rules, such debts are considered allowance assets in respect of which allowances may be enjoyed by the transferee and have, as a result, always qualified for roll-over treatment. This amendment is purely meant to clarify this position.

CLAUSE 67

Income Tax: Amendment to section 48C

Amendment alters the percentage amount to be included in taxable income for micro business from 20 to 10 per cent.

CLAUSE 68

Income Tax: Amendment to section 49D

Sub-clause (a): Amendments to paragraph (a): Amendment inserts the words *"withholding tax"* before royalties as a matter of style and consistency.

Sub-clause (b): Amendments to paragraph (b): Amendment changes the words *"for the purposes of this Act"* to the words *"in terms of Chapter 3 of the Tax Administration Act"* as a matter of style and consistency.

CLAUSE 69

Income Tax: Amendment to section 49E

Amendments in subsection (2)(b) align the wording in the paragraph to apply to both subparagraphs (i) and (ii).

CLAUSE 70

Income Tax: Amendment to section 50A

See notes on **DEFINITION OF INTEREST FOR WITHHOLDING TAX PURPOSES**

CLAUSE 71

Income Tax: Amendment to section 50D

Sub-clause (a): Amendment to item (cc) of subsection (1)(a)(i): Amendment corrects grammatical error by changing the word *"exclusions*" to the word "*exclusion*".

Sub-clauses (b): Insertion of new paragraph (c) of subsection (1): Amendment makes provision for exemption for withholding tax on interest in respect of interest paid to a foreign person for debt owed by another foreign person, unless the other foreign person was present in South Africa for a period exceeding 183 days or the debt claim is effectively connected to a permanent establishment in South Africa.

CLAUSE 72

Income Tax: Amendment to section 56

The proposed amendment in subparagraph (ii) of subsection (1)(k) corrects a grammatical error in the Afrikaans text.

CLAUSE 73

Income Tax: Amendment to section 64D

See notes on **TRANSITIONAL TAX ISSUES RESULTING FROM THE REGULATION OF HEDGE FUNDS**

CLAUSE 74

Income Tax: Amendment to section 64EB

Deletion of subparagraphs (viii), (ix) and (xii) in subsection (2)(a): The proposed amendments delete obsolete references.

CLAUSE 75

Income Tax: Amendment to section 64F

Amendment to paragraph (o) of subsection (1): In 2015, Tax Free Investment was introduced in the Income Tax Act to encourage savings to exempt any amount received or accrued in respect of tax free investment. The definition of Tax Free Investment includes any financial instrument or policy owned by a natural person or the deceased estate or insolvent estate. However, the current provisions in paragraph (o) regarding exemption from dividend tax only refer to natural person and it does not refer to deceased estate or insolvent estate. In order to align the provisions of section paragraph (o) with the definition of Tax Free Investment, it is proposed that amendments be made to paragraph (o) to include deceased estate or insolvent estate.

CLAUSE 76

Income Tax: Amendment to paragraph 7 of the First Schedule

Amendments remove reference to Commissioner’s discretion.

CLAUSE 77

Income Tax: Amendment to paragraph 9 of the First Schedule

Amendments remove reference to Commissioner’s discretion.

CLAUSE 78

Income Tax: Amendment to paragraph 11 of the First Schedule

Amendments remove reference to Commissioner’s discretion.

CLAUSE 79

Income Tax: Amendment to paragraph 13 of the First Schedule

Sub-clause (a): Amendments remove reference to Commissioner’s discretion.

Sub-clause (b): The amendment proposes to delete obsolete provisions.

CLAUSE 80

Income Tax: Amendment to paragraph 14 of the First Schedule

Amendments remove reference to Commissioner’s discretion.

CLAUSE 81

Income Tax: Amendment to paragraph 19 of the First Schedule

Amendments remove reference to Commissioner's discretion.

CLAUSE 82

Income Tax: Amendment to paragraph 20 of the First Schedule

Amendments remove reference to Commissioner's discretion.

CLAUSE 83

Income Tax: Amendment to paragraph 3 of the Second Schedule

The amendment proposes to standardise reference to the Pension Funds Act in the Income Tax Act.

CLAUSE 84

Income Tax: Amendment to paragraph 3A of the Second Schedule

The amendment proposes to standardise reference to the Pension Funds Act in the Income Tax Act.

CLAUSE 85

Income Tax: Amendment to paragraph 4 of the Second Schedule

Sub-clause (a): The amendment proposes to standardise reference to the Pension Funds Act in the Income Tax Act.

Sub-clause (b): Amendment to subparagraph (3) – The amendment clarifies the Commissioner's discretion when a member of a provident fund retires form such fund before the age of 55 years on grounds other than illness.

CLAUSE 86

Income Tax: Amendment to paragraph 5 of the Second Schedule

The amendment proposes to standardise reference to the Pension Funds Act in the Income Tax Act.

CLAUSE 87

Income Tax: Amendment to paragraph 6 of the Second Schedule

The amendment proposes to standardise reference to the Pension Funds Act in the Income Tax Act.

CLAUSE 88

Income Tax: Amendment to paragraph 1 of the Sixth Schedule

Amendments in paragraph (1) delete all reference to sections 10(1)(y), 10(1)(zA), 10(1)(zG), AND 10(1)(zH) and refer to section 12P as those section refer to Government Grants which are now referred to in section 12P and listed in the Eleventh Schedule.

CLAUSE 89

Income Tax: Amendment to paragraph 3 of the Sixth Schedule

Sub-clause (a): Amendment deletes word *"or"* in the definition of employee at the end of the sub-paragraph.

Sub-clause (b): Insertion of new subparagraph (vi) and (vii) in paragraph (f). The proposed amendments includes Associations and Small Business Funding Entities under companies listed in paragraph (f).

CLAUSE 90

Income Tax: Amendment to paragraph 10 of the Sixth Schedule

Amendments remove reference to Commissioner's discretion.

CLAUSE 91

Income Tax: Amendment to paragraph 11 of the Sixth Schedule

Amendments remove reference to Commissioner's discretion.

CLAUSE 92

Income Tax: Amendment to paragraph 13 of the Sixth Schedule

Amendments remove reference to Commissioner's discretion.

CLAUSE 93

Income Tax: Amendment to paragraph 1 of the Seventh Schedule

Sub-clause (a): Deletion of the definition of the term *"loan*" in paragraph (1). Amendments delete obsolete definitions.

Sub-clause (b): Amendments to the definition of *"official rate of interest"* - Amendments change the word *"loan"* to *"debt"* as a result of the deletion of the reference to the term 'loan" in this paragraph.

CLAUSE 94

Income Tax: Amendment to paragraph 2 of the Seventh Schedule

Amendments remove reference to Commissioner's discretion.

CLAUSE 95

Income Tax: Amendment to paragraph 6 of the Seventh Schedule

Amendments remove reference to Commissioner's discretion.

CLAUSE 96

Income Tax: Amendment to paragraph 7 of the Seventh Schedule

Amendments remove reference to Commissioner's discretion.

CLAUSE 97

Income Tax: Amendment to paragraph 9 of the Seventh Schedule

Sub-clause (a): Deletion of the definition of *"remuneration*" in subsection 1. Amendments delete superfluous definitions.

Sub-clause (b): Deletion of subparagraph (3A): Amendments delete obsolete provisions.

CLAUSE 98

Income Tax: Amendment to paragraph 11 of the Seventh Schedule

Sub-clause (a): Amendments change the word *"loan"* to *"debt*" as a result of the deletion of the reference to the term 'loan" in this paragraph.

Sub-clause (b): Amendments change the words *"grant of a loan"* to "*debt owed by*" as a result of the deletion of the reference to the term 'loan" in this paragraph.

Sub-clause (c): Amendments change the words *"on the loan*" to "*in respect of the debt*" as a result of the deletion of the reference to the term "*loan*" in this paragraph.

Sub-clause (d): Amendments change the word *"loan*" to "*debt*" as a result of the deletion of the reference to the term *"loan*" in this paragraph.

Sub-clause (e): Amendments remove reference to Commissioner's discretion.

Sub-clause (f): Amendments change the word "*loan granted to him*" to "*debt owed by him of her*" as a result of the deletion of the reference to the term 'loan" in this paragraph.

Sub-clause (g): Amendments change the word "*loan*" to *"debt"* as a result of the deletion of the reference to the term *"loan*" in this paragraph.

CLAUSE 99

Income Tax: Amendment to paragraph 12 of the Seventh Schedule

Amendments change the word "loan" to *"debt*" as a result of the deletion of the reference to the term *'loan"* in this paragraph.

CLAUSE 100

Income Tax: Amendment to paragraph 12A of the Seventh Schedule

Amendments remove reference to Commissioner's discretion.

CLAUSE 101

Income Tax: Amendment to paragraph 12D of the Seventh Schedule corrects the reference to the definition of *retirement funding income*".

CLAUSE 102

Income Tax: Amendment to paragraph 2 of the Eighth Schedule

Amendments:

- to sub-item (i) in subparagraph (1)(b): See notes on **REVISION OF THE DEFINITION OF IMMOVABLE PROPERTY**, and
- to sub-item (ii) in subparagraph (1)(b) changes the words "*which is attributable to*" to the words "*effectively connected with*" as a matter of style and consistency.

CLAUSE 103

Income Tax: Amendment to paragraph 3 of the Eighth Schedule

Sub-clause (a): Amendment deletes the word *"or"* at the end of subparagraph (a).

Sub-clause (b): Amendments to subparagraph (b): See notes on **REMOVING POTENTIAL ANOMALIES ARISING FROM CANCELLATION OF CONTRACTS**

Sub-clause (c): Amendments in subparagraph (b)(iii)(bb): Amendment deletes the full stop and inserts the expression *"or*".

Sub-clause (d): Insertion of new subparagraph (c): See notes on **REMOVING POTENTIAL ANOMALIES ARISING FROM CANCELLATION OF CONTRACTS**

CLAUSE 104

Income Tax: Amendment to paragraph 4 of the Eighth Schedule

Sub-clause (a): Amendment deletes word *"or"* at the end of subparagraph (a).

Sub-clause (b): Amendments to subparagraph (b): See notes on **REMOVING POTENTIAL ANOMALIES ARISING FROM CANCELLATION OF CONTRACTS**

Sub-clause (c): Amendments in subparagraph (b)(iii)(bb): Amendment deletes the full stop and inserts the expression *"or*".

Sub-clause (d): Insertion of new subparagraph (c): See notes on **REMOVING POTENTIAL ANOMALIES ARISING FROM CANCELLATION OF CONTRACTS**

CLAUSE 105

Income Tax: Amendment to paragraph 11 of the Eighth Schedule

Sub-clause (a): Amendments in subparagraph (2)(b) See notes on **REMOVING POTENTIAL ANOMALIES ARISING FROM CANCELLATION OF CONTRACTS**

Sub-clause (b): Deletion of subparagraph 2(j): See notes on **CLARIFICATION OF THE INTERACTION BETWEEN TAXATION OF SHARE INCENTIVE TRUSTS, TIME OF DISPOSAL RULES AND ATTRIBUTION OF GAINS TO TRUST BENEFICIARY RULES**

Sub-clause (c): Amendments in subparagraph (2)(m) - Amendment deletes the full stop and inserts the semi-colon.

Sub-clause (d): Insertion of new subparagraph 2(n): See notes on **SECURITIES TRANSFER TAX AND CAPITAL GAINS TAX IMPLICATIONS ON COLLATERAL ARRANGEMENTS**

Sub-clause (e): Insertion of new subparagraph 2(o): See notes on **SECURITIES TRANSFER TAX AND CAPITAL GAINS TAX IMPLICATIONS ON COLLATERAL ARRANGEMENTS**

CLAUSE 106

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

Sub-clause (a): Amendment to subparagraph (4): Updates wording as a matter of style and consistency whilst simultaneously correcting the alignment of the bottom flush so that it applies to both items (a) and (b).

Sub-clause (b): The amendment proposes to standardise reference to the Pension Funds Act in the Income Tax Act.

CLAUSE 107

Income Tax: Amendment to paragraph 13 of the Eighth Schedule

Insertion of subitem (iiB) – See notes on **CLARIFICATION OF THE INTERACTION BETWEEN TAXATION OF SHARE INCENTIVE TRUSTS, TIME OF DISPOSAL RULES AND ATTRIBUTION OF GAINS TO TRUST BENEFICIARY RULES**

CLAUSE 108

Income Tax: Amendment to paragraph 20 of the Eighth Schedule

Sub-clause (a): Amendment to subparagraph (1)(c): The amendment proposes to standardise reference to the Securities Transfer Tax Act in the Income Tax Act.

Sub-clause (b): Amendment to subparagraph (1)(h)(iii): The amendment proposes to correct incorrect referencing by replacing (b) with (c) and replaces the word *"less*" with *"reduced by*" as a matter of style consistency.

Sub-clause (c): Insertion of new subparagraph (4): See notes on **REMOVING POTENTIAL ANOMALIES ARISING FROM CANCELLATION OF CONTRACTS**

CLAUSE 109

Income Tax: Amendment to paragraph 29 of the Eighth Schedule

Amendments to subparagraph (5): Corrects legislation to refer to both date and period.

CLAUSE 110

Income Tax: Amendment to paragraph 31 of the Eighth Schedule

Amendments remove reference to Commissioner's discretion.

CLAUSE 111

Income Tax: Amendment to paragraph 35 of the Eighth Schedule

Sub-clause (a): Amendments in subparagraph (3): The amendment seeks to clarify that a reduction of proceeds in the case of a disposal occurs when that disposal was made in that same year of assessment and not a previous year of assessment by inserting the words "*during a year of assessment*".

Sub-clause (b): Amendments in subparagraph (3)(b) and (c): The amendment seeks to clarify that a reduction of proceeds in the case of a disposal occurs when that disposal was made in that same year of assessment and not a previous year of assessment by inserting the words "*during a year of assessment*" and *"during that year*".

CLAUSE 112

Income Tax: Amendment to paragraph 40 of the Eighth Schedule

See notes on **REMOVING ANOMALIES FOR INCOME AND DISPOSAL TO AND FROM DECEASED ESTATES**

CLAUSE 113

Income Tax: Amendment to paragraph 41 of the Eighth Schedule

See notes on **REMOVING ANOMALIES FOR INCOME AND DISPOSAL TO AND FROM DECEASED ESTATES**

CLAUSE 114

Income Tax: Amendment to paragraph 43 of the Eighth Schedule

Sub-clause (a): Amendments in subparagraph (5)(b): Amendment corrects a grammatical error and changes the word "t*hat*" to the word "*the*" and also changes the words "*to acquire*" to the word "*acquiring*".

Sub-clause (b): Amendments in subparagraph (6): Amendment seeks to clarify the provisions of the subparagraph by inserting the words "*for purpose of the application of subparagraph (1A)*".

CLAUSE 115

Income Tax: Amendment to paragraph 55 of the Eighth Schedule

The amendment proposes to standardise reference to the Pension Funds Act in the Income Tax Act.

CLAUSE 116

Income Tax: Amendment to paragraph 57A of the Eighth Schedule

Currently, paragraph 57A is divided into subparagraph (a) and (b). For better reading of the provisions of the paragraph it is proposed that subparagraph (a) and (b) should be merged into one paragraph.

CLAUSE 117

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

See notes on **RELAXING CAPITAL GAINS TAX RULES APPLICABLE TO CROSS ISSUE OF SHARES AND INTRODUCING COUNTER MEASURES FOR TAX-FREE CORPORATE MIGRATIONS**

CLAUSE 118

Income Tax: Insertion of paragraph 64C of the Eighth Schedule - See notes on **CLARIFICATION OF THE INTERACTION BETWEEN TAXATION OF SHARE INCENTIVE TRUSTS, TIME OF DISPOSAL RULES AND ATTRIBUTION OF GAINS TO TRUST BENEFICIARY RULES**

CLAUSE 119

Income Tax: Amendment to paragraph 65 of the Eighth Schedule

Sub-clause (a): Amendments in subparagraph (1)(d)(ii): Amendment updates referencing and includes section 9(2)(j) under this item.

Sub-clause (b): Amendments to the proviso to subparagraph (1)(d): Amendments remove reference to Commissioner's discretion.

CLAUSE 120

Income Tax: Amendment to paragraph 66 of the Eighth Schedule

Amendments to subparagraph (1)(e): Amendments remove reference to Commissioner's discretion.

CLAUSE 121

Income Tax: Amendment to paragraph 67 of the Eighth Schedule

Sub-clause (a): Amendments to subitems (ii), (iii) and (iv) - See notes on **REMOVING ANOMALIES FOR INCOME AND DISPOSAL TO AND FROM DECEASED ESTATES**

Sub-clause (b): Amendments to subparagraph (2): The amendment proposes to standardise reference to the Matrimonial Property Act in the Income Tax Act.

CLAUSE 122

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

Amendments to subparagraph (2)(b): Amendment seeks to clarify the provisions of the subparagraph by inserting the word *"that cash".*

CLAUSE 123

Income Tax: Amendment to paragraph 80 of the Eighth Schedule

Amendments to subparagraph (1) and insertion of new subparagraph (2A) - See notes on **CLARIFICATION OF THE INTERACTION BETWEEN TAXATION OF SHARE INCENTIVE TRUSTS, TIME OF DISPOSAL RULES AND ATTRIBUTION OF GAINS TO TRUST BENEFICIARY RULES**

CLAUSE 124

Income Tax: Amendment to paragraph 8 of the Tenth Schedule

Amendment corrects a an error by inserting *"right"* after the word *"exploration*" in paragraph 8(1)(c).

CLAUSE 125

Income Tax: Amendment to the Eleventh Schedule

Amendment changes the bullets to numbers in the listing of the grants in Eleventh Schedule.

CUSTOMS AND EXCISE DUTY ACT

CLAUSE 126

Custom and Excise: Amendment to section 20

Insertion of the new subsection (7) – The insertion of section 20(7) in the Customs and Excise Act, 1964, harmonises the fuel levy treatment of imported and locally manufactured fuel levy goods. To this end, it regulates the storage of imported fuel levy goods, the use thereof in further manufacture locally, the blending of the imported and locally manufactured products and loss allowances in these instances. The Commissioner may make rules to specify details on payment, processes and any other matter necessary to administer this amendment.

CLAUSE 127

Continuation of certain amendments of Schedules to Act 91 of 1964

This clause provides for the continuation of withdrawal, insertion or amendments to the schedules to the Customs and Excise Act made during the period from 1 September 2014 up to 30 September 2015.

VALUE ADDED TAX

CLAUSE 128

Value Added Tax: Amendment to Section 1(1)

Sub-clause (a): Definition of *"commercial accommodation*" - See notes on **ENTERPRISE SUPPLYING COMMERCIAL ACCOMMODATION: MONETARY THRESHOLD ADJUSTMENTS**

Sub-clause (b): Definition of "*connected persons*" - The proposed amendment removes reference to the definition of shareholder in the VAT Act since this definition was deleted from the Income Tax Act.

Sub-clause (c): Deletes the word "*or*" at the end of the paragraph.

Sub-clause (d): Insertion of the word "*or*" at the end of the paragraph.

Sub-clause (e): Definition of "*domestic goods and services*" – The amendment proposes to include "*water*" in the definition of domestic goods and services

Sub-clause (f): Definition of "*enterprise*" - See notes on **ENTERPRISE SUPPLYING COMMERCIAL ACCOMMODATION: MONETARY THRESHOLD ADJUSTMENTS**

Sub-clause (g): Definition of "*grant*" – As a consequence of the repealing of section 8(23) (clause 121), it has become necessary to amend paragraph (b) of the definition of "grant" to ensure that payments made in terms of the National Housing Programme are not interpreted to now fall within the definition of "grant". It is proposed that all payments made in terms of the National Housing Programme are now standard-rated.

Sub-clause (h): New Definition of "*shareholder*" – As a consequence of the amendment to the definition of "connected persons" (paragraph (b) above), it has become necessary to introduce a definition of "shareholder" for VAT purposes. It is proposed that this definition match the previous definition from the Income Tax Act.

CLAUSE 129

Value Added Tax: Amendments to Section 8(23) - See notes on **REPEALING THE ZERO RATING FOR THE NATIONAL HOUSING PROGRAMME**

CLAUSE 130

Value Added Tax: Amendment to Section 9 - See notes on **TIME OF SUPPLY: CONNECTED PERSONS (UNDETERMINED AMOUNTS)**

CLAUSE 131

Value Added Tax: Amendment to Section 10

Amendments to paragraph (a) of subsection (4) - See notes on **TIME OF SUPPLY: CONNECTED PERSONS (UNDETERMINED AMOUNTS)**

CLAUSE 132

Value Added Tax: Amendment to Section 11

Sub-clause (a): Amendment to subsection (1)(a)(ii) - Amendment removes the reference to "*part 2 of an export incentive scheme*" and updating the reference with the words "*the regulation*" in order to reflect the correct reference as in paragraph (d) of the definition of "exported" in Section 1 of the VAT Act.

Sub-clause (b): Amendment to subsection (1)(a)(ii)(bb) - Amendment removes the reference to "*an export incentive scheme*" and updating the reference with the words "*the regulation*" in order to reflect the correct reference as in paragraph (d) of the definition of "*exported*" in Section 1 of the VAT Act.

Sub-clause (c): Amendment to subsection (1)(m)(ii) - See notes on **ZERO-RATING: GOODS DELIVERED BY A CARTAGE CONTRACTOR**

Sub-clause (d): Amendment to subsection (2)(r) - See notes on **ZERO-RATING OF SERVICES: VOCATIONAL TRAINING**

Sub-clause (e): Deletion of subsection (2)(s) - See notes on **REPEALING THE ZERO RATING FOR THE NATIONAL HOUSING PROGRAMME**

CLAUSE 133

Value Added Tax: Amendment to Section 12

The current exempt provisions in Section 12(h)(ii) do not apply to a school, university, college or technikon if the institution only supplies lodging, as opposed to board and lodging. The proposed amendment seeks to change the term "*boarding and lodging*" to "*lodging or board and lodging*", so that the exemption can apply if either boarding or lodging is supplied by the institution.

CLAUSE 134

Value Added Tax: Amendment to Section 15

Sub-clause (a): Deletion in subsection 2(a) of subparagraph (iii) of the provision relating to "*Regional Electricity Distributor*". The system of "*Regional Electricity Distributor*" has not been implemented and it elapsed on 1 January 2014.

Sub-clauses (b) & (c): Addition to subsection (2)(a) of subparagraph (viii). See notes on **SABC VAT ACCOUNTING METHOD**

CLAUSE 135

Value Added Tax: Amendment to Section 18

Amendments in subsection (6) insert inverted commas to clearly identify the definition being referred to regarding the year of assessment in the Income Tax Act.

CLAUSE 136

Value Added Tax: Amendment to Section 21

Amendments to subsection (6) include paragraph (e) to align subsection (6) with the changes made in 2013 to subsection (1).

SECURITIES TRANSFER TAX

CLAUSE 137

Securities Transfer Tax: Amendment to section 1

Sub-clause (a): Insertion of the new definition of "*collateral arrangement*" - See notes on **SECURITIES TRANSFER TAX AND CAPITAL GAINS TAX IMPLICATIONS ON COLLATERAL ARRANGEMENTS**

Sub-clause (b): Amendments to paragraphs (b), (c) and (d) of the definition of thedefinition of "*lending arrangement*" - See notes on **REFINEMENTS TO SECURITY LENDING ARRANGEMENTS**

Sub-clause (c): Amendment to paragraph (ii) of the definition of "*lending arrangement*" – See notes on **REFINEMENTS TO SECURITY LENDING ARRANGEMENTS**

Sub-clause (d): Insertion of the new definition of "*collateral arrangement*" – See notes on **SECURITIES TRANSFER TAX AND CAPITAL GAINS TAX IMPLICATIONS ON COLLATERAL ARRANGEMENTS**

CLAUSE 138

Securities Transfer Tax: Amendment to section 8

See notes on **SECURITIES TRANSFER TAX AND CAPITAL GAINS TAX IMPLICATIONS ON COLLATERAL ARRANGEMENTS**

OTHER

CLAUSE 139

Rates and Monetary Amounts and Amendments of Revenue Laws Act 23 of 2013: Amendment to section 3

Amendment is deemed to have come into operation on 1 April 2013 and provides for the fact that low-cost residential units in sections 13*quat* and 13*sex* are not necessarily disposed of and that the effective date must be tied to different events in these cases.

CLAUSE 140

Rates and Monetary Amounts and Amendments of Revenue Laws Act 23 of 2013: Amendment to section 7

The amendment corrects the effective date is deemed to have come into operation on 1 April 2013 and applies in respect of years of assessment ending on 31 March 2014 and years of assessment ending after 31 March 2014.

CLAUSE 141

Employment Tax Incentive Act 26 of 2013 as amended by section 113 of Act 43 of 2014: Amendment to section 4

Amendment clarifies this provision of the section regarding hours worked for Employment Tax Incentive purposes by excluding unpaid leave and parts of the month for which the employee is not employed and comes into operation on 1 January 2016.

CLAUSE 142

Employment Tax Incentive Act 26 of 2013 as amended by section 118 of Act 43 of 2014: Amendment to section 10

Amendment corrects referencing by making reference to section 8(a) or section 8(b) instead of section 8(1)(a) or section 8(1)(b) and is deemed to have come into operation on 1 January 2014.

CLAUSE 143

Taxation Laws Amendment Act 31 of 2013 as amended by section 119 of Act 43 of 2013: Amendment to section 4

Amendment corrects the effective date for retirement reforms to 1 March 2016 and is deemed to have come into operation on 20 January 2015.

CLAUSE 144

Taxation Laws Amendment Act 31 of 2013: Amendment to section 13

Amendment postpones the effective date for sections 8F(3)(b)(ii) and 8F(3)(c)(ii) from 1 January 2016 to 1 January 2017.

CLAUSE 145

Taxation Laws Amendment Act 31 of 2013: Amendment to section 15

Amendment postpones the effective date for sections 8FA(3)(b)(ii) and 8FA(3)(c)(ii) from 1 January 2016 to 1 January 2017.

CLAUSE 146

Taxation Laws Amendment Act 31 of 2013: Amendment to section 16

Amendment corrects error by changing the words *"dividends or foreign dividends*" to "*interest*" and is deemed to have come into operation on 1 January 2013.

CLAUSE 147

Taxation Laws Amendment Act 31 of 2013: Amendment to section 21

See notes on **RELAXING CAPITAL GAINS TAX RULES APPLICABLE TO CROSS ISSUE OF SHARES AND INTRODUCING COUNTER MEASURES FOR TAX FREE CORPORATE MIGRATIONS**

CLAUSE 148

Taxation Laws Amendment Act 31 of 2013: Amendment to section 62

Amendment amends the provisions of section 23M and comes into operation on 1 January 2017 and applies in respect of interest received or incurred after that date.

CLAUSE 149

Taxation Laws Amendment Act 31 of 2013: Amendment to section 99

Amendment postpones the effective date in respect of withholding tax on services in Part IVC in section 51A to 51H from 1 January 2016 to 1 January 2017.

CLAUSE 150

Taxation Laws Amendment Act 43 of 2014: Amendment to section 16

Amendment defers effective date to 01 March 2018.

CLAUSE 151

Taxation Laws Amendment Act 43 of 2014: Amendment to section 22

The amendment to the definition of "*industrial project*" in section 12I corrects the alignment of the words following paragraph (b) by aligning those words with the margins and is deemed to have come into operation on 20 January 2015.

CLAUSE 152

Taxation Laws Amendment Act 43 of 2014: Amendment to section 47

Amendment updates referencing in section 29A and comes into operation on 1 January 2016 and applies in respect of years of assessment commencing on or after that date.

CLAUSE 153

Taxation Laws Amendment Act 43 of 2014: Amendment to section 64

Amendment to add the word "*branch*" in paragraph (a) of the definition of "bank" in section 50A is deemed to have come into operation on 1 March 2016 and applies in respect of interest that is paid or that becomes due and payable on or after that date.

CLAUSE 154

Taxation Laws Amendment Act 43 of 2014: Amendment to section 65

Amendment amends the provision of section 50E is deemed to have come into operation on 1 March 2015 and applies in respect of interest that is paid or that becomes due and payable on or after that date.

CLAUSE 155

Taxation Laws Amendment Act 43, 2014: Amendment to section 119

Removal of 2014 amendments on 2013 changes to retirement reform.

CLAUSE 156

Taxation Laws Amendment Act 43, 2014: Amendment to section 120

Removal of 2014 amendments on 2013 changes to retirement reform.

CLAUSE 157

Taxation Laws Amendment Act 43, 2014: Amendment to section 121

The amendment extends the effective date of the changes to the requirements for provident funds to purchase an annuity from 1 March 2015 to 1 March 2018.

CLAUSE 158

Taxation Laws Amendment Act 43, 2014: Amendment to section 127

The amendment extends the effective date of the changes to the requirements for provident funds to purchase an annuity from 1 March 2015 to 1 March 2018.

CLAUSE 159

Taxation Laws Amendment Act 43, 2014: Amendment to section 128

The amendment extends the effective date of the changes to the requirements for provident funds to purchase an annuity from 1 March 2015 to 1 March 2018.

CLAUSE 160

Taxation Laws Amendment Act 43, 2014: Amendment to section 132

The purpose of this amendment it is to align the effective date of section 13(2B) of the Value Added Tax Act with the corresponding provision in the Custom Duty Act and the Excise Duty Act.

CLAUSE 161

Short title of the Act