EXPLANATORY MEMORANDUM

TAXATION LAWS AMENDMENT BILL 2025

national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

TABLE OF CONTENTS

EXPLANATION OF MAIN AMENDMENTS

1. INCOME TAX: INDIVIDUALS, SAVINGS AND EMPLOYMENT 1
1.1 AMENDING THE DEFINITION OF "REMUNERATION PROXY" 1
1.2 CLARIFYING THE INCLUSION OF AN AMOUNT ASSIGNED TO A NON-RETIREMENT FUND MEMBER SPOUSE UNDER RELIGIOUS TENETS 1
1.3 REDUCING THE THRESHOLD FOR RING-FENCING OF ASSESSED LOSSES 2
1.4 REINSTATING THE EXEMPTION FOR CHILD MAINTENANCE PAYMENTS FUNDED FROM AFTER-TAX INCOME 3
1.5 CLARIFYING PAYMENT OF DEATH BENEFITS 4
1.6 CROSS-BORDER TAX TREATMENT OF RETIREMENT FUNDS 5
2. INCOME TAX: BUSINESS (GENERAL) 7
2.1 EXTENDING THE ANTI-AVOIDANCE RULES DEALING WITH THIRD-PARTY BACKED SHARES 7
2.2 REFINING THE DEFINITION OF "HYBRID EQUITY INSTRUMENT" 10
2.3 CLARIFYING THE ORDERING OF SET-OFF OF BALANCE OF ASSESSED LOSSES AND CERTAIN DEDUCTIONS 12
2.4 CLARIFYING THE DETERMINATION OF CONTRIBUTED TAX CAPITAL 13
2.5 CLARIFYING THE ROLLOVER RELIEF FOR LISTED SHARES IN AN ASSET-FOR-SHARE TRANSACTION 14
2.6 REVIEWING ASSET-FOR-SHARE AND AMALGAMATION TRANSACTIONS INVOLVING COLLECTIVE INVESTMENT SCHEMES 16
2.7 REFINING AND CLARIFYING THE MEANING OF "INTEREST" TO ENHANCE CERTAINTY 18
3. INCOME TAX: BUSINESS (FINANCIAL INSTITUTIONS AND PRODUCTS) 20
3.1 ALIGNING THE TAX TREATMENT OF DIVIDENDS WITH THE ACCOUNTING TREATMENT BY A COVERED PERSON 20
3.2 ANOMALY IN THE ACT RELATING TO CAPITAL DISTRIBUTIONS BY COLLECTIVE INVESTMENT SCHEMES 22
3.3 TAX TREATMENT OF FIRST LOSS AFTER CAPITAL (FLAC) INSTRUMENTS AS DEFINED IN THE FINANCIAL SECTOR REGULATION ACT (2017) 23
4. INCOME TAX: BUSINESS (INCENTIVES) 26
4.1 EXTENSION OF THE UDZ TAX INCENTIVE SUNSET DATE 26
4.2 ENERGY EFFICENCY SAVINGS INCENTIVE 27
4.3 ADDITIONAL DEDUCTION FOR DOMESTIC PRODUCTION OF BATTERY ELECTRIC AND HYDROGEN-POWERED VEHICLES 28
5. INCOME TAX: INTERNATIONAL 29

DRAFT

5.1 REFINING THE DEFINITION OF “EQUITY SHARE” TO CATER FOR TRANSFERS BY FOREIGN COMPANIES 29
5.2 INTERACTION BETWEEN SECTIONS 6QUAT AND 23(M) OF THE INCOME TAX ACT 29
5.3 INTERACTION OF CONTROLLED FOREIGN COMPANY RULES IN SECTION 9D WITH SECTION 9H 30
5.4 CFC RULES AND COMPARABLE TAX EXEMPTION 31
5.5 TAXATION OF TRUSTS AND THEIR BENEFICIARIES 32
5.6 REFINING DEFERRAL OF EXCHANGE DIFFERENCE RULES ON DEBT BETWEEN RELATED COMPANIES 33
6. VALUE ADDED TAX 35
6.1 DEBIT AND CREDIT NOTES RELATING TO A GOING CONCERN AS PER SECTION 8(25) OF THE VALUE-ADDED TAX (VAT) ACT (1991) 35
6.2 REVIEWING THE SCOPE OF THE INTERMEDIARY PROVISIONS 35
6.3 REVIEWING VAT RULES DEALING WITH DOCUMENTARY REQUIREMENTS FOR SILVER EXPORTS 36
6.4 REVIEWING THE VAT TREATMENT OF TESTING SERVICES SUPPLIED TO NON-RESIDENTS WHO ARE OUTSIDE THE REPUBLIC AT THE TIME OF THE SUPPLY, WHERE SERVICES ARE SUPPLIED DIRECTLY IN CONNECTION WITH MOVABLE PROPERTY SITUATED IN THE 37
6.5 REVIEWING THE DEFINITION OF “INSURANCE” 38
6.6 CLARIFYING THE VAT TREATMENT OF TEMPORARY LETTING OF RESIDENTIAL PROPERTIES .. 39
6.7 REVIEWING THE VAT TREATMENT OF AIRTIME VOUCHERS SUPPLIED IN THE REPUBLIC FOR EXCLUSIVE USE IN AN EXPORT COUNTRY 41
6.8 SUPPLIES OF EDUCATIONAL SERVICES 42
6.9 LOW VALUE IMPORTATION OF GOODS 44
6.10 CLARIFYING THE VAT TREATMENT IN RESPECT OF PAYMENTS MADE UNDER THE NATIONAL HOUSING PROGRAMME 45
7. CARBON TAX ACT 46
7.1 ELECTRICITY PRICE NEUTRALITY EXTENSION AND ELECTRICITY LEVY REPEAL 46
7.2 SEQUESTRATION DEDUCTION 47
7.3 CARBON OFFSET ALLOWANCE INCREASE 48
7.4 CARBON BUDGET ALLOWANCE 51
7.5 CARBON BUDGET AND CARBON TAX – HIGHER TAX RATE 52
7.6 DIESEL REFUND RELIEF FOR PRIMARY SECTORS 55
7.7 ALIGNING SCHEDULE 1 OF THE CARBON TAX ACT EMISSION FACTORS 57
7.8 FORMULA FOR FUGITIVE EMISSIONS CALCULATION 58
8. CLAUSE BY CLAUSE 62

DRAFT

1. INCOME TAX: INDIVIDUALS, SAVINGS AND EMPLOYMENT

1.1 AMENDING THE DEFINITION OF “REMUNERATION PROXY”

[Applicable provisions: Definition of “remuneration proxy” in section 1(1) of the Income Tax Act, No. 58 of 1962 (“the Act”)]

Background

The term “remuneration proxy” is defined in section 1 of the Act and is used in a variety of provisions throughout the Act. It serves as a reference point for calculating certain tax benefits, thresholds, and values where actual remuneration for the current year may not be available. It is often equated with “remuneration” as defined in the Fourth Schedule to the Act and is particularly relevant for formula-based calculations where prior year remuneration is used as a proxy for present-year values.

Reasons for change

It has been identified that, in some instances, taxpayers who qualified for a foreign employment income exemption under section 10(1)(*o*)(ii) of the Act in the previous year of assessment may have an artificially reduced remuneration proxy in the current year of assessment. Since the remuneration proxy excludes exempt income, this can create unintended tax advantages in multiple contexts, including but not limited to fringe benefit calculations. Reflecting on horizontal equity considerations, this loophole creates an inconsistent tax treatment affecting numerous individual taxpayers.

Proposal

It is proposed that the definition of “remuneration proxy” in section 1 be amended to include income that was exempt under section 10(1)(*o*)(ii) of the Act. This amendment would ensure that the remuneration proxy better reflects a taxpayer’s actual economic participation and aligns with the broader intent behind the utilisation of the remuneration proxy concept.

Effective date

The proposed amendment will come into operation on 1 March 2026 and apply in respect of years of assessment commencing on or after that date.

1.2 CLARIFYING THE INCLUSION OF AN AMOUNT ASSIGNED TO A NON-RETIREMENT FUND MEMBER SPOUSE UNDER RELIGIOUS TENETS

[Applicable provision: Paragraph 2(1)(*b*)(iA) of the Second Schedule to the Act]

Background

The Pension Funds Act No. 24 of 1956 (“the PFA”) provides for certain deductions to be made from a member’s benefit or minimum individual reserve. Section 37D(1)(*d*)(i) of the PFA previously allowed a retirement fund to deduct an amount assigned to a non-member spouse under a divorce order granted in terms of section 7(8) of the Divorce Act No. 70 of 1979. Similarly, the Income Tax Act provides that an amount assigned in terms of a divorce

order under section 7(8) of the Divorce Act must be included in the recipient's gross income under paragraph (*e*) of the definition of gross income.

Reasons for change

In 2024, the PFA was amended to recognise the assignment of retirement fund interests to non-member spouses under religious tenets. The amendment acknowledges cultural and religious practices in asset division following marital dissolution.

However, despite the legal recognition under the PFA, the Income Tax Act has not been updated to accommodate this development. Specifically, paragraph 2(1)(*b*)(iA) of the Second Schedule does not explicitly include such religiously sanctioned transfers, creating uncertainty in tax treatment. Government seeks to amend the Act to accommodate court orders relating to the division of retirement fund assets to a non-retirement fund member spouse under religious tenets.

Proposal

It is proposed that similar wording be added to the provisions of paragraph 2(1)(*b*)(iA) of the Second Schedule to the Act to provide for an inclusion of an amount assigned to a non-member spouse under the tenets of a religion.

Effective date

The proposed amendment will come into operation on 1 March 2026 and apply in respect of years of assessment commencing on or after that date.

1.3 REDUCING THE THRESHOLD FOR RING-FENCING OF ASSESSED LOSSES

[Applicable provision: Section 20A(2) of the Act]

Background

In general, individuals are allowed to offset losses from one trade against income from another, thereby reducing their overall tax burden. However, to prevent abuse of this principle by individuals engaging in activities that are not genuine profit-making enterprises, section 20A of the Act ring-fences losses from certain types of trades under specific conditions. Where applicable, such losses may only be set off against future income from the same trade and not against other income, such as salary income.

The purpose of this rule is to prevent taxpayers from disguising hobbies or lifestyle ventures as businesses, allowing them to reduce taxable income using expenses from these activities. Section 20A of the Act applies only when two conditions are met:

- the taxpayer falls within the highest income tax bracket (e.g., taxable income of more than R1.817 million for the 2026 year of assessment); and
- the trade results in an assessed loss in at least three of the preceding five years or is one of nine specified listed suspect trades.

DRAFT

These trades include sporting activities, dealing in collectibles, performing or creative arts, gambling, farming (unless full-time), and renting out residential accommodation, vehicles, aircraft or boats (unless at least 80% use is by unrelated parties).

Reasons for change

It has come to Government's attention that some taxpayers who are taxed only below the top marginal tax rate, are increasingly using strategies to claim losses from suspect trades to reduce their taxable income.

Section 20A of the Act currently applies to taxpayers who are taxed at the top marginal tax rate, but certain taxpayers slightly below the top marginal tax rate continue to avoid tax by offsetting losses that would otherwise be ring-fenced. When the nature of the trade falls under section 20A(2) of the Act, the rules cannot apply unless both taxable income and trade-type thresholds are met. To address this, Government intends to reduce the taxable income threshold in section 20A(2) of the Act.

Proposal

It is proposed that the taxable income threshold in section 20A(2) of the Act be lowered so that ring-fencing can apply to more taxpayers engaged in suspect trades and consistently claiming suspect trade losses in determining taxable income. This adjustment would close the avoidance by some individuals earning below the maximum tax bracket. These changes will enhance compliance and protect the integrity of the tax base.

Effective date

The proposed amendment will come into operation on 1 March 2026 and apply in respect of years of assessment commencing on or after that date.

1.4 REINSTATING THE EXEMPTION FOR CHILD MAINTENANCE PAYMENTS FUNDED FROM AFTER-TAX INCOME

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

Background

Child maintenance payments are made by one parent to another for the support and wellbeing of a child, usually following a separation or divorce. These payments are often made from the payer's after-tax income, and traditionally, the recipient parent was not taxed on the amount received. In 2007, the PFA was amended to allow for court-ordered reductions in a member's retirement fund for child maintenance payments. This prompted related changes to the Act, including:

- Introduction of section 7(11) of the Act, which deems such maintenance amounts to accrue to the retirement fund member.
- Reworking of paragraph (*b*) of the "gross income" definition to include a new subparagraph (ii) for maintenance under a court order.

DRAFT

- Amendment of section 10(1)(*u*) of the Act to preserve the exemption for maintenance but to carve out an exception for amounts paid from a retirement fund and taxed in the hands of the member.

The intent behind the 2007 changes was to maintain the principle that withdrawals from retirement funds should be taxed under the EET (exempt-exempt-tax) system. At the same time, maintenance not funded from retirement savings remained exempt. In 2008, recurring payments were removed from the Second Schedule to the Act and treated as ordinary income for PAYE purposes. However, during this process, the exemption for non-retirement fund child maintenance payments was inadvertently removed. No explicit policy rationale was provided in the 2008 and 2009 Explanatory Memoranda to suggest that general child maintenance should become taxable.

Reasons for change

Since 2009, child maintenance payments made from after-tax income have been included in the taxable income of the recipient. It is consistent with tax principles that the payer is not entitled to a deduction for child maintenance payments, as prohibited by section 23(*a*) of the Act. However, taxing these payments in the hands of the recipient is an anomaly. These payments are not income intended for the recipient, but rather as financial support intended solely for the upbringing and welfare of the child. Accordingly, subjecting child maintenance payments to tax in the hands of the recipient does not align with the intended objective of the tax system. Government intends to restate its position that child maintenance payments should be tax-exempt in the hands of the recipient.

Proposal

It is proposed that the Act be amended to exempt child maintenance payments funded from after-tax income. The aim is to ensure that ordinary child maintenance payments funded from after-tax income remain tax-exempt in the hands of the recipient.

Effective date

The proposed amendment will come into operation on 1 March 2026 and apply in respect of years of assessment commencing on or after that date.

1.5 CLARIFYING PAYMENT OF DEATH BENEFITS

[Applicable provision: Definition of “savings component” in section 1(1) of the Act]

Background

In the current legislative framework, death is treated as a "retirement" event for tax purposes. This means that lump sum payouts from both the vested and retirement components qualify as retirement fund lump sum benefits, which are taxed according to favourable lump sum tax tables. Lump sum payouts from the savings component remain taxable as a savings withdrawal benefit subject to marginal tax rates in the hands of a nominee or dependant, upon a member’s demise.

Reasons for change

It has come to Government's attention that lump sum payments from the savings component to nominees or dependants upon a member's death are being treated as a savings withdrawal benefit, i.e., taxed as ordinary income in the hands of the nominee or dependant, rather than as a retirement fund lump sum benefit. Government seeks to align all three components to have a uniform tax treatment towards death benefits.

Proposal

It is Government's intention that nominees or dependants have the flexibility to elect a lump sum payout or annuity payments without adverse tax consequences. Government proposes that the Act be amended to clarify that death benefits payable to a nominee or dependant as a lump sum from the member's interest in all three components (vested, retirement and savings), qualify as retirement fund lump sum benefits taxable at favourable lump sum tax rates.

Effective date

The proposed amendment is deemed to come into operation on 1 September 2024.

1.6 CROSS-BORDER TAX TREATMENT OF RETIREMENT FUNDS

[Applicable provision: Section 10(1)(*g*C)(ii) of the Act]

Background

Section 10(1) (*g*C)(ii) of the Act provides an exemption for certain retirement benefits received by South African residents. Specifically, it exempts any lump sum, pension or annuity received by or accrued to a resident from a source outside the Republic, if that amount is received or accrues as consideration for past employment outside South Africa. This provision was designed to prevent double taxation on retirement income already taxed in the foreign jurisdiction or earned while a person was not subject to South African tax. South African residents who worked abroad and contributed to a foreign retirement fund qualify for the section 10(1)(*g*C)(ii) exemption in South Africa. This applies to foreign-sourced retirement benefits as consideration for past employment outside the Republic.

Reasons for change

Call for *reform*

The issue of cross-border pensions and the tax treatment of foreign retirement benefits has long been recognised. In the 2013 Budget Review, it was noted that:

"South African residents working abroad and foreign residents working in South Africa regularly contribute to local and foreign pension funds, giving rise to a variety of tax issues. While certain limited rules have long been in place, these rules are largely ad hoc. With overall retirement reform now in effect, cross-border pension issues need to be fully reconsidered."

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While a number of provisions have addressed cross-border pension issues over time, these have generally evolved in response to specific needs rather than through a unified framework.

Further, the 2022 Budget Review stated that:

"A review of the exemption of foreign retirement benefits in domestic tax legislation will be conducted."

In the 2024 Budget Review, the Government acknowledged the need to enhance the rules that currently exempt lump sums, pensions, and annuities received by South African residents from foreign retirement funds for past employment outside South Africa, so that these amounts are taxed fairly and consistently.

Current exemption rules

There are two main issues with the current blanket exemption under section 10(1)(*g*C)(ii) of the Act:

Issue 1

Firstly, the exemption may result in double non-taxation, particularly where the foreign jurisdiction does not tax the retirement income due to domestic law or tax treaty limitations. In these cases, neither South Africa nor the foreign jurisdiction imposes tax on the retirement benefit. This undermines South Africa's residence-based system of taxation and leads to revenue forgone to the fiscus.

Issue 2

Secondly, in instances where a DTA grants South Africa the exclusive right to tax such retirement benefits based on residence, South Africa forfeits this right by maintaining the exemption in section 10(1)(*g*C)(ii) of the Act. As a result, the foreign jurisdiction, despite lacking primary taxing rights under the treaty, may choose to tax the retirement benefits because South Africa does not tax them. This misalignment allows the foreign jurisdiction to benefit from taxing rights that South Africa does not exercise. The South African fiscus ultimately forgoes revenue that it is entitled to collect.

Proposal

It is proposed that section 10(1)(*g*C)(ii) of the Act be deleted to ensure that foreign retirement benefits received by South African residents are appropriately taxed in accordance with the residence basis of taxation, therefore upholding South Africa's treaty rights to tax.

Effective date

The proposed amendment will come into operation on 1 March 2026 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 EXTENDING THE ANTI-AVOIDANCE RULES DEALING WITH THIRD-PARTY BACKED SHARES

[Applicable provision: Section 8EA of the Income Tax Act]

Background

The Act contains dedicated third-party backed share anti-avoidance rules to deal with shares or equity instruments with dividend yields backed by third parties through an enforcement right. As a result, any dividend or foreign dividend received by or accrued to a person during any year of assessment in respect of a share or equity instrument, is deemed in relation to that person to be an amount of income received by or accrued to that person if that share or equity instrument constitutes a third-party backed share at any time during that year of assessment.

A "third-party backed share", as defined in the Act, encompasses any preference share or equity instrument (the value of which is determined based on a preference share) in respect of which an enforcement right is exercisable by the holder of that preference share or equity instrument as a result of any amount of any specified dividend, foreign dividend, return of capital or foreign return of capital attributable to that share or equity instrument not being received by or accruing to any person entitled thereto.

An "enforcement right", as defined in the Act, denotes the right of a holder or any person that is a connected person in relation to that holder of a share or equity instrument to compel the performance of obligations by third parties, in relation to that share or equity instrument, to:

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

Reasons for change

The application of the "third-party backed share" anti-avoidance rule is triggered when there is a dividend or foreign dividend received by or accrued to a person during any year of assessment and if that share or equity instrument constitutes a third-party backed share at any time during that year of assessment.

At issue is that structures have been identified that consist of transactions to circumvent these third-party backed share anti-avoidance rules through agreements that essentially includes the ability, in relation to the enforcement right of the holder, to dispense of that enforcement right in respect of a share or equity instrument. This enables the holder of a preference share or equity instrument to contractually waive any enforcement right before the dividend or foreign dividend is received by or accrued to that holder during a year of assessment. As a result, the third-party backed share trigger is avoided for the following year

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of assessment, as the anti-avoidance rule can no longer be applied to the subsequent dividend or foreign dividend received by or accrued in respect of that share or equity instrument in the absence of the enforcement right. The following simplified examples illustrate some of the tax avoidance structures:

Example 1:

Company A issues cumulative preference shares to Bank A in exchange for R1 million on 1 March 2026. The preference shares have a term of five (5) years, maturing on 28 February 2031. The yield on the preference shares is determined with reference to an interest rate of 2 per cent and is payable in full at the end of the term. The proceeds received by Company A in respect of the issuance of the preference shares are not applied towards any qualifying purpose.

Bank A holds a dispensable enforcement right, in the form of a third-party guarantee provided by Company H (the holding company of Company A), in respect of the yield on the preference shares.

No dividends are declared or paid during the first four years of the preference share term. Consequently, as the instrument approaches maturity, it accumulates a significant amount of rolled-up returns that become payable upon settlement at the end of year five.

The dispensable enforcement right permits Bank A to waive its right of enforcement against Company H. This waiver is exercised at the end of year four, on 28 February 2030. As a result, the preference shares cease to qualify as third-party backed shares in the subsequent year of assessment ending 28 February 2031. Given that no enforcement right is exercisable during that final year, the shares fall outside the scope of the anti-avoidance rules applicable to third-party backed shares. Accordingly, the dividend due or accrued on the preference shares may be paid free of any anti-avoidance measures upon settlement at the end of the term.

Example 2:

Company A issues cumulative preference shares to Bank A in exchange for R1 million on 1 March 2026. The preference shares have a term of six (6) years, maturing on 29 February 2032. The yield on the preference shares is determined with reference to an interest rate of 2 per cent and is payable in full at the end of every second year. The proceeds received by Company A in respect of the issuance of the preference shares are not applied towards any qualifying purpose.

Bank A holds a dispensable enforcement right, in the form of a third-party guarantee provided by Company H (the holding company of Company A or any person as agreed to between the issuer and holder from time-to-time), in respect of the yield on the preference shares.

The following structured periodic process is then applied over the following timeline:

- Preference share issued on 1 March 2026 and subject to an enforcement;
- Enforcement right waived by Bank A on 28 February 2027;

- Periodic rolled-up dividend paid free of anti-avoidance measures on 29 February 2028 to Bank A;
- Enforcement right re-enacted by Bank A on 1 March 2028;
- Enforcement right waived by Bank A on 28 February 2029;
- Periodic rolled-up dividend paid free of anti-avoidance measures on 28 February 2030 to Bank A;
- Enforcement right re-enacted by Bank A on 1 March 2030;
- Enforcement right waived by Bank A on 28 February 2031; and
- Settlement and last periodic rolled-up dividend paid free of anti-avoidance measures on 29 February 2032 to Bank A.

Proposal

Government proposes that the triggering provision, together with any related provision, be amended with additional measures to address the structuring ability of the dispensable enforcement right exercisable by either the holder or any connected person in relation to that holder in respect of a share or equity instrument.

It is proposed that section 8EA of the Act be broadened to account for the entitlement of the holder to compel the performance of obligations by third parties, during both the specific year of assessment or any previous year of assessment, in respect of that enforcement right.

As a result, if that holder or any person that is a connected person in relation to that holder of that share or equity instrument has the entitlement to compel the performance of obligations by third parties, through a enforcement right, during that year of assessment or any previous year of assessment, then any dividend or foreign dividend received by or accrued to a person, during any year of assessment in respect of a share or equity instrument must be deemed in relation to that person to be an amount of income received by or accrued to that person.

Example 3:

Using the facts from Examples 1 and 2 above:

The proposed extension essentially creates a deemed ‘once-applied, always-applied’ application of the third-party backed share definition if the holder has an enforcement right at any point, past or present, during period a shareholder is holding of the preference share. As such, regardless of whether Bank A’s waiver of its enforcement right against a third-party is exercised at the end of year four, on 28 February 2030, as contemplated in Example 1 above, or periodically, as contemplated in Example 2 above, the application of the “third-party backed share” anti-avoidance rule will be triggered when there is a dividend or foreign dividend received by or accrued to a person during any year of assessment.

Effective date

The proposed amendment will come into operation on 1 January 2026 and apply to years of assessment commencing on or after that date.

2.2 REFINING THE DEFINITION OF "HYBRID EQUITY INSTRUMENT"

[Applicable provision: Section 8E of the Act]

Background

The increasing sophistication of financial instruments presents ongoing challenges for tax authorities seeking to ensure equitable and effective taxation. Financial products are often structured with hybrid characteristics, blurring the traditional lines between debt and equity. At the main, is the specific challenge related to certain financial products, commonly referred to as "preference shares", that exhibit characteristics of debt and often contain embedded derivatives that are designed to circumvent specific anti-avoidance provisions in tax legislation.

In general, section 8E of the Act was introduced as a crucial anti-avoidance provision to counter structures that sought to disguise what is, in economic substance, a debt instrument as an equity instrument, primarily in the form of preference shares. The core intention was to prevent companies from issuing instruments that functioned like loans but generated "dividends" that could be received tax-exempt by certain holders, Historically, the legislation aimed to curb situations where fixed or preferential returns on these hybrid instruments allowed for tax advantages that were not aligned with their true economic nature. A key feature of the original section 8E of the Act targeted instruments with a redemption period of no longer than three years, identifying this as a characteristic indicative of a debt-like arrangement.

Reasons for change

It has come to Government's attention that financial institutions develop and issue complex financial products labelled as "preference shares" that are listed on stock exchanges. Despite their equity label, these instruments possess fundamental characteristics more akin to debt, such as fixed or preferential returns and often a pre-determined redemption obligation. They may also include embedded derivatives that influence their cash flows.

Crucially, while the economic substance of these instruments leads the holders to recognise them as debt for financial reporting purposes under International Financial Reporting Standards (IFRS), their legal form as "preference shares" allows for potential tax arbitrage. Specifically, with reference to the anti-avoidance provision in section 8E of the Act, these products are often structured with a term exceeding the prescribed three-year period (e.g., three years and one day). This extended term is intentionally designed to circumvent the application of section 8E, which would otherwise deem dividends on such "hybrid equity instruments" to be taxable income for the recipient.

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Proposal

To address this challenge and align the tax treatment of these hybrid financial instruments with their economic substance, it is proposed that the definition of "hybrid equity instrument" in section 8E of the Act be redefined as follows:

- To include any share or financial arrangement that is recognised according to its substance as debt (i.e., a financial liability) for financial reporting purposes by the holder of the financial instrument. This approach directly leverages the rigorous classification principles of IFRS to inform tax treatment, ensuring that the tax outcome reflects the economic reality and

- by removing the three-year requirement. This amendment would ensure that instruments that contain an obligation for the issuer to redeem them, thereby creating a financial liability for the issuer, are caught by section 8E, regardless of their duration.

As a consequence of the above amendment to the definition of "hybrid equity instrument", the definitions of "date of issue", "equity instrument" ,"issue price", and "qualifying purpose" will become obsolete and thus deleted, whilst the definition of "financial instrument" is broadened. The broadened definition will include any arrangement that gives rise to a financial asset of on entity and a financial liability of another entity, in accordance with IFRS, and any financial arrangement which has unknown or unspecified terms of repayment.

IFRS Perspective

IFRS place paramount importance on the substance over form principle when classifying financial instruments. Under IFRS, an instrument is classified based on its contractual terms and the economic reality, not merely its legal designation.

- IAS 32 Financial Instruments: Presentation is the primary standard governing the classification of financial instruments by the issuer as either financial liabilities or equity.

  - IAS 32, paragraph 11, defines a financial liability as "any liability that is: (a) a contractual obligation: (i) to deliver cash or another financial asset to another entity; or (ii) to exchange financial assets or financial liabilities with another entity under conditions that are potentially unfavourable to the entity; or (b) a contract that will or may be settled in the entity's own equity instruments and is: (i) a non-derivative for which the entity is or may be obliged to deliver a variable number of its own equity instruments; or (ii) a derivative that will or may be settled other than by the exchange of a fixed amount of cash or another financial asset for a fixed number of the entity's own equity instruments."

  - IAS 32, paragraph 16, further clarifies that if an entity "does not have an unconditional right to avoid delivering cash or another financial asset to settle a contractual obligation, the obligation meets the definition of a financial liability." This is often the case with mandatorily redeemable preference shares or those redeemable at the option of the holder.

  - IAS 32, paragraph AG25 (Application Guidance), specifically addresses preference shares, stating that they may be classified as financial liabilities "because they are redeemable on a specific date or at the option of the holder, or because the dividends are cumulative and mandatory even if they are non-redeemable."

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- IFRS 9 Financial Instruments dictates the classification and measurement of financial assets (from the holder's perspective) and financial liabilities (from the issuer's perspective), as well as the accounting for embedded derivatives.

    - IFRS 9, paragraphs 4.1.2- to 4.1.4, outline the classification of financial assets. For an instrument to be measured at amortised cost (a debt-like measurement), its contractual cash flows must be "solely payments of principal and interest" (SPPI test), and it must be held within a business model whose objective is to collect contractual cash flows. If the contractual terms do not give rise to cash flows that are solely payments of principal and interest (e.g., due to an embedded derivative that significantly modifies the cash flows), or if the business model is not appropriate, the instrument is often classified at Fair Value Through Profit or Loss (FVTPL), which aligns with debt instruments with complex features.

    - IFRS 9, paragraphs B4.3.1 to B4.3.11 (Application Guidance), provide detailed rules on embedded derivatives. If a derivative is embedded in a host contract and is not "closely related" to the host, it must be separated and accounted for as a standalone derivative at fair value through profit or loss. This separation typically occurs when the economic characteristics and risks of the embedded derivative are not clearly and closely related to those of the host contract.

Given that these instruments are already recognised as debt by the holder for financial reporting purposes, it strongly implies that their contractual terms, when subjected to the rigorous analysis of IAS 32 and IFRS 9, lead to a financial liability classification. This classification inherently means they possess characteristics that prevent them from being considered a residual equity interest and instead create a contractual obligation to deliver economic benefits (cash flows akin to interest and principal).

The above proposal directly aligns tax legislation with this established accounting substance and creates a consistent framework that reduces definitional arbitrage, simplifies compliance and ensures that instruments that are economically debt are treated as such for tax purposes, thereby preventing the misuse of dividend exemptions to reduce tax liabilities unfairly.

Effective date

The proposed amendments come into operation on 1 January 2026 and apply in respect of years assessment commencing on or after that date.

2.3 CLARIFYING THE ORDERING OF SET-OFF OF BALANCE OF ASSESSED LOSSES AND CERTAIN DEDUCTIONS

[Applicable provisions: Sections 18A and 29A of the Act]

Background

With effect from 2023, the set-off of the balance of assessed losses is limited to 80 per cent of taxable income for companies. Deductions for donations and transfers from policyholder funds of long-term insurers are limited with reference to “taxable income”, as defined.

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Reasons for change

Government is aware of certain instances where uncertainty exists regarding the ordering of the set-off of the balance of assessed losses and deductions for donations and transfers from policyholder funds of long-term insurers.

Proposal

It is proposed that amendments be introduced to clarify the ordering of these deductions in calculating taxable income, i.e. that taxpayers should apply the limitation of a deduction from taxable income determined before the application of the said deduction and before setting off any balance of assessed losses contemplated in section 20 of the Act and that assessed loss limitation rules apply last (after all deductions have been taken into account).

Taxable income should be calculated by:

- determining the deduction limit of 10% of taxable income before the set-off of a balance of assessed loss under section 20(1)(*a*)(i) of the Act; and
- determining the transfer deduction before the deduction under section 18A and the set-off of a balance of assessed loss under section 20(1)(*a*)(i) of the Act.

Effective date

The proposed amendments will come into effect on date of promulgation of the Taxation Laws Amendment Act of 2025.

2.4 CLARIFYING THE DETERMINATION OF CONTRIBUTED TAX CAPITAL

[Applicable provision: Section 8G of the Act]

Background

Contributed tax capital (CTC) is a notional tax amount that assists in determining the ring-fenced cost of a capital amount of any investment into any class of shares of a company. However, CTC is also reduced by an amount, referred to as a capital distribution, transferred back by the company to its shareholder.

Current CTC legislation contains various anti-avoidance mechanisms to counter a transaction that artificially create CTC within a resident company, which is used to avoid the payment of dividends tax by a non-resident group company.

Reasons for change

A dedicated anti-avoidance mechanism was introduced in 2017 to limit the value of the consideration received for the issue of the shares in the determination of CTC in those instances where there was an interposition of a new SA holding company (SA H-Co and the issuing company) between a foreign parent company (F-Co and the subscribing company) and its SA operating subsidiary (SA Op-Co and the target company). The anti-avoidance measure currently adjusts the value of the consideration received for the issue of the shares by the issuing company (SA H-Co), to the extent that either:

- that consideration consists of; or

DRAFT

- that consideration is used to directly or indirectly acquire;

shares in the target company (SA Op-Co) that also formed part of the same group of companies as the subscribing company (F-Co) prior to the transaction, to be equal to the value of the CTC in the target company (SA Op-Co).

The taxation consequences of this anti-avoidance measure may affect a limited number of legitimate corporate finance practices. At issue is that the current anti-avoidance wording above could impede the ability of the subscribing company (F-Co) to extract the cost of capital in relation to any further legitimate corporate finance transactions through equity where, in effect, any consideration received for a further issue of shares by the issuing company (SA H-Co), within an existing group of companies, are used to acquire any already issued shares in a SA operating subsidiary, that itself is also a group company in relation to the subscribing company, at the time of the transaction, from independent minority shareholders.

The historic issue behind the insertion of the dedicated anti-avoidance measure in section 8G in the Act during 2017 was that any transaction contemplated in section 8G of the Act essentially merely reorganised ownership within the group of companies, with no or limited movement of any operational assets or utilisable cash capital funding.

Proposal

To accommodate the identified corporate financing transaction within a group structure as above, the dedicated anti-avoidance measure will specifically exclude an equity finance transaction, where at the time of the transaction, consideration is paid by the subscribing company (F-Co) to the issuing company (SA H-Co), a group company in relation to the subscribing company, for a further issue of its shares and where SA (H-Co) in turn uses that consideration to acquire additional shares in a SA operating subsidiary, a group company in relation to the subscribing company, from target company shareholders, that are (1) not connected persons to the subscribing company and (2) do not form part of the same group of companies in relation to the subscribing company, at the time of the transaction. As a result, the anti-avoidance measure contained in section 8G of the Act will not limit the "contributed tax capital" of an issuing company in those instances where, essentially, independent minority shareholders in the target company (SA Op-Co), are bought out.

Effective date

The proposed amendments will be deemed to come into effect on 1 January 2026 and applies in respect of share acquired on or after that date.

2.5 CLARIFYING THE ROLLOVER RELIEF FOR LISTED SHARES IN AN ASSET-FOR-SHARE TRANSACTION

[Applicable provision: Section 42 of the Act]

Background

Various roll-over provisions are contained in the Act and are designed to ensure that the recognition of any gain or recoupment is deferred when corporate entities are reorganised.

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In asset-for-share transactions, and more specifically within share-for-share reorganisations, roll-over relief is granted, subject to certain anti-avoidance provisions, where equity shares of a target company are disposed of by one or more target company shareholders to an acquiring company in exchange for newly issued shares of that acquiring company.

The roll-over provisions together with the various anti-avoidance characterisations and measures generally entails that the acquiring company obtains the target shares both in the same tax character (as either a capital asset or trading stock) and at the same applicable tax cost (as determined by the tax character mentioned above) as the target company shareholder immediately before the transaction.

However, in 2010, a unified special roll-over relief regime was introduced for listed shares-for-share reorganisations to address the practical difficulties experienced by the acquiring company of tracing the tax character and tax cost of the listed target equity shares held by numerous minority target shareholders. Under this special roll-over relief regime, relief is provided to the acquiring company to treat the listed target shares obtained as if they were acquired for cash at market value, on the date of the transaction, and without any regard to the historic nature of those listed target equity shares previously held by each target company shareholder. The impact on the acquiring company is essentially a step-up in tax cost and the elimination of the need to trace the original tax character attributable to the multiple minority shareholders who dispose of their listed equity shares to the acquiring company.

Reason for change

The 2010 unified special roll-over regime, as a policy intent, identified, amongst others, the following key conditions for the special roll-over relief to apply in share-for-share reorganisations, including that:

- the special roll-over relief applies only if the acquiring company obtains a sizeable interest in the target company because of the reorganisation. At the end of the share-for-share transaction, the acquiring company must generally hold at least 35 per cent of the shares in the listed target company. This threshold can be reduced to 25 per cent if no other shareholder holds an equal or greater shareholding in that target company as held by the acquiring; an

- more specifically, the special roll-over relief will only apply if the target company is listed and only for target shareholders not holding more than 20 per cent each of the target company before the transaction.

At issue is that current legislation does not clearly and effectively address government's policy intent and the practical tracing problem, in terms of the above-mentioned key condition, that the special roll-over relief regime in terms of tax character and tax cost of each listed target share, can only be applied by the acquiring company, on listed target equity shares obtained from each target company shareholder that holds less than 20 per cent of the listed shares in the target company before the transaction.

Proposal

It is proposed that legislation be amended to clearly align with the original policy intent and resolution of the practical tracing problem that the special roll-over relief regime for listed shares be limited only to listed target equity shares acquired from disposing target shareholders holding less than 20 per cent of the listed equity shares in the target company before the transaction.

The application of the special roll-over relief mechanism will be adjusted so that the key conditions be applied to both the tax character and tax cost of a listed target company share acquired by the acquiring company, with the same regard to any other asset-for-share transaction that is concluded on the same terms as the asset-for-share transaction and within the 90-day period after that disposal.

Effective date

The proposed amendment will come into operation on 1 January 2026 and apply in respect of years of assessment commencing on or after that date.

2.6 REVIEWING ASSET-FOR-SHARE AND AMALGAMATION TRANSACTIONS INVOLVING COLLECTIVE INVESTMENT SCHEMES

[Applicable provisions: Section 41, definitions of a “company”, “equity share”; section 42, definitions of “asset-for-share", “qualifying interest” and section 44 of the Act]

Background

Collective Investment Schemes (CISs), such as unit trusts or mutual funds, are popular investment vehicles allowing individuals to pool their money to invest in a diversified portfolio of assets like shares, bonds, and property. Under the current South African Income Tax Act, CISs are treated as "conduits" or "flow-through" entities for income as defined for tax purposes. This means that:

- Income (like interest and REIT dividends) earned by the CIS is typically passed on to the individual investors (unitholders), who then declare and pay tax on that income in their personal tax returns.

- Capital Gains Tax (CGT) on asset sales by the CIS itself is disregarded. Specifically, paragraph 61(3) of the Eighth Schedule to the Act states that a CIS (with some exceptions) does not pay CGT when it sells assets within its portfolio. Instead, investors are liable for CGT only when they sell their units (participatory interests) in the CIS.

Furthermore, the Income Tax Act contains specific "corporate reorganisation rules," such as:

- Section 42 (Asset-for-Share Transactions): This provision allows a person to transfer an asset (for example shares in a company) to another company in exchange for shares in that receiving company, without immediately triggering tax (such as CGT) on the transfer. This is referred to as "roll-over relief", deferring the tax consequences.

- Section 44 (Amalgamation Transactions): This provision provides similar tax deferral relief for certain company mergers or amalgamations, allowing assets to be transferred between merging entities without immediate tax consequences.

DRAFT

These provisions are designed to facilitate legitimate business restructurings by companies without creating immediate tax burdens.

Reasons for change

While the existing tax framework for CISs and corporate reorganisations serves important purpose, according to the discussion document on CISs published on 13 December 2024, transferring shares to a CIS without tax implications has allowed for unintended tax avoidance during changes of shareholdings in listed companies, as the realised gains in the shares are not taxed on transfer. To explain this in simpler terms:

- Tax-Free Transfer to CIS: An investor who holds shares that have increased in value (meaning they have unrealised gains) can transfer these shares to a CIS. By structuring this as an "asset-for-share" transaction under section 42, the investor avoids paying Capital Gains Tax at the time of this transfer. Instead, the investor receives units in the CIS.

- Tax-Free Disposal by CIS: Subsequently, if the CIS then sells these same shares, for example, as part of a corporate restructuring (like a merger or acquisition involving the listed company) or simply as part of its investment strategy, the CIS itself does not pay CGT on that sale due to the specific exemption in paragraph 61(3) of the Eighth Schedule.

- The Loophole: The combined effect is that the capital gain on the original shares is "realised" in the market (e.g., the listed company shares are disposed of by the investor and by the CIS, and the shares are effectively disposed of for a consideration in units or cash). However, neither the original investor nor the CIS pays tax on that gain at the point of its economic realisation. The investor's tax liability is deferred until they eventually sell their units in the CIS, which could be years later, or potentially avoided entirely by untaxed distributions by the CIS. This creates an imbalance compared to an investor who directly sells their shares and immediately pays CGT.

The realised gains are also not taxed when the CIS disposes of the shares as part of a corporate restructuring. This highlights how the interaction of these provisions can lead to a situation where significant capital gains escape the tax net at the point where they are economically realised.

As CISs are taxed on an adjusted trust basis, conceptually transactions involving CISs should not be qualifying for tax relief under corporate restructuring provisions that are focusing on transactions of companies.

Proposal

To address this unintended tax avoidance going forward and ensure a more equitable and consistent application of tax laws, it is proposed that the provisions relating to asset-for-share transactions (section 42) and amalgamations transactions (section 44), as they apply to transfers involving CISs be withdrawn to prevent the deferral or avoidance of tax on realised capital gains when shares are transferred to and subsequently disposed of by CISs in these specific circumstances.

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Effective date

The proposed amendments will come into operation on 1 January 2026 and apply in respect of years of assessment commencing transactions entered on or after that date.

2.7 REFINING AND CLARIFYING THE MEANING OF "INTEREST" TO ENHANCE CERTAINTY

[Applicable provision: Section 23M of the Act]

Background

In 2021, the Income Tax Act (the Act) was amended to strengthen rules that govern the limitation of interest deductions. These rules are contained in section 23M of the Act to limit interest deductions when a South African debtor incurs interest; there is a direct or indirect controlling relationship between the debtor and creditor and the interest income is not taxed in the hands of the creditor. It has come to government's attention that these measures require further clarification in three areas.

Reasons for change

Refining and clarifying the definition of "interest" to enhance certainty

There is complexity surrounding the definition of "interest" in section 23M of the Act and its use in the calculation of "adjusted taxable income". Items such as foreign exchange differences were included in the definition of "interest" to ensure that such items could not be used to deduct more interest. Section 23M targets interest deductions where there is a direct/indirect controlling relationship between the debtor and creditor, and the "interest" income is not taxable in the hands of the recipient.

Using the wider definition of "interest" to determine whether interest limitation should apply creates complexity as it results in the rules applying to all foreign-denominated amounts owed, irrespective of whether the amounts bear interest (as defined in section 24J) or not, or whether the debt is between independent entities or not. In addition, all transactions involving "interest" as defined would not in all instances result in the creditors/financiers receiving the same amount of interest.

Reviewing the carve-out for the interest limitation rules

The interest limitation rules do not apply to interest on debt in instances where the ultimate lending institution has no controlling relationship with the debtor and if the interest charged does not exceed the official rate of interest plus 100 basis points. However, the carve out may not apply where a creditor obtained the funding indirectly from the ultimate lending institution.

Clarifying the treatment of foreign exchange differences when there is no accrual for the creditor

The interest limitation rules acknowledge exchange differences on foreign exchange instruments under section 23M(7) of the Act. However, it is unclear how exchange differences should be treated when foreign exchange gains do not accrue to creditors. The

foreign counterparty would not be within the scope of section 24I of the Act and the foreign exchange gain does not accrue to the counterparty.

Proposal

It is proposed that amendments be introduced to clarify the rules as follows:

- It is proposed that taxpayers should rely on the definition of "interest" contained in section 24J of the Act to calculate "adjusted taxable income" paragraph *(a)* of subsection (3) and in the words following paragraph *(b)* of subsection (3). This will remove the need to make adjustments for all the additional elements of "interest" that are linked to third-party lending. There is no policy rationale to include these amounts in this calculation.

- To make it clear that the objective is to first test which debt should be focused on for the limitation of interest (i.e. there is a controlling relationship and no interest income inclusion for the creditor), before including additional interest elements, such as exchange differences thereon, "interest" in section 23M(2) of the Act, except for the reference to interest immediately after paragraph (ii) in subsection (2) will be limited to interest, other than interest contemplated in paragraph *(c)* of the definition of interest in subsection (1).

- The reference to interest immediately after paragraph (ii) in section 23M(2) of the Act should still have the broader meaning of interest as defined in section 23M(1) of the Act.

- To ensure that interest deductions are not excessive, in section 23M(3) of the Act, the reference to interest before paragraph *(a)* will retain the wider definition of interest contained in section 23M(1) of the Act – subjecting interest deductions to the limitation test.

- It is proposed that back-to-back lending arrangements where there is no controlling relationship between the ultimate lending institution and the debtor and the creditor in relation to the debtor obtained the funding indirectly from the lending institution, also be eligible for carve-out from these rules.

Effective date

The proposed amendments will come into effect for years of assessment commencing on or after 1 April 2026.

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

3.1 ALIGNING THE TAX TREATMENT OF DIVIDENDS WITH THE ACCOUNTING TREATMENT BY A COVERED PERSON

[Applicable provision: Section 24JB of the Act]

Background

Income tax

Section 24JB of the Act was introduced to address financial instruments, as the rules governing income tax and financial accounting had significantly diverged. In summary, “covered persons” are required to incorporate fair value measurements and all other amounts in respect of financial assets and financial liabilities under International Financial Reporting Standards (IFRS) directly into their taxable income or loss within the same year of assessment. Specifically, they must include in taxable income the total value of all changes and amounts recognised through profit and loss for financial assets and liabilities, as defined and measured by IFRS

Accounting

IFRS 9 is central to the classification and measurement of financial instruments, including derivatives and equity investments used for hedging.

- *Classification and Measurement of Equity Investments*

  Broadly, IFRS 9, paragraph 5.7.5 (and related application guidance) states that for equity instruments not held for trading, an entity has the option to make an irrevocable election at initial recognition to present subsequent changes in fair value in Other Comprehensive Income (OCI). However, dividend income derived from such investments is generally recognised in profit or loss, unless the dividend clearly represents a recovery of a portion of the investment's cost (IFRS 9, B5.7.1). This implies that dividend income, even from an equity instrument designated to OCI, typically impacts profit or loss.

  While in summary, IFRS 9, paragraph 4.2.2 (and related guidance) states that equity instruments can be classified at fair value through profit or loss (FVPL) if they are held for trading, or if the entity makes an irrevocable designation at initial recognition to eliminate or significantly reduce an "accounting mismatch”. If an equity investment is held to hedge a financial liability (such as equity-linked notes) and that liability is measured at FVPL, then classifying the equity investment at FVPL would create a "matching" of fair value movements directly in profit or loss. Therefore, dividends from FVPL instruments would likewise be recognised in profit or loss.

- *Hedge Accounting (Chapter 6 of IFRS 9)*

  In general, IFRS 9 establishes specific criteria for hedge accounting, which aims to align the accounting treatment of the hedging instrument (e.g., shares) and the hedged item (e.g., equity-linked notes) to accurately reflect the economic reality of the hedging relationship.

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IFRS 9, paragraph 6.4.1 (and related guidance) states that in a fair value hedge, gains or losses on both the hedging instrument and the hedged item (to the extent attributable to the hedged risk) are recognised directly in profit or loss. If equity-linked notes are subject to fair value changes that affect profit or loss, and shares are formally designated as a hedging instrument in a fair value hedge, then dividend income (and fair value changes of the shares) would typically be recognised in profit or loss to achieve an accounting match.

While IFRS 9, paragraph 6.5.1 (and related guidance) states that in a cash flow hedge, the effective portion of changes in the fair value of the hedging instrument is recognised in OCI and subsequently reclassified to profit or loss when the hedged cash flows affect profit or loss. If dividends accruing on these hedges are hedging variable cash flows of the equity-linked notes, then the dividend income (or related cash flow changes) could be treated in a manner consistent with cash flow hedge accounting principles to achieve an accounting match.

IAS 12 Income Taxes

This standard dictates the accounting for income tax, encompassing both current and deferred tax. In general, IAS 12, paragraph 58 states that if a transaction is recognised in profit or loss, any related tax effects are also recognised in profit or loss. Conversely, if a transaction is recognised outside profit or loss (e.g., in OCI), any related tax effects are also recognised outside profit or loss.

Reasons for change

It has come to Government's attention that "covered persons" are investing in shares and receiving dividends to hedge financial liabilities like equity-linked notes where the payments are tax deductible.

Proposal

Given that section 24JB of the Act already mandates the incorporation of most IFRS fair value measurements into taxable income for "covered persons," and considering that IFRS 9 often leads to dividend income from hedging instruments being recognised in profit or loss (especially for FVPL classifications or formal hedge accounting), it is proposed that dividends received by "covered persons" from equity investments used to hedge financial liabilities (such as equity-linked notes with tax-deductible payments) should also be subject to tax. This proposed change aims to directly align the tax treatment of such dividends with their financial accounting recognition in profit or loss, thereby mitigating existing tax mismatches and ensuring consistent treatment across financial reporting and taxation, which is further supported by the principles of IAS 12 regarding tax consequences following financial accounting treatment.

Effective date

The proposed amendment will come into operation on 1 January 2026 and apply in respect years of assessment commencing on or after that date.

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3.2 ANOMALY IN THE ACT RELATING TO CAPITAL DISTRIBUTIONS BY COLLECTIVE INVESTMENT SCHEMES

[Applicable provisions: Paragraph 61 and new paragraph 82A of the Eighth Schedule to the Act]

Background

Before 2010, unit trusts in South Africa were treated much like companies for tax purposes. Any income generated by the fund and distributed to unit holders was considered a taxable dividend from the unit trust itself. From 1 January 2010, the tax rules for unit trusts changed significantly. They now operate on a "conduit principle," which allows income (such as interest, dividends, rental income or trading income) earned by the fund to flow directly through to the individual unit holders without being taxed first at the fund level.

Generally, if the CIS fund realises a capital gain that gain is not taxed at the fund level due to the exclusion in paragraph 61 of the Eighth Schedule and also not to the investor (holder of a participatory interest) on distribution of the gain as there is no disposal by the holder. The tax on capital gains may only apply to the investor, when that investor sells units in the fund. At that point, capital gain or loss is based on the difference between the proceeds of units sold and the original cost.

Reasons for change

Despite the move to the "flow-through" adjusted trust system on 1 January 2010, there's a specific area where the law is not clear: i.e. "capital distributions." These are payments made by a unit trust to its investors that come from the fund's "capital", rather than from its income or trading profits from selling investments.

The existing tax law (specifically paragraph 61 of the Eighth Schedule to the Act) does not explicitly address how these "capital distributions" should be treated. While rules exist for what happens when a fund is closed down (liquidated) – where payments are generally seen as proceeds from selling units – there's no distinct rule for payments made from the fund's capital while it is still actively operating.

This lack of clarity can lead to confusion for both investors and tax authorities. It creates uncertainty about how such payments should be taxed, potentially leading to inconsistent treatment or unintended tax outcomes. The current law doesn't prevent such distributions, but it doesn't provide clear guidance on their tax implications.

Proposal

To address this gap, it was proposed in the Discussion document that was published by the National Treasury in December of 2024 that 'a new paragraph be inserted in the Eighth Schedule to the Act so that a capital distribution (distribution from a portfolio of a collective investment scheme (CIS) that is not income, prior to the disposal of a participatory interest in the CIS, the holder of that participatory interest must reduce the expenditure in respect of the participatory interest in a CIS by the amount of that distribution'.

However, based on the comments received it was stated that CISs will not be able to advise investors on the tax implications, as they do not have access to the investors' base cost

information. An alternative, and potentially simpler, approach could be to avoid adjusting the base cost of participatory interests altogether and instead treat all capital distributions as capital gains. It was noted that although this may lead to earlier tax liabilities for some investors, it would significantly reduce the complexity involved in adjusting base costs and the investors could fund the resulting tax liability from the amounts distributed. This trade-off could be worthwhile, especially considering that capital distributions are typically infrequent and relatively minor overall. Therefore, it is proposed that all capital distributions be regarded as capital gains.

Effective date

The proposed amendment will come into operation on 1 March 2026 and apply in respect of disposals or distributions made, as the case may be, on or after that date.

3.3 TAX TREATMENT OF FIRST LOSS AFTER CAPITAL (FLAC) INSTRUMENTS AS DEFINED IN THE FINANCIAL SECTOR REGULATION ACT (2017)

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

Background

The global financial crisis of 2008 highlighted the critical need for robust resolution frameworks for financial institutions. A cornerstone of these frameworks is the enhancement of banks' loss-absorbing and recapitalisation capacity, designed to prevent the need for taxpayer-funded bailouts.

In line with these international prudential standards, South Africa has introduced First Loss After Capital (flac) instruments, as defined in the Financial Sector Regulation Act (2017). These instruments are designed to absorb losses and convert to equity during a bank's resolution, ensuring that the costs of failure are borne by shareholders and creditors rather than the public purse.

In general, flac instruments are a class of unsecured debt instruments issued by systemically important financial institutions (e.g., banks or their controlling companies). While distinct from traditional regulatory capital (Common Equity tier 1, Additional tier 1, and tier 2 capital), they serve a similar purpose of providing loss-absorbing capacity. They rank below senior unsecured debt but above regulatory capital in the creditor hierarchy, designed to convert into shares or be written off when a bank enters resolution. This mechanism facilitates an orderly resolution, ensures continuity of critical functions, and shifts the burden of bank failure to investors.

Globally, similar instruments include Total Loss-Absorbing Capacity (TLAC)-eligible debt (for Global Systemically Important Banks or G-SIBs) and Minimum Requirements for Own Funds and Eligible Liabilities (MREL)-eligible debt (primarily in the European Union). Contingent Convertible Bonds (CoCos) and Additional tier 1 (AT1) instruments also share characteristics of loss absorption and conversion.

However, the effective implementation and market acceptance of flac instruments are significantly influenced by their tax treatment.

Reasons for change

The unique characteristics of flac instruments present several potential tax challenges under current tax legislation, which could inadvertently impede their effective issuance and prudential function. These challenges are mentioned below:

- *Issue: Application of Hybrid Debt Anti-Avoidance Rules*

  South African Context:

  Section 8F of the Act targets "hybrid debt instruments". This anti-avoidance provision aims to reclassify interest payments on certain debt instruments as non-deductible dividends if the instrument possesses equity-like characteristics (e.g., payments dependent on profitability, or long terms with no fixed repayment). Given the hybrid nature of flac instruments and tier Capital (particularly AT1, which has debt-like features but functions as equity for regulatory purposes), there is a concern that they could inadvertently fall within the scope of section 8F of the Act. If caught by section 8F of the Act, the interest payments on these vital instruments would become non-deductible for the issuing bank, significantly increasing its cost of funding.

  International Position:

  Globally, regulatory capital instruments (AT1 and tier 2) and other loss-absorbing debt (TLAC/MREL-eligible debt, which is analogous to flac) are designed to satisfy prudential requirements. While these instruments often have hybrid features that could trigger general hybrid anti-avoidance rules, many jurisdictions provide specific carve-outs or tailored tax treatments for them. The objective is to preserve the tax deductibility of interest paid on these instruments. For example, countries like the UK and Hong Kong have specific legislation or administrative guidance that ensures interest on their regulatory capital and bail-inable debt instruments are treated as tax-deductible.

  In UK, Finance Act 2019, Schedule 20 and The Taxation of Hybrid Capital Instruments (Amendment of Section 475C of the Corporation Tax Act 2009) Regulations 2019 (SI 2019/1250): These provisions introduced a new regime for "hybrid capital instruments." This legislation generally ensures that coupon payments on certain debt instruments with equity-like features (such as deferral or cancellation of interest payments, which are common in AT1 and similar bail-inable debt) are deductible for corporate tax purposes for the issuer. This broader legislation replaced previous specific regulations (like the Taxation of Regulatory Capital Securities Regulations 2013) and applies to a wider range of instruments across all sectors but is particularly relevant for banks and insurers.

  Hong Kong has also taken steps to clarify and facilitate the tax treatment of regulatory capital instruments, including their deductibility. The Inland Revenue (Amendment) (No. 2) Ordinance 2016: This amendment clarified the profits tax and stamp duty treatments for "regulatory capital securities" (RCSs) issued by banks to comply with Basel III capital adequacy requirements. The Hong Kong Departmental Interpretation and Practice Notes No. 53 (Revised) (DIPN 53): This important guidance from the Inland Revenue Department (IRD) confirms that a Regulatory Capital Security (RCS), which is defined to include Additional tier 1 (AT1) and tier 2 capital instruments, is to be treated as a debt security for Hong Kong profits tax purposes. Consequently, payments made under an RCS that are not

repayments of the principal (i.e., coupon payments, premiums, or discounts) are generally treated as interest for both deduction and taxation purposes.

This approach prioritises financial stability, preventing tax rules from creating an undue burden that could hinder banks from building necessary loss-absorbing capacity.

- *Issue: Consequential amendment to section 8FA*

  South African Context:

  Currently, tier 1 and tier 2 capital instruments are already eligible for (or rather, benefit from) an exclusion from section 8FA of the Act. The aim of the exclusions from hybrid debt (section 8F) and hybrid interest (section 8FA) are designed to accommodate prudential capital instruments issued by banks.

  While tier 1 and tier 2 capital are crucial "going concern" capital as they absorb losses before a bank fails, allowing it to continue operating. However, in a severe crisis, the losses might exceed what tier 1 and tier 2 capital can absorb. This is where flac instruments come in. They provide an additional, deeper layer of loss-absorbing capacity. They are "First Loss After Capital" because they are designed to be written down or converted after tier 1 and tier 2 have been depleted, but before other senior unsecured creditors (like ordinary depositors or general bondholders) are hit. Therefore, similar extension of the rules should be afforded to flac instruments.

  International Position:

  The principle of ensuring tax deductibility of interest/coupons and tax neutrality on the write-down/conversion of loss-absorbing instruments is a common feature in jurisdictions that have implemented TLAC/MREL frameworks. Many countries that have domestic tax rules that, similarly to South Africa's section 8FA, would ordinarily re-characterise interest on instruments with equity-like features (like perpetual or deeply subordinated debt, or debt with contingent coupons) as non-deductible dividends. However, to prevent this for regulatory capital and loss-absorbing debt, these countries introduce specific carve-outs or exemptions in their tax legislation. These carve-outs ensure that interest paid on instruments that qualify as Additional tier 1 (AT1), tier 2, or senior non-preferred debt (which is the international equivalent of a flac-like instrument for TLAC purposes) remains tax-deductible for the issuing bank.

Proposal

The effective implementation of South Africa's resolution framework, particularly the reliance on flac instruments, necessitates a coherent and supportive tax policy. The current South African Income Tax Act, specifically sections 8F and 8FA of the Act present potential challenges that could increase the cost and complexity of issuing these vital instruments.

Drawing on international best practices, it is proposed that South Africa's tax legislation be amended to ensure that:

- flac instruments and tier Capital are excluded from the application of hybrid debt and hybrid interest anti-avoidance rules (i.e. sections 8F and 8FA), thereby preserving the tax deductibility of their interest payments.

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Effective date

The proposed amendment will come into operation on 1 January 2026.

4. INCOME TAX: BUSINESS (INCENTIVES)

4.1 EXTENSION OF THE UDZ TAX INCENTIVE SUNSET DATE

[Applicable provision: Section 13*quat* of the Act]

Background

The Urban Development Zone (UDZ) tax incentive was introduced in 2003 to promote the maintenance and further development of inner cities within selected municipalities. The UDZ tax incentive was designed to encourage property investment in central business districts (CBDs) and to address the problem of urban decay in these CBDs through the promotion of 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 qualifying municipalities demarcated as UDZs.

Since its introduction, the UDZ tax incentive has undergone several legislative amendments to extend both the sunset date and UDZ incentive structure to allow for greater uptake. The incentive was initially available from January 2004 until March 2014. Following a review of its effectiveness, the incentive was extended to 31 March 2020. Thereafter, the incentive was extended to 31 March 2021, with the latest extension ending on 31 March 2025 to allow for a comprehensive review to be concluded.

In line with the Minister's announcement in the 21 May 2025 Budget Review, it was proposed that the UDZ tax incentive be extended for another five years, to allow sufficient time for consultations with municipalities as part of the comprehensive review, which will determine the future of the incentive.

Reasons for change

The purpose of applying a sunset date to a tax incentive is to allow Government an opportunity to review its effectiveness before that incentive comes to an end. To better understand the experiences of municipalities and developers accessing the tax incentive, an online survey was conducted as part of the review. While the survey received fewer responses than expected, it provided valuable insights into the experiences of investors/developers. However, the information gathered from the survey and SARS microdata is insufficient to draw conclusive findings regarding the effectiveness of the incentive. Further research is required, particularly to source and evaluate municipal data regarding the uptake of the incentive.

Proposal

It is proposed that changes be made in section 13quat of the Act to extend the UDZ tax incentive by another five years, to 31 March 2030. The extension of the incentive's sunset date will allow sufficient time for consultations with municipalities and the collection of data required to assess the incentive's effectiveness in achieving its objectives.

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Effective date

The proposed amendment will be deemed to have come into effect on 1 April 2025 and will be applicable in respect of any building, part thereof or improvement that is brought into use on or after that date.

4.2 ENERGY EFFICENCY SAVINGS INCENTIVE

[Applicable provision: Section 12L of the Act]

Background

The energy efficiency savings tax incentive was introduced on 9 December 2013 to encourage companies to implement energy efficiency savings. The section 12L incentive provides an income tax deduction for the monetary value of actual energy efficiency savings (kWh) achieved by a company in a financial year and approved by the South African National Energy Development Institute.

In the 2022 Budget, the first phase of the carbon tax and the energy efficiency savings tax incentive were extended for three years to December 2025. In the "Carbon Tax Discussion Paper: Phase Two of the Carbon Tax" it was proposed to include eligible section 12L projects approved under the Energy Efficiency Savings SANS 50010 standard under the carbon offsets mechanism. This proposal was to promote investments in energy efficiency measures, reduce in-scope electricity emissions and to promote job creation.

Reasons for change

During consultations with stakeholders, there was broad support to extend the section 12L incentive. Stakeholders indicated that there would be challenges with including the section 12L energy efficiency projects in the carbon offsets mechanism because a number of section 12L projects are implemented within the taxable boundary of tax-paying entities. Additionally, the 12L energy efficiency projects are implemented on a smaller scale than the typical threshold for viability under existing international carbon standards. It was therefore proposed in Budget 2025 to extend the section 12L energy-efficiency tax incentive for five years to 31 December 2030.

Proposal

It is proposed that section 12L is amended by substituting the current sunset date of years of assessment ending before 1 January 2026 with years of assessment ending before 1 January 2031.

Effective date

The proposed amendment will come into operation on 1 January 2026.

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4.3 ADDITIONAL DEDUCTION FOR DOMESTIC PRODUCTION OF BATTERY ELECTRIC AND HYDROGEN-POWERED VEHICLES

[Applicable provision: Section 12V of the Act]

Background

In 2024, Government introduced a tax incentive to support investment in the local production of battery electric vehicles (BEVs) and hydrogen-powered vehicles (HPVs). This measure is intended to facilitate the transition of South Africa's automotive industry from mainly producing Internal Combustion Engine (ICE) vehicles to a dual platform that includes the production of electric vehicles (EVs). This shift is necessary to secure South Africa's key export markets, such as the EU and UK, which have announced plans to ban the sale of new ICE vehicles by 2035, as well as to address environmental concerns and meet emission reduction commitments under the Paris Agreement.

The tax incentive complements a broader package of measures designed to support the automotive industry's transition to producing BEVs and HPVs. Additional measures are implemented by the Department of Trade, Industry and Competition (DTIC) through the Automotive Investment Scheme (AIS). The AIS provides a 35 per cent grant support for component and tooling manufacturers as well as battery assemblers. Manufacturers of BEVs and HPVs are eligible for a 20 per cent cash grant in addition to the tax incentive.

Under the tax incentive, manufacturers of BEVs and HPVs may claim a 150 per cent accelerated depreciation allowance on qualifying capital expenditure incurred in South Africa. Eligible assets include buildings, new and unused machinery, plant, implements, and articles (including supporting structures) provided they are used in the production of BEVs and HPVs. The incentive applies to assets brought into use between 1 March 2026 and 29 February 2036.

Reasons for change

It has come to Government's attention that the term 'motor vehicle manufacturer' may be interpreted broadly to include the entire vehicle manufacturing value chain (including component manufacturers) and all types of vehicles powered by electricity or hydrogen fuel cells (i.e. golf carts).

Proposal

To ensure clarity and policy alignment, it is proposed that 'motor vehicle manufacturer' be defined to mean manufacturer of light motor vehicles as contemplated in paragraph (i) of the definition of 'final manufacturer' as set out under the Automotive Production and Development Programme Regulations contained in Government Notice No. R.80 as published in Government Gazette No. 44144 of 11 February 2021, or "heavy motor vehicle" as referred to in item 317.07 in Part I of Schedule No.3 of the Customs and Excise Act, 1964 and to the extent of assembly provided for in Note 5 to Chapter 98 of Part 1 of Schedule No.1 to that Act.

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Effective date

The proposed amendment comes into operation on 1 March 2026 and applies in respect of assets brought into use on or after that date.

5. INCOME TAX: INTERNATIONAL

5.1 REFINING THE DEFINITION OF "EQUITY SHARE" TO CATER FOR TRANSFERS BY FOREIGN COMPANIES

[Applicable provision: Definition of an "equity share" in section 1(1) of the Act]

Background

The introduction of dividends tax in 2012, along with significant amendments to the Companies Act in 2011, necessitated adjustments to the definition of an equity share.

An "equity share" as currently defined in the Act, refers to "dividends" and "returns of capital", which are terms that are both defined in the Act. The definitions of "dividend" and "return of capital", both only make reference to an amount that is transferred by a resident company that constitutes a dividend or a return on capital.

Reasons for change

Under the current wording of the "equity share" definition, shares in a foreign company appear to be excluded and cannot be regarded as equity shares.

Proposal

It is proposed that the definition of equity share be updated to cater for foreign dividends and foreign returns of capital.

Effective date

The proposed amendment will come into operation on 1 January 2026.

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5.2 INTERACTION BETWEEN SECTIONS 6QUAT AND 23(M) OF THE INCOME TAX ACT

[Applicable provision: Sections 6*quat* and 23(*m*) of the Act]

Background

Section 23*(m)* of the Act restricts the deductibility of certain expenses when determining a taxpayer's taxable income, specifically disallowing any deduction, loss, or allowance contemplated in section 11 of the Act, which relates to any employment or office held. However, it is important to take into account the provisions of section 11*(x)* of the Act, which allows for the deduction of any amounts permitted under any other provision in Part I of Chapter II of the Act.

As such, the reference to section 11 of the Act in section 23*(m)* of the Act must be interpreted broadly to include all deductions allowed under Part I, including those permitted under section 6*quat*(1C) of the Act. Section 6*quat*(1C) of the Act allows a deduction against income,

for the purposes of determining taxable income, in respect of foreign taxes paid or proved to be payable to any sphere of government of a country other than the Republic.

Reasons for change

Currently, section 23*(m)* of the Act does not include section 6*quat*(1C) of the Act in the list of exceptions provided under subparagraphs (i) to (iv). As a result, and based on a strict interpretation of the law, employees and office holders who receive remuneration would be precluded from claiming a deduction under section 6*quat*(1C) of the Act, due to the prohibitions imposed by section 23*(m)* of the Act.

From a tax policy point of view the election granted to a resident taxpayer to get a deduction from income of taxes paid or proved to be payable to any country other than the Republic should not be restricted by section 23*(m)* of the Act.

Proposal

It is therefore proposed that section 23*(m)* of the Act be amended to expressly exclude section 6*quat*(1C) of the Act from its limitations by adding an additional subparagraph following the current subparagraph (iv). This amendment would provide certainty that employees and office holders are allowed a deduction for foreign taxes, should they elect to do so.

Effective date

The proposed amendment will come into operation on 1 March 2026 and apply in respect of any year of assessment commencing on or after that date.

5.3 INTERACTION OF CONTROLLED FOREIGN COMPANY RULES IN SECTION 9D WITH SECTION 9H

[Applicable provisions: Sections 9D and 9H of the Act]

Background

Broadly, section 9D of the Act serves as an anti-avoidance provision aimed at preventing South African residents from avoiding tax through passive investments in controlled foreign companies or diverting income to controlled foreign companies. If a foreign company qualifies as a controlled foreign company (CFC) as defined, the amount of its net income is proportionally attributed to any South African residents holding 10 per cent or more of the participation rights, effectively including the proportional amount in their taxable income. The provisions of section 9D(2A) of the Act play a crucial role in maintaining the effectiveness of section 9D of the Act by preventing residents from diverting or channelling income to low-tax jurisdictions to gain a tax advantage.

Section 9H of the Act, that triggers an 'exit charge', provides that when a resident ceases to be a resident or a CFC ceases to be a CFC, it is deemed to have disposed of all its worldwide assets on the date immediately before the date it ceases to be a resident or CFC.

DRAFT

Reasons for change

It has come to the Government's attention that the current wording of section 9H of the Act read with section 9D of the Act is not always adequate to trigger an "exit charge" where a CFC ceases to be a CFC. At issue is the hypothesis contained in paragraph (i)(*aa*) of the further proviso to section 9D(2A) of the Act, which is the "comparable tax exemption" aimed at preventing attribution of the already calculated "net income" amount of a CFC to a resident if a comparable tax is suffered in the other jurisdiction. The proviso has the effect of reducing the net income amount of a CFC to nil if the foreign taxes payable by the CFC is at least 67.5 per cent of the normal tax that would have been payable had the CFC been a resident. A CFC may avoid the exit charge under section 9H of the Act as it is treated as a resident when determining the normal tax variable element of the comparable tax exemption. As a result, the interaction between "net income" of CFC rules in section 9D of the Act and ceasing to be a CFC rules in section 9H of the Act needs to be clarified and strengthened.

Proposal

It is proposed that paragraph (i)(*aa*) of the further proviso to section 9D(2A) of the Act be amended to add the normal tax resulting from the application of section 9H(3)(*b*) of the Act to the normal tax that would have been payable had the CFC been a resident.

Effective date

The proposed amendment will come into operation on 31 December 2025 and applies in respect of foreign tax years of controlled foreign companies ending on or after that date.

5.4 CFC RULES AND COMPARABLE TAX EXEMPTION

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

Background

Broadly, section 9D of the Act serves as an anti-avoidance provision aimed at preventing South African residents from avoiding tax through passive investments in controlled foreign companies or diverting income to controlled foreign companies. The provisions of section 9D(2A) of the Act play a crucial role in maintaining the effectiveness of section 9D by preventing residents from diverting or channelling income to low-tax jurisdictions to gain a tax advantage by ensuring the imputation of the CFC's diversionary and passive income into the South African tax net.

Section 9D(2A) of the Act contains a set of specific rules to assist in the determination of the net income of a CFC. However, the further proviso to section 9D(2A) effectively provides an exemption from imputation of the CFC's net income into the South African tax net due to the 'comparable tax exemption'. The current tax rules allow a comparable tax exemption for CFCs if they pay a comparable level of tax overseas as they would in South Africa, i.e. at least 18.225 per cent.

The comparable tax exemption contained in paragraph (i)(*aa*) read with paragraph (ii)(*aa*) of the further proviso to section 9D(2A) of the Act is based on the aggregate amount of foreign taxes paid by a CFC, which is used to determine the effective tax rate of the CFC.

Generally, compliance with this further proviso of the Act requires calculating the hypothetical taxable income of the CFC in accordance with the South African Income Tax Act. The taxable income must be determined by considering any applicable double taxation agreements, credits, rebates, or other tax recovery rights from foreign governments, while also disregarding losses from prior foreign tax years since the foreign company became a CFC or from entities other than the CFC.

Reasons for change

It has come to the Government's attention that the current provisions in section 9D(2A) of the Act that deal with comparable tax exemption do not consider tax systems of countries that allow a refund to certain shareholders of a foreign company for tax paid by the company declaring the dividend. Under current South African law, this creates a discrepancy because a CFC may meet the requirements for the comparable tax exemption based on the tax rate, despite the fact that the ultimate tax paid on profits, after shareholder refunds, is substantially lower. Furthermore, if the refund is made to an intermediate holding company that is also a CFC, the current provisions do not take this refund into account in determining whether the exemption applies.

Proposal

It is proposed that the Act be amended to take into account tax refunds received by shareholders, including intermediate holding company CFCs, when determining whether a CFC qualifies for the comparable tax exemption under section 9D(2A) of the Act. This would ensure a more accurate assessment of the actual effective rate of tax paid on the profits and align the application of the exemption with its intended policy objective—namely, to exclude only those foreign companies that are genuinely taxed at a level comparable to South Africa.

Effective date

The proposed amendment will come into operation on 31 December 2025 and applies in respect of foreign tax years of controlled foreign companies ending on or after that date.

5.5 TAXATION OF TRUSTS AND THEIR BENEFICIARIES

[Applicable provisions: Sections 7(5) and 25B of the Act]

Background

Currently, income received by a trust is taxed in the hands of the donor, the beneficiary or the trust. When determining who will be taxed, the attribution or flow-through principle is applied. The flow-through principle ensures that the income distributed by the trust retains its nature as if it had been received directly and not through a trust. In essence, the flow-through principle ensures that the income is taxed in the hands of the person who benefits from the income. However, the Act has attribution rules to tax income in the hands of the person that made a donation, settlement or other disposition to a trust under certain instances.

DRAFT

Reasons for change

In 2023, amendments were made to the rules relating to the taxation of trusts and their beneficiaries. The intention is that the flow-through principle should be limited to resident beneficiaries. As a result, income vested in or distributed to non-residents is taxed in the trust. The main reason for that policy is that Government found it challenging to identify and collect taxes from non-residents in whom the income is vested or distributed. The current wording in the Act does not meet this objective and, in some instances, may still be interpreted to include non-resident beneficiaries and donors.

Proposal

It proposed that the Act be amended to ensure that the flow-through and attribution principles only apply to income received by or accrued to resident beneficiaries and resident donors.

Example:

Facts:

ABC Trust is resident in South Africa. A, also resident in South Africa, donated R1 million to the ABC Trust and B, a non-resident, donated R1 million to the ABC Trust.

The ABC Trust invested the R2 million in interest-bearing investments that yielded R200 000 interest during the year. The trustees did not exercise their discretion to vest the interest in any of the discretionary beneficiaries.

Result:

Section 7(5) of the Act requires donor A to include R100 000 interest (R200 000 x R1 million donated of the R2 million total invested in the interest-bearing investment) in A's income tax return.

Section 7(5) of the Act is not applicable to donor B, since B is not resident in South Africa.

Section 25B of the Act requires the ABC Trust to include R100 000 interest (R200 000 less R100 000 attributed to donor A) in its taxable income.

Effective date

The proposed amendments will come into operation on 1 March 2026 and apply in respect of years of assessment commencing on or after that date.

5.6 REFINING DEFERRAL OF EXCHANGE DIFFERENCE RULES ON DEBT BETWEEN RELATED COMPANIES

[Applicable provision: Section 24I of the Act]

Background

In general, section 24I(10A) of the Act provides for the deferral of foreign exchange gains or losses on certain exchange items, specifically in relation to long-term debt between connected persons or members of a group of companies. The provision applies where the

DRAFT

exchange item in question—such as an intercompany loan—is not classified as a current asset or current liability for financial reporting purposes under IFRS.

When section 24I(10A) of the Act was introduced in 2012, the underlying policy was to defer the taxation of foreign exchange differences until the exchange item is realised. This was intended to ease compliance and reduce volatility in taxable income caused by unrealised foreign exchange movements.

Reasons for change

Deferral of foreign exchange gain or loss until realisation

It has come to Government's attention that this policy has resulted in unintended consequences as in some instances, taxpayers may intentionally delay realisation of exchange items in order to avoid triggering deferred foreign exchange gains. This deferral can result in distortions to taxable income and deferred recognition of revenue, thereby affecting the timing and collection of tax revenues.

Practical challenges in application of section 24I(10A)

It has come to Government's attention that in certain instances, there is a challenge in applying section 24I(10A) of the Act, particularly regarding the classification of the debt under financial reporting standards, if it is not recognised in the financial statements. For example, one of the key requirements for the deferral of exchange differences is that the relevant loan (or a portion thereof) must not be treated as a current asset or liability for IFRS purposes. Once the loan is written off and no longer reflected in the financial statements, it becomes unclear whether the condition relating to the asset classification is satisfied. The mismatch between the accounting treatment and the tax position creates uncertainty as to whether the continued deferral of exchange differences is appropriate.

Proposal

It is proposed that where an exchange item is not recognised for financial reporting purposes, exchange differences in respect of that exchange item should not qualify for deferral.

In relation to the deferring of exchange differences, it is proposed that the policy be reconsidered so that deferred exchange differences are triggered on the portion of an exchange item realised during the year of assessment.

Effective date

The proposed amendments will come into operation on 1 January 2026 and applies in respect of years of assessment commencing on or after that date.

DRAFT

6. VALUE ADDED TAX

6.1 DEBIT AND CREDIT NOTES RELATING TO A GOING CONCERN AS PER SECTION 8(25) OF THE VALUE-ADDED TAX (VAT) ACT (1991)

[Applicable provision: Section 21(1)(*d*)(ii) of the Value-Added Tax Act, No. 89 of 1991 ("the VAT Act")]

Background

In terms of section 21(1)(*d*)(ii) of the VAT Act, where an enterprise is sold as a going concern as contemplated in section 11(1)(*e*) of the VAT Act, the purchaser of the enterprise is allowed to issue debit and credit notes in respect of goods or services that were supplied by the seller of the enterprise. but which are returned to the purchaser.

Reasons for change

In the event that goods or services are returned (debit and credit note events) to the transferee of an enterprise that was transferred as a going concern in terms of section 8(25) of the VAT Act read together with section 42 or 45 of the Income Tax Act, where the transferor and the transferee are deemed to be one and the same person for VAT purposes section 21(1)(*d*)(ii) of the VAT Act currently does not allow the transferee to issue debit and credit notes. The section currently caters only for debit and credit note events where the going concern transaction was concluded in terms section 11(1)(*e*) of the VAT Act and not section 8(25) of such Act.

III. Proposal

It is proposed that section 21(1)(*d*)(ii) of the VAT Act be expanded to include the return of goods or services that were supplied by the transferor of a business as a going concern under section 8(25) of the VAT Act, read together with sections 42 or 45 of the Income Tax Act, where the goods or services are returned to the transferee.

Effective date

The proposed amendment will come into operation on 1 April 2026.

6.2 REVIEWING THE SCOPE OF THE INTERMEDIARY PROVISIONS

[Applicable provision: Section 54(2B) of the VAT Act]

Background

Section 54(2B) of the VAT Act makes provisions for an intermediary (who is a vendor) to account for VAT, where the intermediary supplies electronic services on behalf of a foreign electronic services supplier (the principal) who is not a resident of the Republic of South Africa (the Republic), to a person in the Republic, subject to the intermediary and the principal (the parties) agreeing in writing that such supply be treated as if supplied by the intermediary. In this instance, the parties shall be held jointly and severally liable in respect of the taxable supplies made under such agreement. Failure to conclude such written agreement means that the principal remains liable to register and account for the VAT on its taxable supplies.

DRAFT

Reasons for change

Intermediaries generally market and sell electronic services on behalf of both foreign and local (South African) suppliers. The current application of section 54(2B) of the VAT Act only allows the intermediary, as an agent, to account for the VAT where the principal is a non-resident. Limiting the application of the intermediary provisions to only apply to non-residents creates added complexities and administrative burdens for intermediaries who also act as agents on behalf of local suppliers.

Intermediaries who run large marketplace platforms, invoice South African customers for supplies made by both local and foreign suppliers on one consolidated invoice. This means the customer receives one invoice from the intermediary for the supplies by the various foreign and local suppliers. Making a distinction between supplies by local and foreign suppliers, create huge administration burdens for the intermediaries.

Proposal

It is proposed that the current intermediary provisions be widened to also include supplies facilitated by intermediaries on behalf of local suppliers, in order to ease administrative burdens.

Effective date

The proposed amendment will come into operation on 1 April 2026.

6.3 REVIEWING VAT RULES DEALING WITH DOCUMENTARY REQUIREMENTS FOR SILVER EXPORTS

[Applicable provision: Section 54(2C) of the VAT Act]

Background

In terms of section 54(2C) of the VAT Act, where gold is supplied as contemplated in section 11(1)(*f*) of the VAT Act or where gold is exported from the Republic in the circumstances contemplated in paragraph *(a)* or *(d)* of the definition of 'exported' in section 1(1) of the VAT Act and in accordance with section 12 of the of the Precious Metals Act, 2005 (Act No. 37 of 2005), by an agent who is acting on behalf of another person who is the principal for the purposes of that supply and—

- the agent is a registered vendor; and
- the principal is a resident of the Republic and a registered vendor,

the agent must, subject to other conditions contained in that section, obtain and retain the documentary proof as acceptable to the Commissioner for South African Revenue Service ("SARS").

Reasons for change

The main purpose of refineries is to refine and smelt certain "precious metals", as defined in the VAT Act, or ore received from various customers, namely depositors / principals, for sale or export. After the refining or smelting silver, as is the case with gold, it is difficult to

determine which depositor's silver or ore is sold or exported because the silver or ore loses its original identity during refinery and smelting. As a result, depositors find it difficult to obtain the documentary evidence to support the application of the zero rate on a transaction-by-transaction basis. In most instances, as with gold, the refineries also act as agents and sell or export silver and ore on behalf of these depositors.

Currently, section 54(2C) of the VAT Act is only applicable to the exportation of gold. However, since similar difficulties arise in respect of silver as with gold, and on the basis that there are adequate reporting and record keeping requirements in place, it is proposed that the dispensation for gold be extended to silver.

Proposal

Section 54(2C) of the VAT Act should be expanded to also apply to the exportation of silver by an agent on behalf of a principal.

Effective date

The proposed amendment will come into operation on 1 April 2026.

6.4 REVIEWING THE VAT TREATMENT OF TESTING SERVICES SUPPLIED TO NON-RESIDENTS WHO ARE OUTSIDE THE REPUBLIC AT THE TIME OF THE SUPPLY, WHERE SERVICES ARE SUPPLIED DIRECTLY IN CONNECTION WITH MOVABLE PROPERTY SITUATED IN THE

[Applicable provision: New sections 11(1)(*x*) and 11(2)(*z*) of the VAT Act]

Background

Subject to certain conditions, section 11(2)(*l*) of the VAT Act provides for services supplied by a vendor to a person who is not a resident of the Republic to be zero-rated. Subparagraph (ii) excludes services supplied "directly in connection with" moveable property situated inside the Republic, save for two exceptions. Subparagraph (iii) excludes services supplied to the recipient or any other person who is in the Republic at the time the services are rendered.

Reasons for change

Based on the literal interpretation of the words "directly in connection with", the clinical trial service which involves testing, amongst others, the effectiveness of the medicine/device/item, may be regarded as being in connection with moveable property. This would then mean that the exclusion contained in subparagraph (ii) to section 11(2)(*l*) of the VAT Act would apply (the two exceptions which may override this exclusion not being applicable in these circumstances) and as a result the supply would not qualify for zero-rating. Similarly, because of the use of the words "directly to the said person or any other person who is in the Republic at the time the services are rendered", tests including tests performed on a patient in the Republic will be excluded from the zero-rating because of subparagraph (iii) to section 11(2)(*l*) of the VAT Act. The testing may also involve "kits" containing needles and vials, for example.

In light of the above, even though it may be argued that the clinical reports are consumed offshore by the non-resident where the non-resident is situated, section 11(2)(*l*) of the VAT

DRAFT

Act does not find application on the clinical trials or testing services. The same issue arises for any other good that may be tested in the Republic, for example, aircraft, machines and weapons.

Proposal

In order to address the difficulties faced by suppliers of testing services to offshore clients and in order to ensure that South African suppliers in this regard remain competitive on the global scale, it is proposed that a new section 11(2)(*z*) be introduced to zero-rate the supply of testing services and reporting to non-residents. Furthermore, a new section 11(1)(*x*) should also be introduced to zero-rate the goods utilized to provide the testing services.

Effective date

The proposed amendment will come into operation on 1 April 2026.

6.5 REVIEWING THE DEFINITION OF "INSURANCE"

[Applicable provision: Section 1(1) Definition of of the VAT Act Definition of "insurance]

Background

The definition of "insurance" in section 1(1) of the VAT Act means insurance or guarantee against loss, damage, injury or risk of any kind whatever, whether pursuant to any contract or law, and includes reinsurance; and "contract of insurance" includes a policy of insurance, an insurance cover, and a renewal of a contract of insurance, provided that nothing in this definition shall apply to any insurance specified in section 2 of the VAT Act.

Reasons for change

In the matter of *Capitec Bank Limited v Commissioner for the South African Revenue Service (CCT 209/22) [2024] ZACC 1* (the Court case), the Constitutional Court ruled that the supply of insurance for no consideration by the appellant is indeed a taxable supply, or at least partly a taxable supply, due to the fact that the appellant provided the insurance free of charge when it granted a loan to a customer. This then means that the provision of free credit cover gives a lender in the same position as the appellant, a competitive advantage over other lenders who require that the customer takes out credit insurance, even though the cost of premiums is indirectly recovered from the customers on the premiums paid. This has the effect that the appellant could claim a deduction, in terms of section 16(3)(*c*) of the VAT Act, on indemnities paid/credited to the customer's account upon a successful claim by the customer. The implication of the judgment is that where any vendor acquires exempt credit life insurance from a life insurer and that vendor stated in the credit agreement that it on-supplies same at no charge, such vendor will be entitled to claim the said VAT deduction on insurance "payouts" made to its customer. The above will result in undue profits from the VAT system, which is premised on the fact that short-term insurers charge premiums in excess of "payouts", for the appellant and similar institutions.

Proposal

In light of the decision in the Court case, it is proposed that the definition of "insurance" be revised to include the requirement that a premium be charged.

Effective date

The proposed amendment will come into operation on 1 April 2026.

6.6 CLARIFYING THE VAT TREATMENT OF TEMPORARY LETTING OF RESIDENTIAL PROPERTIES

[Applicable provision: Section 18D of the VAT Act]

Background

In terms of section 7(1)(*a*) of the VAT Act, the supply of residential fixed property by a VAT vendor (being a property developer) is subject to VAT at the standard rate of 15 per cent. Depending on market conditions, residential fixed property developers are at times unable to dispose of newly built residential fixed properties for extended periods of time. In order to maintain expenses incurred in developing such fixed property, such as bank loan repayments, property developers often enter into short term temporary leases for such fixed property until a buyer can be found.

The leasing of a residential fixed property is an exempt supply, in terms of section 12(*c*) of the VAT Act, which would generally result in the VAT incurred being denied. The VAT Act requires a change in use adjustment in terms of section 18(1) of the VAT Act where property developers apply fixed property developed for resale, in residential letting.

Property developers are entitled to deduct input tax on the VAT costs incurred to build residential fixed property (dwellings) for sale. However, where the property developer is unable to sell the residential fixed property and enters into a lease, until a buyer is found, the property developer is currently required to make an output tax adjustment based on the open market value (OMV) of the residential fixed property when the residential fixed property is leased for the first time. In 2010, an announcement was made in Chapter 4 of the 2010 Budget Review (Heading entitled: “VAT and residential property developers” on page 79 of the Budget Review) to investigate and determine an equitable value and rate of claw-back for property developers as the VAT treatment was disproportionate to the temporary rental income. As a result, changes were made to the VAT Act by inserting new section 18B, for a short period, from 10 January 2012 to 31 December 2017. This section ceased to apply on 1 January 2018. Section 18B of the VAT Act was a temporary measure with a limited lifespan.

In light of the above, a more permanent relief mechanism in the form of section 18D of the VAT Act (together with associated provisions, being sections 9(13), 10(29) and 16(3)(*o*)) were introduced with effect from 1 April 2022 to deal with temporary letting by developers. In short, section 18D of the VAT Act provides relief, for only 12 months, to the developer to suspend the adjustments under section 18(1) of the VAT Act based upon the OMV of the property, for the change in application to the exempt use, if newly developed residential properties are temporarily let.

Upon temporarily applying any newly developed residential unit for an exempt supply (residential letting under lease agreement), the developer must declare output tax, based on

DRAFT

the adjusted costs of developing that unit (land and building), under section 18D(2) of the VAT Act. If the unit is sold during the temporarily applied period, the output tax previously declared under section 18D(2) of the VAT Act can be recovered in the form of deduction under section 16(3)(*o*) of the VAT Act, based on the circumstances in section 18D(5) of such Act. Section 18D(3) provides that such supply will be a taxable supply under section 7(1)(*a*) of the VAT Act.

With effect from 1 April 2024, section 18D(6) of the VAT Act was introduced to make it clear that when the letting of a dwelling extends beyond the "temporarily applied" period or when the developer applies the dwelling permanently for exempt or other than non-taxable purpose during the "temporarily applied" period, an output tax adjustment based on the OMV of the property concerned must be made under section 18(1) of the VAT Act. Section 18D(6) of the VAT Act also provides for a transitional rule to deal with a situation where a sale agreement for the property was concluded during the temporarily applied period, but the time of supply for the property under section 9(3)(*d*) of the VAT Act is only triggered after the end of 12-month period. In such a case, the supply is regarded as a taxable supply, and no adjustment is required under section 18(1) of the VAT Act.

Reasons for change

There is a lacuna in the VAT Act regarding the access to the deduction under section 16(3)(*o*) of the VAT Act, in a case where an adjustment is required under section 18(1) of such Act, if the 12-month period for temporary letting is exceeded or there is a permanent change in use for exempt supplies during the 12-month period. In these instances, as the unit is not sold as contemplated under section 18D(3) read together with section 18D(5)(*a*) of the VAT Act, the vendor is not entitled to a deduction under section 16(3)(*o*) of the VAT Act. However, if the property originally fell into the temporarily applied period, the vendor would have had to make an adjustment under section 18D(2) of the VAT Act. This adjustment is made at the time prescribed under section 9(13), i.e. the date within the tax period in which the agreement or the letting and hiring of accommodation in a dwelling comes into effect or in which the dwelling is occupied, whichever is earlier.

It follows that a vendor who originally intended to only lease the property for 12 months, would have had to make the adjustment under section 18D(2) of the VAT Act at the adjusted cost. If the temporary leasing period is subsequently exceeded or there is a permanent change in use for exempt purposes, section 18(1) of the VAT Act applies and the vendor will be required to make another adjustment, at the OMV. Therefore, the adjustment under section 18D(2) of the VAT Act must be neutralized under section 16(3)(*o*) of that Act.

As a result of the above difficulty, SARS Binding General Ruling 64: "Temporary application of new dwellings for exempt supplies simultaneously held by developers for taxable purposes (Issue 2)" (BGR 64), was amended to contain a decision under section 72 of the VAT Act in terms of which it is clarified that a developer that is required to make an adjustment under section 18(1) of such Act after having temporarily applied a newly developed property for an exempt supply will also be allowed a deduction under section 16(3)(*o*) of such Act, to recover the output tax that was previously declared under section 18D(2) of the VAT Act. The same rule will apply if the agreement for the sale of property is concluded during the period of

temporary application for an exempt supply, but the time of supply only occurs after the 12-month period has expired.

Proposal

For ease of administration, it is proposed that the VAT treatment of the temporary letting of residential properties under section 18D of the VAT Act and consequential sections of this Act, be reviewed and updated.

Effective date

The proposed amendment will come into operation on 1 April 2026.

6.7 REVIEWING THE VAT TREATMENT OF AIRTIME VOUCHERS SUPPLIED IN THE REPUBLIC FOR EXCLUSIVE USE IN AN EXPORT COUNTRY

[Applicable provision: New section 8(30) of the VAT Act]

Background

A non-resident distributor acquires airtime vouchers from a non-resident telecommunications services provider and then sells the same to resident distributors. The resident distributors sell airtime vouchers to customers in the Republic. In turn, the customers in the Republic forward airtime vouchers to family and/or friends in an export country, which is the only place where the airtime vouchers can be used. The infrastructure to make and receive calls/use data for which the airtime vouchers are sold is situated outside the Republic. It is evident that the telecommunication services can only be consumed outside the Republic.

In light of the above, it is clear that the supply of airtime vouchers through the distribution chain comprises of two components, namely:

- Distribution services of the airtime vouchers in the Republic; and
- Telecommunication services to be provided outside of the Republic.

Reasons for change

In the past SARS issued decisions in terms of section 72 of the VAT Act whereby only the fees in relation to distribution services of the airtime vouchers in the Republic were subjected to VAT at the standard rate in terms of section 7(1)(*a*) of the VAT Act and the remainder of the value was attributed to telecommunication services to be provided outside of the Republic, the supply of which was zero-rated.

However, with the amendment to section 72 of the VAT Act on 21 July 2019, the Commissioner is unable to renew the above or issue new decisions under section 72 of the VAT Act to zero-rate the supply of the airtime vouchers used in an export country due to the facts that the –

- zero-rating provisions do not permit the zero-rate to be applied to the supply of airtime vouchers that can only be used outside the Republic; and

- granting of such requests will result in a change in the rate of tax from standard rated to zero rated, thus resulting in a reduction in the liability for VAT.

Regardless of whether the resident distributor contractually acts as agent or principal, the non-resident distributor acquires airtime vouchers from a non-resident telecommunications services provider or distributor at a discount. On the basis that the discount represented consideration for a distribution service, this amount was taxed at the standard rate under section 72, whilst the supply of the airtime itself was zero-rated.

It is proposed that the law be changed to give effect to the following, explained by way of example:

- Foreign telecommunications services provider ABC sells an airtime voucher with a face value of R100 to a distributor CDE in the Republic for R80, that on supplies the voucher to a customer in the Republic.

- CDE has to declare VAT at the standard rate on the difference between the face value of the airtime voucher and the amount at which it acquired such voucher from ABC, as being consideration for distribution services supplied to ABC (i.e. on R20).

- The supply of the airtime by ABC is out of scope for VAT purposes as this activity is not conducted in the Republic.

Proposal

It is proposed that provision be made in the legislation to subject only the deemed distribution services in the Republic to VAT at the standard rate.

Effective date

The proposed amendment will come into operation on 1 April 2026.

6.8 SUPPLIES OF EDUCATIONAL SERVICES

[Applicable provisions: new sections 8(2H), 12(*h*)(iv) and 40E and sections 12(*h*)(i) and (ii)]

Background

Section 12(*h*)(i) of the VAT Act exempts from VAT the supply of educational services by:

- a school registered under the South African Schools Act, 1996 (Act No. 84 of 1996) or a public college or private college established, declared or registered as such under the Further Education and Training Colleges Act, 2006 (Act No.16 of 2006); and

- an institution that provides higher education which is established or deemed to be established as a public higher education institution under the Higher Education Act, 1997 (Act No. 101 of 1997), or is declared as a public higher education institution under that Act or is registered or conditionally registered as a private higher education institution under that Act.

Section 12(*h*)(ii) of the VAT Act further exempts from VAT, the supplies made by an educational institution solely or mainly for the benefit of its leaners or students of goods or services (including domestic goods and services) that are necessary for and subordinate and incidental to the supply of services referred to in section 12(*h*)(i) of the VAT Act, if such goods

or services are supplied for consideration in the form of school fees, tuition fees or payment for lodging and boarding.

Reasons for change

The reference to Further Education and Training Colleges Act, 2006 (Act No.16 of 2006) in section 12(*h*)(i)(aa) of the VAT Act is obsolete as the Act has been renamed to the Continuous Education and Training Act, 2006 (Act No.16 of 2006). That Act makes reference to a private college as meaning a private college registered or provisionally registered as a private college under Chapter 6 of that Act. The current wording of section 12(h)(i)(bb) of the VAT Act refers to institutions that are registered or conditionally registered as higher education institutions, and this creates uncertainty as to whether the exemption applies to private schools or colleges provisionally registered by the respective Departments.

Further the policy intent was always to exclude schools from the VAT net and having regard to the changes in the manner in which the educational services are provided and charged for, the amendment seeks to provide clarity that these services are all exempt.

There are numerous schools registered for VAT that will now cease to be vendors. As a consequence, basic education institutions that are currently on register and become liable to deregister for VAT (as of the effective date, in terms of section 8(2) of the VAT Act) will be given a concession to pay over the VAT liability in twelve equal monthly instalments or in so many instalments as the Commissioner may decide in terms of the newly introduced section 8(2H).

Since this extension of the period to make payment does not change the time of supply under section 8(2), itresults in penalties and interest being due when the extended period is allowed. Consequently, a new section 9(14) is now proposed and the time of supply will be deemed to take place as when each payment is due, prescribed or paid under such payment arrangements.

As a result of this extension, the proposed insertion of new section 40E seeks to ensure that past assessments that have been finalised for the periods prior to 1 January 2026 are not re-opened either by SARS or the vendor. However, with regard to past assessments that have not been finalised, applications may be made to SARS to consider reviewing the assessment. However, the review of such assessment may not result in a refund paid to the vendor. Further, no new assessment may be issued by SARS in this regard.

Proposal

A textual amendment to section 12(*h*)(i)(*aa*) to refer to the correct Act and that the wording in section 12(*h*)(i)(*bb*) in respect of “registered or conditionally registered” be aligned with the wording used by the educational authorities which is “registered or provisionally registered”. It is further proposed that the provisional registration allowed in section 12(*h*)(i)(*bb*) be extended to section 12(*h*)(i)(*aa*).

To extend the scope of the exemption to all supplies made by basic educational institutions.

To provide relief to institutions that are required to deregister by introducing section 8(2H) along with new time of supply rules in relation to any such arrangement by the introduction of section 9(14).

A provision be introduced to ensure that past assessments that have been finalised for the periods prior to 1 January 2026 are not re-opened either by SARS or the vendor by the introduction of section 40E.

Effective date

The proposed amendment will come into operation on 1 January 2026.

6.9 LOW VALUE IMPORTATION OF GOODS

[Applicable provision: Paragraphs 1(v) and 2 of Schedule 1 of the VAT Act]

Background

Due to the growth globally of small or negligible value goods across borders that were primarily being carried by courier and express mail services in the early 1990s, the World Customs Organization (WCO) developed a set of release/clearance procedures (provisions) to assist both customs administrations and trade with expediting the clearance of these goods. The provisions were aimed at assisting WCO members' customs administrations in standardising the processing of goods purchased online and across borders. One of the provisions was that low-value goods below a specified threshold attracted no customs duties or VAT.

Since then, though, the volume of these goods has increased significantly, more especially since the lock-down periods of the Covid 19 pandemic. As noted by the OECD, "more than 131 billion parcels were shipped globally in 2020, representing a 27% year-on-year growth."

In terms of section 13(3) of the VAT Act, proviso to section 38(1) of the Customs and Excise Act, No. 91 of 1964 ("the Customs and Excise Act") and paragraph 1(v) of Schedule 1 to the VAT Act, goods of a value of R500 or less for customs duty purposes, are exempt from the VAT imposed under section 7(1)(*b*) of the VAT Act, provided that no customs duty is payable in terms of Schedule 1 of the Customs and Excise Act. Further, goods, being printed books, newspapers, journals and periodicals that are imported into the Republic by post not exceeding R100 in value, are exempt from VAT imposed under section 7(1)(*b*) of the VAT Act as per section 13(3) read together with paragraph 2 of Schedule 1 to the VAT Act.

Reasons for change

Government noted legitimate concerns that have been expressed by the domestic industry relating to the uneven playing field between domestic and offshore suppliers of these low value goods, especially where the provisions of the VAT Act are concerned. Since domestic industry can be held to account for not complying with the VAT Act in the Republic and government relies on the voluntary compliance of offshore suppliers, it is now necessary that amendments be made in the legislation to level the playing field in this regard.

Proposal

It is proposed that the legislation be amended to remove the thresholds below which no VAT will be levied on the importation of goods (including books). The Customs procedures will also be simplified for the clearance of such goods.

DRAFT

Effective date

The proposed amendment will come into operation on a date to be announced by the Minister.

6.10 CLARIFYING THE VAT TREATMENT IN RESPECT OF PAYMENTS MADE UNDER THE NATIONAL HOUSING PROGRAMME

[Applicable provision: Section 8(23) of the VAT Act]

Background

Section 8(23) of the VAT Act provides that a vendor shall be deemed to supply services to any public authority or municipality to the extent of any payment to or on behalf of that vendor in terms of the National Housing Programme (NHP). Section 11(2)(*s*) of the VAT Act provides for a zero rating of services where the services are deemed to be supplied to a public authority or municipality in terms of section 8(23) of the VAT Act. The supply of a dwelling under a rental agreement is an exempt supply in terms section 12(*c*)(i) of the VAT Act and as such, input tax deductions are denied.

Reasons for change

Section 8(23) of the VAT Act currently applies to any payment to or on behalf of a vendor in terms of the NHP. The purpose of the provision was to zero rate the supply of services by a vendor to a public or local authority in respect of what was then known as the Reconstruction and Development Programme which was more commonly known as RDP housing. In an attempt to simplify the application and interpretation of this section the reference to specific programmes under the NHP was deleted. The result was unintended fiscal leakage (in effect vendors inadvertently extended the scope of the zero rating to, amongst others, exempt supplies of rental stock and then consequentially deducting input tax on these supplies) without resolving the issues around the different interpretations on the scope and the application of the zero-rating.

Proposal

In order to address this confusion, it is proposed that section 8(23) of the VAT Act be amended so that the section 11(2)(*s*) zero-rating is narrowed. It is proposed that this be done by deleting the reference to “a national housing programme contemplated in the Housing Act” in section 8(23) and replacing it with the words “Housing Subsidy Scheme referred to in section 3(5)(*a*) of the Housing Act”.

Effective date

The proposed amendment will come into operation on 1 April 2026.

DRAFT

7. CARBON TAX ACT

7.1 ELECTRICITY PRICE NEUTRALITY EXTENSION AND ELECTRICITY LEVY REPEAL

[Applicable provision: Section 6(2) of the Carbon Tax Act 15 of 2019 (“the Carbon Tax Act”)]

Background

Under the carbon tax, electricity generators qualify for a credit for the payment of the electricity generation levy and the renewable energy premium built into the electricity tariff for power purchases under the Renewable Energy Independent Power Producers Programme and from other producers. This concession aims to provide high emitters including electricity generators with sufficient time to transition to low carbon sources and energy efficiency measures and is available until 31 December 2025.

Government published the Carbon Tax Discussion Paper: Phase 2 of the Carbon Tax in November 2024 for public comment. This paper outlined options to extend the commitment to electricity price neutrality until 31 December 2030 to help facilitate the just transition and limit potential adverse impacts of the carbon tax on low income and poor households.

Reasons for change

Electricity consumers have faced significantly higher electricity prices over the past 7 years and electricity supply shortages and loadshedding have contributed to the additional costs to energy intensive companies and the economy.

To assist consumers, it is proposed to extend the commitment to electricity price neutrality and ensure that the carbon tax is revenue neutral and has no impact on the price of electricity until 2030. This will be achieved by repealing the electricity generation levy imposed in terms of the Customs and Excise Act and applying the carbon tax only on combustion emissions from 2026. The carbon tax will replace the electricity generation levy and electricity generators can continue to deduct a portion of the renewable energy (RE) premium from their carbon tax liability for the difference between the carbon tax and electricity levy liabilities.

Proposal

The following amendments to Section 6 of the Carbon Tax Act which provides for calculation of the amount of tax payable; and the Customs and Excise Act are proposed:

- Section 6(2)(*c*) is amended by substituting the current sunset date for the deduction of the RE premium of 31 December 2025 with 31 December 2030.

- The maximum amount of the renewable energy premium (B) that a taxpayer can deduct is the difference between its tax liability for combustion emissions declared under IPCC code 1A1 and an amount equivalent to the electricity generation levy payment. The following text and formula for calculating the amount of the RE premium deduction is inserted in Section (6(2)(*c*).

- The maximum amount of the renewable energy premium allowed as a deduction in 2(*c*) is to be determined using the formula below:

Max RE Premium (B) = Carbon tax liability of electricity generators (A) – (Amount of electricity generated by that entity or taxpayer per kWh × an amount of 3,5c/kWh in a tax period (Y)).

Where electricity is generated from non-renewable resources such as coal, petroleum based liquid fuels and natural gas.

- Section 6(2)(*d*) is repealed.
- Section 6(2) – formula to be amended to remove symbol "C"
- The Customs and Excise Act (No 91 of 1964) provides for the imposition of environmental levies in terms of Section 54A and as specified in Part 3 of Schedule 1 of the Act. It is proposed that Part 3B of Schedule 1 of the Act applicable to the electricity generation levy and associated provisions in the Customs and Excise Act will have to be repealed.

Effective date

The proposed amendments will come into operation on 1 January 2026.

7.2 SEQUESTRATION DEDUCTION

[Applicable provision: Section 6 of the Carbon Tax Act]

Background

The Carbon Tax Act currently allows businesses to reduce their carbon tax bill by deducting certain activities that remove carbon dioxide from the atmosphere, a process known as "sequestration." This includes carbon stored in forestry plantations and harvested wood products, as well as carbon capture and storage technologies.

In the 2022 Budget, a proposal was made to refine these rules, specifically for the pulp, paper, and print industries. The idea was to limit the sequestration deduction to only those activities directly controlled by the taxpayer (e.g., a paper mill owning its own forest). However, during discussions, the industry suggested that this deduction should also apply to timber grown and supplied by third parties, especially informal growers who supply wood to processing mills.

Reasons for change

of South Africa (in collaboration with the Sustainable African Forest Assurance Scheme) developed a methodology to accurately measure and report carbon stored in plantations. This new method was formally accepted by the Department of Forestry, Fisheries and the Environment (DFFE) in September 2024, but with important conditions:

- *Registration*: Third-party timber growers must register under the national greenhouse gas reporting program.
- *Verification*: Any carbon sequestration reported involving a third party must be independently checked and confirmed.
- *Grower List*: A list of all third-party growers needs to be registered with the DFFE.

- *Support for Small-Scale Operators*: Assistance must be provided to smaller growers to help them meet these carbon reporting and accounting requirements.

The DFFE's acceptance of this new protocol is a significant step, as it ensures that carbon sequestration from third-party timber meets all the necessary standards for reporting in the forestry sector. This aligns with the department's existing Monitoring, Reporting, and Verification (MRV) Tool, providing a robust framework for tracking carbon.

Proposal

Given the development and acceptance of this robust protocol, it is now proposed to expand the carbon sequestration deduction for the paper and pulp sector to include timber supplied by third parties, provided that the sequestration is measured and verified according to the newly approved protocol.

Currently, the deduction is limited to activities under the direct "operational control" of the taxpayer. The proposed change aims to extend this deduction to also cover carbon stored in forestry plantations and harvested wood products that come from third-party timber production. This will specifically apply to emissions related to fuel combustion in the pulp, paper, and print (IPCC code 1A2d) and wood and wood products (IPCC code 1A2j) industries, as declared under Section 4 of the Carbon Tax Act.

This amendment will ensure that all owners of forestry plantations, regardless of whether they are directly integrated with a processing mill or are independent third-party suppliers, are treated fairly under the Carbon Tax Act for their role in sequestering carbon.

To achieve this, it is proposed that Section 6(4) of the Carbon Tax Act be amended to specifically include "third-party timber production" alongside activities within the taxpayer's operational control, for the purpose of defining "sequestrate" in relation to the specified IPCC codes.

Effective date

The proposed amendments will come into operation on 1 January 2026.

7.3 CARBON OFFSET ALLOWANCE INCREASE

[Applicable provision: Schedule 2 of the Carbon Tax Act 15 of 2019]

Background

The Carbon Tax Act provides for a carbon offset allowance of 10 per cent for combustion emissions and 5 per cent for fugitive and process emissions. A carbon offset is an external investment through which a firm can access additional GHG mitigation options that are cheaper than what can be achieved by investment in its own operations. Carbon offsets are typically project-based, i.e. involve specific projects or activities that reduce, avoid, or sequester emissions, and are developed and evaluated under specific methodologies and standards, which enable the issuance of carbon credits. The eligible projects under the carbon offset regulations are carbon offset projects and credits approved under the Clean Development Mechanism, the Gold Standard and the Verra programme including the Verified Carbon Standard.

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The 2024 “Carbon Tax Discussion Paper: Phase Two of the Carbon Tax” proposed amendments to the carbon offset allowance to stimulate carbon market activities under the carbon tax. It was proposed to increase the carbon offset allowance by 15 percentage points to provide the necessary policy certainty to help expedite low carbon investments and encourage technology innovation. An alternative approach was proposed to increase the allowance gradually by 5 percentage points.

Reasons for change

During consultations on the discussion paper, stakeholders supported a lower increase to the offsets allowance due to the time required to develop offset projects and the concern over the market supply of offsets. An increase of 5 percentage points from 5 to 10 per cent for fugitive and process emissions and from 10 to 15 per cent for combustions emissions is proposed. This would provide an important economic and financial incentive on the margin to accelerate low carbon investments and encourage technology innovation in the short to medium term.

Proposal

It is proposed to increase the carbon offset allowance by 5 percentage points to 15 per cent for combustion emissions and 10 per cent for fugitive and process emissions.

The following amendments to Schedule 2 are proposed:

- by the substitution in the line corresponding to IPCC Code ‘‘1A’’ and Activity / Sector ‘‘Fuel Combustion Activities’’ for the allowance in the column ‘‘Offsets allowance %’’ of the following allowance:

  ‘‘**[10]** 15’’ except for 1AB Residential (100% tax free allowance)

- by the substitution in the line corresponding to IPCC Code ‘‘1B’’ and Activity / Sector ‘‘Fugitive Emissions from Fuels’’ for the allowance in the column ‘‘Offsets allowance %’’ of the following allowance:

  ‘‘**[5]** 10’’ except 1B1b uncontrolled combustion, and burning coal dumps (100% tax free allowance)

- by the substitution in the line corresponding to IPCC Code ‘‘1C’’ and Activity / Sector ‘‘Carbon Dioxide Transport and Storage’’ for the allowance in the column ‘‘Offsets allowance %’’ of the following allowance:

  ‘‘**[5]** 10’’

- by the substitution in the line corresponding to IPCC Code ‘‘2A’’ and Activity / Sector ‘‘Mineral Industry’’ for the allowance in the column ‘‘Offsets allowance %’’ of the following allowance:

  ‘‘**[5]** 10’’ *except for 2A5 below

- by the substitution in the line corresponding to IPCC Code ‘‘2A5’’ and Activity / Sector ‘‘Other (please specify)’’ for the allowance in the column ‘‘Offsets allowance %’’ of the following allowance:

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‘‘**[10]** 15’’

- by the substitution in the line corresponding to IPCC Code ‘‘2B’’ and Activity / Sector ‘‘Chemical Industry’’ for the allowance in the column ‘‘Offsets allowance %’’ of the following allowance:

‘‘**[5]** 10’’

- by the substitution in the line corresponding to IPCC Code ‘‘2C’’ and Activity / Sector ‘‘Metal Industry’’ for the allowance in the column ‘‘Offsets allowance %’’ of the following allowance:

‘‘**[5]** 10’’ except for 2C7 Other (please specify) (see below)

- by the substitution in the line corresponding to IPCC Code ‘‘2C7’’ and Activity / Sector ‘‘Other (please specify)’’ for the allowance in the column ‘‘Offsets allowance %’’ of the following allowance:

‘‘**[10]** 15’’

- by the substitution in the line corresponding to IPCC Code ‘‘2D’’ and Activity / Sector ‘‘Non-Energy Products from Fuels and Solvent Use’’ for the allowance in the column ‘‘Offsets allowance %’’ of the following allowance:

‘‘**[10]** 15’’

- by the substitution in the line corresponding to IPCC Code ‘‘2E’’ and Activity / Sector ‘‘Electronics Industry’’ for the allowance in the column ‘‘Offsets allowance %’’ of the following allowance:

‘‘**[10]** 15’’

- by the substitution in the line corresponding to IPCC Code ‘‘2F’’ and Activity / Sector ‘‘Product Uses as Substitutes for Ozone Depleting Substances’’ for the allowance in the column ‘‘Offsets allowance %’’ of the following allowance:

‘‘**[10]** 15’’

- by the substitution in the line corresponding to IPCC Code ‘‘2G’’ and Activity / Sector ‘‘Other Product Manufacture and Use’’ for the allowance in the column ‘‘Offsets allowance %’’ of the following allowance:

‘‘**[10]** 15’’

- by the substitution in the line corresponding to IPCC Code ‘‘2H’’ and Activity / Sector ‘‘Other’’ for the allowance in the column ‘‘Offsets allowance %’’ of the following allowance:

‘‘**[10]** 15’’

- by the substitution in the line corresponding to IPCC Code ‘‘4C1’’ and Activity / Sector ‘‘Waste Incineration’’ for the allowance in the column ‘‘Offsets allowance %’’ of the following allowance:

‘‘**[10]** 15’’

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- by the substitution in the line corresponding to IPCC Code ''5'' and Activity / Sector ''Other'' for the allowance in the column ''Offsets allowance %'' of the following allowance:

  ''**[10]** 15''

Effective date

The proposed amendments will come into operation on 1 January 2026.

7.4 CARBON BUDGET ALLOWANCE

[Applicable provision: Section 12 of the Carbon Tax Act 15 of 2019 ("the Carbon Tax Act")]

Background

The carbon budget tax-free allowance of five percent was implemented for the voluntary carbon budget phase from 2016 to 2024. The allowance was implemented to encourage companies to participate in the voluntary carbon budgets system of the Department of Forestry Fisheries and the Environment (DFFE) and provide emissions data to government.

It was envisaged that the mandatory carbon budget system will come into effect, once the Climate Change Act is operationalised and the carbon budget and greenhouse gas mitigation plan regulations are gazetted by the DFFE. In the 2023 Budget, the carbon budget allowance was extended until 31 December 2024 due to delays with the finalisation of the Climate Change Bill and implementation mandatory carbon budget system. It was proposed that this allowance falls away with implementation of the mandatory system as provided for in Section 27 of the Climate Change Act (No 22 of 2024).

Reasons for change

With the promulgation of the Climate Change Act in July 2024 and planned implementation of the mandatory carbon budget system, it is proposed to extend the carbon budget allowance for the voluntary carbon budget system until 31 December 2025. This will give taxpayers clarity on the application of the allowance while the mandatory carbon budgets are being finalised.

Proposal

It is proposed to extend the carbon budget allowance by 1 year to end on 31 December 2025.

The following amendment to Section 12 is proposed:

Carbon budget allowance.- (1) Subject to subsection (2), a taxpayer that conducts an activity that is listed in Schedule 2 in the column 'Activity/Sector' and participates in the carbon budget system from 1 January 2021 to 31 December **[2024]** 2025, must receive an additional allowance of five per cent of the total greenhouse gas emissions in respect of a tax period.

Effective date

The proposed amendments will come into operation on 1 January 2025.

7.5 CARBON BUDGET AND CARBON TAX – HIGHER TAX RATE

[Applicable provisions: Sections 1, 4, 5, 6, 14 and 16 of the Carbon Tax Act]

Background

The former Department of Environmental Affairs (DEA) and National Treasury (NT) undertook a study on the Options for the Alignment and Integration of the carbon tax and Carbon Budget Instruments through the Word Bank Partnership Market Readiness in 2016. Various stakeholders were consulted on the alignment options and the report was made publicly available. In 2018, as part of the Parliamentary process on the Carbon Tax Bill, the NT and the DEA further discussed the options for alignment of the two instruments during several meetings held in June and July 2018 and agreed in principle that emissions within the carbon budget will be taxed at a lower rate (all tax-free allowances applicable) while emissions above the carbon budget will be taxed at a higher tax rate.

In the November 2018 response to the joint Standing Committee on Finance and the Portfolio Committee on Environment, the outcomes from the discussions were presented and it was recommended that where the emissions of an entity exceeds the carbon budget allocated to that entity, a higher tax rate of R600/tCO_2e will apply. This alignment option promotes compliance with the mandatory carbon budget of the DFFE. It ensures the effective alignment of the carbon tax and mandatory carbon budget system and prevents the double taxation of emissions.

In the 2022 Budget, government proposed a higher tax rate of R640/tCO_2e on emissions exceeding the carbon budget allocated to companies. The higher tax rate will be applied on emissions above the carbon budget (no tax-free allowances apply) where the carbon budget will serve as the maximum level of emissions allowed. This formed part of the 2022 carbon tax rate announcements from 2023 to 2030 to provide policy certainty to investors and taxpayers on the future carbon price path for South Africa.

The higher tax rate/s were informed by the effective carbon prices required to more fully account for the externality costs of climate change and overall climate risks to the economy. This is aligned with the polluter pays principle and provides a strong price signal/penalty to encourage high emitters to either change their behaviour and adopt lower carbon technologies or pay a higher carbon tax/penalty for non-compliance with the carbon budget. The proposed rate took into account carbon pricing research conducted by the Intergovernmental Panel on Climate Change, World Bank High Level Commission on Carbon Pricing, and International Monetary fund. It is aligned with the lower bound of the carbon pricing range of about US$40 (2022 ZAR/US$ exchange rate of R15) recommended by the high level commission.

An announcement was made in the 2024 Budget that the higher tax rate on emissions exceeding the allocated carbon budgets will be legislated once the Climate Change Bill is enacted and the DFFE gazettes the relevant regulations. The mandatory carbon budget system was expected to be implemented from 1 January of the calendar year after the legislation is finalised.

The mandatory carbon budget system was expected to be implemented from 1 January of the calendar year after the legislation is finalised.

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Reasons for change

The Climate Change Act was enacted in July 2024. Key sections of the act which provides for the implementation of the national mitigation system including mandatory carbon budgets, sectoral emissions targets and greenhouse gas mitigation plan requirements came into effect on 17 March 2025 (Gazette No 52319 – Climate Change Act 22 of 2024: Commencement of the Act).

Sections 27 of the act deals with carbon budgets. The gazetted notice published by the DFFE indicates that the mandatory carbon budget system will come into effect once the regulations under section 30 of the Act are developed.

The Minister of Forestry, Fisheries and the Environment approved the publication of the draft National Greenhouse Gas Carbon Budget and Mitigation Plan Regulations, alongside the declaration of the List of Greenhouse Gases and Activities and associated Technical Guidelines, for public comment on 21st July 2025. The draft Regulations and Technical Guidelines will be published in early August.

The carbon budget regulation sets out the methodology and framework for determining the carbon budget allocations to affected entities, and the requirements for mitigation plans to be compiled by entities, respectively. The mandatory carbon budget system and allocations will be determined for three consecutive five-year budgeting periods.

Cabinet approved the carbon budget allocation framework and methodology in November 2021. The allocation methodology is based on benchmark emission intensities to promote net emission reductions. The department conducted extensive public consultation on the draft framework and methodology. The draft regulations provide for the implementation of the framework and methodology and sets out the administrative requirements for compliance with the regulations.

Since the Climate Change Act has come into effect and the relevant regulations will be gazetted soon by the DFFE, it is proposed that amendments to the carbon tax act are made to provide for the higher tax rate of R640/tCO_2e as announced in the previous Budgets. The higher rate will apply to the quantum of emissions of greenhouse gases above the allocated carbon budget of an entity. This will promote compliance with the mandatory carbon budget system and contribute towards meeting South Africa's Nationally Determined Contribution emission commitments made under the Paris Agreement and net zero goals.

Proposal

The 2018 Response Document to the Carbon Tax Bill outlined possible amendments to be made in anticipation of the Climate Change Act. It noted that the Climate Change Act is not enacted and that these amendments could only be determined once the Climate Change Act is in operation. It was envisaged that a Carbon Tax Amendment Act will give effect to the necessary changes to align the Carbon Tax and the Carbon Budget established by the Climate Change Act.

In light of the proposals made on the carbon budgets as part of the 2018/19 Parliamentary process on the Carbon Tax Bill, the response document to the bill and the implementation of the Climate Change Act (No 22 of 2024), the following amendments are proposed:

- **Section 1: Definition of carbon budget**

  Amendment of Section 1 of the Carbon Tax Act by the substitution for the definition of "carbon budget" to reflect the definition contained in the Climate Change Act:

  - Carbon budget means an assigned amount of greenhouse gas emissions allocated to a person in terms of section 27 for direct emissions arising from the operations of that person over a defined time period.

- **Section 4: Tax base**

  - In terms of the Climate Change Act, the Minister of Forestry Fisheries and the Environment (MFFE) must allocate a carbon budget to any person that conducts an activity listed in terms of section 26(2) of the Act.
  - Section 26(2) allows the Minister (MFFE) to publish a list of activities which has the potential to emit greenhouse gases by notice in the gazette. The notice must, among others, determine the quantitative greenhouse gas emission thresholds expressed in carbon dioxide equivalent to identify persons to be assigned a carbon budget, in terms of section 27(1), and who are required, in terms of section 27(4), to submit greenhouse gas mitigation plans to the Minister.
  - In terms of Section 30(2)(a), the MFFE must make regulations on the determination, review, revision, compliance with and enforcement of an allocated carbon budget, amendment and cancellation of a carbon budget allocation, the content, implementation and operation of a greenhouse gas mitigation plan, and all matters related thereto.

Taking into account the provisions of the Climate Change Act as they relate to the carbon budget, amendments to Section 4 of the Carbon Tax Act would be necessary to define the tax base i.e.. emissions activities covered and the carbon budget allocations determined by the MFFE in terms of Section 27 of the Climate Change Act and the carbon budget regulations of the DFFE.

  - The activities to be covered by the carbon budgets and subject to the higher carbon tax rate will be the list of activities published by the Minister of Forestry Fisheries in a notice in terms of per Section 26(2) of the Climate Change Act.
  - The amount of greenhouse gas emissions to be taxed will be the difference between the emission allocation to an entity as determined by the DFFE in terms of Section 27 of the climate change act and the carbon budget regulations and the provisional emissions of an entity for a tax period i.e.. 1 January to 31 December.
  - The emissions to be taxed in a specific tax period must be determined, confirmed and approved by the DFFE. This is aligned with the carbon tax period under the carbon tax act.

- **Section 5: Rate of tax**

  - It is proposed that Section 5 of the Carbon Tax Act on the rate of the carbon tax on greenhouse gas emissions is amended to include the new tax rate to be applied to emissions above the carbon budget.
  - The carbon tax rate of R640/ tCO2e will apply to GHG emissions above the carbon budget as approved by the DFFE.
  - This will ensure a progressive tax system where each additional ton of greenhouse gas emission above the level of the carbon budget is taxed at the higher rate.

DRAFT

- **Section 6: Calculation of carbon tax payable**
  - It is proposed that Section 6 is amended to include the following formula:
  - Carbon tax payable = "total GHG emissions above the carbon budget determined by the DFFE" × tax rate (R640/tCO2e).

For example, if a company's total carbon budget allocation for a 5-year period is 275 million tCO2e and the annual allocation is divided equally over the 5 years, i.e., 55million tCO2e, then its carbon tax liability for different emissions level is shown in the table below:

YEAR	TOTAL GREENHOUSE GAS EMISSIONS (TCO_2E)	EMISSIONS ABOVE THE BUDGET TO BE TAXED (TCO_2E)	ESTIMATED TAX LIABILITY ($R640/TCO_2E$)
2026	60 000 000	5 000 000	3 200 000 000
2027	55 000 000	0	0
2028	50 000 000	0	0
2029	57 000 000	2 000 000	1 280 000 000
2030	53 000 000	0	0

- **Tax-free Allowances (Section 14)**

  It is proposed that Section 14 is amended to specify that no tax-free allowances will apply to emissions above the level of the carbon budget.

- **Tax period (Section 16)**
  - The DFFE provides for accounting of carbon budgets on an annual basis and over a 5-year period. Although the carbon budgeting period is for 5 years, for purposes of the carbon tax and applying the higher tax rate, the tax period will be a calendar year. This seeks to prevent a situation where the entity / taxpayer may be required to make a once-off exorbitant carbon tax payment at the end of the 5 years and allow for a smoothing of the tax liability over the 5 year period.
  - The carbon budget is cumulative over the 5 year period and could be allocated proportionally over this period. Where there are emissions above the carbon budget in a specific tax period, the company will be required to pay the higher tax on those emissions in that year. The tax period for the application of the higher tax rate for emissions exceeding the carbon budget allocated to an entity is a calendar year ie. 1 January to 31 December. This is aligned with the tax period under the carbon tax. The 5-year carbon budget allocation will be annualised.

Effective date

The effective date for the implementation of the higher tax rate will be aligned with the implementation date of the carbon budget and mitigation plan regulations determined by the Minister of Forestry Fisheries and the Environment. It is proposed that the higher tax rate and related amendments come into effect on the date to be published by the Minister of Finance in a notice in the government gazette.

7.6 DIESEL REFUND RELIEF FOR PRIMARY SECTORS

[Applicable provision: Note 6(b)(i) in Schedule 6 Part 3 of the Customs and Excise Act]

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Background

Government implemented the diesel refund system in 2000 to provide full or partial relief for the General Fuel Levy (GFL) and the Road Accident Fund (RAF) levy to primary sectors. The rationale for the relief is to protect the international competitiveness of these sectors and ensure the equitable tax treatment of non-road users.

The qualifying on-land activities are farming, mining and forestry. On-land activities qualify for 40 per cent refund of the GFL and 100 per cent refund of the RAF levy. Onshore farming, mining and forestry businesses qualify for a refund of the GFL and RAF levy for 80 per cent of eligible diesel fuel purchases. Eligible purchases are used for qualifying activities, whilst non-eligible purchases are used for non-qualifying activities (including private use, non-qualifying transport) defined in terms of Note 6(b) in Schedule 6 Part 3 of the Customs and Excise Act (No 91 of 1964).

Reasons for change

The 80:20 policy of the diesel refund system was aimed at minimising potential abuse of the system and deemed that 20 per cent of the diesel used is non-eligible for the rebate. Government proposes to apply the refund for all eligible diesel purchases declared to SARS and align with the original policy intent. This will simplify the administration of the diesel refund system and provide additional relief of about R1 billion to taxpayers.

Proposal

It is proposed that Note 6b on the extent of refund for eligible purchases set out in Schedule 6 Part 3 of the Customs and Excise Act is amended as follows:

Note 6(b) The extent of refunds for eligible purchases:

- *ONLAND*
  - (i) Farming, forestry or mining on land is 154,0 cents per litre fuel levy [on 80 per cent of eligible purchases,] plus 218,0 cents per litre Road Accident Fund levy [on 80 per cent of eligible purchases] equalling 372,0 cents per litre [on 80 per cent of the total eligible purchases.

    Mode of calculation of refund is as follows:

    (aa) For 1000 litres eligible purchases –

    1000 × 80 per cent equals 800 litres on which a refund of 372,0 cent per litre may be claimed;

    (bb) For 1000 litres eligible purchased of which 300 litres represent non-eligible purchases, for example, carriage of good for reward –

    1000 litres less 300 litres equals 700 litres eligible purchases × 80 per cent equals 560 litres on which a refund of 372,0 cents per litre may be claimed.

DRAFT

Effective date

The proposed amendments will come into operation on 1 April 2026.

7.7 ALIGNING SCHEDULE 1 OF THE CARBON TAX ACT EMISSION FACTORS

[Applicable provision: Schedule 1 of the Carbon Tax Act]

Background

In the 2023 and 2024 Budgets, changes to the fuel and fugitive emission factor tables were proposed to align with the updated 2022 Methodological Guideline for the quantification of greenhouse gas emissions of the DFFE. The Carbon Tax Act Schedule 1 tables were updated to include the new tier 2 emission factors for fuel combustion emissions and fugitive emission activities including solid fuel transformation and coal to liquid fuels.

The amendments were incorporated into the relevant Taxation Laws Amendment Bills for the respective budgets. During stakeholder consultations on the 2024 Taxation Laws Amendment Bill, there were requests from stakeholders for the inclusion of the DFFE approved tier 2 emission factors for natural gas and coal in Schedule 1 of the Act.

Reasons for change

In 2023, the DFFE approved country-specific tier 2 emission factors for natural gas and coal fuel types to be used by data providers for estimating and reporting stationary and non-stationary fuel combustion emissions. A submission was made to the department to consider revisions to the carbon dioxide emission factors for about sixteen fuels under the National Greenhouse Gas Emission Reporting Regulations of April 2017.

In May 2024, the department approved the country specific CO_2 emission factor of 54 891kg/TJ and net calorific value of 0.000033141TJ/m^3 for methane rich gas for the 2025 to 2027 GHG emission reporting cycles. To align with the DFFE approved factors, changes to the carbon dioxide emission factors and net calorific values for coal, natural gas and methane rich gas contained in Schedule 1 are necessary.

Proposal

The following amendments to Schedule 1 of the carbon tax act are proposed:

- by the substitution in the line corresponding to Fuel Type ‘‘Methane Rich Gas’’ for the Greenhouse Gas in the column ‘‘CO_2 ($KGCO_2$/TJ)’’ of the following value:

  ‘‘**[54 888]** 54 891’’

- by the substitution in the line corresponding to Fuel Type ‘‘Methane Rich Gas’’ for the expression ‘‘Net Calorific Value’’ of the following value:

  ‘‘**[0.048]** 0.033141 ’’

- by the substitution in the line corresponding to Fuel Type ‘‘Natural Gas’’ for the Greenhouse Gas in the column ‘‘CO_2 ($KGCO_2$/TJ)’’ of the following value:

  ‘‘**[56 100]** 55 709’’

- by the substitution in the line corresponding to Fuel Type ''Natural Gas'' for the expression ''Net Calorific Value'' of the following value:

  ''**[0.048]** <u>0.03701''</u>

- by the substitution in the line corresponding to Fuel Type ''Sub-bituminous coal'' for the Greenhouse Gas in the column ''CO_2 ($KGCO_2$/TJ)'' of the following value:

  ''**[96 100]** <u>96 777</u>''

- by the substitution in the line corresponding to Fuel Type ''Sub-bituminous coal'' for the expression ''Net Calorific Value'' of the following value:

  ''**[0.0192]** <u>0.01914''</u>

- by the substitution in the line corresponding to Fuel Type ''Other bituminous coal'' for the Greenhouse Gas in the column ''CO_2 ($KGCO_2$/TJ)'' of the following value:

  ''**[94 600]** <u>82 912</u>''

- by the substitution in the line corresponding to Fuel Type ''Other bituminous coal'' for the expression ''Net Calorific Value'' of the following value:

  ''**[0.0192]** <u>0.02651''</u>

Effective date

The proposed amendments will come into operation on 1 January 2026.

7.8 FORMULA FOR FUGITIVE EMISSIONS CALCULATION

[Applicable provision: Section 4(2)(b)(b)(iii)(aa) of the Carbon Tax Act]

Background

Section 4(2)(b)(b) of the Carbon Tax Act provides the formulas to be used by companies to calculate their greenhouse gas emissions for fugitive emission activities and the respective carbon dioxide equivalent emission factors to be applied. The formulas for oil and natural gas and coal mining and handling carbon dioxide equivalent emission factors are specified in the section.

In 2023 and 2024, the Schedule 1 fugitive emissions factor table of the Carbon Tax Act was aligned with the Department of Forestry Fisheries and Environment's Methodological guidelines which was published in 2022. Amendments were made to the table to add in the new fugitive emission source categories for solid fuel transformation and coal and gas to liquid fuels.

Reasons for change

It is necessary to clarify the formula to be used by taxpayers to accurately calculate the CO2e factors for some of the solid fuel transformation emission activities. The formula provided for oil and natural gas emission activities can be used to determine the emission factors for

DRAFT

the solid fuel transformation (IPCC code 1B1C) activities including coke, biochar and charcoal production.

However, for the charcoal production (fuel wood input) and coal and gas to liquid activities, changes to the formulas are required to accurately calculate the CO_2e emission factors. The emission factor units for these activities differ from the oil and gas and coal mining and handling factors. They are presented in kilogram of greenhouse gas per terajoule (kgGHG/TJ) and tonne of greenhouse gas per terajoule of total output or input (tGHG/TJ), respectively.

Two new formulas are necessary to convert the emission factors to tonnes for these activities. This will provide an important clarification to taxpayers on the formula to be used to calculate the carbon dioxide equivalent emission factor and total greenhouse gas emissions for the fugitive emissions activities covered by the carbon tax.

Proposal

- **Updated definitions:**

  "N" shall refer to:

  - The mass of solid fuels expressed in tonnes;
  - The volume of non-solid fuels expressed in cubic metres;
  - The amount of syngas produced (expressed in terajoules) for coal-to-liquid conversions;
  - The total quantity of natural gas input for gas-to-liquid conversions;
  - The mass of product (in tonnes) resulting in greenhouse gas emissions; or
  - The mass of fuel wood (in tonnes) used as the source of greenhouse gas emissions.
  - **"Q"** shall represent the greenhouse gas emission factor, expressed in carbon dioxide equivalent per tonne, cubic metre, or unit of product.

  It is proposed that the section containing the formula for oil and natural gas is amended to include coke, biochar, and charcoal production (per charcoal produced).

- **Formula Inclusions:**

  - For charcoal production, coal and gas to liquid and other solid fuel transformation activities.

  Formula 1: For Charcoal Production (based on the wood used as input): This formula will be used to calculate the emissions from producing charcoal, specifically by looking at the amount of fuelwood (the wood used to make charcoal) that goes into the process.

  - The emission factor shall be calculated using the following formula:

    $X = [(C \times 1) + (M \times 23) + (N \times 296) \times D] / Y$

  - Where:

X = Emission value to be determined

C = CO_2 emissions based on fuel type, as listed in Table 2 of Schedule 1

M = CH_4 emissions based on fuel type, multiplied by 23

N = N_2O emissions based on fuel type, multiplied by 296

D = Net Calorific Value (between 0.0149 and 0.058 TJ/tonne)

Y = 1000

- Important Note for the Charcoal Formula: The charcoal formula also includes:

  Net Calorific Value (D): This accounts for the energy content of the fuel, which influences emissions.

  Division by 1000 (Y): This helps to scale the final number appropriately.

- For coal-to-liquid, gas-to-liquid, and other solid fuel transformation activities

Formula 2: For Coal-to-Liquids, Gas-to-Liquids, and Other Solid Fuel Transformation Activities: This formula will be applied to activities where coal or gas is converted into liquid fuels, as well as other processes that transform solid fuels. This will give us a standardised way to measure the emissions from these complex industrial transformations.

- The emission factor shall be calculated using the following formula:

  $X = (C \times 1) + (M \times 23) + (N \times 296)$

- Where:

  X = Emission value to be determined

  C = CO_2 emissions based on fuel type, as listed in Table 2 of Schedule 1

  M = CH_4 emissions based on fuel type, multiplied by 23

  N = N_2O emissions based on fuel type, multiplied by 296

- Broadly, both new formulas calculate a "number to be determined" (which we call 'X'). This number is essentially a measure of the total greenhouse gas impact. They do this by considering three key greenhouse gases:

  - **Carbon Dioxide (CO_2):** This is multiplied by a factor of 1 because it's the baseline.

  - **Methane (CH4):** This is multiplied by 23 because it's 23 times more potent than CO_2 over a 100-year period.

  - **Nitrous Oxide (N_2O):** This is multiplied by 296 because it's 296 times more potent than CO_2 over a 100-year period.

- These emission values (for CO_2, CH4, and N_2O) are found by looking up the specific fuel type in a reference table (Table 2 of Schedule 1).

- By introducing these specific formulas, we aim to ensure that our emission calculations are more comprehensive, accurate, and reflect the unique nature of these industrial processes.

Effective date

The proposed amendments are deemed to have come into operation on 1 January 2024.

DRAFT

8. CLAUSE BY CLAUSE

CLAUSE 1

Income Tax Act: Amendments to section 1(1)

Subclause (1)(*a*): See notes on **REFINING THE DEFINITION OF "EQUITY SHARE" TO CATER FOR TRANSFERS BY FOREIGN COMPANIES**

Subclause (1)(*b*): See notes on **TAX TREATMENT OF FIRST LOSS AFTER CAPITAL (FLAC) INSTRUMENTS AS DEFINED IN THE FINANCIAL SECTOR REGULATION ACT (2017)**

Subclause (1)(*c*): The proposed amendment to paragraph (*a*) of the definition of "member's interest in the savings component" seeks to remove the obsolete reference to paragraph (*c*) of the proviso to the definition of "savings component" in section 1(1) of the Act which was repealed in 2024.

Subclause (1)(*d*) – (*e*): The proposed amendments to the definitions of "pension preservation fund" and "provident preservation fund" seek to clearly state that a non-SA resident member is still allowed to make a once-off withdrawal during his or her membership of that fund, up to the full value in the member's interest in the vested component in those funds. This is however subject to the condition that the member has not previously accessed the value in the vested component during their membership in the preservation fund. If the non-SA resident member did previously access the value in the vested component in the pension preservation fund or provident preservations fund during their membership of such fund, then the balance can only be accessed after the 3 uninterrupted year requirement of not being an SA resident has been met.

Subclause (1)(*f*): See notes on **AMENDING THE DEFINITION OF "REMUNERATION PROXY"**

Subclause (1)(*g*): The proposed amendment of paragraph (*b*)(ii) of the proviso to the definition of "retirement annuity fund" for the words of the proviso preceding paragraph (*a*) seeks to clarify that the two-thirds portion of the member's interest in the vested component is determined from the total value of the member's interest in the vested component.

Subclause (1)(*h*): See notes on **CLARIFYING PAYMENT OF DEATH**

Subclause (1)(*i*): The proposed amendment for paragraph (*c*) of the proviso to the definition of "savings withdrawal benefit" seeks to clarify that when a member terminates their membership in a fund, they may still be eligible to withdraw the value of the remaining balance in the savings component, even if they had made a previous withdrawal during the same year of assessment.

Subclause (1)(*j*): The proposed amendment in the definition of "severance benefit" seeks to add a cross-reference to the definition of an "associated institution" in paragraph 1 of the Seventh Schedule to the Act.

DRAFT

CLAUSE 2

Income Tax Act: Amendment to section 6*quat*

The proposed amendment to subsection (1A) for subparagraph *(bb)* of paragraph (ii) of the proviso seeks to correct a grammatical error to correct the wording “by” to “with”.

CLAUSE 3

Income Tax Act: Amendment to section 7

See notes on **TAXATION OF TRUSTS AND THEIR BENEFICIARIES**

CLAUSE 4

Income Tax Act: Amendment to section 8

The proposed amendment in the definition of “severance benefit” seeks to add a cross-reference to the definition of an “associated institution” in paragraph 1 of the Seventh Schedule to the Act.

CLAUSE 5

Income Tax Act: Repeal of section 8A

The proposed amendment seeks to repeal the previous version of rules dealing with employee share schemes, which has since been replaced by section 8C of the Act (starting in late 2004).

CLAUSE 6

Income Tax Act: Amendments to section 8E

See notes on **REFINING THE DEFINITION OF “HYBRID EQUITY INSTRUMENT”**

CLAUSE 7

Income Tax Act: Amendments to section 8EA

See notes on **EXTENDING THE ANTI-AVOIDANCE RULES DEALING WITH THIRD-PARTY BACKED SHARES**

CLAUSE 8

Income Tax Act: Amendments to section 8F

Subclause (1)(*a*): The proposed amendment seeks to remove the “or” at the end of subsection (3)(*e*) as a matter of style and consistency and to insert an “or” at the end of subsection (3)(*f*) which is necessitated by the addition of subsection (3)(*g*).

Subclause (1)(*b*): See notes on **TAX TREATMENT OF FIRST LOSS AFTER CAPITAL (FLAC) INSTRUMENTS AS DEFINED IN THE FINANCIAL SECTOR REGULATION ACT (2017)**

DRAFT

CLAUSE 9

Income Tax Act: Amendments to section 8FA

Subclause (1)(*a*) – (*b*): The proposed amendment seeks to remove the “or” at the end of subsection (3)(*c*) as a matter of style and consistency and to insert an “or” at the end of subsection (3)(*e*) which is necessitated by the addition of subsection (3)(*f*).

Subclause (1)(*c*): See notes on **TAX TREATMENT OF FIRST LOSS AFTER CAPITAL (FLAC) INSTRUMENTS AS DEFINED IN THE FINANCIAL SECTOR REGULATION ACT (2017)**

CLAUSE 10

Income Tax Act: Amendment to section 8G

See notes on **CLARIFYING THE DETERMINATION OF CONTRIBUTED TAX CAPITAL**

CLAUSE 11

Income Tax Act: Amendments to section 9D

Subclause (1)(*a*): See notes on **INTERACTION OF CONTROLLED FOREIGN COMPANY RULES IN SECTION 9D WITH SECTION 9H**

Subclause (1)(*b*): See notes on **CFC RULES AND COMPARABLE TAX EXEMPTION**

CLAUSE 12

Income Tax Act: Amendments to section 10

Subclause (1)(*a*): The proposed amendment to subsection (1)(*e*)(i) for item (*aa*) substitutes a now obsolete reference in relation to the Sectional Titles Act (1986) which has been repealed and replaced with a reference to the Sectional Titles Schemes Management Act (2011).

Subclause (1)(*b*): See notes on **CROSS-BORDER TAX TREATMENT OF RETIREMENT FUNDS**

Subclause (1)*(c)*: See notes on **REINSTATING THE EXEMPTION FOR CHILD MAINTENANCE PAYMENTS FUNDED FROM AFTER-TAX INCOME**

Subclause (1)(*d*): The proposed amendment seeks to delete subsection (1)(y) as an obsolete provision.

CLAUSE 13

Income Tax Act: Amendment to section 11D

The proposed amendment is a technical correction that seeks to delete the superfluous words “carried on by that taxpayer” at the end of the subsection (4)(*b*), as this requirement is already included in the preamble to section 11D(4) of the Act.

CLAUSE 14

Income Tax Act: Amendment to section 11G

The proposed amendment for the words of subsection (2) preceding paragraph (*a*) seeks to confirm that section 11G of the Act applies notwithstanding the general prohibition on the

DRAFT

deduction of private or domestic-type expenses in the determination of taxable income, as outlined in section 23(*b*) of the Act

CLAUSE 15

Income Tax Act: Amendment to section 12C

The proposed amendment in subsection (1)(*g*) seeks to provide a correct reference for a South African ship mainly engaged in international traffic to qualify for an allowance under section 12C of the Act.

CLAUSE 16

Income Tax Act: Amendments to section 12L

See notes on **ENERGY EFFICENCY SAVINGS INCENTIVE**

CLAUSE 17

Income Tax: Amendments to section 12V

See notes on **ADDITIONAL DEDUCTION FOR DOMESTIC PRODUCTION OF BATTERY ELECTRIC AND HYDROGEN-POWERED VEHICLES**

CLAUSE 18

Income Tax Act: Amendment to section 13*quat*

See notes on **EXTENSION OF THE UDZ TAX INCENTIVE SUNSET DATE**

CLAUSE 19

Income Tax Act: Amendment to section 18A

See notes on **CLARIFYING THE ORDERING OF SET-OFF OF BALANCE OF ASSESSED LOSSES AND CERTAIN DEDUCTIONS**

CLAUSE 20

Income Tax Act: Amendments to section 20A

Subclause (1)(*a*): See notes on **REDUCING THE THRESHOLD FOR RING-FENCING OF ASSESSED LOSSES**

Subclause (1)(*b*): The proposed amendment to subsection (2)(*b*)(vi) seeks to align and match the scope of the initial reference to 'farming and animal breeding' as suspect trades on the subsequent disqualification of 'farming and animal breeding' as suspect trades if done on a full time basis by the deletion of the words "or activities of a similar nature" at the end of paragraph (vi).

CLAUSE 21

Income Tax Act: Amendment to section 23

Subclause (1)(*a*) – (*b*): The proposed amendment seeks to remove the "and" at the end of paragraph (*m*)(iiA) as a matter of style and consistency and to insert an "and" at the end of subsection (*m*)(iv) which is necessitated by the addition of subsection (*m*)(v).

DRAFT

Subclause (1)*(c)*: See notes on **INTERACTION BETWEEN SECTIONS 6*QUAT* AND 23(m) OF THE INCOME TAX ACT**

CLAUSE 22

Income Tax Act: Amendments to section 23M

See notes on **REFINING AND CLARIFYING THE DEFINITION OF "INTEREST" TO ENHANCE CERTAINTY**

CLAUSE 23

Income Tax Act: Amendments to section 24I

Subclause (1)*(a)* – (*e*): The proposed amendment seeks to provide rules for the determination of an exchange difference for an exchange item that is a preference share.

Subclause (1)*(f)* – (*g*): The proposed amendment seeks to clarify that the words "to the extent" apply to both paragraphs *(a)* and *(b)* of subsection (4).

Subclause (1)(*h*) – (*j*): See notes on **REFINING DEFERRAL OF EXCHANGE DIFFERENCE RULES ON DEBT BETWEEN RELATED COMPANIES**.

CLAUSE 24

Income Tax Act: Amendment to section 24JB

See notes on **ALIGNING THE TAX TREATMENT OF DIVIDENDS WITH THE ACCOUNTING TREATMENT BY A COVERED PERSON**

CLAUSE 25

Income Tax Act: Amendment to section 25B

See notes on **TAXATION OF TRUSTS AND THEIR BENEFICIARIES**

CLAUSE 26

Income Tax Act: Amendment to section 29A

See notes on **CLARIFYING THE ORDERING OF SET-OFF OF BALANCE OF ASSESSED LOSSES AND CERTAIN DEDUCTIONS**

CLAUSE 27

Income Tax Act: Amendments to section 41

See notes on **REVIEWING ASSET-FOR-SHARE AND AMALGAMATIONS TRANSACTIONS INVOLVING COLLECTIVE INVESTMENT SCHEMES**

CLAUSE 28

Income Tax Act: Amendments to section 42

See notes on both **CLARIFYING THE ROLLOVER RELIEF FOR LISTED SHARES IN AN ASSET-FOR-SHARE TRANSACTION** and **REVIEWING ASSET-FOR-SHARE AND AMALGAMATIONS TRANSACTIONS INVOLVING COLLECTIVE INVESTMENT SCHEMES**

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CLAUSE 29

Income Tax Act: Amendments to section 44

See notes on **REVIEWING ASSET-FOR-SHARE AND AMALGAMATION TRANSACTIONS INVOLVING COLLECTIVE INVESTMENT SCHEMES**

CLAUSE 30

Income Tax Act: Amendment to section 64E

The proposed amendment to subsection (4)(*a*) for the words following subparagraph (ii)(*cc*) seeks to broaden the scope of the provision to include situations where a subsidiary of a company held by a trust makes a loan to the trust.

CLAUSE 31

Income Tax Act: Amendment to paragraph 2(1) of the Second Schedule to the Act

See notes on **CLARIFYING THE INCLUSION OF AN AMOUNT ASSIGNED TO A NON-RETIREMENT FUND MEMBER SPOUSE UNDER RELIGIOUS TENETS**

CLAUSE 32

Income Tax Act: Amendment to paragraph 6B of the Second Schedule to the Act

The proposed amendment to the proviso to paragraph 6B seeks to correct a grammatical error to correct the wording “individual contract policy basis” to “individual policy contract basis”.

CLAUSE 33

Income Tax Act: Amendment of paragraph 9 of the Seventh Schedule to the Act

The proposed amendment to subparagraph (2) is a technical correction that seeks to improve on the wording.

CLAUSE 34

Income Tax Act: Amendment of paragraph 5 of the Eighth Schedule to the Act

The proposed amendment to subparagraph (1) for the proviso is a technical correction that seeks to correct a grammatical error to correct the wording “assessments” to “assessment”.

CLAUSE 35

Income Tax Act: Amendment of paragraph 61 of the Eighth Schedule to the Act

See notes on **ANOMALY IN THE ACT RELATING TO CAPITAL DISTRIBUTIONS BY COLLECTIVE INVESTMENT SCHEMES**

CLAUSE 36

Income Tax Act: Insertion of paragraph 82A of the Eighth Schedule to the Act

See notes on **ANOMALY IN THE ACT RELATING TO CAPITAL DISTRIBUTIONS BY COLLECTIVE INVESTMENT SCHEMES**

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CLAUSE 37

Income Tax Act: Amendment of item 7 of the Eleventh Schedule to the Act

The amendment seeks to update the government grant schedule in the Eleventh Schedule in line with the government grants paid by government.

CLAUSE 38

Global Minimum Tax Act: Continuation of certain changes effected by Notice

In 2024, South Africa introduced a new Global Minimum Tax. The law, contained in the Global Minimum Tax Act (GMTA) and the Global Minimum Tax Administration Act, is part of a worldwide effort to ensure that large multinational companies pay a fair share of tax, no matter where they operate.

A key part of our new law (specifically section 23(1) of GMTA) allows the Minister of Finance to officially adopt detailed guidance from the international body leading this initiative, the OECD/G20 Inclusive Framework. This means that South Africa's tax rules for the Global Minimum Tax will stay aligned with the latest international understandings.

The Notice is an important update, as it officially incorporates the newest international guidance and explanations and are essentially the "how-to" guides for applying the Global Minimum Tax.

The updated documents may be summarised as follows:

- OECD (2024) Administrative Guidance (June 2024): This guidance covers the application of the recapture rule applicable to deferred tax liabilities, how to determine deferred tax assets and liabilities when there is a divergence between tax and accounting rules and further guidance on cross-border allocation of current and deferred taxes, allocation of profits and taxes in certain structures involving Flow-through Entities and the treatment of securitisation vehicles.

- OECD (2025) Administrative Guidance on Article 8.1.4 and 8.1.5 (January 2025): This guidance updates the language in the Commentary to Articles 8.1.4 and 8.1.5 following the publication of the standardised template for the GloBE Information Return and clarifies the basis that MNE Groups shall rely on to complete the return.

- OECD (2025) Administrative Guidance on Article 9.1 (January 2025) This guidance addresses the treatment of certain deferred tax assets that arose prior to the application of the global minimum tax as a result of certain governmental arrangements or following the introduction of a new corporate income tax.

- OECD (2025) Administrative Guidance – Central Record of Legislation with Transitional Qualified Status (March 2025): This central record tracks which countries have passed laws that meet the global minimum tax requirements, on a self-certification and limited peer-review basis, so that they may be recognised by other implementing jurisdictions during a transition period. A more in-depth peer review process will follow.

- OECD (2025) Consolidated Commentary to the Global Anti-Base Erosion Model Rules (May 2025): This is the most comprehensive document. It is the official, combined interpretation of the global minimum tax rules, putting all the explanations and guidance issued since March 2022 into one complete guide.

CLAUSE 39

Customs and Excise Act & Value-Added Tax Act: Continuation of certain amendments of Schedules

The proposed clause makes provision for the continuation of certain amendments to the Schedules to the Customs and Excise Act and the VAT Act, effected by notices in the government Gazette during the period of 1 October 2024 up to and including 31 October 2025.

CLAUSE 40

Value-Added Tax: Amendments to section 1(1)

See notes on **REVIEWING THE DEFINITION OF “INSURANCE”**

CLAUSE 41

Value-Added Tax: Amendments to section 8

Subclause (1)(*a*): See notes on **SUPPLY OF EDUCATIONAL SERVICES**

Subclause (1)(*b*): See notes on **CLARIFYING THE VAT TREATMENT IN RESPECT OF PAYMENTS MADE UNDER THE NATIONAL HOUSING PROGRAMME**

Subclause (1)(*c*): See notes on **REVIEWING THE VAT TREATMENT OF AIRTIME VOUCHERS SUPPLIED IN SOUTH AFRICA FOR EXCLUSIVE USE IN AN EXPORT COUNTRY**

CLAUSE 42

Value-Added Tax: Amendments to section 9

See notes on **SUPPLY OF EDUCATIONAL SERVICES**

CLAUSE 43

Value-Added Tax: Amendments to section 10

See notes on **REVIEWING THE VAT TREATMENT OF AIRTIME VOUCHERS SUPPLIED IN SOUTH AFRICA FOR EXCLUSIVE USE IN AN EXPORT COUNTRY**

CLAUSE 44

Value-Added Tax: Amendments to section 11

See notes on **REVIEWING THE VAT TREATMENT OF TESTING SERVICES SUPPLIED TO NON-RESIDENTS WHO ARE OUTSIDE SOUTH AFRICA AT THE TIME OF SUPPLY, WHERE SERVICES ARE SUPPLIED DIRECTLY IN CONNECTION WITH MOVABLE PROPERTY SITUATED IN SOUTH AFRICA**

CLAUSE 45

Value-Added Tax: Amendments to section 12

See notes on **SUPPLY OF EDUCATIONAL SERVICES**

DRAFT

CLAUSE 46

Value-Added Tax: Amendment of section 18D

See notes on **CLARIFYING THE VAT TREATMENT OF TEMPORARY LETTING OF RESIDENTIAL PROPERTIES**

CLAUSE 47

Value-Added Tax: Amendment to section 21

See notes on **DEBIT AND CREDIT NOTES RELATING TO A GOING CONCERN AS PER SECTION 8(25) OF THE VAT ACT**

CLAUSE 48

Value-Added Tax: Insertion of section 40E

See notes on **SUPPLY OF EDUCATIONAL SERVICES**

CLAUSE 49

Value-Added Tax: Amendment of section 50

The proposed amendment of the proviso to subsection (2A) seeks to make it clear that the proviso is applicable to both paragraphs (*a*) and (*b*).

CLAUSE 50

Value-Added Tax: Amendment of section 54

Subclause (1)(*a*): See notes on **REVIEWING THE SCOPE OF THE INTERMEDIARY PROVISIONS**

Subclause (1)(*b*): See notes on **REVIEWING VAT RULES DEALING WITH DOCUMENTARY REQUIREMENTS FOR SILVER EXPORTS**

CLAUSE 51

Value-Added Tax: Amendment to Schedule 1

See notes on **LOW VALUE IMPORTATION OF GOODS**

CLAUSE 52

Taxation Laws Amendment Act of 2013: Amendment to section 13

The proposed amendment postpones the effective date of amendments to sections 8F(3)(*b*)(ii), 8F(3)(*c*)(ii) and 8F(3)(*d*) from 1 January 2026 to 1 January 2027.

CLAUSE 53

Taxation Laws Amendment Act of 2013: Amendment to section 15

The proposed amendment postpones the effective date of amendments to sections 8FA(3)(*b*)(ii), 8FA(3)(*c*)(ii) and 8FA(3)(*d*) from 1 January 2026 to 1 January 2027.

DRAFT

CLAUSE 54

Taxation Laws Amendment Act of 2013: Amendment to section 62

The proposed amendment postpones the effective date of certain amendments to section 23M from 1 January 2026 to 1 January 2027.

CLAUSE 55

Carbon Tax Act: Amendments to section 1

See notes on **CARBON BUDGET AND CARBON TAX – HIGHER TAX RATE**

CLAUSE 56

Carbon Tax Act: Amendments to section 4

See notes on **FORMULA FOR FUGITIVE EMISSIONS CALCULATION**

CLAUSE 57

Carbon Tax Act: Insertion of section 5

See notes on **CARBON BUDGET AND CARBON TAX – HIGHER TAX RATE**

CLAUSE 58

Carbon Tax Act: Amendments to section 6

Sub-clause (1)(*a*) – (*b*): See notes on **ELECTRICITY PRICE NEUTRALITY EXTENSION AND ELECTRICITY LEVY REPEAL**

Sub-clause (1)(*c*): See notes on **SEQUESTRATION DEDUCTION**

Sub-clause (1)(*d*): See notes on **CARBON BUDGET AND CARBON TAX – HIGHER TAX RATE**

CLAUSE 59

Carbon Tax Act: Amendments to section 12

See notes on **CARBON BUDGET ALLOWANCE**

CLAUSE 60

Carbon Tax Act: Insertion of section 14A

See notes on **CARBON BUDGET AND CARBON TAX – HIGHER TAX RATE**

CLAUSE 61

Carbon Tax Act: Amendments to Schedule 1 of the Carbon Tax Act of 2019

See notes on **ALIGNING SCHEDULE 1 OF THE CARBON TAX ACT EMISSION FACTORS**

CLAUSE 62

Carbon Tax Act: Amendments to Schedule 2 of the Carbon Tax Act of 2019

See notes on **CARBON OFFSET ALLOWANCE**

DRAFT

CLAUSE 63

Taxation Laws Amendment Act 42 of 2024: Amendments to section 46

The proposed amendments to section 46(3) and (4) seek to correct and create the effective date of amendments made in 2024 respectively from 1 January 2023 to 1 January 2025 for section 46(2) and the insertion of 1 January 2025 for section 46(3).

CLAUSE 64

Global Minimum Tax Act 46 of 2024: Amendments to section 1

Further Administrative Guidance may be periodically issued by the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting to provide additional guidance on the interpretation and intended operation of the GloBE Model Rules (including safe harbours). The GloBE Model Rules may also be amended in future by the IF. To ensure the Republic adheres to its commitment to implement and administer the GloBE Model Rules consistently with the outcomes provided for under the GloBE Model Rules and the Commentary (as updated from time to time through Administrative Guidance), this amendment seeks to ensure that the Republic adheres to its commitment to implement and administer the GloBE Model Rules so that it achieves timely, consistent and coordinated outcomes under the Rules and meets the GloBE Model Rules requirement that an implementing jurisdiction must apply the Rules in accordance with any amendment or updates that have been agreed by the IF on a timely basis.

CLAUSE 65

Global Minimum Tax Act 46 of 2024: Amendments to section 2

Further Administrative Guidance may be periodically issued by the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting to provide additional guidance on the interpretation and intended operation of the GloBE Model Rules (including safe harbours). The GloBE Model Rules may also be amended in future by the IF. To ensure the Republic adheres to its commitment to implement and administer the GloBE Model Rules consistently with the outcomes provided for under the GloBE Model Rules and the Commentary (as updated from time to time through Administrative Guidance), this amendment seeks to ensure that the Republic adheres to its commitment to implement and administer the GloBE Model Rules so that it achieves timely, consistent and coordinated outcomes under the Rules and meets the GloBE Model Rules requirement that an implementing jurisdiction must apply the Rules in accordance with any amendment or updates that have been agreed by the IF on a timely basis.

CLAUSE 66

Short title and commencement.

DRAFT

TAXATION LAWS AMENDMENT BILL 2025

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