



REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

TAXATION LAWS AMENDMENT BILL, 2024

30 October 2024

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1. INCOME TAX: INDIVIDUALS, SAVINGS AND EMPLOYMENT

1.1. CURBING THE ABUSE OF THE EMPLOYMENT TAX INCENTIVE SCHEME

[Applicable provisions: Sections 1(1) and new 5(3) of the Employment Tax Incentive Act, No. 26 of 2013 (“the ETI Act”)]

I. Background

In 2013, the Government introduced the Employment Tax Incentive (ETI) as an incentive aimed at encouraging employers to hire young work seekers. The ETI reduces the cost of hiring young people to employers through a cost-sharing mechanism with the government while leaving the wage the employee receives unaffected. The ETI commenced on 1 January 2014 and is due to expire on 28 February 2029.

II. Reasons for change

In the past three years, the Government has amended the ETI Act to curb abuse of the incentive through aggressive tax schemes. These schemes often involved training institutions claiming the incentive for students classified as employees under the ETI Act, who, however, never received cash payouts in their bank accounts. Instead, the training institutions would deduct training fees from their wages. The Government's position is that training costs should be the responsibility of the employer. The misuse of the ETI for creating fictitious employment, primarily to exploit the incentive, contradicts the policy's intention. It is essential to emphasise that millions of young South Africans are excluded from economic participation, resulting in high levels of unemployment, discouragement, and economic marginalisation. This high youth unemployment rate prevents young people from acquiring the skills and experience necessary to drive economic growth, potentially leading to long-term adverse effects on the economy. The primary purpose of the ETI is to encourage employers to hire young job seekers, providing them with a living wage and valuable work experience for future employability.

III. Proposal

It is proposed that punitive measures to curb the abuse of ETI be extended in the legislation to address the abusive behaviour of certain taxpayers towards the incentive.

IV. Effective date

The proposed amendments come into operation on 1 March 2025 and apply in respect of years of assessment commencing on or after that date.

1.2. AMENDING THE DEFINITION OF “REMUNERATION PROXY” IN SECTION 1

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

I. Background

In the tax legislation, the meaning of an employer-employee relationship is generally expanded to include an “associated institution” as defined in paragraph 1 of the Seventh Schedule to the Act. In addition, the concept of an “associated institution” has the purpose and effect of expanding the

employer-employee relationship to the granting of a taxable benefit to an employee. With effect from 1 March 2014, the definition of “remuneration proxy” was introduced in section 1 of the Act with the purpose that the design of the definition of “remuneration proxy” in section 1 to specifically refer to an “associated institution” as defined in paragraph 1 of the Seventh Schedule to the Act.

II. Reasons for change

In 2013, the definition of “remuneration factor” in paragraph 9(1) of the Seventh Schedule to the Act was deleted and the definition of “remuneration proxy” was inserted in section 1 of the Act effective 1 March 2014. Currently, the term “associated institution” is used in the definition of “remuneration proxy” with its ordinary meaning, as “associated institution” is not defined in the main body of the Act, but in the Seventh Schedule. Since the ordinary meaning of the term “associated institution” is used in the definition of “remuneration proxy” in section 1 of the Act, this creates an inconsistency in the application of:

- Section 10(1)(g)(ii)(aa) of the Act for any bona fide scholarship or bursary granted by the employer to enable or assist any person to study;
- Section 10(1)(qA)(ii)(aa) of the Act for any bona fide scholarship or bursary to enable any person living with a disability to study;
- Paragraph 5(3A)(a) of the Seventh Schedule to the Act, which caters for the no-value provision regarding the cash equivalent for employer-provided accommodation (low-cost housing); and
- Paragraph 9(3)(i) of the Seventh Schedule to the Act dealing with the rental value to be placed on employer-provided residential accommodation.

The difficulty lies with the term “associated institution” which cannot be given its ordinary meaning but be given its meaning by reference to where it is defined in the Act, i.e. in paragraph 1 of the Seventh Schedule. Therefore, Government proposes aligning the policy objective for an “associated institution” to carry its intended meaning and use in the Act.

III. Proposal

It is proposed that a cross-reference be added in the definition of “remuneration proxy” to refer to the definition of an “associated institution” by reference to paragraph 1 of the Seventh Schedule to the Act.

IV. Effective date

The proposed amendment comes into operation on 1 March 2025 and applies in respect of years of assessment commencing on or after that date.

1.3. PAYROLL AMENDMENTS AND REFUNDS MADE IN THE CURRENT YEAR

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

I. Background

From the year of assessment commencing on 1 March 2009, the legislation allows a deduction of any amount included in the taxable income of an employee and the said amount is subsequently refunded by the employee to the employer. This is in terms of section 11(*nA*) of the Act which permits a deduction for any amount, including any voluntary award, received or accrued for services rendered, employment or holding of an office, and the amount included in taxable income is subsequently refunded by the recipient.

II. Reasons for change

Section 11(*nA*) of the Act only permits a deduction for an amount that was refunded by an employee, but only if it was previously included in taxable income. As it stands, the legislation currently reads “as was included in the taxable income of that person and is refunded by that person”. The words “was included” create an interpretation challenge for refunds taking place in the same year of assessment. The law is currently interpreted to mean that prior inclusion in taxable income is required or must take place before the refund can be claimed as a deduction. As a result, the interpretation meaning of section 11(*nA*) of the Act is limited only to refunds made in a year of assessment occurring after initial inclusion in taxable income. If the refund occurs in the same year of assessment as income received, there would be no prior inclusion in taxable income, as taxable income is only determined after the year of assessment has concluded.

In the past, SARS has informally allowed payroll administrators to make corrections within the same year of assessment to avoid prejudicing taxpayers. However, with the introduction of monthly payroll reporting, it is now necessary to amend section 11(*nA*) of the legislation. This amendment should explicitly clarify that refunds made within the same year of assessment can be allowed as a deduction under section 11(*nA*) of the Act if the income received is or was included in taxable income.

III. Proposal

It is proposed to amend section 11(*nA*) of the Act to explicitly state that refunds occurring within the same year of assessment can be allowed as a deduction under section 11(*nA*) of the Act if the income received is included in taxable income.

IV. Effective date

The proposed amendment comes into operation on 1 March 2025 and applies in respect of years of assessment commencing on or after that date.

1.4. CLARIFYING ANTI-AVOIDANCE RULES FOR LOW-INTEREST OR INTEREST-FREE LOANS TO TRUSTS

[Applicable provision: Section 7C of the Act]

I. Background

The Act contains a trust anti-avoidance measure aimed at curbing the tax-free transfer of wealth to trusts (both local and foreign) using low-interest or interest-free loans, advances or credit arrangements (including cross-border loan arrangements). In terms of the trust anti-avoidance measure, interest incurred by the trust at an interest rate lower than the official rate of interest in respect of a loan, advance or credit made to the trust is treated as ongoing and annual donation made by a natural person or a company that is a connected person in relation to that natural person, on the last day of the year of assessment of that trust. The amount of the deemed donation made by the natural person to the trust is determined as the difference between the interest charged on the loan, advance or credit and the interest that would have been payable by the trust had the interest been charged at the official rate of interest.

Similarly, the transfer pricing rules in the Act also apply to counter the mispricing of any transaction, operation, scheme, agreement or understanding (including cross-border loan arrangements). In terms of a trust, the transfer pricing rules determines that any cross-border loan arrangement between a person that is a resident and any other person that is a connected person and is not a resident (including a foreign trust) would be an affected transaction subject to tax if that cross-border loan arrangement is different from any term or condition (including interest rates) that would have existed had those persons been independent persons dealing at arm's length.

II. Reasons for change

To avoid the possibility of an overlap or double taxation, the trust anti-avoidance measures specifically exclude a low- or no-interest loan arrangement that constitutes an affected transaction that is subject to the transfer pricing rules contained in the Act.

At issue is that the above-mentioned exclusion does not effectively address the interaction between the trust anti-avoidance measures and transfer pricing rules where the arm's length interest rate is less than the official rate on these cross-border loan arrangements.

Example

X, a resident natural person, makes a non-arm's length interest free cross-border loan to a connected non-resident trust of R10 million and a tax benefit is derived. Had the trust borrowed the funds from a financial institution, it would have paid interest at a market-related rate of 5 per cent a year (R10 million x 5% = R500 000). The official rate of interest for tax purposes is 8 per cent. In light of the fact that this is a non-arm's length transaction, the cross-border loan is subject to the transfer pricing rules of section 31 of the Act which essentially results in X having a primary adjustment to its taxable income of R500 000 in terms of section 31(2) of the Act and a secondary adjustment in terms of section 31(3) of the Act, a deemed donation of R500 000, as X is a natural person.

As it was a non-arm's length transaction the anti-avoidance exclusion of section 7C(5)(e) of the Act is applied. Had the transfer pricing rules not applied, in terms of section 7C of the Act, the taxpayer would have had to declare a deemed donation of R800 000 (R10 million x 8%).

The R300 000 difference between the deemed donation value for the trust anti-avoidance measure in terms of section 7C of the Act and the adjustment under section 31 of the Act is an unintended anomaly in the interaction between the trust anti-avoidance measures and transfer pricing rules. This can create structuring opportunities that if left without legislative intervention, could lead to the erosion of the tax base.

III. Proposal

To address the anomaly and to clarify the policy intent of the trust anti-avoidance measure regarding the tax-free transfer of wealth to a trust using a low-interest or interest-free loan, advance or credit arrangement, any improper or undue tax avoidance opportunities should be addressed.

It is proposed that an amendment be made to ensure that the exemption of the trust anti-avoidance measure in respect of a loan, advance or credit that constitutes an affected transaction, as defined in the transfer pricing provisions, only applies to the extent of an adjustment being made in terms of the transfer pricing provisions.

IV. Effective date

The proposed amendment comes into operation on 1 January 2025 and applies in respect of years of assessment commencing on or after that date.

1.5. TRANSFERS BETWEEN RETIREMENT FUNDS BY MEMBERS WHO REACHED NORMAL RETIREMENT AGE BEFORE RETIREMENT DATE

[Applicable provisions: Definition of “retirement annuity fund” in section 1, paragraphs 2(1)(c) and 6A of the Second Schedule to the Act]

I. Background

Paragraph 2(1)(c) of the Second Schedule to the Act specifies the amount to be included in gross income for any amount transferred for the benefit of a member of a retirement fund scheme on or after normal retirement age but before the retirement date. This amount is reduced by any allowable deductions under paragraph 6A of the Second Schedule to the Act.

With effect from 1 March 2024, paragraph 6A of the Second Schedule to the Act added to the list of deductions, tax-neutral transfers between pension or provident funds to another pension or provident fund for members who have reached normal retirement age (as contained in the fund's rules) but have not yet elected to retire. This allows them to transfer their retirement interest tax-free in the event of an involuntary transfer.

II. Reasons for change

Government seeks to address an inconsistency in the law, whereby tax-free transfers are allowed for certain transfers between pension, or provident funds, but not for retirement annuity fund members who transfer to another retirement annuity fund. Specifically, members who have reached normal retirement age but have not elected to retire and are subject to tax on these transfers.

III. Proposal

To ensure parity amongst members of retirement annuity funds who have reached normal retirement age in terms of the fund rules but have not yet opted to retire from their respective fund, the following is proposed:

- that members of retirement annuity funds who have reached normal retirement age as stipulated in the fund rules, but have not yet opted to retire from said fund, must have the ability to have their retirement interest transferred from a retirement annuity fund into another retirement annuity fund without incurring a tax liability; and
- that the value of the retirement interest, including any growth thereon, will remain ring-fenced and preserved in the receiving retirement annuity fund until the member elects to retire from that fund subject to fund rules. This means that these members will not be entitled to the payment of a withdrawal benefit in respect of the amount transferred.

IV. Effective date

The proposed amendment comes into operation on 1 March 2025 and applies in respect of years of assessment commencing on or after that date.

2. INCOME TAX: BUSINESS (GENERAL)

2.1. REVIEWING THE CONNECTED PERSON DEFINITION IN RELATION TO PARTNERSHIPS

[Applicable provision: Definition of “connected person” in section 1 of the Act]

I. Background

Currently, paragraph (c) of the definition of “connected person” in section 1 of the Act provides that, in the context of a “partnership” or “foreign partnership” as defined in section 1, each member of such partnership is a connected person in relation to any other member of such partnership and any connected person in relation to any member of such partnership or foreign partnership.

As a result, large corporate investors forming part of a large group of companies that invest in fund partnerships inadvertently become connected to connected parties in relation to the other investors in relation to all other unrelated transactions that are entered into by these investors and connected persons.

II. Reasons for change

It has come to Government’s attention that limited partners in an *en commandite* partnership (a partnership carried out in the name of only some of the partners; the undisclosed partners contribute a fixed sum and are not liable for more than their capital contribution in case of a loss)

and their connected persons are affected by the wide ambit of paragraph (c) of the definition of “connected person”.

III. Proposal

It is proposed that the definition of a “connected person” be amended to exclude connected persons in relation to “qualifying investors”

IV. Effective date

The proposed amendment will come into operation on the date of promulgation of the Taxation Laws Amendment Act of 2024.

2.2. LIMITING INTEREST DEDUCTIONS IN RESPECT OF REORGANISATION AND ACQUISITION TRANSACTIONS

[Applicable provision: Section 23N of the Act]

I. Background

In general, the provisions of limitation of interest deductions in respect of reorganisation and acquisition transactions cater for interest deductions associated with share acquisitions that can be achieved indirectly through the use of the section 45 or section 47 rollover provisions of the Act or under section 24O of the Act because this form of acquisition is comparable to indirect share acquisitions.

The amount of interest allowed to be deducted in terms of all debts owed that are within the scope of section 23N(2) of the Act is subject to an annual limitation pursuant to a defined formula in respect of any year of assessment in which the acquisition transaction or reorganisation transaction is entered into and in respect of five years of assessment immediately following that year of assessment.

Deductible interest must not exceed the sum of:

- a. the amount of interest received by or accrued to the acquiring company;
- b. the highest of the amounts determined by multiplying the percentage determined under section 23N(4) (referred below) by the adjusted taxable income of the acquiring company for each of the years of assessment: (i) in which the acquisition transaction or reorganisation transaction is entered into (ii) in which the amount of interest is incurred by that acquiring company or (iii) immediately prior to the year of assessment contemplated in (i); and
- c. reduced by interest incurred in respect of other debt (i.e. excluding debt to which section 23N applies).

The percentage mentioned in (b) above must be determined in accordance with the formula:

$A = B \times C/D$ where:

- A represents the percentage to be determined;
- B represents the number 40;
- C represents the average repo rate plus 400 basis points; and
- D represents the number 10

The amount of the interest deductible may not exceed 60 per cent of the adjusted taxable income of that acquiring company.

For section 23N purposes, adjusted taxable income in general means the taxable income of the taxpayer less all interest received or accrued, section 9D controlled foreign company net income inclusion and recovered or recouped amounts in respect of capital assets with the addition of deductible interest incurred, all capital allowances, an additional 75 per cent of the debtor's income from the letting of immovable property and any losses set off against income.

II. Reasons for change

In 2023, changes were made to the definition of “adjusted taxable income” in section 23M of Act stating that the calculation must be done before setting off any balance of assessed loss against income and that the result of the calculations may not be less than zero.

Over and above the changes mentioned above, in 2021 amendments were made to section 23M of the Act that formed part of the corporate tax package to broaden the tax base and reduce the headline corporate income tax rate in a revenue neutral manner. The percentage calculated under the formula was replaced by a fixed amount of 0,3 (i.e. 30%).

Given that the nature of limitation of interest deductions in respect of reorganisation and acquisition transaction rules is broadly similar to the limitation of interest deductions in respect of debts owed to persons not subject to tax rules, it is proposed that the amendments made to section 23M of the Act be mirrored in section 23N of the Act.

III. Proposal

Based on the above, it is proposed that:

- the definition of “adjusted taxable income” and the methodology applied to limit an interest deduction in section 23N of the Act be reviewed and changed for closer alignment with the provisions of section 23M of the Act;
- the formula applied be replaced with a fixed amount of 0,3; and
- the definitions of “repo rate” and “average repo rate” be deleted.

IV. Effective date

The proposed amendment comes into operation on 1 January 2027 and applies in respect of years of assessment commencing on or after that date while the amendment to the definition of “adjusted taxable income” comes into operation on 1 January 2025 and applies in respect of years of assessment commencing on or after that date.

2.3. RELAXING THE ASSESSED LOSS RESTRICTION RULE UNDER CERTAIN CIRCUMSTANCES

[Applicable provisions: Sections 20 and 41 of the Act]

I. Background

In general, section 20 of the Act previously allowed most taxpayers carrying on a trade to set-off assessed losses brought forward from prior years of assessments against taxable income in the current year of assessment, with any unutilised portion of the assessed loss available for carry forward to subsequent years of assessment. However, an assessed loss restriction rule was introduced into the Act for companies with years of assessment ending on or after 31 March 2022. This proposal broadened the corporate tax base by restricting the offset of assessed losses carried forward to 80 per cent of taxable income.

II. Reasons for change

As stated above, a taxpayer that continuously carries on a trade can set off its balance of assessed loss against income, subject to the assessed loss limitation provisions. However, where companies are being liquidated, deregistered or wound-up during a year of assessment they will not be able to utilise balance of assessed losses in subsequent years. Therefore, there may be instances where the assessed loss limitation will result in the balance of assessed loss not being fully utilised and partially forfeited by the company that is being liquidated, deregistered or wound-up.

III. Proposal

It is proposed that the legislation be amended to exempt companies from applying the assessed loss restriction rule while in the process of liquidation, deregistration or winding up.

IV. Effective date

The proposed amendment comes into operation on 31 December 2024 and applies in respect of years of assessment ending on or after that date.

2.4. REVIEWING THE PROHIBITION AGAINST THE TRANSFER OF ASSETS IN TERMS OF AN AMALGAMATION TRANSACTION

[Applicable provision: Section 44 of the Act]

I. Background

In general, an “amalgamation transaction”, as defined in section 44 of the Act, envisages transactions in terms of which an amalgamated company transfers all of its assets into and merges with a resultant company. The following three types of transactions are covered in the definition of “amalgamation transaction”: (i) a South African resident company transfers its assets to another resident company (domestic transfers), (ii) a foreign company transfers its assets to a South African resident company (inbound transfers) and (iii) a foreign company transfers its assets to another foreign company which is a controlled foreign company and is in the same group of companies as the transferee foreign company (foreign to foreign transfers).

Further, “amalgamation transaction” rules do not apply if assets are transferred to companies that are wholly or partially exempt or fall outside the South African tax base because they are not fully taxable and to ensure that rollover relief is not used to obtain a permanent exemption.

The current paragraphs (a) to (g) of section 44(14) of the Act provides for scenarios where the amalgamation provisions will not apply and includes a scenario in paragraph (d) where amalgamation provisions will not apply for domestic transfers where the resultant company is any association, corporation or company incorporated outside South Africa or the resultant company is a portfolio of collective in any investment scheme carried outside South Africa that is comparable to a portfolio of a collective investment scheme in participation bonds or portfolio of a collective investment in securities and does not have its place of effective management in South Africa. However, the scenario in paragraph (d) seems to be contradictory as domestic transfers only includes a resultant company which is a resident.

II. Reasons for change

It has come to Government’s attention that the reference in paragraph (d) of section 44(14) of the Act to a resultant company that is a foreign company that does not have a place of effective management in South Africa in relation to domestic transfers seem to be misaligned and unclear as domestic transfers only include a resultant company which is a resident.

III. Proposal

Given that domestic transfers in terms of “amalgamation transaction” rules do not include transfers to foreign companies, it is proposed that the exclusion for domestic transfers to a resultant company that is any association, corporation or company incorporated outside South Africa or the resultant company that is a portfolio of collective in any investment scheme carried outside South Africa and does not have its place of effective management in South Africa be deleted.

IV. Effective date

The proposed amendment will come into operation on the date of promulgation of the Taxation Laws Amendment Act of 2024.

2.5. THIRD-PARTY BACKED SHARES: EXTENDING THE DEFINITION OF “ENFORCEMENT RIGHT” TO A CONNECTED PERSON

[Applicable provision: Section 8EA of the Act]

I. Background

The Act contains dedicated third-party backed share anti-avoidance rules to deal with preference shares with dividend yields backed by third parties through an enforcement right. These anti-avoidance rules deem dividend yields of third-party backed shares as income unless the funds derived from the issue of the third-party backed shares are used for a qualifying purpose.

II. Reasons for change

An “enforcement right”, as defined in the Act, encompasses a right of the holder of a share or equity instrument, or any connected person in relation to that holder to enforce performance by another third-party person in respect of that share, by obligating that third-party person, to:

- acquire that share from that holder;

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

A “third-party backed share”, as defined in the Act, encompasses any preference share or equity instrument 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.

At issue is that there is an unintended anomaly between the two definitions where the definition of a “third-party backed share” does not clearly match the policy intent and respective legislative wording, compared to the “enforcement right” definition, that either a holder or a connected person to that holder could hold that enforcement right.

III. Proposal

Government proposes that the definition of a “third-party backed share” be clarified to address this anomaly by amending that definition to match the policy intent that the enforcement right is exercisable by either the holder or any connected person in relation to that holder.

IV. Effective date

The proposed amendments comes into operation on 1 January 2025 and applies in respect of dividends or foreign dividends received or accrued during years of assessment commencing on or after that date.

2.6. THIRD-PARTY BACKED SHARES: EXTENDING EXCLUSIONS TO THE OWNERSHIP REQUIREMENT

[Applicable provision: Section 8EA]

I. Background

The third-party backed share anti-avoidance rules deem dividend yields of preference shares, backed by third parties through an enforcement right of the holder, to be income except where the funds derived from the issue of these third-party backed shares are used for a qualifying purpose.

With effect from 1 January 2024, certain ownership requirement refinements on equity shares acquired in a targeted operating company, for a qualifying purpose, by the person that acquired those equity shares, came into effect. The main objective of these refinements was to specifically clarify the ownership requirement test, on the equity shares in the targeted operational company, at the time of the receipt or accrual of any dividend or foreign dividend. The new ownership requirement test includes certain exceptions, including that:

- if the equity shares in the targeted operating company were disposed of and the funds derived from that disposal are used by the issuer of the preference share to settle that preference share within 90-days of that disposal; and

- the ownership requirement will not apply if that equity share was a listed share and was substituted for another listed share in terms of an arrangement that is announced and released as a corporate action on a South African regulated stock exchange.

II. Reasons for change

It has come to Government's attention that the exceptions to the ownership requirement test may be too narrow and could impede legitimate transactions envisaged in the relevant policy rationale.

A. Settlement

A qualifying purpose for the use of funds derived from the issue of a preference share includes, amongst others, the—

- acquisition or redemption of any preference shares previously used for any qualifying purpose;
- settlement of debt used for the purposes set out above and any interest accruing on such debt.

The use of funds for the qualifying purpose refinancing arrangements above has specific legislative clarity to, as a matter of policy, extend the use of funds or consideration for the newly issued preference share to settle any accrued dividends, foreign dividends or interest in the relevant settlement amount.

At issue is that the new ownership requirement test does not contain the same legislative clarity in terms of the settlement of any accrued dividends or foreign dividends payable by the issuer of a preference share in relation to the settlement of that preference share within 90-days of that disposal.

B. Recognised exchange

The purpose of the corporate action exception in the ownership requirement test was to cater for those instances where that corporate action impacted on the person's ability to, at the time of the receipt or accrual of any dividend or foreign dividend came into effect, still hold the acquired listed equity shares of the targeted operating company.

The "operating company" definition read together with the "qualifying purpose" definition allows for the acquisition of equity shares in a listed company which would by definition include a company whose shares or depository receipts in respect of its shares are listed on a stock exchange in a country other than the Republic which has been recognised by the Minister of Finance as contemplated in paragraph (c) of the definition of "recognised exchange" in paragraph 1 of the Eighth Schedule.

At issue is that the corporate action exception noted above in the ownership requirement test currently only applies to equity shares that is listed on a South African exchange licensed under the Financial Markets Act.

III. Proposal

In order to address concerns regarding the fact that the ownership requirement test exceptions are too narrow, and may impede legitimate transactions, an amendment is proposed to the legislation:

A. Settlement

It is proposed that the legislation be amended to clarify that the redemption of the preference share in terms of the ownership requirement test includes the settlement of any amounts of dividends or foreign dividends accrued in respect of that preference share.

B. Recognised exchange

It is proposed that the ownership requirement test exclusion be extended to include corporate actions relating to listed shares on a recognised exchange in a country other than South Africa. As a result, the ownership requirement will not apply if that foreign equity share was a listed share and was substituted for another listed share in terms of an arrangement that is announced and released as a corporate action on stock exchange in a country other than the Republic which has been recognised by the Minister of Finance as contemplated in paragraph (c) of the definition of “recognised exchange” in paragraph 1 of the Eighth Schedule.

IV. Effective date

A. Settlement

The proposed amendment is deemed to have come into operation on 1 January 2024 and applies in respect of the settlement of an amount of dividends or foreign dividends in respect of that preference share, during years of assessment commencing on or after that date.

B. Recognised exchange

The proposed amendment comes into operation on 1 January 2025 and applies in respect of dividends or foreign dividends received or accrued during years of assessment commencing on or after that date.

2.7. TRANSLATING “CONTRIBUTED TAX CAPITAL” FROM FOREIGN CURRENCY TO RANDS

[Applicable provision: Section 25E of the Act]

I. Background

The contributed tax capital (CTC) of any company is a notional amount calculated for tax purposes only derived from either (1) contributions received by a resident company from a shareholder for shares issued to that shareholder or (2) an amount equal to the market value of shares when a foreign company becomes a South African tax resident. However, the CTC amount is reduced by any amounts referred to as capital distributions, transferred by the company to the shareholders.

In line with the 2023 Budget announcement, during the 2023 legislative cycle, rules were introduced to clarify the translation of the “contributed tax capital” of a class of shares that are denominated in a foreign currency to the currency of the Republic. More specifically, these translation rules require that companies apply the applicable spot rate on the date that the relevant amount is recognised for income tax purposes.

II. Reasons for change

The translation rules for purposes of CTC have been welcomed by industry and taxpayers but concerns have been raised about certain potential application and interpretive shortcomings not sufficiently clarified. For a tax resident company they relate to the interaction between:

- the functional currency of that company;
- the share capital of that company which can be denominated in either the Rand or a currency other than the Rand, or both; and
- several distinguishable and separate tax events (both in the creation and reduction of CTC), over an extended period of time, that must be considered for purposes of the determination of CTC.

At issue is that CTC of a tax resident company could be impacted by several variables, including currency fluctuations, that could influence the translation outcome for the relevant amount to be recognised for income tax purposes. This may require the use and keeping of data over a long period of time.

As such, it could be difficult to determine, for example, whether the capital distribution amount through CTC returned to a shareholder, should be translated into Rand at the spot rate at the date of transfer or whether the spot rate on the date when the CTC was created should be used, so as to determine a rand amount of CTC available for distribution that would not be affected by subsequent currency fluctuations

III. Proposal

It is proposed that the rules introduced for the translation of the amount of CTC in 2023 in relation to a class of shares be amended to rather make a distinction for application based on (1) the functional currency of the tax resident company; and (2) the distinguishable and separate points of creation or reduction of CTC.

Where the functional currency of a tax resident company is:

A. The currency of the Republic: Rand

Any foreign amount of consideration received, in relation to a class of shares, as referred to in paragraphs (a) or (b) of the definition of “contributed tax capital” in section 1 of the Act, must be translated to the currency of the Republic by applying the spot rate on the date receipt, accrual or conversion, as the case may be, for purposes of the determination of the increase of CTC. In the case of a foreign company that becomes a resident the translation of the market value of the shares is at the date immediately preceding the date of becoming a resident.

B. A currency other than the currency of the Republic

Any reduction of CTC denominated in a foreign currency, in relation to a class of shares, as referred to in paragraphs (a) or (b) of the definition of “contributed tax capital” in section 1 of the Act, must be translated to the currency of the Republic by applying the spot rate on the date of transfer or conversion, as the case may be, for purposes of the reduction of CTC.

The impact of these amendments to the translation rules for purposes of CTC is best shown through examples:

Example A: Consideration received if a company has a functional currency in Rand

Facts:

On 1 January 2025, Company A, a SA tax resident company with a primary listing on the JSE and a secondary listing on the NSE, issues 100 ordinary shares of a particular class at a consideration of \$10 a share on the foreign exchange. On 30 July 2025, Company A makes a capital distribution per share in terms of that particular class of shares.

\$/R Exchange Rate:

- 1 January 2025 - R18.00
- 31 July 2025 – R19.00

Results:

Tax event 1: Based on an assumed functional currency of the Republic, Company A's CTC will increase by an amount of R18 000 [$\$1000 \times R18$] on 1 January 2025.

Tax event 2: Important to note that in light of the fact that Company A has a functional currency of the Republic, and an already Rand determined CTC-amount (based on the calculation of tax event 1 above), any subsequent reduction of CTC will not need to be translated for purposes of the determination of CTC as at 31 July 2025 in terms of section 25E of the Act. Rather, the reduction would be the relevant Rand amount at the date of transfer determined by the directors of the company or by some other appropriate person or body of persons.

Example B: Reductions of CTC made if a company has a functional currency other than that of the Republic

Facts:

On 1 May 2025, Company B, a SA tax resident company that is a wholly owned subsidiary of a UK company, issues 100 ordinary shares of a particular class at a consideration of £10 a share. On 16 August 2025, Company B makes a capital distribution per share for that particular class of shares.

£/R Exchange Rate:

- 1 May 2025 – R24.00
- 16 August 2025 – R25.00

Results:

Tax event 1: Based on an assumed functional currency other than that of the Republic, Company B has CTC of £1000 [100 ordinary shares \times £10] as at 1 May 2025. Important to note that in light of the fact that Company B has a functional currency other than that of the Republic that the foreign consideration received for the issues of that class of shares will not be translated as at 1 May 2025 in terms of section 25E of the Act for purposes of the determination of CTC.

Tax event 2: On 16 August 2025, Company B makes a £1 per share capital distribution from CTC which results in a reduction in CTC of R2 500 [$R25 \times (100 \times £1)$]. The balance of the CTC, £900

[£1 000 – (100 x £1)] for that class of shares, will not be translated for purposes of the determination of CTC as at 16 August 2025. Based on the application of proposal B above, only the amount in foreign currency by which CTC is reduced must be translated to the currency of the Republic by applying the spot rate on the date of transfer. It is important to note that the translation is only applied to the capital distribution amount and not the total CTC amount available prior to or post that capital distribution.

IV. Effective date

The amendments come into operation on 1 January 2025.

2.8. TAXATION ISSUES INVOLVING UNLISTED PROPERTY COMPANIES

[Applicable provision: Definition of “REIT” in section 1 of the Act]

I. Background

Broadly, in 2012, a unified approach termed REITs (Real Estate Investment Trusts) was adopted for property investment schemes encompassing both the property unit trust and property loan stock companies in the Act. The aim was to ensure that South Africa’s property investment scheme is in line with the international norms and ensuring that the objective of the REITs to provide investors with a steady rental stream while also providing capital growth stemming from the underlying property is maintained. The REIT regime provided a flow-through principle where income and capital gains will be taxed solely in the hands of the investor and not in the REITs.

Section 1 of the Act defines a “REIT” to be a South African resident company, listed on the South African stock exchange and the shares of which are listed as shares in a REIT as defined in the listing requirements of that exchange.

The unlisted property companies were not afforded a flow-through treatment due to the lack of comparable regulation offered by the exchanges for the listed REITs.

II. Reasons for change

As stated above, the issue is that the unlisted property companies were not afforded a flow-through treatment due to the lack of regulation.

III. Proposal

To provide a rule for the tax treatment of unlisted property companies and ensuring that they meet certain requirements and conditions, it is proposed that the “REIT” definition in section 1 of the Act be extended to cater for a company that is a South African company, that is not listed on a South African Stock Exchange, but meets the requirements and conditions set by the Minister of Finance by notice in the *Gazette*.

IV. Effective date

The proposed amendment will come into operation with effect from a date determined by the Minister of Finance by notice in the *Gazette* after the publication of the requirements regulating the unlisted property companies.

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

3.1. CLARIFYING THE INTERACTION OF SECTION 24JB(3) OF THE INCOME TAX ACT AND THE GROSS INCOME DEFINITION

[Applicable provision: Section 24JB of the Act]

I. Background

Section 24JB(3) of the Act states that: *“any amount required to be taken into account in determining the taxable income in terms of any provision of Part I of Chapter II, or in determining any assessed capital loss of a covered person in respect of a financial asset or a financial liability contemplated in subsection (2) must only be taken into account in terms of this section.”*

In general, the aim is that section 24JB(3) of the Act ensures that amounts in respect of financial assets and financial liabilities, measured at fair value in terms of International Financial Reporting Standard (IFRS) 9 that are recognised in the statement of profit or loss and other comprehensive income are only included in or deducted from the income of certain persons under section 24JB(2) of the Act. Therefore, the amounts in respect of these financial assets and financial liabilities that are measured at fair value in terms of the IFRS 9 accounting standard cannot be dealt with under any section of the Act.

Section 24JB(3) of the Act refers to all the provisions in Part I of Chapter II of the Act (Part I of Chapter II covers sections 5 to 37G of the Act) that are normally utilised to calculate the taxable income of a covered person in respect of a financial asset or liability contemplated in section 24JB(2) of the Act. This means that the application of sections 5 to 37G of the Act (including paragraph 10 of the Eighth Schedule via section 26A of the Act) must not be applied in determining taxable income. Thus, only section 24JB must be applied as a form of fair-value-taxation.

However, the definition of “gross income” in section 1(1) of the Act is not one of the provisions mentioned in section 24JB(3) of the Act when reference is made to Part I of Chapter II.

II. Reasons for change

It has come to Government’s attention that further clarity is required on the interaction between the aforementioned rule in section 24JB(3) of the Act and the definition of “gross income”.

III. Proposal

It is proposed that section 24JB(3) of the Act be amended to specifically exclude the application of the definition of “gross income” to ensure that section 24JB of the Act takes preference over all other sections in the Act in determining taxable income in respect of financial instruments described in section 24JB(2) of the Act.

IV. Effective date

The proposed amendment comes into operation on 31 December 2024 and applies in respect of years of assessment ending on or after that date.

3.2. IMPACT OF IFRS 17 ON THE TAXATION OF INSURERS

[Applicable provision: Section 28 of the Act]

I. Background

In 2022, amendments were made in the Act by introducing a phasing in period of three years to be provided to short-term insurers to cater for the tax impact as a result of the difference between the methodologies applied in valuing insurance liabilities between accounting standards IFRS 4 and IFRS 17 which was going to be effective for annual reporting periods beginning on or after 1 January 2023.

The “phasing-in amount” was defined to be an amount that is a difference between the amount that is deductible from the income of a short-term insurer in terms of section 28(3) or section 28(3A) of the Act at the end of the latest year of assessment commencing on or after 1 January 2022 but before 1 January 2023 (measuring year) determined under the current rules of section 28(3) or section 28(3A) of the Act and the amount of the deduction for the measuring year had IFRS 17 been applied at the end of the measuring year, adjusted by specified amounts.

In general, prior to the change in 2022, the insurance liabilities were made up of the unearned premium reserve (“UPR”) liability, claims incurred but not reported (“IBNR”) and the outstanding claims reserve (“OCR”), net of deferred acquisition costs, deferred revenue liability and the re-insurance reserve, which was provided for in section 28(3) of the Act.

Under IFRS 17, the insurance liabilities are made up of the liability for remaining coverage (“LRC”), which is the equivalent to UPR, and the liability for incurred claims (“LIC”), which is akin to the IBNR and OCR. However, under IFRS 17, the LRC is taken into account as a deduction when determining insurance revenue and is, therefore, also taken into account under section 28(2)(a) when a short-term insurer is determining the taxable income derived during a year of assessment from carrying on short-term insurance business.

II. Reasons for change

- A. As stated above, the change in the treatment of UPR under IFRS 17 that led to it being taken into account under section 28(2)(a) of the Act has created complexity when calculating the “phasing-in-amount” as the difference between the amount that is deductible from the income of a short-term insurer in terms of section 28(3) or section 28(3A) of the Act at the end of the latest year of assessment commencing on or after 1 January 2022 but before 1 January 2023 (measuring year) determined under the current rules of section 28(3) or section 28(3A) of the Act and the amount of the deduction for the measuring year had IFRS 17 been applied at the end of the measuring year.
- B. For cell captive arrangements, the licensed short-term insurer acts as the principal for all insurance contracts, even though the risks are transferred to the cell owner via a participation agreement. As a result, the transfer of risk to the cell owner, after accounting for commercial reinsurance, can be recognised for IFRS purposes as outward reinsurance transactions. This applies to both ‘first party’ and ‘third party’ risks.

- C. Section 28(3C)(b) allows for a deduction of the liability for remaining coverage (LRC), net of reinsurance, calculated for the last assessment year starting on or after January 1, 2022, but before January 1, 2023, as if IFRS 17 had been applied at the end of that assessment year. Cases have been encountered where the reinsurance asset related to the LRC exceeds the LRC itself, resulting in the net LRC being a net asset.
- D. Section 28(3C)(c) allows for a deduction of the net amounts of insurance premium or reinsurance premium debtors, and reinsurance premium payables, considered in determining the liabilities for remaining coverage at the end of the most recent assessment year starting on or after January 1, 2022, but before January 1, 2023, as if IFRS 17 had been applied at the end of that year. Paragraph (c) assumes that the total of the insurance premium debtor and reinsurance premium debtor will exceed the reinsurance premium payable, resulting in a net debtor position. However, cases have been observed where the outcome is a net creditor position (i.e., payables exceed receivables), which would typically lead to an inclusion in taxable income.
- E. Paragraph (c) of section 28(3D) determines the 'phasing-in amount' when the total deduction under section 28(3) for the latest assessment year starting on or after January 1, 2022, exceeds the combined deductions under the amended section 28(3) and subsection 3C(b) if IFRS 17 had been applied. The paragraph also specifies that this difference must be reduced by the difference between (i) the amount of insurance premium debtors and reinsurance premium debtors, and (ii) the amount of reinsurance premiums payable at the end of the latest assessment year starting on or after January 1, 2022, but before January 1, 2023, excluding amounts that are part of the liability for incurred claims. However, there are instances where this reduction results in a negative amount, leading to an inclusion in taxable income rather than the intended deduction.

III. Proposals

- A. To avoid an excessive phasing in amount, as a result of LRC not specifically being allowed as a deduction under the IFRS 17, it is proposed that the phase-in provisions be amended to include the LRC when comparing the IFRS 4 liabilities to the IFRS 17 liabilities.
- B. Amendments are proposed to section 28 to disregard amounts payable to or receivable from a cell owner that do not relate to a policy and to remove references to "third party risks".
- C. It is proposed that subsection (3)(bA) be introduced to address situations where the net LRC amount is a net asset, rather than a net liability.
- D. It is proposed that subsection 3C(cA) be introduced to address the tax treatment for a net creditor position, rather than a net debtor position.
- E. The phase-in provisions in subsection 3D will be amended to cater for any resultant negative positions as described under paragraph E of reasons for change.

IV. Effective date

The proposed amendments are deemed to have come into operation on 1 January 2023 and apply in respect of years of assessment commencing on or after that date.

4. INCOME TAX: BUSINESS (INCENTIVES)

4.1. DEDUCTION IN RESPECT OF CERTAIN ASSETS USED IN DOMESTIC PRODUCTION OF BATTERY ELECTRIC AND HYDROGEN-POWERED VEHICLES

[Applicable provisions: Sections 8, 12C, 13, 13*quat* and insertion of the new section 12V of the Act]

I. Background

To support the development of the automotive industry, government has – through the Department of Trade, Industry and Competition (“the *dtic*”) – implemented various incentives over time. These included the Motor Industry Development Programme (“MIDP”), which ran from 1995 until 2012 to bolster the automotive sector’s international competitiveness and global reintegration utilizing strategies such as import duty reductions and export incentives. In 2013, the MIDP was replaced with the Automotive Production and Development Programme (“APDP”), which focused on significantly growing production volumes in the specified motor vehicle industry and promoting value addition in the automotive component industry through stable and moderate tariffs, a local volume assembly allowance, a production incentive and grant funding. In line with the Automotive Masterplan, the APDP was updated in 2021 to APDP Phase 2 and outlines ambitious targets on vehicle production volumes and requirements for local content to sustain the sector’s growth.

II. Reasons for change

The *dtic* published the *Electric Vehicles White Paper* outlining its plan to transition the automotive industry from primarily producing Internal Combustion Engine (“ICE”) vehicles to a dual platform that includes the production of electric vehicles (“EVs”). The compelling reasons behind this transition include the urgent need to address environmental concerns and for countries to meet their national emission reduction commitments stemming from the Paris Agreement. Additionally, some of South Africa’s key export markets like the European Union (“EU”) and the United Kingdom (“UK”) have announced their intentions to ban the sale of new ICE vehicles by 2035. According to the *dtic*, this paradigm shift threatens the country’s strategic position in the global automotive export industry, since the majority of the vehicles manufactured in the country are currently exported to these countries.

Internationally, a number of countries have introduced various tax incentives to encourage investment in EVs production and related infrastructure. These incentives include accelerated depreciation allowances, tax holidays, lower corporate income tax rates for profits from EV and/or

battery production facilities, tax credits for EVs production, R&D tax incentives for EVs and battery research, reduced customs duties for imports of components as well as VAT reductions or exemptions.

III. Proposal

To encourage investment in the local production of electric and hydrogen-powered vehicles, Government proposes to introduce a 150 per cent investment allowance targeting new investments in the production of electric and hydrogen-powered vehicles in South Africa. This means motor vehicle manufacturers will be able to claim 150 per cent of qualifying investment spending on production capacity for battery electric and hydrogen-powered vehicles in the year the investment assets are brought into use.

A. Eligibility for the EVs investment allowance tax incentive

Any motor vehicle manufacturer investing in new and unused buildings, machinery, plant, implements, utensils and articles to be used for the production of battery electric or hydrogen-powered vehicles will qualify for the incentive.

The general overriding requirements for businesses to deduct a capital allowance will be applicable to companies wanting to make use of this incentive. These requirements are:

- will be carrying on a trade as a result of the bringing into use of the assets; and
- the business must have acquired and brought the asset into use (the business must own the asset).

Additional requirements will include:

- the capital assets will be used by the company mainly for the local production of battery electric and hydrogen-powered vehicles in South Africa;
- only new and unused assets qualify (including improvements), to ensure that assets will add to the production capacity for battery electric and hydrogen-powered vehicles that the company plans to produce; and
- assets must be brought into use for the first time on or after 1 March 2026 and before 1 March 2036.

B. Manufacturing assets used in the production of battery electric and hydrogen-powered vehicles eligible for the investment allowance

The incentive will be available for new and unused buildings , plant and machinery (including improvements) acquired and brought into use for the first time by the company on or after 1 March 2026. Assets acquired and brought into use before this date will not be eligible for the incentive (because an incentive in this instance would represent a deadweight loss).

Assets will qualify if they will be used mainly in the production of battery electric and hydrogen-powered vehicles in South Africa. While eligibility will be based on facts and circumstances, it is envisaged that eligible assets will be those that are necessary to set up a new facility or extend

an existing building to cater for the domestic production of battery electric vehicles and hydrogen-powered vehicles.

The cost of the asset for tax purposes will be limited to the lesser of the arm's length market value on the date of acquisition or the actual cost to the taxpayer. This is intended to ensure that taxpayers do benefit from an additional allowance on financing costs.

C. Recoupment of the investment allowance

Where an asset in respect of which an investment allowance was granted is disposed of within a period of 5 years from the date it was brought into use, there shall be included in the taxpayer's income 50 per cent of the cost of that asset, which has been recouped during the current year of assessment, in addition to the inclusion of amounts in terms of section 8(4)(a) of the Act, but limited to the total amount allowed to be deducted in respect of that asset.

D. Limitation of deduction in respect of assets granted a deduction in terms of section 12V of the Act

To ensure that there is no double deduction, taxpayers who qualify for the section 12V deduction will not be allowed to claim deductions under section 12C, section 13, and section 13~~quat~~ of the Act for assets brought into use during the period of the incentive.

IV. Effective date

The proposed incentive will come into effect on 1 March 2026 and applies in respect of assets brought into use on or after that date.

5. INCOME TAX: INTERNATIONAL

5.1. CLARIFYING THE TRANSLATION FOR HYPERINFLATIONARY CURRENCIES

[Applicable provisions: Sections 9D(2A) and 9D(6) of the Act]

I. Background

The meaning of "local currency" is given in section 9D(2A)(k) of the Act for purposes of gains or losses on foreign exchange transactions and for purposes of paragraph 43 of the Eighth Schedule to the Act that deals with assets disposed of or acquired in foreign currency. In general, the term "local currency" of a controlled foreign company (CFC) means the currency used for purposes of its financial reporting.

The net income of a CFC is determined in the currency used by that CFC for purposes of financial reporting (the functional currency) and is translated into the currency of the Republic at the average exchange rate for that year of assessment. Exchange items are treated as not attributable to any permanent establishment of the CFC if the currency used for financial reporting

is the currency of the country which has an official rate of inflation of 100 per cent or more throughout the foreign tax year.

II. Reasons for change

For hyperinflationary cases, the policy intention is that transactions in a third currency should be translated directly to Rand and not into the hyperinflationary functional currency and thereafter to Rand applying the average exchange rate. However, currently, the proviso to section 9D(6) of the Act deems those exchange items not to be attributable to a permanent establishment, and subsection (2A)(k) requires the hyperinflationary functional currency to be the local currency.

III. Proposal

In order to align the rules with the policy intention, it is proposed that section 9D(2A)(k) of the Act be amended to cater for a situation where the functional currency of a particular country has an official inflation rate of 100 per cent or more for the foreign tax year, by deeming the “local currency” to be the currency of the Republic.

IV. Effective date

The proposed amendment comes into operation on 31 December 2024 and applies in respect of foreign tax years of CFCs ending on or after that date.

5.2. CLARIFYING THE 18-MONTH PERIOD IN RELATION TO SHAREHOLDINGS BY GROUP ENTITIES

[Applicable provision: Paragraph 64B of the Eighth Schedule to the Act]

I. Background

The participation exemption under paragraph 64B of the Eighth Schedule to the Act requires a person to disregard any capital gain or capital loss resulting from the disposal of equity shares in a non-resident company if certain requirements are met. Amongst those requirements is that the person disposing of such equity shares should have held the interest for a period of at least 18-months prior to that disposal.

Prior to 2023, the participation exemption under paragraph 64B(4) of the Eighth Schedule to the Act required that a person must disregard any capital gain determined in respect of any foreign return of capital received by or accrued to that person from a “foreign company” as defined in section 9D of the Act. This rule applied when that person (whether alone or together with any other person forming part of the same group of companies as that person) holds at least 10 per cent of the total equity shares and voting rights in that company.

In 2023, an amendment was made to the Act to introduce an 18-months holding requirement to be applied to qualify for the participation exemption in respect of foreign return of capital from a foreign company.

II. Reasons for change

It has come to Government's attention that the 2023 amendment is not clear in certain instances such as where multiple group companies held the shares in the foreign company during an 18-months period. A clarification is required in this regard.

III. Proposal

It is proposed that the legislation be made clear that when it comes to a foreign return of capital to a company the 18-months requirement will apply in aggregate to the company and another company in the group of companies from which the shares were acquired during the 18month period.

IV. Effective date

The proposed amendment is deemed to have come into operation on 1 January 2024 and applies in respect of any foreign return of capital received or accrued on or after that date.

5.3. CLARIFYING THE REBATE FOR FOREIGN TAXES ON INCOME IN RESPECT OF CAPITAL GAINS

[Applicable provision: Section 6~~quat~~(1A)(a)(iii) in the Act]

I. Background

In order to prevent double taxation on capital gains of residents attributable to the disposal of assets situated outside the Republic, section 6~~quat~~(1A)(a)(iii) of the Act provides for residents to to be allowed a credit against South African tax for irrecoverable foreign taxes paid on these foreign sourced capital gains. The rebate is an amount equal to the sum of the irrecoverable foreign taxes payable in respect of the taxable capital gain (which is a percentage of the net capital gain due to the application of an inclusion rate) included in the resident's taxable income in respect of the foreign sourced gains. Where the resident's taxable capital gain and tax payable as determined in the foreign jurisdiction in terms of such jurisdiction's tax rules is higher than that determined in the Republic in terms of the Act, the resident will not be able to fully reduce the South African capital gains tax payable by the foreign tax payable on the same gain, resulting in double taxation.

II. Reasons for change

It has come to the Government's attention that section 6~~quat~~(1A)(a)(iii) is not aligned with the policy intention. A resident taxpayer that disposes of a capital asset in a foreign jurisdiction resulting in a capital gain that is subject to tax in that jurisdiction cannot utilise the full tax paid in that jurisdiction against the capital gains tax payable in South Africa on the same capital gain, resulting in double taxation.

III. Proposal

It is proposed that section 6~~quat~~ of the Act should be amended to explicitly allow the taxpayer to utilise the full foreign tax credit for the taxes paid in the foreign jurisdiction to the extent of the taxes paid in South Africa in respect of the taxable capital gain.

IV. Effective date

The proposed amendment comes into operation on 1 January 2025 and applies in respect of years of assessment commencing on or after that date.

5.4. ALIGNING TIMING OF THE SECTION 6QUAT REBATE AND TRANSLATION OF NET INCOME RULE FOR CFCs

[Applicable provision: Sections 6quat and 9D of the Act]

I. Background

Section 9D(6) of the Act stipulates the approach that should be followed in translating the amount of net income of a CFC, from the foreign currency used by the CFC for financial reporting purposes to the South African Rand. It requires the net income of a CFC to be determined in the functional currency of that CFC and to be translated into the currency of the Republic at the average exchange rate for the financial year of the CFC.

However, qualifying foreign taxes proved to be payable by a CFC are required to be translated to Rand at the average exchange rate for the year of assessment of the resident in which an amount of net income is included in taxable income.

II. Reasons for change

As stated above, foreign taxes are required to be translated to Rand at the average exchange rate for the year of assessment of a resident in which an amount of net income is included in taxable income. However, the Act requires the amount of net income of the CFC to be translated by applying the average exchange rate for the foreign tax year of the CFC. Therefore, a mismatch arises in the event that the year of assessment of the resident and the foreign tax year of the CFC are different periods.

III. Proposal

In order to address this anomaly, it is proposed that the Act be amended to align the translation rules for foreign taxes proved to be payable and the inclusion of CFC net income.

IV. Effective date

The proposed amendment comes into operation on 31 December 2024 and applies in respect of foreign tax years of CFCs ending on or after that date.

5.5. REFINING THE DEFINITION OF “EXCHANGE ITEM” FOR DETERMINING EXCHANGE DIFFERENCES

[Applicable provision: Section 24I of the Act]

I. Background

A resident company may enter into financial arrangements by acquiring preference shares in a non-resident company as well cross-currency swap agreements where interest payments and a principal amount in one currency are exchanged for a principal amount and interest payments in a different currency. Although the preference shares are in essence yielding an interest based return, they are not hybrid equity instruments under section 8E of the Act. For financial reporting purposes by the resident company, the periodic payments in respect of the financial arrangement in relation to the foreign dividends received on the preference shares, interest paid on the cross-currency swap and interest received on the cross-currency swap are disclosed based on its economic substance as financial assets.

II. Reasons for change

A preference share that is paying a “dividend” that is in essence an interest yield is not currently treated as debt for purposes of section 24I. Furthermore, the financial arrangement depicted above creates a mismatch that results in a tax leakage as the exchange differences on the debt obligation are taxable under section 24I of the Act while the exchange differences in respect of the preference shares are not taxable under section 24I of the Act as there is no exchange item.

III. Proposal

To address the tax leakage associated with these preference shares and financial arrangements, it is proposed that the definition of “exchange item” be extended to include preference shares, as defined in section 8EA(1).

IV. Effective date

The proposed amendment comes into operation on 1 January 2025 and applies in respect of years of assessment commencing on or after that date.

5.6. REVIEWING THE TAX TREATMENT OF EXCHANGE DIFFERENCES ON FOREIGN EXCHANGE TRANSACTIONS WHERE TRADE IS NOT CARRIED ON

[Applicable provision: Section 24I of the Act]

I. Background

Section 20 of the Act enables companies to set off their balance of assessed losses carried forward from the preceding tax year against their income if the trading requirement in section 20 of the Act is met. If that is the case, any unutilised assessed loss balance may be carried forward to future years of assessment to be set off against future income.

However, a company that does not carry on trade during a year of assessment forfeits the right to carry forward and utilise its assessed loss from the immediate preceding year of assessment.

In general, section 24I of the Act deals with the income tax treatment of foreign exchange gains and losses on 'exchange items' as well as the premiums or like consideration received or paid in respect of foreign currency option contracts and any consideration paid to acquire foreign currency option contracts.

II. Reasons for change

Currently, the legislation requires that exchange differences and the other specified amounts be included or deducted from income and companies are afforded this treatment irrespective of whether they are trading or not. However, where a company is not trading, it is not allowed to set off its balance of assessed loss brought forward from the previous year of assessment. Therefore, exchange losses and premiums and consideration paid for foreign currency option contracts in previous years of assessment that form part of the assessed loss are forfeited. As a result, the company may be taxed on its foreign exchange gains without taking into account exchange losses and the other specified expenses forfeited in previous years of assessment due to not trading.

III. Proposal

It is proposed that foreign exchange transaction rules be amended to ring-fence expenditure in respect of exchange items for companies that are not trading. The net expenditure is deemed to be an exchange loss in the immediately succeeding year of assessment, which is available to neutralise exchange gains as well as premiums or like consideration received in terms of foreign currency option contracts.

IV. Effective date

The amendment comes into operation on 1 January 2025 and applies in respect of years of assessment commencing on or after that date.

6. VALUE ADDED TAX

6.1. PROVIDING VAT RELIEF FOR NON-RESIDENT LESSORS OF PARTS OF SHIPS, AIRCRAFT OR ROLLING STOCK REQUIRED TO DEREGISTER AS A RESULT OF RECENT AMENDMENTS TO THE VAT ACT

[Applicable provisions: New proviso to section 8(2) of the Value-Added Tax Act No. 89 of 1991 ("the VAT Act")]

I. Background

The definition of "enterprise" in paragraph (a) of section 1(1) of the VAT Act means, in the case of a vendor, any enterprise or activity which is carried on continuously or regularly by any person in the Republic of South Africa (the Republic) or partly in the Republic and in the course or furtherance of which goods or services are supplied to any other person for a consideration, whether for a profit or not.

Notwithstanding the above, effective from 1 January 2023, where any person is neither a resident of the Republic, nor a registered vendor and that person solely supplies or intends to supply to a resident recipient the use or the right of use of ships, aircraft, rolling stock or parts directly in connection thereto under a rental agreement, that activity shall (subject to certain conditions), as per proviso (xiii) of the definition of "enterprise" in section 1(1) in the VAT Act, be deemed not to be the carrying of an enterprise, irrespective of whether those goods are supplied for use in the Republic.

II. Reasons for change

Before the definition of "enterprise" was amended on 1 April 2021, with the aim of effectively excluding foreign lessors of ships, aircraft and rolling stock from registering as VAT vendors in the Republic, if certain requirements were met, the Commissioner for the South African Revenue Service (SARS) (the Commissioner) would issue VAT rulings, under section 72 of the VAT Act, to foreign lessors of ships, aircraft and rolling stock, allowing those lessors not to register for VAT purposes in the Republic.

With the amendments to section 72 of the VAT Act effective 1 January 2022, the Commissioner was no longer able to issue the aforementioned rulings to foreign lessors of ships, aircraft and aircraft engines. This resulted in the foreign lessors of any items not specifically listed in proviso (xiii) to the definition of "enterprise" in section 1(1) of the VAT Act being required to register for VAT purposes.

With effect from 1 January 2023, the definition of "enterprise" in section 1(1) of the VAT Act has been amended to further exclude foreign lessors of parts to ships, aircraft and rolling stock (such as aircraft engines), subject to certain requirements. The consequence of this amendment is therefore that foreign lessors of aircraft engines who are registered were now required to de-register for VAT.

Where the foreign lessor was required to de-register due to the introduction or any subsequent amendment to proviso (xiii) to the definition of "enterprise", section 8(2) of the VAT Act would be triggered. Having regard to the fact that the foreign lessor would not have been entitled to deduct input tax on the importation of the engine into the Republic (see paragraph (cc) of proviso (xiii) to the definition of "enterprise" in section 1(1) of the VAT Act), it would be incorrect to require the payment of output tax on the ceasing of an enterprise solely as a result of the change in legislation.

III. Proposal

Previously, foreign lessors of parts of ships, aircraft or rolling stock were required to register for VAT since they were not covered under the proviso (xiii) exclusion in the definition of "enterprise". However, the amendment to the VAT Act that was effective from 1 January 2023 implied that such foreign lessors were now required to deregister due to the addition of the words "or parts directly in connection thereto" to the proviso (xiii) to the definition of "enterprise" in section 1(1) of the VAT Act. This resulted in an unintended consequence of such vendors now facing an output tax liability under section 8(2) of the VAT Act, which was purely as a result of the legislation being amended. It is proposed that the VAT Act be amended to provide relief from this unintended consequence.

IV. Effective date

The proposed amendment is deemed to have come into operation on 1 January 2023.

6.2. CLARIFYING THE VAT TREATMENT OF THE MUDARABA ISLAMIC FINANCING ARRANGEMENT

[Applicable provision: Section 8A of the VAT Act]

I. Background

Mudaraba contemplates a scenario where funds are deposited with the bank by a client. The bank in turn invests the funds deposited by the client in other Sharia arrangements. The client bears the risk of loss in respect of the funds and any return is divided between the client and the bank as agreed upon at the time of the inception of the contract between the parties. Income received by or accrued to a client in terms of a Mudaraba, as defined in section 24JA of the Act, with very specific qualification criteria, is deemed to be interest for income tax purposes. The Mudaraba product is akin to a conventional transaction account or investment product (e.g. a fixed deposit).

II. Reasons for change

Section 8A of the VAT Act, which addresses Sharia-compliant financing arrangements deals with Murabaha and diminishing Musharaka products but not Mudaraba arrangements. This creates uncertainty as to whether Mudaraba profit share payments amount to consideration for taxable, exempt, or non-supplies for VAT purposes and potential misalignment with section 24JA of the IT Act (as amended) which determines that such amounts are deemed to be interest for income tax purposes.

In the case of a conventional finance structure, the supply of credit would be exempt under section 2(1)(f) of the VAT Act. In this regard, interest charged on the said supply of credit would not be subject to VAT whereas any “fee” would be subject to VAT under section 7 of the VAT Act, as the proviso to section 2(1) of the VAT Act takes any fee as consideration out of the exemption.

III. Proposal

To ensure that there is parity between Sharia-compliant financing arrangements and no unanticipated VAT charge in any Mudaraba product, it is proposed that the return of the profit from this product be exempt from VAT.

IV. Effective date

The proposed amendment comes into operation on 1 April 2025.

6.3. CLARIFYING THE VAT TREATMENT OF SUPPLY OF SERVICES TO NON-RESIDENT SUBSIDIARIES OF COMPANIES BASED IN THE REPUBLIC

[Applicable provision: Section 1 of the VAT Act: definition of “resident of the Republic”]

I. Background

The VAT system in the Republic of South Africa (the Republic/South Africa) is destination based. Goods or services consumed in the Republic are subject to VAT at the standard rate. Exports to other countries from the Republic are generally zero-rated and the importation of goods or

services into the Republic are generally subject to VAT at the standard rate (all subject to certain exclusions or exceptions).

In terms of section 11(2)(f) of the VAT Act, where services are supplied to non-residents of the Republic, such services are presumed to be consumed outside the Republic and attract VAT at the zero rate, unless the services are supplied directly in connection with fixed or movable property in the Republic at the time the services are rendered, or if the non-resident or any other person to whom the services are supplied is present in the Republic at the time the services are rendered, subject to certain exceptions.

II. Reasons for change

It is evident that section 11(2)(f) of the VAT Act finds application only to services supplied to persons who are non-residents of the Republic. However, situations arise in the case of, for example, foreign subsidiaries of South African companies, where the subsidiary is incorporated in a foreign country and has a fixed and permanent place of business in the foreign country with no presence in the Republic but is nevertheless a “resident of the Republic” as defined in section 1(1) of the VAT Act. This is due to the fact that this definition makes reference to the definition of “resident” in section 1 of the Income Tax Act. Paragraph (b) of the definition in the Act deems a person, other than a natural person, to be a resident of the Republic if it has its place of effective management in the Republic. As such, any service supplied to such foreign subsidiary by the South African company, being a vendor, does not qualify for the zero rate under section 11(2)(f) of the VAT Act, despite the fact that the services may be consumed wholly outside the Republic. Furthermore, because these foreign subsidiaries have no activities in the Republic, they are not conducting an enterprise and cannot register as vendors in the Republic. The effect is that the VAT charged on these supplies becomes a cost to these businesses.

The provisions of section 8(9) and 11(2)(o) of the VAT Act also do not apply because the foreign subsidiary is not a branch of a South African company as envisaged in paragraph (ii) of the proviso to the definition of “enterprise” in section 1(1) of the VAT Act, but a separate legal entity. This is contrary to the operation of the VAT system which seeks to tax only consumption in the Republic and results in unintended VAT costs in the hands of the foreign subsidiary.

III. Proposal

In order to correct the unintended consequence explained above, it is proposed that the VAT Act be amended to exclude such foreign subsidiaries from the definition of “resident of the Republic” in section 1(1) of the VAT Act.

IV. Effective date

The proposed amendment comes into operation on 1 January 2025.

6.4. REVIEWING THE FOREIGN DONOR FUNDED PROJECT REGIME

[Applicable provision: Section 50 of the VAT Act]

I. Background

In terms of section 1(1) of the VAT Act, a foreign donor funded project (“FDFP”) means a project established in terms of an official development assistance agreement to supply goods or services to beneficiaries, to which the government of the Republic of South Africa (the Republic) is a party.

An implementing agency, as per section 1(1) of the VAT Act, means:

- the government of the Republic in the national, provincial or local sphere; or
- any institution or body established and appointed by a foreign government, as contemplated in section 10(1)(bA)(ii) of the Income Tax Act; or
- any person who has entered into a contract directly with a party contemplated in the above paragraphs to implement, operate, administer or manage an FDFP.

Effective from 1 April 2020, each FDFP is regarded as a separate enterprise and should be registered as a separate branch of the implementing agency’s own VAT registration in terms of section 50(2A) of the VAT Act.

II. Reasons for change

In practice, a foreign donor may fund a research project through multiple recipients by awarding the funds to a prime recipient and allocating sub-awards to more than one recipient as sub-awardees. Applying the law as it stands will lead to multiple VAT registrations concerning the same project. Further, some implementing agencies “implement, operate, administer or manage” multiple FDFPs and are required to register multiple branches for VAT purposes. Some institutions manage hundreds of FDFPs.

These administrative concerns have been raised by taxpayers, since they are leading to inefficiencies in applications and unnecessary burdens for both taxpayers and SARS.

The establishment of the FDFP is generally only for a set period, for example 3 years, for the project to be completed. Recipients will therefore constantly have to register new projects and deregister projects once completed.

In summary, the FDFP legislation introduced with effect from 1 April 2020 has resulted in an increased administrative burden for recipients of foreign donor funding, which led to additional risk and costs associated with VAT compliance.

The reason for originally requiring separate VAT branch registrations was to limit the risk of abuse of the FDFP provisions. Based on subsequent market research and discussions, it was highlighted that the implementing agency would, by agreement, be required to keep detailed records of all funding received and the manner those funds were expensed or used for each FDFP project separately through a comprehensive coding system. Implementing agencies are therefore able to provide SARS with all the relevant information regarding each FDFP separately. This, together with the fact that an FDFP must still be approved by National Treasury, addresses the previous

concerns regarding the risk of abuse and hence, separate branch registrations for each FDFP are not required.

III. Proposal

To ease the administrative burden on the implementing agents, it is proposed that implementing agents register one branch for VAT purposes that encompasses all FDFPs that such implementing agency is responsible to “implement, operate, administer or manage.” Further, implementing agents may elect to merge all their FDFPs that were registered or required to be registered before 1 January 2025 or continue as separate enterprises until the project is concluded. In the event that the implementing agent elects to merge all the FDFPs branches into the single branch, the individual branches and the single branch will be deemed to be one and the same person so that there are no unintended VAT consequences where all the assets are retained within the FDFP project as reflected in the single branch. In the event that all the assets are not retained, the normal provisions of the VAT Act will apply.

IV. Effective date

The proposed amendment comes into operation on 1 January 2025.

6.5. VAT CLAW-BACK ON IRRECOVERABLE DEBTS SUBSEQUENTLY RECOVERED

[Applicable provision: Section 22(2) of the VAT Act]

I. Background

Section 22(1) of the VAT Act makes provision for a vendor to deduct VAT on amounts written off as irrecoverable in respect of taxable supplies, in respect of which the output tax was previously declared on a tax return. In the event that a vendor subsequently recovers any amount previously written-off, section 22(2) of the VAT Act provides for a claw-back to the extent of the VAT so recovered.

Currently, section 22(2) of the VAT Act only allows for a claw-back of a deduction made as referred to in section 22(1) of the VAT Act. However, the introduction of section 22(1A) of the VAT Act in 1997, specifically allows a deduction to the recipient of a transfer of account receivables at face value, on a non-recourse basis, where any amount of such receivable has been written off by the recipient, limited to the amount that the recipient has paid for the face value of the account receivable that was transferred to the recipient.

II. Reasons for change

Proviso (iv)(aa) to section 22(1) of the VAT Act specifically denies a transferor of an account receivable at face value, on a non-recourse basis, to make a deduction based on the transfer. In terms of the current provisions of the VAT Act, a recipient of an account receivable at face value on a non-recourse basis is entitled to a deduction of the tax amounts written off as irrecoverable. However, the VAT Act does not provide for any claw-back of these deductions on amounts subsequently recovered.

III. Proposal

It is proposed that the claw-back provided by section 22(2) of the VAT Act should be extended to any tax amount written off by such a recipient, which is subsequently recovered, as envisaged under section 22(1A) of the VAT Act.

IV. Effective date

The proposed amendment comes into operation on 1 April 2025.

7. CARBON TAX ACT

7.1. ALIGNING SCHEDULE 1 OF THE CARBON TAX ACT WITH THE UPDATED GREENHOUSE GAS EMISSIONS METHODOLOGICAL GUIDELINES

[Applicable provision: Schedule 1 of the Carbon Tax Act 15 of 2019 (“the Carbon Tax Act”)]

I. Background

The Carbon Tax Act contains Schedule 1 that sets out the default emission factors for fuel combustion (stationary and non-stationary), fugitive and industrial process emissions. The emission factors and net caloric values are used to calculate the emission factors and total emissions for a company for the different activities under Section 4 of the Carbon tax Act.

In October 2022, the Department of Forestry Fisheries and the Environment (DFFE) gazetted the Amended Methodological Guideline for Quantification of Greenhouse Gas Emissions (Gazette No 47257 dated 7 October 2022). Schedule 1 of the Act is aligned with the emission factor tables contained in Annexures A, B and C of the Methodological Guidelines for Quantification of Greenhouse Gas Emissions. The updated Technical Guidelines included updated tables on the Country Specific Carbon Dioxide Emission Factors for stationary and non-stationary combustion emissions. This was based on studies conducted by the DFFE in 2021/22 on Liquid Fuels and Gas and Cement.

II. Reasons for change

In Budget 2023, amendments were proposed to Schedule 1 of the Carbon Tax Act to include new tables on the country specific CO₂ emissions and fugitive emissions factors. The tables which were included in the Taxation Laws Amendment Bill of 2023 were withdrawn after public consultation on the TLAB to allow for further consultations with DFFE on the application of the tier

2 emission factors and determination of the appropriate net calorific values to be used for the different fuel types for calculation of greenhouse gas emissions.

To ensure alignment between the Carbon Tax Act and the Department of Forestry, Fisheries and the Environment's Methodological Guidelines for Quantification of Greenhouse Gas Emissions (the Methodological Guidelines), changes to the carbon dioxide emission factors and net calorific values for the relevant fuel types are necessary, as announced in the 2023 Budget. Updates to the Schedule 1 fuel combustion emissions factors and net calorific values and additional of new fuel types are necessary.

III. Proposal

As stated above, to ensure alignment between the Carbon Tax Act and the Department of Forestry, Fisheries and the Environment's Methodological Guidelines, it is proposed that the Schedule 1 fuel combustion emission factors and net calorific values are updated, and new fuel types added, as set out in the tables below.

Table 1: Proposed Changes to Schedule 1 Stationary Fuel Emission Factors						
	FUEL COMBUSTION EMISSION FACTORS STATIONARY SOURCE CATEGORY			DEFAULT NET CALORIFIC VALUE (TJ/TONNE)		
FUEL TYPE	CO₂ (KGCO₂ /TJ)	CH₄ (KGCH₄ /TJ)	N₂O (KGN₂O /TJ)	NET CALORI FIC VALUE	LOWER LIMIT OF THE 95% CONFIDEN CE INTERVAL	UPPER LIMIT OF THE 95% CONFIDEN CE INTERVAL
Changes to existing fuel types						
Aviation Gasoline	65 752			0.0475		0.0475
Diesel	74 638			0.043		0.0433
Heavy Fuel Oil (residual fuel oil)	73 090			0.043		
Jet Kerosene	73 463			0.0433		
Liquefied Petroleum Gas (LPG)	64 852			0.0463		
Paraffin	64 640			0.049		0.0490
Petrol	72 430			0.0439		
Other bituminous coal				0.0192	0.0192	
New fuel types						

Acetylene	67 870	N/A	N/A	0.04981 8	N/A	N/A
Refuse Derived Fuel	83 000	30	4	0.01	0.007	0.018
Sawdust	0	30	4	0.0116	0.0059	0.023
Waste Tyres	85 000	1	1.5	0.0325	N/A	N/A
Methane Rich Gas (MRG)	54 888	1	0.1	0.048	0.0465	0.0504
Deletion						
Diesel	74 100	3	0.6	0.0381	0	0
*The current emission factors and net calorific values contained in Schedule 1 of the Carbon Tax Act are applicable where the blocks in the table are blank.						

Table 2: Proposed Changes to Schedule 1 Non-Stationary Fuel Emission Factors

FUEL TYPE	FUEL COMBUSTION EMISSION FACTORS NON-STATIONARY SOURCE CATEGORY			DEFAULT NET CALORIFIC VALUE (TJ/TONNE)		
	CO ₂ (KGCO ₂ /TJ)	CH ₄ (KGCH ₄ /TJ)	N ₂ O (KGN ₂ O/TJ)	NET CALORIFIC VALUE	LOWER LIMIT OF THE 95% CONFIDENCE INTERVAL	UPPER LIMIT OF THE 95% CONFIDENCE INTERVAL
Changes to existing fuel types						
Aviation Gasoline	65 752	0.5	2	0.0475		0.0475
Diesel	74 638			0.0430		
Heavy Fuel Oil (residual fuel oil)	73 090			0.0473		0.0473
Jet Kerosene	73 463			0.0433		
Liquefied Petroleum Gas (LPG)	64 852			0.0463		
Paraffin	64 640			0.0490		0.0490
Petrol	72 430			0.0439		
Diesel-Rail		4.15				
Additional fuel types						
Biodiesel	0	4.15	28.6	0.027	N/A	N/A
Biogasoline	0	3.5	5.7	0.027	N/A	N/A

Diesel-Offroad	74 100	3.9	3.9	0.0381	N/A	N/A
Petrol – oxidation catalyst	69 300	25	8	0.0443	N/A	N/A
Petrol uncontrolled	69 300	33	3.2	0.0443	N/A	N/A
Refuse Derived Fuel	83 000	N/A	N/A	N/A	N/A	N/A
Sawdust	0	N/A	N/A	N/A	N/A	N/A
Waste Tyres	85 000	N/A	N/A	N/A	N/A	N/A
Methane Rich Gas (MRG)	54 888	92	3	0.048	0.0465	0.0504

* The current emission factors and net calorific values contained in Schedule 1 of the Carbon Tax Act are applicable where the blocks in the table are blank.

IV. Effective date

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

7.2. INCLUDING DEFAULT EMISSION FACTORS FOR ADDITIONAL FUGITIVE EMISSIONS SOURCE CATEGORIES

[Applicable provisions: Schedule 1 and Schedule 2 of the Carbon Tax Act 15 of 2019 (“the Carbon Tax Act”)]

I. Background

The Carbon Tax Act contains Schedule 1 sets out the default emission factors for the calculation of fuel combustion (stationary and non-stationary), fugitive and industrial process greenhouse gas emissions. The emission factors and net caloric values are used to calculate the emission factors and total emissions for a company for the different activities under Section 4 of the Carbon tax Act.

In October 2022, the Department of Forestry Fisheries and the Environment (DFFE) gazetted the *Amended Methodological Guideline for Quantification of Greenhouse Gas Emissions* (Gazette No 47257 dated 7 October 2022). Schedule 1 of the Act is aligned with the emission factor tables contained in Annexures A, B and C of the Methodological Guidelines for Quantification of Greenhouse Gas Emissions. The updated guideline contained a new table B3 on Default Emission Factors for fugitive emissions from coal mining, oil and gas operations based on the 2019 Intergovernmental Panel on Climate Change (IPCC) refinements study on emission factors.

II. Reasons for change

The Methodological Guidelines included additional default emission factors for fugitive emissions from coal mining, oil and gas operations. In Budget 2023, amendments were proposed to Schedule 1 to include new tables on the country specific CO₂ emissions and fugitive emissions factors. The tables which were included in the Taxation Laws Amendment Bill of 2023 were withdrawn after public consultation on the TLAB to allow for further consultations with DFFE. To

ensure alignment between the Carbon Tax Act and the methodological guidelines, changes to the Schedule 1 fugitive emissions tables and to Schedule 2 are necessary to include the new fugitive emission factors and activities.

III. Proposal

- a) It is proposed that the fugitive emissions table in Schedule 1 of the Carbon Tax Act is updated to add the following activities and emissions factors for the relevant emission source categories based on the 2019 refinements to the 2006 Intergovernmental Panel on Climate Change Guidelines for National Greenhouse Gas Inventories.

Table 1: Proposed Changes to Schedule 1 Fugitive Emission Factors

IPCC CODE	SOURCE CATEGORY ACTIVITY	FUGITIVE EMISSION FACTORS		
		CO ₂	CH ₄	N ₂ O
1B1	Solid Fuels (M³/tonne)			
1B1cii	Charcoal production (per charcoal produced (tonne GHG/tonne charcoal	0	0.0000403	8*10 ⁻⁸
1B1Ciii	Biochar production (per biochar produced) (tonne GHG/tonne biochar)	0	0.00003	ND
1B1ci	Coke production (per coke produced) (tonne GHG/tonne coke)	ND	4.9*10 ⁻⁸	ND
1B1civ	Coal to liquids (tonne GHG/TJ total output)			
1B1civ	Coal to liquids – syngas	55	0.0061	0
1B1civ	Coal to liquids – syngas H ₂	55	0.0061	0
1B1civ	Coal to liquids – SNG (synthetic natural gas)	78	0.0061	0
1B1civ	Gas to liquids (tonne GHG/TJ natural gas input)	12.73	ND	ND
	Oil transport (tonne/10³M³ oil loaded onto tanker ships)			
1B2ai	Loading offshore production on tanker ships – without VRU – All	ND	0.065	ND
1B2ai	Loading offshore production on tanker ships – with VRU – All	ND	0.040	ND
1B2a	Oil refining (tonne/10 ³ M ³ oil refined)			
1B2aiii4	All (the factors include fugitive equipment leaks, flaring, storage of crude oil, handling and calcination)	5.85	2.6*10 ⁻⁶ to 4.1*10 ⁻⁵	8.77*10 ⁻⁵

- b) To provide further clarification on the inclusion of new fugitive emissions activities, it is proposed that Schedule 2 of the Carbon Tax Act is amended to insert new activities in

relation to IPCC code for 1B1civ: Coal to Liquids and Gas to Liquids. Schedule 2 contains fugitive emissions activities, and the allowances related to the activities. The insertion of the Coal to Liquids and Gas to Liquids activities will give clarity to taxpayers on the allowances that are applicable to these activities.

Table 2: Proposed changes to Schedule 2 Fugitive Emissions Activities

1B1civ	Coal to liquids									
1B1civ	Coal to liquids – syngas	none	60	0	10	10	5	5	5	95
1B1civ	Coal to liquids – syngas(H2)	none	60	0	10	10	5	5	5	95
1B1civ	Coal to liquids – SNG (synthetic natural gas)	none	60	0	10	10	5	5	5	95
1B1civ	Gas to liquids (Tonne Ghg/Tj Natural Gas Input)	none	60	0	10	10	5	5	5	95

IV. Effective date

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

7.3. RENEWABLE ENERGY PREMIUM DEDUCTION

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

I. Background

In terms of section 6(2) of the Carbon Tax Act, electricity generators including state-owned entities (Eskom) can claim the renewable energy premium deduction in respect of renewable energy purchased during the tax period in terms of the power purchase agreements concluded as part of the Renewable Energy Independent Power Producers Procurement Programme.

However, Eskom is undergoing a process of separating it into three companies (namely, generation, transmission and distribution) in accordance with the document titled Road Map for Eskom in a Reformed Electricity Supply Industry issued by the Department of Public Enterprises in 2019.

Due to the restructuring of the electricity sector and separation of the generation, transmission and distribution functions, the power purchase agreements concluded as part of the Renewable Energy Independent Power Producers Procurement Programme will be transferred to the National Transmission Company of South Africa (NTCSA) when it commences operations. NTCSA has been established as wholly owned subsidiary of Eskom.

However, the carbon tax liability arising from greenhouse gas emissions in category 1A1a will remain with the generation function of the state-owned entity.

II. Reasons for change

In December 2021, approval was granted to Eskom in terms of sections 54(2)(c) and 54(2)(d) of the PFMA for the operationalisation of the NTCSA through the proposed disposal of Eskom's transmission business to the NTCSA. As the generation, transmission and distribution functions of Eskom are separated, the power purchase agreements will be transferred to the NTCSA when it commences operations. To provide certainty to Eskom, a technical clarification is necessary to ensure that the relevant electricity purchases made under the power purchase agreements ceded to the NTCSA are eligible for the deduction against their carbon tax liability until 31 December 2025.

III. Proposal

Based on the operationalisation of the NTCSA, it is proposed that Section 6 of the Carbon Tax Act is amended to allow electricity purchases under power purchase agreements ceded to the NTCSA to be eligible for the renewable energy premium deduction.

IV. Effective date

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

8. CLAUSE BY CLAUSE

CLAUSE 1

Income Tax Act: Amendments to section 1(1)

Subclause (1)(a) and (e): See notes on **DEDUCTION IN RESPECT OF CERTAIN ASSETS USED IN DOMESTIC PRODUCTION OF BATTERY ELECTRIC AND HYDROGEN-POWERED VEHICLES**

Subclause (1)(b): The proposed amendment to the definition of “company” is a clarification that seeks to add the reference to “portfolio of a hedge fund collective scheme” to ensure that foreign hedge fund collective investment schemes are treated as a company for income tax purposes.

Subclause (1)(c): See notes on **REVIEWING THE CONNECTED PERSON DEFINITION IN RELATION TO PARTNERSHIPS**

Subclause (1)(d): The proposed amendment to the definition of “connected person” seeks to renumber subitems (i) and (ii) as subitems (A) and (B) to correct the consecutive numbering sequence.

Subclause (1)(f): See notes on **TAXATION ISSUES INVOLVING UNLISTED PROPERTY INDUSTRY**

Subclause (1)(g): See notes on **AMENDING THE DEFINITION OF “REMUNERATION PROXY” IN SECTION 1**

Subclause (1)(h) and (i): See notes on **TRANSFERS BETWEEN RETIREMENT FUNDS BY MEMBERS WHO REACHED NORMAL RETIREMENT AGE BEFORE RETIREMENT DATE**

Subclause (1)(j): The proposed amendment is consequential upon the implementation of the two-pot retirement system.

Sub-clause (k): The proposed amendment to the definition of “trust” seeks to add a reference to a portfolio of a collective investment scheme and a portfolio of a hedge fund collective investment scheme to the definition to clarify their type of taxpayer category and the administration of their tax affairs..

CLAUSE 2

Income Tax Act: Amendments to section 6*quat*

Subclause (1)(a) and (b): See notes on **CLARIFYING THE REBATE FOR FOREIGN TAXES ON INCOME IN RESPECT OF CAPITAL GAINS**

Subclause (c): See notes on **CLARIFYING THE TIMING OF THE REBATE AND TRANSLATION OF NET INCOME RULE FOR CFCs**

CLAUSE 3

Income Tax Act: Amendments to section 7

The proposed amendment to subsection (11) seeks to align the Act with amendments made by the Pension Funds Amendment Act, 2024 (Act 31 of 2024) in light of the fact that section 37D(1)(d)(iB) of the Pension Funds Act now refers to interim maintenance orders granted by the court in terms of rule 43 of the High Court rules or rule 58 of the Magistrates' Court rules made under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No.1 of 1985).

CLAUSE 4

Income Tax Act: Amendments to section 7C

Subclause (1)(a): The proposed amendment clarifies that the provisions of section 7C of the Act also apply to loans made to companies by adding that a donation is deemed to have been made on the last day of the year of assessment of not only a trust but a company too.

Subclause (1)(b): See notes on **CLARIFYING ANTI-AVOIDANCE RULES FOR LOW-INTEREST OR INTEREST-FREE LOANS TO TRUSTS**

CLAUSE 5

Income Tax Act: Amendments to section 8

See notes on **DEDUCTION IN RESPECT OF CERTAIN ASSETSUSED IN DOMESTIC PRODUCTION OF BATTERY ELECTRIC AND HYDROGEN-POWERED VEHICLES**

CLAUSE 6

Income Tax Act: Amendment to section 8EA

Subclause (1)(a): See notes on **THIRD-PARTY BACKED SHARES: EXTENDING THE DEFINITION OF “ENFORCEMENT RIGHT” TO A CONNECTED PERSON**

Subclause (1)(b) and (c): See notes on **THIRD-PARTY BACKED SHARES: EXTENDING EXCLUSIONS TO THE OWNERSHIP REQUIREMENT**

CLAUSE 7

Income Tax Act: Amendment to section 9D

Subclause (1)(a): See notes on **CLARIFYING THE TRANSLATION FOR HYPERINFLATIONARY CURRENCIES**

Subclause (1)(b) and (c): These proposed amendment changes the word “attributable” to “effectively connected”, to clarify the nexus of an asset to a permanent establishment.

CLAUSE 8

Income Tax Act: Amendments to section 9H

The proposed amendment seeks to clarify how an interest in a South African retirement fund must be treated when a member of such a fund ceases to be a resident. From a policy point of view, the value of the member’s interest in the fund should not be subject to capital gains tax on exit, since this will result in potential double taxation when the member withdraws, dies or retires from the fund by virtue of the lump sum tables published in the annual Rates and Monetary Amounts Acts or in the form of an annuity (paragraph (a) of the definition of “gross income” in the Act). Such amounts are deemed to be from a South African source under section 9(2)(i) of the Act and thus remain within South Africa’s taxing jurisdiction, despite the member becoming a non-resident. It is therefore proposed that interests in SA retirement funds be excluded from the ambit of the exit charge in a new paragraph (g) of section 9H(4) of the Act.

CLAUSE 9

Income Tax Act: Amendments to section 11

See notes on **PAYROLL AMENDMENTS AND REFUNDS MADE IN THE CURRENT YEAR**

CLAUSE 10

Income Tax Act: Amendments to section 12C

See notes on **DEDUCTION IN RESPECT OF CERTAIN ASSETSUSED IN DOMESTIC PRODUCTION OF BATTERY ELECTRIC AND HYDROGEN-POWERED VEHICLES**

CLAUSE 11

Income Tax Act: Amendments to section 12E

The proposed amendment to subsection (3B) seeks to correct the grammatical error to correct the wording “an allowance” to “a deduction” as a deduction exceeding the cost of the asset is allowed.

CLAUSE 12

Income Tax Act: Insertion of section 12V

See notes on **DEDUCTION IN RESPECT OF CERTAIN ASSETS USED IN DOMESTIC PRODUCTION OF BATTERY ELECTRIC AND HYDROGEN-POWERED VEHICLES**

CLAUSE 13

Income Tax Act: Amendments to section 13

Subclause (1)(a): The proposed amendment to the heading of section 13 seeks to add the words “or research and development” to clarify the scope of the section.

Subclause (1)(b): The proposed amendment to subsection (1) for the words preceding paragraph (b) deletes the obsolete reference to subsection (7), which was repealed.

Subclause (1)(c): The proposed amendment seeks to remove the “or” at the end of paragraphs (b) and (d) as a matter of style and consistency.

Subclause (1)(d): The proposed deletion of subsection (1)(e) seeks to delete a now obsolete provision of the Act that allowed for a 2% allowance on any improvements commencing no later than the thirty-first of March 1971. As such, any taxpayer’s ability to claim the allowance ended in March 2021.

Subclause (1)(e): The proposed amendment of subsection (1)(f) seeks to add the words “research and development” to clarify the scope of the section.

Subclause (1)(f): The proposed amendment to subsection (1) for paragraph (b) of the proviso deletes an obsolete reference to paragraph (c) of that proviso which was repealed.

Subclause (1)(g): The proposed amendment to subsection (2) deletes an obsolete reference to subsection (7), which was repealed.

Subclause (1)(h): See notes on **DEDUCTION IN RESPECT OF CERTAIN ASSETS USED IN DOMESTIC PRODUCTION OF BATTERY ELECTRIC AND HYDROGEN-POWERED VEHICLES**

CLAUSE 14

Income Tax Act: Amendments to section 13*bis*

The proposed deletion of subsections (2), (3), (4) and (9) seeks to delete obsolete provisions of the Act that allowed for an additional grading allowance on any building or improvements thereon commencing on or after 1 January 1964 but before 4 June 1988. Based on the maximum continuous allowance period as contemplated in this section (25 years), any taxpayer’s ability to claim that allowance ended in 2013.

CLAUSE 15

Income Tax Act: Amendments to section 13*quat*

See notes on **DEDUCTION IN RESPECT OF CERTAIN ASSETS USED IN DOMESTIC PRODUCTION OF BATTERY ELECTRIC AND HYDROGEN-POWERED VEHICLES**

CLAUSE 16

Income Tax Act: Amendments to section 20

Subclause (1)(a): The proposed amendment seeks to delete a superfluous “.” at the end of subsection (1)(a)(iii).

Subclause (1)(b): See notes on **RELAXING THE ASSESSED LOSS RESTRICTION RULE UNDER CERTAIN CIRCUMSTANCES**

CLAUSE 17

Income Tax: Amendments to section 23

The proposed amendment seeks to broaden the prohibition of the deduction of any taxes imposed under the Income Tax Act to also include any interest imposed under the Income Tax Act.

CLAUSE 18

Income Tax Act: Amendments to section 23M

Subclause (a) The proposed amendment to subsection (3) seeks to clarify that the reduction in the calculation is limited to deductible interest.

Subclause (b) The proposed amendment to subsection (4) seeks to clarify that there is a deemed debt owed to a creditor in the following year of assessment even where the debt that gave rise to the interest has already been settled.

CLAUSE 19

Income Tax Act: Amendments to section 23N

See notes on **LIMITING INTEREST DEDUCTIONS IN RESPECT OF REORGANISATION AND ACQUISITION TRANSACTIONS**

CLAUSE 20

Income Tax Act: Amendment to section 24I

Subclause (1)(a) and (b): See notes on **REFINING THE DEFINITION OF EXCHANGE ITEM FOR DETERMINING EXCHANGE DIFFERENCES**

Subclauses (1)(c) to (i): See notes on **REVIEWING THE INTERACTION OF THE SET-OFF OF ASSESSED LOSS RULES AND RULES ON EXCHANGE DIFFERENCES ON FOREIGN EXCHANGE TRANSACTIONS**

CLAUSE 21

Income Tax Act: Amendment to section 24JB

See notes on **CLARIFYING THE INTERACTION OF SECTION 24JB(3) OF THE INCOME TAX ACT AND THE GROSS INCOME DEFINITION**

CLAUSE 22

Income Tax Act: Amendment to section 25BB

Subclauses (a) and (b): The proposed amendment seeks to broaden the prohibition of depreciation allowances, by including references to sections 12B and 12BA of the Act, in respect of immovable property by a company that is a REIT or a controlled company at the last day of the year of assessment.

CLAUSE 23

Income Tax Act: Amendment to section 25E

See notes on **TRANSLATING CONTRIBUTED TAX CAPITAL FROM A FOREIGN CURRENCY TO RANDS**

CLAUSE 24

Income Tax Act: Amendment to section 28

See notes on **IMPACT OF IFRS 17 ON THE TAXATION OF INSURERS**

CLAUSE 25

Income Tax Act: Amendment to section 29A

Subclause (1)(a) and (b): The amendments seek to disregard amounts payable to or receivable from a cell owner that do not relate to a policy.

Subclause (1)(c): The amendment seeks to update the 2022 amendment of deducting the premium debtors and policy loans that have been reclassified from the asset section of the balance sheet to a reduction in the liability section of the balance sheet, to also apply to reinsurance debtors.

CLAUSE 26

Income Tax Act: Amendment to section 30

The proposed amendments delete the obsolete provision relating to consolidation of the previous National Urban Reconstruction and Housing Agency and the Rural Housing Loan Fund under the National Housing Finance Corporation, which was finalised with effect from 1 October 2018.

CLAUSE 27

Income Tax Act: Amendment to section 41

See notes on **RELAXING THE ASSESSED LOSS RESTRICTION RULE UNDER CERTAIN CIRCUMSTANCES**

CLAUSE 28

Income Tax Act: Amendment to section 42

The proposed amendment to paragraph (d)i of the definition of “qualifying interest” corrects a spelling mistake.

CLAUSE 29

Income Tax Act: Amendment to section 44

See notes on **REVIEWING THE PROHIBITION AGAINST THE TRANSFER OF ASSETS IN TERMS OF AN AMALAGAMATION TRANSACTION**

CLAUSE 30

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

See notes on **TRANSFERS BETWEEN RETIREMENT FUNDS BY MEMBERS WHO REACHED NORMAL RETIREMENT AGE BEFORE RETIREMENT DATE**

CLAUSE 31

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

See notes on **TRANSFERS BETWEEN RETIREMENT FUNDS BY MEMBERS WHO REACHED NORMAL RETIREMENT AGE BEFORE RETIREMENT DATE**

CLAUSE 32

Income Tax Act: Deletion of paragraph 2(*gA*) of the Seventh Schedule to the Act

The proposed amendment seeks to delete the obsolete paragraph 2(*gA*).

CLAUSE 33

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

The proposed amendments are technical corrections and are consequential to amendments made in the Taxation Laws Amendment Act of 2018. On 1 March 2019 retirement annuity fund contributions by the employer for the benefit of an employee who is a member of that fund were removed from paragraph 2(*l*) and they are a taxable benefit under paragraph 2(*h*) and determined in accordance with paragraph 13(1).

CLAUSE 34

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

The proposed amendment to the proviso to subparagraph (1) seeks to correct an anomaly when a natural person or a special trust has two years of assessment in the single 12-month tax period. The annual exclusion cuts both ways, that is, it applies to both gains and losses. In determining what is available in the second year of assessment regard should be had to the exclusion as an absolute value. When there are gains in both the first and second years of assessment there is no problem. The same is true when there are losses in both. However, a difficulty is encountered when there is a loss in the first and a gain in the second year of assessment. As such, proposed amendments are made to better facilitate the interaction and aggregation of the sum of the annual exclusions for years of assessment ending during the period of 12 months commencing on 1 March and ending on the last day of February of the immediately following calendar year.

CLAUSE 35

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

Subclause (1)(a): The proposed amendment rewords subparagraph (1)(b)(iii) to clarify the circumstances in which it applies.

Subclause (1)(b): See notes on **CLARIFYING THE 18-MONTH PERIOD IN RELATION TO SHAREHOLDING BY GROUP ENTITIES**

CLAUSE 36

Income Tax Act: Amendment of paragraph 80 of the Eighth Schedule to the Act

The proposed amendments are consequential upon the substitution of paragraph 80(2) and the insertion of paragraph 80(2A) into the Act by the Taxation Laws Amendment Act of 2020.

CLAUSE 37

Income Tax Act: Amendment of paragraph 4 of Part I of the Ninth Schedule to the Act

The proposed amendment to paragraph 4(c) substitutes a now obsolete reference to “Adult education and training”, which was defined in the now repealed Adult Education and Training Act, 2000, (Act No. 52 of 2000) with a reference to section 29(1)(a) of the Constitution.

CLAUSE 38

Income Tax Act: Amendment of paragraph 3 of Part II of the Ninth Schedule to the Act

The proposed amendment to paragraph 3(c) substitutes a now obsolete reference to “Adult education and training” which was defined in the now repealed Adult Education and Training Act, 2000, (Act No. 52 of 2000) with a reference to section 29(1)(a) of the Constitution.

CLAUSE 39

Income Tax Act: Amendment of item 11 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 payable by the government.

CLAUSE 40

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 1 October 2023 up to and including 31 October 2024.

CLAUSE 41

Customs and Excise Act: Amendment to Schedule 1

South Africa is a member of the World Customs Organisation (WCO) and a signatory to the Harmonised System Convention (HS) issued by the WCO. The HS is a multipurpose goods nomenclature used as the basis for customs tariffs and for the compilation of trade statistics all over the world. With the implementation of changes in terms of the HS recommended by the WCO for 2002 (HS2002), a new 6-digit tariff structure as well as a new subheading note were introduced to define "light oils and preparations" for the purposes of subheading 2710.11 (now 2710.12). When this change was made on a national level in South Africa, all the national subheadings under 27.10 were transposed to 2710.11 as light oils and preparations, irrespective of whether the oils and preparations complied with new HS subheading Note 4, which specifies a threshold for distillation. These provisions have been applied according to their obvious intent for many years. More recently, however, a technical interpretation has been advanced by some industry members that would give rise to a glaring absurdity and pose a substantial threat to the fiscus if accepted.

It is, therefore, proposed that the bulk of products that were transposed in 2002 to 2710.11 as light oils and preparations also be transposed to subheading 2710.19 as they may have a distillation point above the threshold provided for in Note 4 applicable to 2710.11 (now 2710.12). It is further proposed that the transposition be done retrospectively from 1 January 2002, being the date the threshold for distillation was introduced at an international level.

CLAUSE 42

Customs and Excise Act: Amendment to Schedule 4

South Africa is a member of the World Customs Organisation (WCO) and a signatory to the Harmonised System Convention (HS) issued by the WCO. The HS is a multipurpose goods nomenclature used as the basis for customs tariffs and for the compilation of trade statistics all over the world. With the implementation of changes in terms of the HS recommended by the WCO for 2002 (HS2002), a new 6-digit tariff structure as well as a new subheading note were introduced to define "light oils and preparations" for the purposes of subheading 2710.11 (now 2710.12). When this change was made on a national level in South Africa, all the national subheadings under 27.10 were transposed to 2710.11 as light oils and preparations, irrespective of whether the oils and preparations complied with new HS subheading Note 4, which specifies a threshold for distillation. These provisions have been applied according to their obvious intent for many years. More recently, however, a technical interpretation has been advanced by some industry members that would give rise to a glaring absurdity and pose a substantial threat to the fiscus if accepted.

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CLAUSE 43

Customs and Excise Act: Amendment to Schedule 5

South Africa is a member of the World Customs Organisation (WCO) and a signatory to the Harmonised System Convention (HS) issued by the WCO. The HS is a multipurpose goods nomenclature used as the basis for customs tariffs and for the compilation of trade statistics all over the world. With the implementation of changes in terms of the HS recommended by the WCO for 2002 (HS2002), a new 6-digit tariff structure as well as a new subheading note were introduced to define "light oils and preparations" for the purposes of subheading 2710.11 (now 2710.12). When this change was made on a national level in South Africa, all the national subheadings under 27.10 were transposed to 2710.11 as light oils and preparations, irrespective of whether the oils and preparations complied with new HS subheading Note 4, which specifies a threshold for distillation. These provisions have been applied according to their obvious intent for many years. More recently, however, a technical interpretation has been advanced by some industry members that would give rise to a glaring absurdity and pose a substantial threat to the fiscus if accepted.

It is, therefore, proposed that the bulk of products that were transposed in 2002 to 2710.11 as light oils and preparations also be transposed to subheading 2710.19 as they may have a distillation point above the threshold provided for in Note 4 applicable to 2710.11 (now 2710.12). It is further proposed that the transposition be done retrospectively from 1 January 2002, being the date the threshold for distillation was introduced at an international level.

CLAUSE 44

Customs and Excise Act: Amendment to Schedule 6

South Africa is a member of the World Customs Organisation (WCO) and a signatory to the Harmonised System Convention (HS) issued by the WCO. The HS is a multipurpose goods nomenclature used as the basis for customs tariffs and for the compilation of trade statistics all over the world. With the implementation of changes in terms of the HS recommended by the WCO for 2002 (HS2002), a new 6-digit tariff structure as well as a new subheading note were introduced to define "light oils and preparations" for the purposes of subheading 2710.11 (now 2710.12). When this change was made on a national level in South Africa, all the national subheadings under 27.10 were transposed to 2710.11 as light oils and preparations, irrespective of whether the oils and preparations complied with new HS subheading Note 4, which specifies a threshold for distillation. These provisions have been applied according to their obvious intent for many years. More recently, however, a technical interpretation has been advanced by some industry members that would give rise to a glaring absurdity and pose a substantial threat to the fiscus if accepted.

It is, therefore, proposed that the bulk of products that were transposed in 2002 to 2710.11 as light oils and preparations also be transposed to subheading 2710.19 as they may have a distillation point above the threshold provided for in Note 4 applicable to 2710.11 (now 2710.12). It is further proposed that the transposition be done retrospectively from 1 January 2002, being the date the threshold for distillation was introduced at an international level.

CLAUSE 45

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

See notes on **CLARIFYING THE VAT TREATMENT OF SUPPLY OF SERVICES TO NON-RESIDENT SUBSIDIARIES OF COMPANIES BASED IN THE REPUBLIC**

CLAUSE 46

Value-Added Tax: Amendments to section 8

Subclause (1)(a): The amendment is textual

Subclause (1)(b): This amendment is deemed to have come into operation on 1 January 2023. See notes on **PROVIDING VAT RELIEF FOR NON-RESIDENT LESSORS OF PARTS OF SHIPS, AIRCRAFT OR ROLLING STOCK REQUIRED TO DEREGISTER AS A RESULT OF RECENT AMENDMENTS TO THE VAT ACT**

Subclause (1)(c): This amendment is deemed to have come into operation on 1 January 2025. See notes on **REVIEWING THE FOREIGN DONOR FUNDED PROJECT REGIME**

CLAUSE 47

Value-Added Tax: Amendments to section 8A

See notes on **CLARIFYING THE VAT TREATMENT OF THE MUDARABA ISLAMIC FINANCING ARRANGEMENTS**

CLAUSE 48

Value-Added Tax: Amendments to section 11

These amendments are consequential to the amendments to the Customs and Excise Act. See Clause 41-44.

CLAUSE 49

Value-Added Tax: Amendments to section 22

See notes on **VAT CLAW-BACK ON IRRECVERABLE DEBTS SUBSEQUENTLY RECOVERED**

CLAUSE 50

Value-Added Tax: Amendments to section 50

See notes on **REVIEWING THE FOREIGN DONOR FUNDED PROJECT REGIME**

CLAUSE 51

Value-Added Tax: Amendments to section 54

These amendments are linked to the **REGULATIONS PRESCRIBING ELECTRONIC SERVICES FOR THE PURPOSE OF THE DEFINITION OF “ELECTRONIC SERVICES” IN SECTION 1(1) OF THE VALUE-ADDED TAX ACT, 1991**. In terms of the Explanatory Memorandum to the amendments to those regulations, the reason for these amendments is as follows: “The first amendment relates to the requirement that the underlying supplier (the principal) is not a registered vendor. This requirement is being deleted since it is the intention to hold the intermediary responsible for all supplies made through its platform, including supplies made by principals that are not residents of the Republic, irrespective of their VAT status in the Republic, where such principal and intermediary have agreed, in writing, that the supply will be treated as being that of the intermediary. The policy rationale behind this is to ease the administrative burden on the principal, to ensure that VAT is not accounted for twice (by the principal and the intermediary) on the same supply and to facilitate ease of compliance checks and audits.

The second amendment to this section is to introduce a second sub-section that introduces the concept of a joint and several liability for both the principal and the intermediary in instances where both parties have agreed to treat the supplies as being made by the intermediary. Both parties will be held jointly and severally liable for performing the duties of the principal or the intermediary under the VAT Act and paying the tax imposed by the VAT Act in respect of those taxable supplies that were made under the agreement.”

CLAUSE 52

Value-Added Tax: Amendments to Schedule 1 of the VAT Act

These amendments are consequential to the amendments to the Customs and Excise Act. See Clauses 41-44.

CLAUSE 53

Securities Transfer Tax Act: Amendments to section 1

The proposed amendment to the definition of “collateral arrangement” is a clarification that seeks to correct the reference to that of an identical share or bond as contemplated in paragraph (c) of that definition as to ensure the definition correctly describes the consequence of not returning an identical share or bond within a period of 24 months.

CLAUSE 54

Securities Transfer Tax Act: Amendments to section 8

The proposed amendment is a technical correction that seeks to correct a grammatical error with reference to the spelling of “*intestato*”.

CLAUSE 55

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

The proposed amendments seek to align the wording in both section 6A(1)(a) and section 6A(1A)(a) of the Mineral and Petroleum Resources Royalty Act to the wording of section 6(1)(b) and section 6(2)(b) of that Act respectively, in an effort to clarify that the gross sales would be the amount that would have been received or accrued during the year of assessment in respect of the transfer of that mineral resource had that resource been transferred at the condition specified or the minimum of the range of conditions specified for that mineral resource.

CLAUSE 56

Employment Tax Incentive Act: Amendment of section 1

See notes on **CURBING THE ABUSE OF THE EMPLOYMENT TAX INCENTIVE SCHEME**

CLAUSE 57

Employment Tax Incentive Act: Amendment of section 5

See notes on **CURBING THE ABUSE OF THE EMPLOYMENT TAX INCENTIVE SCHEME**

CLAUSE 58

Taxation Laws Amendment Act of 2013: Amendment of section 13

The proposed amendment postpones the effective date of amendments to sections 8F(3)(b)(ii), 8F(3)(c)(ii) and 8F(3)(d) from 1 January 2025 to 1 January 2026

CLAUSE 59

Taxation Laws Amendment Act of 2013: Amendment of section 15

The proposed amendment postpones the effective date of amendments to sections 8FA(3)(b)(ii), 8FA(3)(c)(ii) and 8FA(3)(d) from 1 January 2025 to 1 January 2026.

CLAUSE 60

Taxation Laws Amendment Act of 2013: Amendment of section 62

The proposed amendment postpones the effective date of amendments to section 23M(6) from 1 January 2025 to 1 January 2026.

CLAUSE 61

Taxation Laws Amendment Act of 2018: Amendment of section 106

The proposed amendment updates the amendment of 2015 with subsequent amendments to section 11(e) of the Income Tax Act.

CLAUSE 62

Carbon Tax Act: Amendments to section 6

See notes on **RENEWABLE ENERGY PREMIUM DEDUCTION**

CLAUSE 63

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

Subclause (1)(a): Proposed amendments to Table 1 - See notes on **ALIGNING SCHEDULE 1 OF THE CARBON TAX ACT WITH THE UPDATED GREENHOUSE GAS EMISSIONS METHODOLOGICAL GUIDELINES**

Subclause (1)(b): Proposed amendments to Table 2 - See notes on **INCLUDING DEFAULT EMISSION FACTORS FOR ADDITIONAL FUGITIVE EMISSIONS SOURCE CATEGORIES**

CLAUSE 64

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

Proposed amendments to Schedule 2 - See notes on **INCLUDING DEFAULT EMISSION FACTORS FOR ADDITIONAL FUGITIVE EMISSIONS SOURCE CATEGORIES**

CLAUSE 65

Taxation Laws Amendment Act 20 of 2021: Amendment of section 14

The proposed amendment seeks to extend the learnership tax incentive by another three years, to 31 March 2027, in line with the Minister's 2024 Budget announcement to further facilitate the evaluation of the tax incentive.

CLAUSE 66

Taxation Laws Amendment Act 17 of 2023: Amendments to section 12

The proposed amendments are consequential corrections to amendments made in 2023 regarding various refinements made to research and development tax incentive.

CLAUSE 67

Taxation Laws Amendment Act 17 of 2023: Amendment to section 14

In 2023, Government inserted section 11G of the Act as a measure to replace SARS Practice Note 31 of 1994. After the publication of the Taxation Laws Amendment Act, 2023, comments were received from various stakeholders about certain reservations regarding section 11G of the Act. The proposed amendment seeks to postpone the effective date of this provision until 1 January 2026 to allow for further engagement between Government and stakeholders.

CLAUSE 68

Taxation Laws Amendment Act 17 of 2023: Amendments to section 47

The proposed amendment is a technical correction and is consequential to amendments made in 2023 to update the reference from IAS 39 in the definition of "derivative" to the relevant International Financial Reporting Standards ("IFRS"), which is, IFRS 9 Financial Instruments.

CLAUSE 69

Short title and commencement
