October 2024

Response Document on the 2024 Draft Revenue Laws Amendment Bill, 2024 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2024 Draft Taxation Laws Amendment Bill, 2024 Draft Tax Administration Laws Amendment Bill, Global Minimum Tax Bill and Global Minimum Tax Administration Bill.

(Based on hearings by the Standing Committee on Finance in Parliament)

Table of Contents

1. BACKGROUND 4

1.1. PROCESS AND PUBLIC COMMENTS 4

1.2. POLICY ISSUES AND RESPONSES 5

1.3. SUMMARY 5

2. TWO-POTS RETIREMENT SYSTEM 6

2.1. Two-pots retirement system 6

3. CUSTOMS AND EXCISE: INCREASE IN THE EXCISE DUTY ON ALCOHOL, TOBACCO AND ELECTRONIC NICOTINE AND NON-NICOTINE DELIVERY SYSTEMS 10

3.1. Increase in excise duty on tobacco 10

3.2. Increase in excise duty on alcohol products 10

3.3. Increase in excise duty on Electronic Nicotine & Non-nicotine Systems 13

3.4. Illicit trade in excisable products 15

3.5. Other Administrative matters 18

4. CARBON TAX 20

4.1. Renewable energy premium deduction 20

4.2. Alignment of Fuel Combustion Emissions Factors and Net Calorific Values with Greenhouse Gas Emissions Methodological Guidelines 20

4.3. Aligning the Fugitive Emission Factors In Schedule 1 Of The Carbon Tax Act with the Greenhouse Gas Emission Methodological Guidelines 22

5. INCOME TAX: INDIVIDUALS, SAVINGS AND EMPLOYMENT 23

5.1. Curbing the abuse of the Employment Tax Incentive Scheme 23

5.2. Transfers between retirement funds by members who reached normal retirement age before retirement date 24

5.3. Clarifying anti-avoidance rules for low-interest or interest-free loans to trusts 25

6. INCOME TAX: GENERAL BUSINESS TAX 26

6.1. Reviewing the connected person definition in relation to partnerships 26

6.2. Limiting interest deductions in respect of reorganisation and acquisition transactions 27

6.3. Relaxing the assessed loss restriction rule under certain circumstances 28

6.4. Taxation issues involving unlisted property industry 29

6.5. Clarification of the interest limitation rules 30

6.6. Third-party backed shares: extending exclusions to the ownership requirement in section 8EA ending the definition of "enforcement right" to a connected person in section 8EA 31

6.7. Translating "contributed tax capital" from foreign currency to rands 32

7. INCOME TAX: TAXATION OF FINANCIAL INSTITUTIONS AND PRODUCTS 34

7.1. Impact of IFRS17 insurance contracts on the taxation of short term and long- term insurers 34

8. INCOME TAX: BUSINESS INCENTIVES 36

8.1. DEDUCTIONS IN RESPECT OF SCIENTIFIC OR TECHNOLOGICAL RESEARCH AND DEVELOPMENT 36

8.2. SPECIAL ECONOMIC ZONES 37

8.3. INVESTMENT ALLOWANCE IN RESPECT OF BUILDINGS, MACHINERY, PLANT, IMPLEMENTS, UTENSILS AND ARTICLES USED IN DOMESTIC PRODUCTION OF ELECTRIC AND HYDROGEN-POWERED VEHICLES 38

8.4. Deduction in respect of certain machinery, plant, implements, utensils and articles used in farming or production of renewable energy 41

9. INTERNATIONAL TAX 42

9.1. Clarifying the translation for hyperinflationary currencies 42

9.2. Clarifying the 18-month period in relation to shareholdings by group entities 43

9.3. Clarifying the rebate for foreign taxes on income in respect of capital gains 43

9.4. Aligning the section 6quat rebate and translation of net income rule for CFCs 44

9.5. Refining the definition of "exchange item" for determining exchange differences 44

9.6. Reviewing the interaction of the set-off of assessed loss rules and rules on exchange differences on foreign exchange transaction 45

10. VALUE-ADDED TAX 46

10.1. Reviewing the Foreign Donor Funded Project (FDFP) regime 46
10.2. Supplies by educational institutions to third parties 47
10.3. Prescription period for input tax claims 48

11. GLOBAL MINIMUM TAX BILL 49
11.1. Global Minimum Tax (GMT) 49

12. DRAFT GLOBAL MINIMUM TAX ADMINISTRATION BILL 54
12.1. Definition of "GloBE Information Return" 54
12.2. Requirement to submit a GloBE Information Return and notice of Designated Filing Entity 54
12.3. Due date for filing a GloBE Information Return 55
12.4. Exception for returns provided under automatic exchange of information agreement 55
12.5. Due date for payment 56
12.6. Penalties 57
12.7. Record keeping and extension of period 58
12.8. Administration of the Act 59
12.9. Short title and commencement 59

13. TAX ADMINISTRATION LAWS AMENDMENT BILL 60
13.1. Amendment to the definition of "provisional taxpayer" 60
13.2. Timing of VAT on imported services 60
13.3. Overpayments of VAT on the importation of goods and imported services 61
13.4. Non-resident vendors with no or a limited physical presence in South Africa 61
13.5. Implementing the Constitutional Court judgment regarding tax records access 62
13.6. Right of appearance of SARS officials and natural persons appearing on behalf of the taxpayer and provision for cost orders in favour of SARS 62
13.7. Expanding the provision requiring the presentation of relevant information in person 65
13.8. Clarifying provisions relating to original assessments 66
13.9. Introduction of alternative dispute resolution proceedings at the objection stage of a dispute 68
13.10. Removing the grace period for a new company to appoint a public officer 70
13.11. Amendments not included in draft Bill released for public comment 71

1. BACKGROUND

1.1. PROCESS AND PUBLIC COMMENTS

The National Treasury and South African Revenue Service (SARS) published the 2024 Draft Revenue Laws Amendment Bill (RLAB) on 21 February 2024 for public comment. Public workshops were held on 6 and 7 June 2024 to discuss the comments submitted. After soliciting comments, it was published again on 1 August 2024. The second round of public workshops was held on 6 September 2024.

The 2024 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill (Rates Bill) contains announcements made in Chapter 4 and Annexure C of the 2024 Budget Review that deal with the increase of excise duties and carbon tax. Public workshops were held on 6 and 7 June 2024 to discuss the comments submitted.

The 2024 Draft Taxation Laws Amendment Bill (TLAB) and Tax Administration Laws Amendment Bill (TALAB) were published for public comment on 1 August 2024. The closing date for all public comments on the 2024 Draft TLAB and 2024 Draft TALAB was 31 August 2024. The Public workshops on the comments received were held on 12 and 13 of September 2024. These draft bills contain the remainder of the tax announcements made in Chapter 4 and Annexure C of the 2024 Budget Review, which are legislatively more complicated and require greater consultation with the public.

The National Treasury and SARS published the Global Minimum Tax Bill and Global Minimum Tax Administration Bill on 21 February 2024 for public comment. Public workshops were held on 6 and 7 June 2024 to discuss the comments submitted.

National Treasury and SARS received written comments from 65 organisations and 6 individuals (list of commentators attached as Annexure A).

For legal reasons, the draft tax amendments continue to be split into two separate bills, namely, a money bill in terms of section 77 of the Constitution, dealing with money bill issues, for example, 2023 Draft TLAB and an ordinary bill in terms of section 75 of the Constitution, dealing with tax administration issues, for example 2023 Draft TALAB.

The National Treasury and SARS briefed the Standing Committee on Finance (SCoF) on the 2024 Draft Tax Bills which are the Rates Bill, 2024 Draft TLAB, 2024 TALAB, Global Minimum Tax Bill and Global Minimum Tax Administration Bill on 17 September 2024. Subsequently, oral presentations by taxpayers and tax advisors on the 2024 Draft Tax Bills were made at hearings held by the SCoF on 8 and 9 October 2024.

Today, on 23 October 2024, National Treasury and SARS present to the SCoF the Draft Response Document on the 2024 Draft Revenue Laws Amendment Bill, 2024 Draft Rates Bill, 2024 Draft TLAB, 2024 Draft TALAB, Draft Global Minimum Tax Bill and Draft Global Minimum Tax Administration Bill. The 2024 Draft Response Document contains a summary of draft responses from National Treasury and SARS officials to the public comments received and proposed steps to be taken in addressing the key issues raised during the consultation process.

Once the responses are considered by SCoF, they will be presented to the Minister for approval, including to approve consequential amendments to the 2024 Draft RLAB, 2024 Draft TLAB, 2024 Draft TALAB, and Draft Global Minimum Tax Bill and Draft Global Minimum Tax Administration Bill prior to the formal introduction/tabling by the Minister in Parliament.

1.2. POLICY ISSUES AND RESPONSES

Provided below are the responses to the key issues raised by the public in respect of the 2024 Draft Revenue Laws Amendment Bill, 2024 Draft Rates Bill, 2024 Draft TLAB, 2024 Draft TALAB, Global Minimum Tax Bill and Global Minimum Tax Administration Bill in the form of written submissions as well as during the public hearings. These comments will be considered in finalising the 2024 Draft Revenue Laws Amendment Bill, 2024 Draft Rates Bill, 2024 Draft TLAB, 2024 Draft TALAB, Draft Global Minimum Tax Bill and Draft Global Minimum Tax Administration Bill to be tabled. Comments that are outside the scope of the 2024 Draft Tax Bills are not considered for the purposes of this response document.

1.3. SUMMARY

This response document includes a summary of all the written comments received on the 2024 Draft Revenue Laws Amendment Bill published for comment on 21 February 2024 and on 1 August 2024 as well as a summary of all the written and oral presentations made during public hearings held by the SCOF on 17 September 2024.

While the 2024 Draft Rates Bill, Draft Global Minimum Tax Bill and Draft Global Minimum Tax Administration Bill were published for public comment on 21 February 2024. This response includes summaries of the written comments as well the comments made during public hearings held by the SCOF on 17 September 2024. Lastly, this response document includes summary of all the written comments received on the 2024 Draft TLAB and 2024 Draft TALAB that were published for public comment on 1 August 2024 as well as a summary of all the written and oral presentations made during public hearings on these Bills held by the SCOF on 17 September 2024.

2. TWO-POTS RETIREMENT SYSTEM

2.1. Two-pots retirement system

(Main reference: Draft Revenue Laws Amendment Bill)

In 2023, Government proposed a further reform to the retirement saving regime to introduce the so-called “two-pots” retirement system from 1 September 2024. In terms of this reform, retirement savings are split into a “vested component”, “savings component” and “retirement component”. The 2024 Draft Revenue Laws Amendment Bill contain the following main changes:

a. Despite the 2023 enhancements to the two-pot regime, further adjustments are needed to clarify the language. Clarification of the definitions of the members' interests in the three components that the components must be reduced proportionally by the various section 37D deductions

b. To simplify the directives system for administrators and SARS and to facilitate quick implementation, it is unnecessary to obtain a directive when transferring the seeding amount from the “vested component” to the “savings component,” as tax is only imposed on withdrawals from the “savings component.”

c. The requirements for ceasing to be a resident should still apply to preservation funds, retirement annuity funds, and the retirement components of pension and provident funds. The savings component is excluded because it can be accessed at any time before retirement.

d. Consequential amendments are needed to exclude the “savings withdrawal benefit” from the liability for the Skills Development Levy and Unemployment Insurance Contributions payable by members.

e. Clarification of the definition of retirement component in respect of provident fund members over age 55 on 1 March 2021 who elect to contribute to the savings and retirement components.

Broader retirement policy matters

Comment: While the immediate relief of up to R30,000 is appreciated, many workers find it insufficient to significantly reduce their high debt levels, pay off their debts, free up income for family needs, or eliminate the temptation to resign to cash out and settle large debts. Workers require a larger amount to escape debt. Both pension funds and the government are concerned about the impact of resignations on savings.

Response: Noted. The National Treasury has received several policy recommendations from policy actors affected by the two-pot system or retirement reforms in general. Any future refinements relating to tax policy on retirement will be considered by government through policy options which incorporate thorough public consultation and engagement.

Comment: Workers be allowed to choose how much to transfer from their vested rights pot to the new two pot regime, along the two thirds/ one third split.

Response: Noted. The National Treasury has received several policy recommendations from policy actors affected by the two-pot system or retirement reforms in general. Any future refinements relating to tax policy on retirement will be considered by government through policy options which incorporate thorough public consultation and engagement.

Comment: Workers should be permitted to use their pension funds for education fees, similar to the provisions for home loans.

Response: Noted. The National Treasury has received several policy recommendations from policy actors affected by the two-pot system or retirement reforms in general. Any future refinements relating to tax policy on retirement will be considered by government through policy options which incorporate thorough public consultation and engagement.

Comment: Should retirement calculations be based on each contract or each fund? An additional amendment is needed to clarify whether contracts should be handled individually or together upon retirement.

Response: Noted. The current policy decision remains unchanged in that the calculation is still being performed on a per fund basis on retirement from that fund.

Technical comments

Comment: The Bill's definition of the savings component allows a retiring member to choose to take the remaining balance in the savings component as part of the retirement fund lump sum benefit, which will be taxed according to the rates for retirement fund lump sum benefits. If no cash is taken, the remaining balance will be added to the retirement component to purchase an annuity (as per paragraph (d) of the retirement component definition) on retirement from the retirement fund. It is suggested that the Bill explicitly allow for direct annuitisation from the savings component at retirement. Additionally, it is recommended that the wording of (g)(ii) be revised to clarify that any amount not paid as described in subparagraph (i).

Response: Accepted. The wording will be revised to match the wording of the "savings component" definition as it appeared in the February 2024 version of the Draft Revenue Laws Second Amendment Bill. Current policy is that no direct purchase /payment of annuities on retirement from the savings component will be permitted.

Comment: For provident fund and provident preservation fund members who were 55 years old on 1 March 2021, the seeding date and calculation basis are proposed to be flexible. Funds should have the option to choose which approach to follow. Essentially, whichever version they have communicated to their members and included in their rules should remain valid.

Response: Accepted. The amendment will be made that will give optionality for the funds to select which approach to follow.

Comment: The Bill enforces a three-year waiting period for preservation fund members who have changed their tax residence. This should be revised so that the three-year waiting period only applies if the member has already made their one-time withdrawal from the preservation fund. This amendment is to safeguard an existing or vested right.

Response: Not accepted. A non-SA resident member is still allowed to make a once-off withdrawal during his or her membership of up to the full value in the member's interest in the vested component in his or pension preservation or provident preservation fund, but only if the member has not previously accessed the value in the vested component for that reason during the membership in the preservation fund. If the non-SA resident member did previously access the value in the vested component in the pension preservation fund or provident preservations fund during membership, then the balance can only be accessed after the 3 uninterrupted years requirement of not being a SA resident have been met.

Comment: With respect to the definition of ''legacy retirement annuity policy'' , a retirement annuity fund has never been able to issue polices, neither under the Long-term Insurance Act nor the current Insurance Act. Only a long-term insurer can issue polices. Policies are issued by a long-term insurer to the retirement annuity fund, in respect of that fund's members.

Response: Accepted. The draft legislation will be amended to mean 'legacy retirement annuity policy' which policy is held by a retirement annuity fund.

Comment: It is not made clear that the T-Day vested amounts must also be taken into account when the one-third that can be taken in cash on retirement is determined.

Response: Accepted. The proviso's wording, which states that 'Provided that in determining the value of two-thirds of the member's interest in the vested component,' will specifically refer to 'on retirement'.

Comment: Wording of definitions of the various different types of retirement funds needs to be changed to clarify how vested benefits must be dealt with in the R165 000 de minimis calculation.

Response: Noted. The current wording is sufficient and confirms that if the sum of 2/3 of the vested component (excluding the value that relates to vested benefits of those members who were members of a provident fund or provident preservation fund on 1 March 2021) and the full value of the retirement component is R165 000 or less then the full value of the vested component and the retirement component may

be taken as a lump sum in cash.

Comment: Members of retirement annuity and preservation funds might hold multiple contracts within the same fund, resulting in more than one retirement component. The wording should be revised to reflect these contracts.

Response: Accepted. The wording will be revised to cater for multiple contracts relating to transfers of components before retirement.

Comment: Maintenance claims should be proportionately deducted from the various pots/components.

Response: Accepted. Amendments will be made to the draft legislation to include the reference to section 37D (1) (d)(iA) maintenance deductions from the same provision, to provide clarity on how maintenance deductions should be applied to the three components. The reference to section 37D(1)(d)((iB) relating to interim maintenance awards will also be incorporated. These maintenance deductions will follow the same deduction from all three components and section 7(11) for taxation and payment.

Comments received that were not part of the Published Bill

Comment: There appears to be an unintended consequence in the definition of 'savings withdrawal benefit'. The intention was to allow members with less than R2000 in their savings withdrawal components to withdraw the entire amount upon exiting the fund. However, the current wording only permits this if the member has already taken a savings withdrawal benefit during the same tax year. Consequently, members who did not take a savings withdrawal benefit during the tax year because they had less than R2000 in their savings component will be unable to access the savings component upon exiting the fund.

Response: Accepted. Amendments will be made to allow members to withdraw amounts less than R2,000 from the savings component when they exit the fund .

*Comment:*A clarification is needed on the definition of 'retirement annuity fund' that permits the payment of one or more lump sum benefits when a member's interest in the fund is below an amount specified by the Minister in the Gazette (R15,000). Given that we now have member interests in the retirement component, savings component, and vested component, it is unclear what 'member's interest in the fund' specifically refers to.

Response: Accepted. To align closely with the current legislation, if the combined value of the retirement component and the vested component is below R15,000, it can be taken as a lump sum.

2024 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill

3. CUSTOMS AND EXCISE: INCREASE IN THE EXCISE DUTY ON ALCOHOL, TOBACCO AND ELECTRONIC NICOTINE AND NON-NICOTINE DELIVERY SYSTEMS

3.1. Increase in excise duty on tobacco

In the 2024 February Budget and the current Draft Rates Bill, a proposal was made to increase excise duties on alcoholic beverages by between 6.7 and 7.2 per cent for 2024/25.

Comment: Since cigarettes are the most commonly used product, and in order to effectively reduce its affordability while at the same time increasing revenues, it is recommended that tax rates for cigarettes are increased above inflation, that is above the current inflation rate of about 5%. An increase similar to or above the increase proposed for other tobacco products (at 8.2%) would yield better health and revenue benefits. Recommends a tax increase of 8-10% for cigarettes.

Response: Noted. The excise duty rates increase proposal in the budget considers all other factors not just the quantum of the rate.

Comment: The current structure of excise applied on heated tobacco products is in line with WHO's recommendations to tax HTPs, that is, to apply a specific excise on the basis of sticks, similar to cigarettes. However, the rate applied on HTP is 75% of the cigarette excise rate. HTPs contain tobacco and should be treated as tobacco products. Decision 22 of the WHO FCTC COP recognizes that "heated tobacco products are tobacco products and are therefore subject to the provisions of the WHO FCTC". In light of this decision, recommend that the excise tax rate applied on HTPs should be the same as the rate applied on cigarettes..

Response: Noted. Any changes to the current structure will be subject to a tobacco excise review process.

3.2. Increase in excise duty on alcohol products

In the 2024 February Budget and the current Draft Rates Bill, a proposal was made to increase excise duties on alcoholic beverages by between 6.7 and 7.2 per cent for 2024/25.

Comment: The confirmed policy position in respect of spirits is a targeted incidence of 36% of the weighted average price of a bottle of spirits in the South African alcohol market. Our market analysis confirms that our producers and importers of spirits pay

approximately 38.5% excise tax on average on a bottle of spirits. This is currently trending almost 7% higher than government's excise policy and significantly higher than the average for both emerging markets (27%) and developed markets (22%). This analysis was conducted even before the latest adjustment was introduced in February 2024. We hold the view that excise adjustments should be below the prevailing CPI.

Response: Not Accepted. There is an excise tax policy guideline in place to increase the excise rates by at least inflation or targeted incidence, whichever is higher, on an annual basis. Also, the adherence to the policy guidelines is not only dependent on Governments annual excise rate increases but also on the behaviour of the industry regarding the excise duty pass-through and pricing of alcoholic products. If the price increases are lower than excise rate increases, it is inevitable that the incidence will be exceeded.

Comment: Data indicates that the average retail price of beer increased by only 4.3% in 2023, compared to increases of 6.2% for still wine, 4.5% for fortified wine, 4.4% for sparkling wine, 5.1% for spirits and 6.6% for RTDs. This raises the question of whether manufacturers are passing on the excise duties (a consumer tax) or instead absorbing the costs. Only wine and RTDs are passing on the excise duties, which will be reflected in the retail selling price (RSP).

Response: Noted. This reflects the assertion that government has been making over the years that the adherence to the policy guidelines is not only dependent on Governments annual excise rate increases but also on the behaviour of the industry regarding the excise duty pass-through and pricing of alcoholic products. If the price increases are lower than excise rate increases, it is inevitable that the incidence will be exceeded.

Comment: Since 2019, excise decisions have been unpredictable, creating increased complexity and uncertainty for legal and compliant businesses operating in an already unpredictable and tumultuous business environment.

The general lack of certainty and volatility presented by the application of the annual adjustment on excise has made us a reactive business. Strategic decisions on infrastructure expansion and other maintenance decisions are highly dependent on the revenue projections. With large uncertainties related to the excise adjustment it is difficult to forecast with accuracy what these projections would be and ascertain clear opportunities for investments. We would like to recommend that the precedent and the upholding of the tax principle of certainty set by giving a three-year outlook of the adjustment versus the current approach where it is amended in a volatile manner on a year-on-year basis.

Response: Noted. As is the custom, excise adjustments are not discussed with taxpayers before budget. However, government is considering a proposal as put forward by stakeholders to perhaps set excise adjustments for a three-year circle to provide some level of certainty. This proposal is under consideration and a final

decision will be communicated to all stakeholders.

Comment: The above inflation increase in excise taxes on beer is over-burdening the excise tax instrument with sustaining the health of the fiscus. The draft Rates Bill in its current form has shown that the government has put on the table taking more than the annually stipulated share of excise taxes from the beer industry, which should only be in line with projected inflation. This is on the back of the continued tax exemption of the fuel levy, resulting in R4 billion in tax foregone and the postponement of the health promotion levy due to overall industry support to the sugar industry. This is to say that if indeed Budget 2024 is 'Balancing development and Fiscal sustainability' as chapter 1 of the Budget Review is so aptly titled, then the use of all tax instruments should be applied bearing this in mind, including excise taxes and the industries that must pay it.

Response: Noted. Tax policy decisions entail balancing difficult trade-offs to raise revenue (and address externalities) in an equitable, efficient, and sustainable manner to support government's development objectives. Responding to these demands requires appreciation of the long-term tax policy context, the role of tax policy in the overall fiscal strategy and a consideration of its limitations.

Comments: Along with other alcohol control measures, countries raise alcohol taxes sufficiently to reduce alcohol-related harm. The type and structure of the tax should be adapted to each country's specific needs and institutional setting.

Response: Noted. The current alcohol policy framework takes into consideration experiences of other jurisdictions in dealing with alcohol related policy but also customise these experiences to local conditions.

Comments: To effectively curb the affordability of these products while simultaneously increasing revenues, it is recommended that tax rates for all alcoholic beverages be substantially raised above inflation. The proposed modest increase is unlikely to reverse the concerning trend of increasing alcohol consumption in South Africa. More significant tax increases would yield better health and revenue benefits. Therefore, recommend a tax increase of more than 10% for all alcoholic beverages.

Response: Noted. The excise increases with at least inflation seeks to ensure that alcohol products do not become affordable over time as this will increase consumption, which goes against government public health policy objectives.

Comment: Beer consumption in South Africa is disproportionately concentrated among lower-income groups, who also bear the most significant alcohol-related health burden. Indeed, in the South African context, the latest industry financial report indicates double-digit revenue growth and record-high sales volumes in the beer market. Therefore, it is crucial for South Africa to promptly address this issue, with excise tax policies playing a key role in reversing this troubling trend of rapidly increasing beer sales. More significant tax increases would yield better health and revenue benefits. Therefore, recommend a tax increase of more than 10% for all

alcoholic beverages.

Response: Noted. Beer is the preferred alcoholic beverage and dominates the alcoholic beverage market. It is estimated[1] to account for approximately 75 per cent of total alcoholic beverage consumption by volume, and about 51.4 per cent[2] of the market based on absolute alcohol content. Any policy measure to address alcohol harm should include a focus on beer consumption.

Comment: In February 2024, duties on still wine rose 7.1%, fortified and sparkling wine 7.2%, and spirits, RTDs, and beer 6.7%. In 2023, all duties were raised by at least 2% more than the headline consumer inflation, with wine-related products at CPI plus 2.5%. There's no clear justification for this above-inflation hike to curb wine consumption. The 2.5% increase above CPI for a small-volume category like wine is disproportionate. Urge a CPI-related adjustment for all alcohol categories this financial year, as wine, beer, and spirits are already at or exceeding their respective incidence rates of 11%, 23%, and 36%.

Response: Noted. However, over the years, the excise adjustments on other categories of alcoholic products have been relatively higher creating a widening gap on the relative excise duties between categories.

3.3. Increase in excise duty on Electronic Nicotine & Non-nicotine Systems

Government implemented an excise duty on electronic nicotine and non-nicotine delivery systems, colloquially referred to as vaping, with effect from 1 June 2023 at a flat excise duty rate of R2.90 per millilitre on both nicotine and non-nicotine solutions. Government proposes to increase these excise duties in line with expected inflation to R3.04 per millilitre for 2024/25.

Comments: The proposed rates for 2024/2025 are also suggesting an increase of about 4.8% in the next budget, just close to current inflation rates. Given the affordability of those products and in view of the alarming rates of consumption of electronic nicotine and non-nicotine delivery systems among the youth and the increasing evidence that the use of those products is becoming a gateway to cigarette smoking, current excise tax rates on those products need to be substantially increased, well above the suggested 4.8% and well above the tax increase on cigarettes.

Response: Noted. This is still a relatively new area of excise taxation and will be reviewed over time to account for any concerns and new developments.

Comments: Tax must be applied equally to all delivery systems whether or not they

[1] WESGRO (2021). South African Wine: Trends and Opportunities for Trade in Africa. https://www.wesgro.co.za/uploads/files/Research/SouthAfrican-Wine-Trends-and-Opportunities-in-Africa_Wesgro-IQ_20210518.pdf

[2] SAWIS (2021). SA Wine Industry 2021 Statistics Nr 46. Accessible at https://www.sawis.co.za/info/download/Book_2021.pdf

contain nicotine for ease of tax administration and based on evidence that many e-liquids labelled as nicotine-free actually contained nicotine when subject to lab tests.

Response: Noted. The initial proposal on the taxation of these products sought to account for nicotine in the excise design, however, after consultation with stakeholders it became apparent that it would impose administrative burden, hence the current excise is a simplified design which does not make a distinction between nicotine and non-nicotine products.

Comment: The latest excise increase is far too high in the South African context and may have unintended consequences in the medium to long term. If excise on vaping products is held at such a high level it will diminish the full potential for tobacco harm reduction and also start creating a market for illicit suppliers.

Response: Not Accepted. The introductory rate implemented in June 2023 and the inflationary adjustment proposed is comparable to other rates applied in other jurisdictions that have implemented excise duties on ENDS/ENNDS.

Comment: The decision to increase the tax in less than 12 months of it being introduced is immature. At the time the excise tax increase was announced in February 2024, it was still less than a year old. Neither industry, nor consumers have fully adjusted to the tax. The increase should be held in abeyance for at least 24 months. Any increase should be preceded by an impact assessment which quantifies its impact on behaviour, industry and switching behaviour among smokers. As matters stand, the rate increase appears entirely arbitrary and unrelated to the purpose for which the tax was initially introduced.

Response: Not Accepted. The initial proposal as announced in the 2022 Budget was to implement the excise duty from 1 January 2023. However, in the 2022 draft TLAB a decision was made to have a later implementation date of 01 June 2023 to provide SARS and taxpayers sufficient time for the administration of the system. The inflationary adjustment just follows the budgetary cycle of annual adjustment to excise duties.

Comment: The popularity of disposable vapes, and the impact of the volume-based model provide little incentive to reduce demand, especially the youth, increase the risk of addiction given that most are 50mg variant, prevented most from working down their nicotine dependence level, shifted the market from local manufacturing to imported products, open the market to every conceivable retail outlet, and added to the environmental impact.

Response: Noted. National Treasury will review the current design in due course to follow the new developments on the market and redesign the current excise regime if necessary.

Comment: Are there other product categories that garnish an excise without any regulations or standards in a country's legal framework? The lack of legislation and

regulations does not prevent the youth from purchasing any END products. The current revenue generated from the tax on e-liquids includes the very people we set out to protect, our youth. Per-volume model sets the same price irrespective of the nicotine strength – 0mg to 50mg.

Response: Noted. The electronic nicotine and non-nicotine delivery systems (ENDS / ENNDS) are not harmless products, and the excise tax is a legitimate fiscal instrument that contributes to closing a regulatory loophole in the system that has placed the South African population (especially the youth) in a vulnerable position. The initial proposal on the taxation of these products sought to account for nicotine in the excise design, however, after consultation with stakeholders it became apparent that it would impose administrative burden, hence the current excise does not make a distinction between nicotine and non-nicotine products.

3.4. Illicit trade in excisable products

Comments:

- Research conducted by Euromonitor in 2017 and again in 2020 confirms that the spirits segment accounts for more than 50% of all illicit alcohol volumes (HL LAE) in the market. The reality is that more than half of the retail sales price for an average bottle of spirits goes towards taxes. This allows illicit producers to discount their prices as consumers search for more affordable alternatives, thereby growing the illicit trade in spirits. The high tax burden on spirits creates a profit incentive for illicit producers to discount their prices because they do not pay taxes. In a market where illicit substitutes are available, a high and growing tax burden on spirits correlates with the growth on illicit spirit volumes (LAA) which indicates that, beyond enforcement, excise policy is a driver of illicit growth.

- It is widely reported that illicit producers have links to organised crime and that the growth of illicit trade fuels the levels of crime in our country. The syndicates operating in our sector seem to operate with impunity and law enforcement alone cannot reverse the tide of illicit trade and organised crime. Policy issues, such as over-regulation and taxation of the legal industry, plays an undeniable role in the growth of illicit trade.

- It is important to note that a decline in excise revenue should not be celebrated on the basis that it may mean that the consumption of spirits is in decline, it merely indicates that the consumption of LEGAL spirits is in decline. The consumption and availability of illicit spirits is on the rise, together with the multiple dangers to society that goes along with this trade.

- We are of the view that the only way to reverse this trend is for Treasury to amend its excise policy to give industry a fighting chance to win back the market share lost to the illicit traders. Until such time as the excise policy is reviewed,

we hold the view that excise adjustments should be below the prevailing CPI.

- The National Treasury refers to SARS as implementing compliance measures and collaborating with law enforcement. Still, they might lose sight of the unintended consequences of fuelling it with legal market price increases (raising excise above the CPI rate). The price gap between the tax leakage category (where sugar-fermented ales are classified) and the legal market is as high as 62%.

- Excise is payable by manufacturers and are ONLY applicable to the legal and compliant producers. Illicit and non-compliant producers/traders benefit from any increase announced as it increases the demand for their products as well as their profit margins at the cost of legal, compliant businesses whose market share is reduced. Above inflation increases widen the price gap between these two markets and the illicit market gains.

- South Africans have access to an increasing range of alternatives to legal alcohol, including drugs and illicit alcohol. Thus, making legal options more expensive is a risky policy approach, within the context that illicit alternatives are growing in availability and accessibility. Yes, illicit alcohol is an administration and enforcement issue, however the unintended consequences linked to excise rate increase cannot be ignored.

- A further crisis impacting the industry is the large and growing market for illicit alcohol, which provides consumers with access to more affordable alternatives, possibly with more associated harm, especially in vulnerable communities. These come in the form of sugar-fermented beverages (known as Ales), which benefit from not paying the total excise rate – per the correct tariff determination -and thus provide a viable alternative to wine (and other categories) for financially constrained consumers. The potential harm to these communities is a matter of grave concern

- The latest research by Euromonitor International (2020) shows that the size of the illicit market in SA was 22% (volume of hectolitres of absolute alcohol) and had grown. It is incorrect to suggest that this is small and not of concern nor linked to disproportionate excise hikes. Illicit markets have grown over time and alcohol is no different - disproportionate, blanket regulation of the legal market fuels this growth as has been evidenced by tobacco in South Africa as well as the widespread media reports of the increased sophistication of illicit goods markets in SA, including food, clothing, pharmaceuticals, etc. The upward trend of the illicit market mirrors that of excise rate growth.

Response: Noted. National Treasury acknowledges the problem of illicit trade and is concerned about it as it undermines government's health and excise policy objectives. As other stakeholders have highlighted, illicit trade is an act of criminality and may involve organised crime syndicates. Therefore, it needs to be

addressed through robust compliance and law enforcement mechanisms which include role-players such as SARS, police, the justice system and taxpayers, to address effectively. A call to reverse the excise tax regime is not a solution. SARS, as the administrator of excise taxes, is working on strengthening its capacity to deal with the illicit economy.

Comments: Evidence shows that weakened tax administration has a significant role in driving illicit trade in tobacco and alcohol products. Experience from many countries demonstrates that illicit trade can be successfully addressed, even when taxes and prices on these products are raised. Strengthening tax administration along the supply chain of alcoholic beverages can reduce unrecorded alcohol consumption, independently of the increases in excise taxes and prices.

Response: Noted. SARS, as the administrator of excise taxes, is working on strengthening its capacity to deal with the illicit economy.

Comments: The Protocol to Eliminate Illicit Trade in Tobacco Products is an international treaty that aims to combat the illicit tobacco trade through various measures, including supply chain control (e.g. tracking and tracing), offence prosecution, and international cooperation. South Africa should become a Party to the Protocol and partner with the international community of countries committed to addressing illicit trade in tobacco products.

Response: Noted. The National Department of Health is leading Government on the matter of ratifying the World Health Organisation's Protocol to Eliminate Illicit Trade in Tobacco Products. As part of the Protocol, South Africa would be required to consider, as appropriate developing a practical tracking and tracing regime that would further secure the distribution system and assist in the investigation of illicit trade. The implementation of a track and trace system would be beneficial for the administration of all excisable products as it would equally apply.

Comments: South Africa has one of the highest illicit cigarette trade levels in the world at up to 73% of annual consumption in 2023. Illicit products continue to sell on a mass scale for as little as R5.70 for a pack of 20 cigarettes and, with a Minimum Collectable Tax (MCT) alone of R25.04 on a pack of 20 cigarettes, it is not possible for the legal industry to “win back” any volume from this illegal market segment.

Introduce into Customs and Excise Act 91 of 1964 (“the Act”), through a primary legislation change, a Minimum Retail Price (“MRP”) point of R34 per pack of 20 cigarettes to achieve effective enforcement and to address retail tax compliance. This change should not take place as part of the excise policy framework review (as previously noted by National Treasury in a response to our proposals) but rather through an amendment to the Act. A primary legislation change will allow all stakeholders to provide support (through detailed public consultation) to National Treasury as to why the proposed price point is too high or too low. In addition, it will allow the MRP to be adjusted annually through secondary legislation and will allow

for the MRP to be “turned off” once illicit trade has been brought under control.

Response: Noted. The issue of Minimum Retail Sales Price is receiving attention, and at an appropriate time government will make its decision known on this matter. However, it should be noted that even though this measure may assist in reducing consumption due to higher prices, it doesn’t by itself ensure compliance with excise duty obligations.

Comment: Allocate additional “ring fenced budget” to SARS, of at least R1 billion per annum, for purposes of illicit trade enforcement on tobacco products. This will enable SARS to implement technology and deploy resource to adequality deal with the illicit trade problem. Countries are recognising the “Return on Investment” (from a public health and public revenue perspective) that additional budget spend on tobacco enforcement can have.

Response: Noted. The National Treasury will continue to engage with SARS on its funding challenges. An additional amount of R500 million per year over the 2023 MTEF period was added to SARS’ budget to fund its capital and information and communications technology projects. In addition, R1 billion was provided to SARS during the 2023 adjustments budget process to improve its revenue-raising capabilities. A further R1 billion per year in 2024/25 and 2025/26 is allocated to SARS depending on its ability to meet the set conditions.

3.5. Other Administrative matters

Comment: Unlike other tax increases proposed by the Minister during the budget speech, the excise increase is final and effective immediately (i.e. at 14:00 on the day that the budget is read) and without prior consultation. The impact of this approach for large businesses is significant, considering the complexity and scale of operations which spans all alcohol categories with different production lines and schedules. Also, the administrative impact and burden on smaller businesses and craft producers in the spirits, wine and beer industry is unnecessarily disruptive and possibly more severe for other reasons.

In terms of section 58(1) of the Customs and Excise Act the annual increases in excise duty rates at the time of the Budget currently take effect at the moment the Minister of Finance tables the Budget documentation containing the tax proposals in Parliament. It is required that all excise accounts for February must be closed at the time the new rates are tabled. This means that our business must put in place processes that will ensure there is proper accounting at the time of the change. We put forth that the immediate application of the Budget increases in excise duty rates creates compliance complexities for taxpayers and poses administrative challenges for SARS. In this light we have suggested that the effective date of the excise increase be at the beginning at the beginning of the new fiscal calendar.

Response: Noted. National Treasury is considering the proposal and once a

decision has been made it will be communicated to all the stakeholders.

4. CARBON TAX

4.1. Renewable energy premium deduction

(Main reference: Section 6 of the Carbon Tax Act: Clause 63 of the Draft TLAB)

Electricity generators including state-owned entities claim the renewable energy premium deduction for renewable energy purchased under power purchase agreements (PPAs) concluded as part of the Renewable Energy Independent Power Producer Procurement Programme and with private producers. As the generation, transmission and distribution functions of Eskom are separated, the power purchase agreements will be transferred to the National Transmission Company of South Africa when it commences operations. However, the carbon tax liability arising from greenhouse gas emissions in category 1A1a will remain with the generation function of the state-owned entity.

It is proposed that the Carbon Tax Act be amended to allow electricity generators to continue to claim the renewable energy premium deduction for power purchase agreements ceded to the National Transmission Company of South Africa (NTCSA). The Electricity Regulation Amendment Act was signed into law by the President on 30 August and provides for additional electricity, new generation capacity and electricity infrastructure. The proposed amendments will ensure that both Eskom purchases of renewable energy in terms of legacy PPAs and direct new purchases of electricity through the transmission system or distributed generation (outside the grid) are eligible for the deduction from an equity perspective.

4.2. Alignment of Fuel Combustion Emissions Factors and Net Calorific Values with Greenhouse Gas Emissions Methodological Guidelines

(Main reference: Schedule 1 of the Carbon Tax Act: Clause 64 of the Draft TLAB)

Schedule 1 of the Carbon Tax Act sets out the 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 total emissions for a company for different activities under Section 4 of the Carbon Tax Act. The tax base of the Carbon Tax Act is greenhouse gas emissions reported to the Department of Forestry, Fisheries and the Environment (DFFE). The emissions are reported according to the 2016 National Greenhouse Gas Emission Reporting Regulations, which were gazetted in terms of the National Environmental Management: Air Quality Act, No.39 of 2004.

Schedule 1 of the Carbon Tax Act is aligned with the emission factor tables contained in Annexures of the DFFE's Methodological Guidelines for Quantification of Greenhouse Gas Emissions (the Methodological Guidelines). In October 2022, the DFFE gazetted the Amended Methodological Guideline for Quantification of

Greenhouse Gas Emissions. The 2022 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.

In Budget 2023, amendments were proposed to Schedule 1 to include new tables on the country specific CO2 emissions. 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 (2019) and the DFFE's 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.

It is proposed that the Schedule 1 fuel combustion emissions factors and net calorific values are updated, and new fuel types added.

Comment: The upper and lower range to determine net caloric value are removed. It is proposed that these values should be retained in the Carbon Tax Act so that the carbon taxpayer can use a calorific value for its fuel that is made available by its fuel supplier, provided it falls within the limits. This allows the carbon taxpayer to more accurately calculate its greenhouse gas emissions.

> *Response:* Accepted. The range was included in Schedule 1 of the Act for tier 1 emission factors. Upon consultations with DFFE, the NCV range is applicable for tier 1 and 2 emission factors therefore the NCV ranges will be applied.

Comment: The calorific value for other bituminous coal does not align with the South African Department of Forestry, Fisheries and Environment's (DFFE's) value. It is proposed that the value be in line with Coal General Purpose in Annexure D of DFFE's Methodological Guidelines for the Quantification of Greenhouse Gas Emissions.

Comment: The calorific value for diesel in the stationery source category and the non-stationary/mobile source category is different to the calorific value for other diesel types (ocean going ships, offroad and rail) in the nonstationary/ mobile source category. The calorific value for non-stationery diesel should either be aligned with DFFE's Methodological Guidelines for the Quantification of Greenhouse Gas Emissions or the difference should be explained.

> *Response:* Not Accepted. The change of the net calorific value for other

bituminous coal is to align with the Guidelines of the DFFE. The tier 1 and tier 2 NCVs both fall within the range that is applicable for other bituminous coal. Taxpayers may use the relevant NCV that is within the specified range.

Response: Not Accepted. The proposed diesel calorific values are aligned with the Methodological Guidelines and are based on the country-specific net caloric values in Annexure D of the Methodological Guideline, which are converted to TJ/Tonne by use of the Density factors as guided by the DFFE.

Comment: There is a country-specific carbon dioxide emission factor for natural gas. The schedule should be updated to include this country-specific CO2 emission factor. For both natural gas and methane-rich gas, there are country-specific calorific values. The schedule should be updated to include these country-specific calorific values.

Response: Not Accepted. The carbon dioxide emission factor used for natural gas is the default IPCC emission factor in the DFFE Methodological Guidelines. The emission factors in Schedule 1 are aligned with the factors in the Guidelines.

Comment: For the process emission factor of 2A3 glass production, it is recommended that the Act is clear for taxpayers to subtract the cullet (recycled material) percentage prior to applying the emission factor. This is in line with DFFE's Methodological Guidelines and the IPCC 2006 Guidelines. The use of recycled material does not result in process emissions. Taxpayers must be aligned to the emissions submitted to the DFFE.

Response: Noted. The calculation of emissions using recycled or virgin material is already accounted for in the DFFE Guidelines and in the emissions reported by taxpayers to the DFFE. Further consideration may be taken for Budget 2025 technical clarifications where necessary.

4.3. Aligning the Fugitive Emission Factors In Schedule 1 Of The Carbon Tax Act with the Greenhouse Gas Emission Methodological Guidelines

(Main reference: Schedule 1 of the Carbon Tax Act: Clause 64 of the Draft TLAB)

The Carbon Tax Act contains Schedule 1 which outlines the default emission factors for fuel combustion (stationary and non-stationary), fugitive and industrial process emissions. These factors are used to calculate the total emissions for companies under different activities In Section 4 of the Carbon Tax Act. Schedule 1 of the Act is aligned with the emission factor tables contained in Annexures of the Methodological Guidelines for Quantification of Greenhouse Gas Emissions. In October 2022, the DFFE gazetted the Amended Methodological Guideline for Quantification of Greenhouse Gas Emissions.

The updated Methodological 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. •In Budget 2023, amendments were proposed to Schedule 1 to include new tables on the fugitive emissions. 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 new fugitive emissions table.

It is proposed that the fugitive emissions table in Schedule 1 of the Carbon Tax Act is updated to include the new activities and fugitive 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.

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.

Comment: The fugitive emission factors must be aligned with the DFFE Methodological Guidelines. Alignment is important to ensure coordinated policy implementation in emissions disclosure and reporting transparency. Using lower emission factors will not be consistent with the fugitive emissions reported to the DFFE or the Nationally Determined Contribution reports.

Response: Accepted. Amendments were made in 2023 TLAA to correct the emission factors in Table 2 for which the multiplication by 1000 would result in an overestimation of the carbon tax liability for some activities. This approach was taken as it was the least disruptive from an administrative and legal perspective.

After consultation with the DFFE, the division by 1000 will be reversed for certain activities for which the amendment was incorrect. This amendment will be implemented for the following activities; Coal Mining and Handling, Charcoal Production, and Gas Transmission & Storage.

The amendment of the fugitive emission factors will allow for an accurate estimation of the carbon tax liability.

5. INCOME TAX: INDIVIDUALS, SAVINGS AND EMPLOYMENT

5.1. Curbing the abuse of the Employment Tax Incentive Scheme

(Main reference: Sections 1(1) and 5(3) of the Employment Tax Incentive Act, No. 26 of 2013 (“the ETI Act”): Clause 56 and 57 of the Draft TLAB)

Changes were made to the Employment Tax Incentive Act (2013) in 2021 and 2023 to curb abuse of the employment tax incentive from aggressive tax

schemes, which used training institutions to claim the incentive for students. It is proposed that punitive measures to support those amendments be refined in the legislation to address the abusive behaviour of certain taxpayers towards the incentive.

Comment: We support measures aimed at curbing abuse of the ETI.

Response: Noted. The additional penalty regime is intended to encourage compliance with the provisions of the ETI Act and to close loopholes intended to undermine the objectives of the ETI.

Comment: It is submitted that the sanctions of the ETI Act be extended to promoters of aggressive schemes and that employers be offered relief (e.g. penalties and interest) should they collaborate with SARS if SARS successfully sanctions and recovers monies from the promoter. In addition, NT should clarify whether this is intended to be an additional penalty over and above other penalties (e.g. understatement penalty).

Response: Noted. The penalty provisions in the Tax Administration Act (TAA) will apply. Over and above the penalty mechanism in the TAA, the provisions of the new section 5(3) of the ETI Act will apply separately. As is normally the case, any taxpayer requests for remission of penalties and interest will be considered by SARS on a case-by-case basis.

Comment: To clarify that the anti-abuse "monthly remuneration" definition applies to section 4, it is submitted that "remuneration paid" be replaced with "monthly remuneration paid".

Response: Not Accepted. It is not recommended that changes are made to section 4 of the ETI Act.

5.2. Transfers between retirement funds by members who reached normal retirement age before retirement date

(Main reference: Definition of "retirement annuity fund" in section 1(1), paragraphs 2(1) and 6A of the Second Schedule of the Income Tax Act: Clauses 30 and 31 of the Draft TLAB)

In 2023, changes were made to the legislation to allow for tax-neutral transfers between retirement funds in instances where members of pension or provident funds who have reached the normal retirement age as contained in the rules of the fund, but have not yet elected to retire, to transfer their retirement interest tax-free if it is an involuntary transfer. However, to be tax-free the transfer of the retirement interest should be made to a fund that is not less restrictive. It has come to government's attention that the law only allows certain tax-free transfers of an involuntary nature but excludes transfers from one retirement annuity fund to another. It is proposed that the law be amended to allow involuntary transfers of this nature.

Comment: The National Treasury should reconsider the requirement that Retirement Annuity Fund (RAF) to RAF transfers in terms of paragraph 2(1)(c) of the Second Schedule to the ITA can only be tax neutral if the transfer was involuntary and that these transfers should instead be allowed tax neutral where the transfer is at the election of the RAF member. In addition, involuntary transfers of member benefits from an RAF to another RAF hardly occur in practice. This is a more common occurrence in occupational funds. Consequentially, alignment of the Draft Explanatory Memorandum wording with the draft legislation is required.

Response: Accepted. It is the policy intention of the government to ensure parity amongst members of retirement annuity funds who have reached normal retirement age as stipulated in the fund rules but have not yet elected to retire from the fund. Therefore, the amendments contained in the 2024 TLAB will make it possible to have the ability to transfer retirement interest from a retirement annuity fund into another retirement annuity fund without incurring a tax liability regardless of whether the transfer is of a voluntary or involuntary nature. The final Explanatory Memondarum will reflect wording aligning with the policy instrument.

5.3. Clarifying anti-avoidance rules for low-interest or interest-free loans to trusts

(Main reference: Section 7C of the Act: Clause 4 of the Draft TLAB)

The Income Tax Act contains an anti-avoidance measure aimed at curbing the tax-free transfer of wealth to trusts using low-interest or interest-free loans, advances or credit arrangements (including cross-border loan arrangements).

The transfer pricing rules in the act also apply to counter the mispricing of cross-border loan arrangements. To avoid the possibility of an overlap or double taxation, the trust anti-avoidance measures specifically exclude low- or no-interest loan arrangements that are subject to the transfer pricing rules.

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.

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 amount or portion thereof, owing by that trust in respect of that loan, advance or credit, to the extent of an adjustment being made on that amount or part thereof in terms of the transfer pricing provisions.

Comment: There is a concern that, in certain circumstances, the current proposal may cause uncertainty for taxpayers that prepared a detailed analysis of the

considerations that should be considered in determining an arm's length interest rate. The impact being that, at a minimum, the loan will always be subject to the section 7C rate and tax consequences, notwithstanding that it is an arm's length transaction. As such, there should be a carve out, that in those instances where an interest rate lower than the official rate can be justified as being an arm's length interest rate, section 7C should not apply.

Response: Not accepted. This is our policy intent as section 7C of the Act is an anti-avoidance measure aimed at curbing the tax-free transfer of wealth. The proposed amendment ends any improper or undue opportunities that arise due to the difference in rate.

Comment: Whilst it is implicit that the transfer pricing adjustment applies to a specific loan, it could be interpreted that any transfer pricing application would suffice for the exclusion and that it need not relate to the loan to the trust. It is recommended that legislation be explicit that transfer pricing application relates to interest levied in respect of a specific loan.

Response: Not accepted. Legislation is clear if read in context.

6. INCOME TAX: GENERAL BUSINESS TAX

6.1. Reviewing the connected person definition in relation to partnerships

(Main reference: Section 1 of the Act: Clause 1 of the draft TLAB)

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 which invest in fund partnerships inadvertently become connected to other commercially unrelated corporate investors and connected parties in relation to such investors and to each other in relation to all other unrelated transactions that are entered into by these investors.

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) are affected by the wide ambit of paragraph (c) of the definition of "connected person". Therefore, it is proposed that the definition of a "connected person" be amended to exclude "qualifying investors" due to their isolated involvement in the partnership.

Comment: The proposed amendment is currently limited to only paragraph (*c*)(ii) of

the definition of “connected person”. This part of the definition relates to connected persons in relation to members of a partnership and not members themselves. The result is that, for example, the members of an *en commandite* partnership will continue to be connected persons while the proposed amendment will only result in connected persons in relation to one member not being connected persons in relation to another member by virtue of that part of the connected person definition. It is recommended that the exclusion of limited partners should apply to the entirety of the connected person definition.

Response: Not accepted. The proposed amendment is limited to the scope of connected persons in relation to members of a partnership (paragraph (*c*)(ii)) by design and not the members themselves. Any further expansion to the proposed exception, to also include the members themselves, are out of scope as it would be a massive policy shift and essentially counter the anti-avoidance nature of the concept of "connected person”.

Comment: The ambit of the partnership provision within the definition of a "connected person” remains too wide with anomalous and unintended consequences. Accordingly, it is submitted that the proposed amendments do not go far enough and the definition in the context of partnerships should be removed in its entirety.

Response: Not accepted. The comment is out of scope in relation to the proposed and directed amendment. The submission would be a massive policy shift, requiring an intense review of the long-standing tax policy intent around the anti-avoidance nature of the concept of "connected person”.

6.2. Limiting interest deductions in respect of reorganisation and acquisition transactions

(Main reference: Section 23N of the Act: Clause 19 of the Draft TLAB)

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.

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%). Further changes

were made in 2023 to the definition of “adjusted taxable income” in section 23M of Act.

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.

Comment: The proposal to align section 23N with section 23M in terms of the formula may be inappropriate. The formula in section 23N allows for a limitation amounting to 49 per cent of adjusted taxable income. The proposed amendments to replace the formula with a fixed amount of 30 per cent will potentially have a substantial impact on transactions that have already been concluded in a high-interest rate environment and undermine the very purpose of the variable formula in section 23N. To limit the impact of the proposal on already concluded transactions, it is proposed that the amendment to the formula in section 23N be applied to transactions concluded at a future date.

Response: Accepted. The effective date for the proposed amendment to the formula in section 23N will be postponed to 1 January 2027.

Comment: Replace the word more with less in the current proposed amended wording to the definition of "adjusted taxable income".

Response: Accepted. Amendments will be made to draft legislation to correct the wording.

Comment: The definition of adjusted taxable income in section 23M includes provisions that cater for REITS. However, these provisions have not been included in the definition of adjusted taxable income in section 23N. Given that the intention of the proposed amendments is for the two definitions to mirror each other, it is questioned why this adjustment was not included.

Response: Noted. Government notes the omission and will consider including these provisions to ensure that the definition of adjusted taxable income in section 23N mirrors the current definition of adjusted taxable income in section 23M.

6.3. Relaxing the assessed loss restriction rule under certain circumstances

(Main reference: Sections 20 and 41 of the Act: Clauses 16 and 27 of the Draft TLAB)

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 commencing on or after 1 April 2022. This proposal broadened the corporate tax base by restricting the offset of assessed losses carried forward to 80 per cent of taxable income.

As a result, 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, taxable income is often calculated in that year. 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. Government proposes that companies be exempt from applying the assessed loss restriction rule while in the process of liquidation, deregistration or winding up.

Comment: The reference to section 41(4) unintentionally narrows the application of the proposed exemption. The settlement of all liabilities is likely to be one of the last steps that will be taken during a liquidation or winding up process which typically takes place years after the resolution is lodged for complicated liquidations. There are other instances where the exemption would assist companies such as companies with different shareholder structures and companies undergoing business rescue (voluntary or involuntary) which are not included in the draft legislation.

Response: Not Accepted. Government recognises the potential limitations. The intention is to ensure that only those businesses that have taken the necessary steps and are being liquidated, deregistered or wound-up are exempt from applying the assessed loss restriction.

Comment: The exemption for companies in the process of liquidation, deregistration or wind-up was an unintended consequence upon implementation of the limitation of set off provision. The effective date of this exemption should be brought forward and rather apply to years of assessment ending on or after 31 January 2025 instead of years of assessment commencing on or after 31 January 2025.

Response: Accepted. Effective date will be amended so that the amendment will apply to years of assessment ending on or after 31 December 2024.

6.4. Taxation issues involving unlisted property industry

(Main reference: Definition of “REIT” in section 1 of the Act: Clause 1 of the Draft TLAB)

Broadly, in 2012, a unified approach termed Real Estate Investment Trusts (REITs) 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 REITs regime provided a flow-through principle where income and capital gains will normally be taxed solely in the hands of the investor and not in the hands of 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. To provide a rule for the tax treatment of the unlisted property companies and ensure that monitoring is done by the Financial Sector Conduct Authority ("FSCA"), it is proposed that the "REIT" definition in section 1 of the Act be extended to cater for unlisted property companies regulated by the FSCA through the published requirements approved in consultation with the Director-General of the National Treasury.

Comment: The proposed change is welcomed. However, the draft TLAB has no effective date nor deadline by which the FSCA is required to publish the approved regulations. Until the FSCA publishes the relevant regulatory framework the proposed legislation will remain ineffective.

Response: Noted. The current draft wording will be revised to allow the Minister of Finance to issue regulations for unlisted property companies catering to retirement funds and long-term insurance company policy holder funds, which will be modelled on the regulatory framework for listed property companies.

Comment: The draft TLAB does not include any amendments in respect of the 2024 Budget proposals regarding "the feasibility of a 'flow-through' tax treatment, similar to what is afforded to trusts and other investment vehicles, for certain clearly defined infrastructure projects, under specified circumstances".

Response: Noted. Government is still considering the tax treatment of certain infrastructure projects and any proposals regarding this work will be announced thereafter.

6.5. Clarification of the interest limitation rules

(Main reference: Section 23M of the Income Tax Act: Clause 18 of the Draft TLAB)

In 2021, changes were made to the Act as part of the corporate income tax package to broaden the tax base and reduce the headline corporate income tax rate in a revenue neutral manner. One of these measures included strengthening the rules dealing with the limitation of interest deductions for debts owed to certain persons not subject to tax in section 23M of the Act.

In 2023 amendments were made to section 23M to clarify these rules. Government proposes further amendments to clarify that there is a deemed debt

owed to a creditor in the following year of assessment even where the debt that gave rises to the interest has already been settled.

Comment: The proposed amendment deems the two requirements of section 23M(2) i.e. there must be a debt owed to a creditor and the creditor must be not subject to tax on the interest to continue notwithstanding the repayment of the debt. It is not clear whether the intention is also to deem the debt to be owing to a creditor in a controlling relationship.

Response: Noted. The intention of the proposed amendment to subsection (4) is to cater for both instances where there is a controlling relationship and instances where there is no controlling relationship.

6.6. Third-party backed shares: extending exclusions to the ownership requirement in section 8EA ending the definition of "enforcement right" to a connected person in section 8EA

(Main reference: Section 8EA of the Income Tax Act: Clause 6 of the Draft TLAB)

In 2023, amendments were made to the qualifying purpose provisions to clarify the ownership requirement for the equity shares in the operating company by the person that acquired those equity shares at the time of the receipt or accrual of any dividend or foreign dividend, subject to certain exclusions.

The exclusions include a provision that 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.

- It is proposed that the ownership requirement exclusions be extended to include corporate actions relating to listed share substitutions on a recognised exchange in a country other than South Africa.

- It has come to government's attention that further clarity is required on whether settlement of any dividends, foreign dividends or interest accrued in respect of a preference share that are payable also falls within the ambit of its allowable redemption.

- It is proposed that the legislation be amended to include the settlement of any amounts of dividends, foreign dividends or interest accrued in respect of the redemption of a preference share.

Comment: The draft Explanatory Memorandum notes that the extension of exclusions should apply to the settlement of accrued dividends, foreign dividends or interest, however the actual proposed wording in the 2024 Draft TLAB refers only to the settlement of any amount of dividends or foreign dividends.

Response: Accepted. The draft Explanatory Memorandum will be corrected by removing the reference to interest.

Comment: Because the proposed amendment seeks to clarify that the redemption of the preference share in terms of the ownership requirement test (effective 1 Jan 2024) includes the settlement of any amount of dividends or foreign dividends accrued in respect of that preference share, this proposed amendment's effective date should also be 1 January 2024.

Response: Accepted. The effective date will be amended to 1 January 2024 to provide clarity.

Comment: It is proposed that the exceptions to the ownership requirement test, effective 1 January 2024, be expanded to include further exceptions, other than those proposed in the 2024 draft TLAB, including:

- an exclusion from the ownership requirement in instances where the equity shares in the operating company have been transferred in terms of a "securities lending arrangement" or a "collateral arrangement";
- a share-substitution carve-out be included for unlisted share transactions; and
- any intra-group transactions which have the result that the original shares in the operating company have been transferred to a different group holding company or the operating company was merged with another group company;
- A provision that a determined time period applies to the ownership requirement test, or even a de minimus rule be applied where some equity shares underlying operating companies are disposed of for commercial reasons.

Response: Not accepted. Comments relate to additional expansions requested outside of scope of the proposed amendments in the 2024 draft TLAB.

6.7. Translating "contributed tax capital" from foreign currency to rands

(Main reference: Section 25E of the Income Tax Act: Clause 23 of the Draft TLAB)

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.

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.

As such, it could be difficult to determine, by 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

To ensure better legislative clarity and efficiency of application 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 the functional currency of the tax resident company; and
- the distinguishable and separate points of creation or reduction of CTC.

Comment: There are potential application and interpretive shortcomings, which needs clarification, including that the*:*

- proposed amended to section 25E of the Act only applies where the functional currency of the company is ZAR for the purposes of determining increases in CTC. However, in such circumstances there is no rule for the translation of reductions in CTC;
- way in which section 25E(*b*) of the Act is worded would result in the reduction amount having to be converted to ZAR despite the functional currency being denominated in a foreign currency because the reduction amount is not *ZAR;*

Response: Not accepted. Issues raised in the comments are either by intentional design or possibly because of a misunderstanding of the policy intent. To clarify, the provisions of section 25E of the Act, as stated above, now rather makes a distinction for application based on the functional currency of the tax resident company and the distinguishable and separate points of creation or reduction of CTC. As such, where the functional currency of a tax resident company is*:*

- 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.

- 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.

Comment: The word 'or' where it appears in the proposed section 25E(b) of the Act should be replaced with 'and', since in the definition of CTC, paragraph (*a*)(*aa*), (*bb*) and (*cc*) and (*b*)(*aa*), (*bb*) and (*cc*) are set conjunctively. It should thus read: "… and any amount referred to in paragraph (*a*)(*aa*), (*bb*) and (*cc*) or(*b*)(*aa*), (*bb*) and (*cc*) of the definition of 'contributed tax capital'..."

Response: Not accepted. Intentional design as the application of section 25E of the Act should find application at the date on which that amount must be taken into account for purposes of the determination of CTC. Had it been an "and" application, then the creation, conversion and distribution of CTC contemplated in the definition of CTC would all have to apply first before the conversion could be applied.

7. INCOME TAX: TAXATION OF FINANCIAL INSTITUTIONS AND PRODUCTS

7.1. Impact of IFRS17 insurance contracts on the taxation of short term and long- term insurers

(Main reference: Section 28 and 29A of the Income Tax Act: Clauses 24 and 25 of the Draft TLAB)

In May 2017, the International Accounting Standards Board issued IFRS 17 to replace IFRS 4 as the new accounting standard for insurers. In 2022, tax legislation was developed to cater for the application of IFRS 17 for the financial years of insurers starting on or after 1 January 2023. The implementation of IFRS 17 is a complex, ongoing process, with insurers now starting to report on the new standard. Given the significant adjustments required due to implementing IFRS 17, several unintended consequences have come to government's attention and need to be addressed in the tax legislation.

For example, an amendment is required to reduce an excessive phasing-in amount as a result of liabilities for remaining coverage not specifically being allowed as a deduction under the IFRS 17 tax system.

Comments on short term insurance

Comment: The current wording of this section mentions the inclusion of 'the difference between amounts recoverable…'. The phrase 'the difference between' implies a comparison of two variables. However, only one variable, 'amounts recoverable by that short-term insurer,' is specified. Therefore, the phrase 'difference

between' is unnecessary. The purpose of paragraph (a), as noted in the EM, is to include salvages and third-party recoveries in the taxable income of the short-term insurer in the year of transition, since these amounts were not previously taxed. This simply requires their inclusion in taxable income, rather than a comparison.

Response: Accepted. The phrase 'difference between' will be deleted in section 28(3C)(*a*) so that it is aligned with the with the stated intention in the Explanatory Memorandum.

Comment: 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. We have observed cases where the reinsurance asset related to the LRC exceeds the LRC itself, resulting in the net LRC being a net asset.

Response: Accepted. The wording of section 28(3C)(b) will be revised to address situations where the net LRC amount is a net asset, rather than a net liability.

Comment: 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, we have observed cases where the outcome is a net creditor position (i.e., payables exceed receivables), which would typically lead to an inclusion in taxable income.

Response: Accepted. Section 28(3C)(*c*) will be amended to clarify the tax treatment for a net creditor position, rather than a net debtor position.

Comment: 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.

Response: Accepted. The phase-in provisions will be amended to cater for any resultant negative positions.

Comments on long term insurance

Comment: For cell captive arrangements, the licensed 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. The proposed amendment to exclude amounts payable to or receivable from a cell owner that do not relate to a policy in the adjusted IFRS formula should also be reflected in the definition of 'value of liabilities'.

Response: Accepted. An amendment will be made to the definition of 'value of liabilities' to provide consistency when the reference is made to amounts payable to or receivable from a cell owner.

8. INCOME TAX: BUSINESS INCENTIVES

8.1. DEDUCTIONS IN RESPECT OF SCIENTIFIC OR TECHNOLOGICAL RESEARCH AND DEVELOPMENT

(Main reference: Section 11D)

The Act contains the Research and Development (R&D) tax incentive in section 11D of the Act, which came into operation on 2 November 2006. The R&D tax incentive has undergone various design changes over the years to better tailor it to meet its objectives. The most significant of these changes was the introduction of a pre-approval process in 2012.

In 2023, Government extended the revised R&D tax incentive to 31 December 2033. Various changes were made to the definition of R&D to align it with the principles outlined in the OECD Frascati Manual and clarify that the incentive is only applicable to activities aimed at solving scientific or technological uncertainty. Additional administrative changes were included such as the six-month grace period for pre-approval of applications, extended disclosure circumstances for monitoring R&D, and sanctions for violating secrecy provisions.

Comment: The amendment to section 11D introduces stricter criteria for qualifying R&D activities eligible for tax incentives. Clear guidelines on qualifying activities and expenditures should be made available to assist businesses to claim R&D tax deductions.

Response: Not accepted. It should be noted that this provision was not part of the 2024 draft TLAB proposals. The criteria for qualifying R&D was revised in 2023 to clarify that R&D activities must be systematic, experimental, aimed at resolving a scientific or technological uncertainty that isn't easily deducible by a person skilled in that field. These activities should focus on discovering new knowledge,

creating or improving products, processes, or services, developing multisource pharmaceuticals, or conducting clinical trials. The Department of Science and Innovation has issued guidelines to assist taxpayers to evaluate whether their proposed R&D activities meet the revised definition of R&D in section 11D.

8.2. SPECIAL ECONOMIC ZONES

(Main reference: Section 12R, section 12S of the Act)

In 2013, the Special Economic Zone (SEZ) tax regime was introduced in the Act. Tax benefits for this regime are contained under two separate provisions of the Act. The first provision contained in section 12R deals with the criteria determining what constitutes a qualifying company that qualifies to be taxed at 15 per cent instead of the statutory 27 per cent corporate tax rate. The second provision contained in section 12S provides for an accelerated capital allowances for buildings owned and used by a qualifying company in the production of its income within SEZ.

In 2020, changes were made to align the sunset dates of the two provisions SEZ tax regime. A single date for the end of the application of the SEZ tax regime was introduced to clarify that the SEZ tax regime will come to an end after 1 January 2031. Comment: The Anti-avoidance measures in terms of 2R(4)(*c*), disqualify companies from the SEZ incentive even if they do not abuse transfer pricing in any way.

Response: Noted. The comment is outside the scope of the proposed change in legislation contained in the draft TLAB 2024. Government recognises the challenge posed by the anti-avoidance measures. An inter-governmental task team has been established to investigate all SEZ related issues, and government will indicate the policy direction thereafter.

Comment: The sunset date of the SEZ tax incentive should ceases to apply in respect of any year of assessment commencing on or after 1 January 2031 or ten years after the qualifying company commences operations in any Special economic Zone, whichever is the longer.

Response: Not accepted. The comment is outside the scope of the proposed change in legislation contained in the draft TLAB 2024. Although qualifying companies were initially intended to have the incentives available to them for a period of 10 years, government clearly stated the change in intention and provided reasons in the 2020 EM.

8.3. INVESTMENT ALLOWANCE IN RESPECT OF BUILDINGS, MACHINERY, PLANT, IMPLEMENTS, UTENSILS AND ARTICLES USED IN DOMESTIC PRODUCTION OF ELECTRIC AND HYDROGEN-POWERED VEHICLES

(Main reference: Sections 8, 12C, new section 12V ,13, and 13quat of the Act: Clauses 5, 10, 11,12 and 15 of the Draft TLAB)

The South African government has – through the Department of Trade, Industry and Competition ("the dtic"), implemented various incentives to support the automotive industry including the Motor Industry Development Programme (MIDP) from 1995 to 2012 and the Automotive Production and Development Programme (APDP) in 2013. The APDP aims to grow production volumes and promote value addition in the automotive component industry.

The DTIC published the Electric Vehicles White Paper, stating the transition from primarily producing Internal Combustion Engine ("ICE") vehicles to a dual platform that includes electric vehicles (EVs). This shift is necessary to address environmental concerns and meet emission reduction commitments from the Paris Agreement. South Africa's key export markets, like the EU and UK, have announced plans to ban the sale of new ICE vehicles by 2035, which threatens the country's strategic position in the global automotive export industry.

Internationally, countries have introduced tax incentives to encourage investment in EV production and related infrastructure. To encourage the investment in the local production of electric and hydrogen-powered vehicles, Government proposed to introduce a 150% investment allowance for qualifying investment spending on production capacity for electric and hydrogen-powered vehicles. The investment allowance will be available for qualifying assets brought into use from 1 March 2026 until and including 1 March 2036. Assets will qualify if they are new and unused (including improvements) and will be used mainly to produce electric or hydrogen-powered vehicles.

Comment: The proposed investment allowance is welcomed. However, the Income Tax Act currently does not have a definition of a 'motor vehicle manufacturer'. The process of manufacturing vehicles involves various steps, including assembling parts. It is not clear.

Response: Accepted. Amendments will be made to draft legislation to include a definition of a 'motor vehicle manufacturer' in line with the definition of a 'final manufacturer' in terms of Automotive Production and Development Programme Phase 2 (APDP 2).

Comment: There is no definition as to what constitutes "electric and hydrogen-powered vehicles". For example, it is not clear whether a hybrid vehicle would qualify given that it is electric powered in addition to having an internal combustion engine or would this be interpreted to mean the vehicle must be wholly electric or hydrogen-powered.

Response: Accepted. Amendments will be made to draft legislation to include a

definition of electric and hydrogen-powered vehicles. Government is aware that the DTIC issued for public comments Draft Regulations requesting the International Trade Administration Commission (ITAC) to effect amendments to the APDP2 legislative framework, in line with the recommendations of the EV White Paper. The current draft of these Regulations does not provide definitions of electric and hydrogen-powered vehicles. However, this will change when the DTIC publishes detailed guidelines on the criteria for EVs. An analysis of countries that provide incentives and subsidies targeting electric and hydrogen-powered vehicles was undertaken. Based on this analysis, a definition for electric and hydrogen-powered vehicles was developed.

Comment: The word ‘any’ in subsection 12V(1) should be amended to refer to ‘an’ instead of 'any'.

Response: Accepted. Amendments will be made to draft legislation to correct the wording.

Comment: The process of manufacturing of vehicles requires the assembling of parts. For the country to benefits extensively from the electric and hydrogen-powered vehicles industry, incentives must be made available to encourage the local production of parts that will be used in the process of manufacturing electric and hydrogen-powered vehicles. Component manufacturers will also likely need to modify their production lines in order to meet the requirements of electric and hydrogen powered vehicles to be able to continue to supply motor vehicle manufacturers.

Response: Not accepted. A different incentive package for component manufacturers was announced in the notice issued by the Automative Investment Scheme (AIS) in February 2024. The Notice outlined an increased AIS cash grant incentive of 35 per cent for component manufacturers producing for NEVs. Component manufacturers producing parts for internal combustion engine (ICE) vehicles can only claim the original 25 per cent AIS cash grant.

Comment: The proposed provision provides an allowance based on the cost of new and unused machinery, plant, implements, utensils and articles. However, in instances where the plant and machinery must be mounted to a foundation or supporting structures, the cost of the foundation and supporting structures would not qualify for the allowance under the proposed section 12V.

Response: Accepted. Amendments will be made to draft legislation to include a proviso to section 12V(1) that allow for foundations or supporting structures to which assets qualifying for a section 12V deduction are affixed and which have the same useful life as the assets, to qualify for the investment allowance.

Comment: The proposed section 12V does not permit a deduction for any improvements to plant machinery used for manufacturing electric or hydrogen-powered vehicles.

Response: Accepted. Amendments will be made to draft legislation to include improvements to plant machinery used for manufacturing electric or hydrogen-powered vehicles.

Comment: The scope of the tax incentive should be for all new energy vehicles (NEVs), which includes plug-in hybrid electric vehicles (PHEV) and not only Zero Emissions Vehicles (ZEVs) i.e. electric or hydrogen-powered vehicles only. It is envisaged that all NEVs will co-exist with ZEVs, and each will play an equitable role towards decarbonisation.

Response: Not Accepted. A different support package for hybrid and plug-in hybrid electric vehicles is currently available through the APDP 2. In addition, these vehicles are already being produced in South Africa and exported. The intention of this incentive is not to assist local production of vehicles that is already underway, and which would have proceeded without government assistance.

Comment: Currently no provision is made in the proposed section 12V for improvements made to buildings or land not owned by the taxpayer.

Response: Noted. Government is currently reviewing provisions pertaining to improvements made to buildings or land not owned by taxpayers located in Special Economic Zones.

Comment: The proposal whereby no other allowances would be available where a taxpayer has ever claimed a section 12V allowance in respect of the asset will act as a major deterrent to investment. For instance, some taxpayers may be prompted by the tax incentive to construct a facility to be used in the production of electric or hydrogen-powered vehicles which later proves economically unsustainable and decide to use the assets in another trade. Based on the current provisions the taxpayer will be prohibited from claiming any allowances in the future in terms of sections 12C, 13(1) or 13quat in respect of that assets because the assets once qualified for the section 12V allowance.

Response: Not accepted. It is Government's intention to restrict the availability of other allowances where a section 12V tax allowance was granted. This is to ensure that the incentive is targeted at the local production of electric and hydrogen-powered vehicles and companies invest in assets that will be mainly used to produce electric and hydrogen-powered vehicles and not easily repurposed to produce other vehicles.

Comment: The proposed effective date will prejudice local vehicle manufacturers who may wish to commence the process earlier than 1 March 2026 and those that already have NEV products in the SA market. Some vehicle manufacturers are in an investment cycle targeting production in January 2026.

Response: Not accepted. Government is not aware of any local vehicle

manufacturers that have started producing electric or hydrogen powered vehicles locally. Based on the analysis conducted by the DTIC, vehicle manufacturers have an investment cycle targeting production for 2026, which is in line with the effective date.

Comment: The introduction of the GloBE pillar 2 minimum tax rules could have a profound impact on tax incentives, including incentives such as investment allowances, by lowering the effective tax rate of companies in scope. In the context of SA and the automotive sector, this could potentially result in SA subsidiaries of the OEMs having effective tax rates of less than 15%, thereby triggering the SA domestic minimum top-up tax and potentially undermining the incentive.

Response: Noted. The Global Minimum Tax also includes a 'substance-based income exclusion' which reduces the impact of the rules on investments which have real economic substance and which brings jobs and tangible assets may assist in this regard.

8.4. Deduction in respect of certain machinery, plant, implements, utensils and articles used in farming or production of renewable energy

(Main reference: Section 12B of the Income Tax Act)

In 2004, Government introduced an accelerated depreciation allowance for investments in biodiesel and biofuels in section 12B of the Act. Assets used in the production of electricity using wind, sunlight (later referred to as solar power), gravitational water force to produce electricity of not more than 30 megawatts (later referred to as hydropower) and biomass comprising organic waste, landfill gas or plants were eligible to benefit from a tax depreciation write-off of 50:30:20 per cent over three years. Additional amendments were made in 2012 to include the necessary and integrated supporting structures, with respect to assets that are used in renewable energy generation, to benefit from the same tax write-off of three years.

In 2015, Government sought to further encourage the independent generation of electricity through renewable energy sources to alleviate the then-projected electricity shortages in the country. In particular, changes were made to increase the uptake of small-scale embedded solar photovoltaic (PV) energy production to ease the pressure on the national electricity grid. In this regard, assets used for embedded solar PV renewable energy with a generation capacity not exceeding 1 000 kW or 1 MW were made eligible for an accelerated depreciation of 100 per cent in one year.

Given the country's recent past struggle to produce reliable electricity through the national grid, in 2023 the private electricity generation threshold was removed to encourage greater investment in new generation capacity. A temporary enhancement to the current renewable energy tax incentive available in section 12B was also introduced in terms of section 12BA of the Act. The enhanced

renewable energy tax incentive is set to expire on 1 March 2025. government announced in the 2024 Budget Review that it will reconsider the generation threshold and leasing restrictions of section 12B.

Comment: Section 12B disallows the allowance in circumstance where the asset has been let by the taxpayer to a lessee that does not derive income under such lease in the carrying on of a trade. This constraint was relaxed under the enhanced renewable energy tax incentive in section 12BA. The concern is that assets that would otherwise qualify for an allowance under section 12BA, would be excluded from the application of section 12B on the basis that the asset is let by the owner of the assets in a finance lease arrangement to a lessee that is not carrying on a trade. In addition, it was announced that government would consider increasing the generation threshold in section 12B.

Response: Noted. Government requires more time to reconsider these proposals.

9. INTERNATIONAL TAX

9.1. Clarifying the translation for hyperinflationary currencies

(Main reference: Sections 9D(2A) and 9D(6) of the Act: Clause 7 of the Draft TLAB)

In general, the net income of a controlled foreign company (CFC) is to be determined in the currency used by that CFC for purposes of financial reporting and to be translated into the currency of the Republic at an average exchange rate for that year of assessment. However, exchange items that are not attributable to any permanent establishment of the CFC must currently be translated to the hyperinflationary functional currency.

It is proposed that these rules be clarified so that where 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, exchange items in a foreign currency are to be translated to Rand.

Comment: We support the effort to simplify the translation procedure. However, we note that the proposed effective date of December 31, 2024, also applies to the current tax year of controlled foreign companies ending on or after this date. This retrospective application may present practical challenges during implementation. We recommend considering these factors to ensure a smooth transition and avoid potential complications for businesses adapting to the new rule.

Response: Comment misplaced. The practical challenges during implementation were not explained and this proposal does not have a retrospective application as come into operation on 1 January 2025 and apply in respect of years of assessment commencing on or after that date.

9.2. Clarifying the 18-month period in relation to shareholdings by group entities

(Main reference: Paragraph 64B of the Eighth Schedule to the Act: Clause 35 of the Draft TLAB)

In 2023, it was proposed that a similar 18-month holding requirement that applied to the participation exemption relating to the sale of shares in a foreign company should be introduced for the participation exemption in respect of the foreign return of capital in a controlled foreign company.

However, the current wording is not quite clear, and it is proposed that this wording be refined.

Comment: While the proposed amendment to paragraph 64B(4) is appreciated, it falls short. The change merely replicates the current language in paragraph 64B(1) and does not adequately address the 18-month holding rule. This rule only considers a single transfer of the foreign company within the group of companies over an 18-month period. If there are multiple transfers within that timeframe, the requirement is not met. The rule should account for all holdings within the group over 18 months, not just the last two holders. Similar adjustments should also be made to paragraph 64B(1).

Response: Noted. The above suggestion will be recommended for the 2025 Budget Review.

9.3. Clarifying the rebate for foreign taxes on income in respect of capital gains

(Main reference: Section 6quat(1A)(*a*)(iii) in the Act: Clause 2 of the Draft TLAB)

The Income Tax Act provides that a taxpayer should get credit for the taxes paid in the relevant foreign jurisdiction but limits this to the South African tax on the amount taxed in South Africa. No credit is available for exempt or untaxed amounts. According to the foreign tax credit rules dealing with foreign dividends, the tax-exempt portion must not be taken into account when determining the allowable foreign tax credit. However, the rules dealing with capital gains have no corresponding provision for the non-taxable portion of the capital gain.

It is proposed that section 6quat be amended to explicitly allow for a full foreign tax credit against tax payable in South Africa on a capital gain for taxes payable in the relevant foreign jurisdiction on the disposal of an asset. This will ensure a similar treatment as for foreign tax credits for foreign dividends.

Comment: The Explanatory Memorandum states that the amendment will take effect for foreign tax years ending on or after January 1, 2025. However, the Draft TLAB specifies an effective date of foreign tax years ending on or after December 31, 2024.

Response: Accepted. The Explanatory Memorandum effective date will be corrected so that it is aligned with the Draft TLAB's effective date.

9.4. Aligning the section 6quat rebate and translation of net income rule for CFCs

(Main reference: Sections 9D of the Act: Clause 7 of the Draft TLAB)

Foreign taxes payable by a Controlled Foreign Company (CFC) must be translated to rand at the average exchange rate for the year of assessment of the resident having an interest in the CFC and for whom an amount of net income of the CFC is included in the income of that resident.

However, the net income of the CFC must be translated by applying the average exchange rate for the foreign tax year of the CFC. A mismatch arises when the year of assessment of the resident and the foreign tax year of the CFC are different.
To address this anomaly, it is proposed that the Income Tax Act aligns the years used to translate net income and foreign tax payable by referring to the foreign tax year of the CFC.

Comment: The Explanatory Memorandum states that the amendment will take effect for foreign tax years ending on or after January 1, 2025. However, the Draft TLAB specifies an effective date of foreign tax years ending on or after December 31, 2024.

Response: Accepted. The Explanatory Memorandum effective date will be corrected so that it is aligned with the Draft TLAB's effective date.

Comment: The proposed amendment to section 6quat(4)(b) does not clarify whether the average rate or spot rate should be used for converting the foreign tax credit to Rand, leading to uncertainty about the appropriate exchange rate for the translation. It is proposed that the translation rate be aligned to the translation rate used to translate the CFC income into Rand for purposes of section 9D(6) of the Act.

Response: Accepted. The average exchange rate for that foreign tax year is to be used to translate.

9.5. Refining the definition of "exchange item" for determining exchange differences

(Main reference: Section 24I of the Act: Clause 20 of the Draft TLAB)

Certain financial arrangements that include preference shares are eroding the tax base due to a mismatch as some elements of the arrangement result in an exchange loss for tax purposes, while gains on the preference shares are not being taken into account for tax purposes.

Government proposes to address the tax leakage associated with these financial arrangements by extending the definition of “exchange item” to include shares that are disclosed as financial assets for purposes of financial reporting in terms of IFRS.

Comment: The definition of “financial asset” in terms of International Accounting Standard 32 includes “any asset that is an equity instrument of another entity” and is not limited to preference shares.

Response: Accepted. The reference to International Accounting Standard 32 will be removed.

Comment: The proposed amendment needs significant refinement to precisely target its intended purpose and avoid unintended consequences. As it stands, the amendment broadens the application of section 24I to include any shares in a foreign company, potentially encompassing more than just preference shares. As a result, shares in a foreign company that represent investments in subsidiaries, associates, and joint ventures might also be classified as exchange items.

Response: Accepted. The proposed wording will be amended to refer to a preference share as defined in section 8EA in a foreign company.

9.6. Reviewing the interaction of the set-off of assessed loss rules and rules on exchange differences on foreign exchange transaction

(Main reference: Section 24I of the Act: Clause 20 of the Draft TLAB)

When determining taxable income, the Income Tax Act enables taxpayers to set off their balance of assessed losses carried forward from the preceding tax year against their income, provided that the taxpayer continues trading.

The interaction between the assessed loss set-off and exchange differences rules mean that a foreign exchange loss on an exchange item may not be set off in future years against gains from the same exchange item if the trading requirement is not met.

It is proposed that all foreign exchange losses on exchange items be ringfenced from a future year of assessment and only be allowed against foreign exchange gains.

Comment: We suggest introducing a separate provision specifically for companies not engaged in trade, rather than amending the entire charging provision, which would impact all companies.

Response: Accepted. A separate section dealing with companies not trading will created.

Comment: To achieve the objective of the proposed amendment, it is proposed that

the proposed amendment should only apply to foreign exchange losses where the relevant taxpayer is not trading.

Response: Partially accepted. The proposed amendment will be reworded to cater for this instance.

Comment: Clarification be provided in section 20 of the Income Tax Act for companies that are not trading to be able to carry forward their net foreign exchange against net foreign exchange gains in subsequent years.

Response: Not accepted. This will be a significant shift to the policy objective of section 20 and thus not accepted.

Comment: We suggest that taxpayers be allowed to choose, within a given assessment year, to either carry forward the net foreign exchange loss (if the overall result of all foreign exchange gains and losses is a net loss) to the next assessment year, where it would be considered an exchange loss for that year, or to deduct the net exchange loss in the year it occurs.

Response: Partially accepted. If the total amount of foreign exchange losses, premiums, or similar payments made under foreign currency option contracts exceeds the total amount of foreign exchange gains and premiums or similar receipts from such contracts, the net excess is considered an exchange loss for the company in the following year.

10. VALUE-ADDED TAX

10.1. Reviewing the Foreign Donor Funded Project (FDFP) regime

(Main reference: Section 50 of the VAT Act: Clause 50 of the Draft TLAB)

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.

Where a foreign donor funds 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, this 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. The above administrative concerns lead to inefficiencies in applications and unnecessary burdens for both taxpayers and SARS, and 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 in which those funds were expensed or used for each FDFP project separately through a comprehensive accounting 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.

To ease the administrative burden on the implementing agents, it is proposed that implementing agents be required to register one branch for VAT purposes that will encompass all FDFPs that such implementing agency is responsible to "implement, operate, administer or manage.

Comment: The amendment is not addressing the challenges when obtaining confirmation from the National Treasury as to whether a project qualifies as a FDFP.

Response: Accepted. National Treasury are aware of the delays in obtaining these and are working on a solution.

Comment: There may be unintended consequences in requiring existing FDFPs to merge into one branch. This may trigger section 8(2) output tax liability. Further, implementing agents should be given an option of whether to merge existing projects or not, since the burden and costs in doing so for existing projects, which are usually short-lived, may outweigh the benefits.

Response: Accepted. The draft TLAB was amended to ensure that 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 projects are 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 output tax consequences where all the assets are retained within the FDFP project as reflected in the single branch. Implementing agents that are required to register any FDFP for VAT on or after 1 January 2025, will not have the option of registering FDFPs in several branches.

10.2. Supplies by educational institutions to third parties

(Main reference: Section 12(h)(ii) of the VAT Act)

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

if such goods or services are supplied for consideration in the form of school fees, tuition fees or payment for lodging or board and lodging.

There seems to be two strong opposing interpretations with regards to the application of section 12(h)(ii) of the VAT Act. The first interpretation is that the supplies made to third parties of goods or services by an educational institution are exempt from VAT in terms of section 12(h)(ii) of the VAT Act. The second interpretation is that the subparagraph limits the scope of the exemption to only supplies where a consideration is made in the form of school fees, tuition fees or payment for lodging and boarding.

It is proposed that section 12(h)(ii) of the VAT Act be amended to clarify the policy intention relating to these supplies.

Comment: More time is required to accurately assess the impact of a change in use, since this proposed amendment will trigger VAT consequences on such change in use. Further, the words "solely or mainly for the benefit of its learners or students" in the proposed amendment to section 12(h)(ii) should be retained and not deleted.

Response: Accepted. The amended has been withdrawn in order to consult further with all stakeholders.

10.3. Prescription period for input tax claims

(Main reference: Paragraph (i) of the proviso to section 16(3) of the VAT Act)

The VAT Act permits vendors a 5-year period within which to claim input tax credits relating to past periods, which were, for whatever reason, not claimed. It has come to the government's attention that there has been a practice whereby all such unclaimed the input tax is claimed in one future tax period.

This practice might lead to a risk of double deduction.

It is proposed that the VAT Act be amended to require that such deductions be made in the original period in which the entitlement to that deduction arose.

Comment: The amendment is not welcomed due to the following: SARS efiling system is currently unable to accommodate this, there are costs and practical difficulties related to this proposal, since it will involve manual adjustments, which has the potential to increase the risks involved. Further, larger vendors that process hundreds of invoices per month will face huge burdens and risks of human error in complying with the proposed amendment. SARS should consider alternative solutions, such as, creating a separate "field" on the VAT201 return. This is an audit concern and not a legislative problem.

Response: Accepted. The amendment has been withdrawn in order to consult further with all stakeholders.

Draft Global Minimum Tax Bill

11. GLOBAL MINIMUM TAX BILL

11.1. Global Minimum Tax (GMT)

(Main reference: Draft Global Minimum Tax Bill)

In October 2021 South Africa was one of the 135 Inclusive Framework member countries that agreed to a two-pillar solution to address the challenges of a globalised and digitalised economy. The GloBE Model Rules, which were released in December 2021 are a key component of that agreement.

These rules that are designed to be introduced into a country's domestic law and to work together with those of other jurisdictions to create a coordinated and comprehensive system of minimum taxation that ensures large multinational enterprises (MNEs) pay a minimum level of tax on their income in respect of every jurisdiction where they operate.

Having been a founding member of the Inclusive Framework and having agreed to the global minimum tax rules in 2021, it makes sense for South Africa to align itself with common approach being adopted by other Inclusive Framework countries and to ensure that South Africa captures its fair share of the revenues to be generated from this global minimum tax.

The GMT Bill has two components, an Income Inclusion Rule (IIR) that ensures that any low taxed operations of large South African headquartered groups are subject to a minimum effective tax rate of 15% and a Domestic Minimum Top-up Tax (DMTT) that ensures that any large MNE group with operations in South Africa pays tax at an effective rate of 15% on the profits it makes in South Africa.

The OECD estimates that, by putting a floor under tax competition, these rules could result in an increase in global tax revenues of between USD 155-192 billion per year.

South Africa stated in the Budget Review that it expects to increase tax collection by R8 billion in 2026/27.

The GMT Bill will incorporate the Model Rules and Commentary by reference giving the legal effect in South African law. This incorporation by reference approach, which has been adopted in other countries such as Switzerland and New Zealand, simplify the implementation of the rules and makes it easier for MNEs to comply – avoiding the risk of differences that could arise in translating the full text of the model rules into domestic law.

Comment: The Corporate Income Tax return which includes a section 9D of the

imputation of net income of controlled foreign companies, must be submitted locally within 12 months after the financial year-end of the South African resident taxpayer. According to the GloBE Model Rules and the Draft Global Minimum Tax Administration Bill, the timing for determining the global minimum tax must be set within 15 months following the relevant financial year and thus creating a timing mismatch.

Response: Noted. It is recommended that the South African resident taxpayer should reopen their tax return and update only the foreign tax credit section with the additional tax incurred. The reason for this correction should be stated as due to the DMTT.

Comment: Life insurance companies commonly hold significant investments in investment funds. The income from these investments is principally used to meet their liabilities to policyholders. These investment funds are often consolidated into the life insurer's consolidated financial statements and are therefore treated as a Constituent Entity of the MNE Group for the purposes of the GloBE Rules.

There is uncertainty on whether Article 7.5 that allows a filing constituent entity to make an election to treat an investment entity (including an insurance investment entity) as a tax transparent entity under the GloBE Rules in the GloBE Model Rules for the corporate fund that is taxed on a mark-to-market basis at 27 per cent, the untaxed policyholder fund and risk policy fund that are exempt from tax.

Response: Noted. After consultations with the OECD, Government considers that the Article 7.5 election can be made in these circumstances. This is because the life insurance taxation rules ensure that the MNE Group's income from the Investment Entity is subject to tax on an annual basis at 27%. While the income from the untaxed policyholder fund and risk policy fund are not subject to tax on a mark-to-market basis, this income is not included in the life insurer's GloBE Income or Loss because the income is fully offset by the expenses from the movement in the life insurer's liabilities to its policyholders and is therefore not relevant for the purposes of testing whether the conditions in the Article 7.5 election are met.

Comment: The implementation of the GMT starting January 1, 2024, means that MNE Groups with financial year-ends on December 31 will be subject to GMT on their GloBE Income, even before the legislation is finalised and approved by Parliament. The implementation of the GMT starting January 1, 2024, means that MNE Groups with financial year-ends on December 31 will be subject to GMT on their GloBE Income, even before the legislation is finalised and approved by Parliament.

Response: Not accepted. South Africa's intention to implement the GloBE rules has been long stated in Budget documentation. Implementing it at a later date would mean that jurisdictions that have implemented the Income Inclusion Rule would be in the position to levy tax on income in South Africa that has not been

subject to GloBE minimum tax of 15 per cent. From the technical perspective, the tax under the GMT Bill is determined at the end of the fiscal year and if the legislation is place before that date it is not retrospective. In addition, a period of 18 months is allowed to file the relevant returns. Finally, it should be noted that South Africa is not alone in legislating for this tax for in 2024 , with Australia and Canada finalising their legislation after 1 Jan 2024 .

Comment: Currently, there are 17 MNEs in South Africa that meet the EUR 750 million threshold, making them subject to the GMT.

Response: Not accepted. This figure isn't entirely accurate; we actually have around 44 companies that meet this threshold.

Comment: There needs to be more coordination between the Department of International Relations and Co-operation (DIRCO) and the National Treasury to ensure that South Africa's proposals are in line with the Africa Group, and that South Africa takes a leading role in making the UN Tax Convention into the authoritative body for global tax reform.

Response: Comment misplaced. There is coordination between DIRCO and the National Treasury with respect to the work that is being undertaken by the UN Framework Convention on International Tax Cooperation.

Comment: The implementation of the OECD's rules in this Bill will act as a barrier to supporting a more impactful and just global tax reform agenda, as it not only legitimates the OECD's undemocratic processes and recognises it as de facto platform for international tax cooperation, but also leads to further complexity should a new UN tax framework be developed that supersedes the work of the OECD. We argue that the implementation of the OECD rules be put on hold until the negotiations on the UN Framework Convention on International Tax Cooperation have reached an advanced stage.

Response: Not accepted. It should be borne in mind that other countries are introducing these rules at the same time and the introduction of these rules will ensure that any top-up taxes due on this income in South Africa will be paid to the Government in South Africa.

Comment: The Bill adopts the OECD GloBE rules by reference, meaning it doesn't fully integrate the rules into domestic law but instead includes direct references to the relevant Articles of the GloBE Model Rules. Any future updates or changes to the GloBE Commentary or Administrative Guidance will be automatically applied in South Africa. Therefore, any future changes to the Commentary or Guidance will not pass through the legislative process because they are automatically applicable as per the Draft Bill.

Response: Accepted. The Bill was updated to include clauses that enables the Minister of Finance to update the model rules and guidance to be considered in

applying the GMT and DMTT, to maintain consistency with the internationally adopted approach as it is developed further, while preserving the right to make such modifications as may be required by the South African context. Similar to the approach used in the Customs and Excise Act, 1964, with respect to tariff amendments, the updates will lapse unless approved by Parliament.

Comment: Considering the widespread adoption of the OECD BEPS initiatives and the fact that countries with traditionally low tax rates are now introducing their own DMTT to ensure entities are taxed at an effective rate of 15%, does South Africa still have a reason to maintain its CFC legislation?

Response: Not accepted. Despite South Africa's comprehensive and effective controlled foreign company (CFC) rules, there are several exceptions that South African-based companies can use to minimise their CFC exposure. The GloBE rules ensure that the MNEs benefiting from these exceptions still pay a minimum tax rate on their foreign investments.

Comment: The introduction of the GMT will lead to heightened tax compliance and reporting obligations for MNE Groups, requiring them to adhere to new reporting standards, such as the GloBE Information Return. In addition, the increased tax burden and compliance costs might influence MNE Groups investment decisions, potentially leading to a re-evaluation of investments in certain jurisdictions.

Response: Not accepted. The first thing to note is that these MNEs will, in many cases, already be subject to the same rules in other jurisdictions and therefore are already complying with the minimum tax. Delaying South African implementation would not affect the compliance burden for these businesses because they are already required to do these calculations to comply with the global minimum tax rules in other countries.

However, do take the concerns about compliance burden seriously and we have been working with our Inclusive Framework on simplifications to the rules which will reduce the compliance burden for businesses. These include a transitional safe harbour that allows businesses to make simplified calculations using data they already report, and a transitional simplified reporting regime. These simplifications will allow businesses to transition into the rules and focus their resources on the jurisdictions where they expect to pay a top-up tax.

Comment: MNE Groups in regions that adopt the GloBE Model Rules ahead of others could encounter competitive drawbacks. For instance, South African MNEs might have to comply with these rules earlier than their international peers, potentially affecting their competitive edge. MNE Groups in regions that adopt the GloBE Model Rules ahead of others could encounter competitive drawbacks. For instance, South African MNEs might have to comply with these rules earlier than their international peers, potentially affecting their competitive edge.

Response: Not accepted. No. Under the Global Minimum Tax framework, income

will always be subject to the minimum tax rate, even if it is moved to countries that haven't implemented the rules. In such scenarios, the multinational would need to pay additional taxes to countries that have adopted the rules. This ensures that there is no benefit to being in non-implementing countries and prevents businesses from bypassing these rules.

Comment: Although the GloBE Model Rules strive for worldwide uniformity, it's essential for jurisdictions to adapt them locally. This local adaptation helps prevent unintended outcomes and ensures the rules are implemented smoothly.

Response: Not accepted. As stated above in the introduction, the incorporation by reference which has been adopted in other countries such as Switzerland and New Zealand, simplify the implementation of the rules and makes it easier for MNEs to comply – avoiding the risk of differences that could arise in translating the full text of the model rules into domestic law.

Comment: Lack of clarity on the treatment of domestic constituent entities that are minority-owned and investment entities.

Response: Comment misplaced. There is a clause that provides for the Domestic Minimum Top-up Tax calculations for Domestic Constituent Entities that are Minority-Owned Constituent Entities, Domestic Constituent Entities that are Investment Entities, Domestic Joint Venture Groups and other Domestic Constituent Entities.

Comment: Request clarity on how South African tax resident MNEs that fall within the definition of partially owned parent entities must comply with the GLoBE Rules.

Response: Accepted. Clarification in the Explanatory Memorandum on the intermediate parent entities that owns a low-taxed constituent entity and ordering rules in instances where there are two or more intermediate parent entities that have a stake in a low-taxed constituent entity have been provided.

Comment: There may potentially be many practicalities that NT and/or SARS have not considered and could not be resolved in such a short period of time, for example relating to excluded entities, or the interaction with the CFC Rules, and hence would warrant a more prolonged consultative process.

Response: Comment misplaced. The checks and balances present with the refinery of gold and the export thereof are not the same as those relating to silver and other metals. It is unclear what practicalities are referred in this comment. The following entities are excluded from the GloBE Model Rules, governmental entities; international organisations; non-profit organisations; pension funds; investment funds that are UPEs; and real estate investment vehicles that are UPEs. To the extent that the issue relates to the pension funds that invest via life insurance companies, the issue was addressed above.

On the interaction with the CFC rules, the following can be stated, IIR: tax on CFC income gets allocated to the CFC and is not taken into account by the shareholder. The CFC income is not GloBE Income of the shareholder. While in the case of QDMTT, CFC taxes are generally excluded in a QDMTT for the shareholder and the CFC.

2024 Draft Global Minimum Tax Administration Bill

12. DRAFT GLOBAL MINIMUM TAX ADMINISTRATION BILL

12.1. Definition of "GloBE Information Return"

(Main reference: Clause 1 of the Draft GMTA Bill)

Comment: The definition of "GloBE Information Return" (GIR) is missing the ambulatory wording used in the Draft GMT Bill for other references to OECD documents.

Response: Accepted. The definition of the GIR has been reworded to explicitly reference the GloBE Model rules as defined in the Draft GMT Bill and applied in accordance with that Bill.

Comment: The definition is confusing, as it refers to the document entitled OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – GloBE Information Return (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris. It is unclear if this applies to both a return under clause 2 as well as clause 4.

Response: Accepted. The definition of a GIR has been changed to have a different meaning in a domestic context, i.e. a GIR filed under clause 2 by a Domestic Constituent Entity or a Designated Local Entity on behalf of one or more Domestic Constituent Entities, than in an international context, i.e. a GIR that is filed under clause 4 by the Ultimate Parent Entity or by a Designated Filing Entity appointed by the MNE Group, in a jurisdiction that has a Qualifying Competent Authority Agreement with South Africa. This change also requires consequential changes to clauses 2 and 4.

12.2. Requirement to submit a GloBE Information Return and notice of Designated Filing Entity

(Main reference: Clause 2 of the Draft GMTA Bill)

Comment: If a Designated Local Entity (DLE) files a GIR on behalf of one or more Domestic Constituent Entities that appointed the DLE, the Domestic Constituent Entity(ies) that appointed the DLE must notify SARS accordingly no later than six months prior to the filing due date of the GIR under clause 3. It is proposed that a simplified approach, for example a manual email process, be followed for dealing with the notification requirements under clause 2(3)(b) and communicated via regulations, alternatively more granular guidance must be issued to clarify the format

such a notification should take, method of submission and which platform it must be submitted through.

Response: Noted. The Tax Administration Act (TAA) will regulate any administrative requirement and procedure not regulated by the Draft GMT Bill or the Draft GMTA Bill but is required for their administration (clause 11(2)). As to whether the notice required under clause 2(3)*(b)* will be a process using email or the eFiling platform, this will form part of the operational implementation of this Bill which generally caters for stakeholder input as well as a published standard operating procedure.

Comment: There is a lack of clarity regarding the entity obliged to file returns under clause 2.

Response: Accepted. Changes have been effected to clause 2 to enhance its clarity.

12.3. Due date for filing a GloBE Information Return

(Main reference: Clause 3 of the Draft GMTA Bill)

Comment: The obligation to prepare and file a GIR is separate from the obligation to file an annual income tax return (ITR14) and controlled foreign company (CFC) return (IT10B), which assumingly will still exist. The GIR is due 15 months after the last day of the relevant fiscal year, extended to 18 months for the first fiscal year. Will SARS extend the due date for filing the ITR14 and IT10B returns to coincide with the GIR filing due date and if not, why not?

Response: Comment misplaced. The due dates for the different returns required under different tax Acts or the TAA are not the same and are determined by the tax type and the operation of tax filing and payment obligation rules based on the design of SARS' existing tax filing and payment procedures. The due for a GIR under the Draft GMTA Bill is also premised on the GloBE Model Rules, which adopting jurisdictions seek to apply uniformly to the extent possible to ensure a globally horizontal playing field. To the extent that foreign tax credits for CFCs are at issue, a proposed mechanism for adjusting the credits has been inserted in the explanatory memorandum for the Draft GMT Bill.

12.4. Exception for returns provided under automatic exchange of information agreement

(Main reference: Clause 4 of the Draft GMTA Bill)

Comment: Under this clause a Domestic Constituent Entity need not file a GIR with SARS if the GIR has been filed by the Ultimate Parent Entity (UPE) or by a Designated Filing Entity appointed by the MNE Group, in a jurisdiction that has a Qualifying Competent Authority Agreement with South Africa. A Domestic Constituent Entity must notify SARS no later than six months prior to the GIR filing due date of the identity of the UPE or DFE that will file the GIR and its jurisdiction. However, the manner in which the Commissioner will be notified is not clarified (i.e. whether the notification will be in the form of a letter or eFiling, etc.).

Response: Noted. See response to first comment in respect of clause 2 above. The TAA will regulate any administrative requirement and procedure not regulated by the Draft GMT Bill or the Draft GMTA Bill but are required for their administration (clause 11(2)). As to whether the notice required under clause 2(3)*(b)* will be a process using email or the eFiling platform, this will form part of the operational implementation of this Bill which generally caters for stakeholder input as well as a published standard operating procedure.

Comment: There is a lack of clarity in respect of local filing and information requirements.

Response: Accepted. Changes have been effected to the definition of a GloBE Information Return as well as clauses 2 and 4 to enhance clarity.

As for the information required in a return for purposes of clause 4, the revised definition provides that a GIR in an international context, means a return conforming to the requirements of Articles 8.1.4 to 8.1.6 of the GloBE Model Rules, which are incorporated by reference in both the Draft GMT Bill and this Bill. These Articles, read with the GloBE Commentary and Administrative Guidance to the GloBE Model Rules, as defined in the Draft GMT Bill, as well as any explanatory notes in the GIR by SARS, will provide sufficient clarity on what information is required.

Comment: Consideration needs to be given towards whether one return must be filed under clause 4 for both the Income Inclusion Rule (IIR) and the Domestic Minimum Top-up Tax (DMTT) or whether separate returns would need to be filed for both.

Response: Noted. It is anticipated that there will be two separate GIR filing obligations for the IIR and DMTT in the short to medium term due to certain transitional rules. In the longer term, consideration will be given to whether the system processes can be designed to satisfy both obligations through a single GIR submission.

12.5. Due date for payment

(Main reference: Clause 5 of the Draft GMTA Bill)

Comment: Given its lack of clarity in relation to the estimation of Top-up Tax due under the Draft GMT Act, it is recommended that clause 5 be reviewed.

Response: Accepted. Clause 5(1) has been changed to provide that Top-up Tax must be paid by the date under clause 3 and clause 5(2) now provides that the Designated Local Entity or Designated Filing Entity may pay the Top-up Tax on behalf of all Domestic Constituent Entities. In turn, clause 5(3) no longer provides for *an estimation*, but for the Commissioner to assess one or more Domestic Constituent Entity, Domestic Joint Venture or Domestic Joint Venture Subsidiary that does not fully comply with clause 5(1) or 5(2), for the *full or part* of the amount of Top-up Tax due. For this purpose, the Commissioner may use any of the powers to assess under the TAA, which applies by virtue of the provisions of clause 10(2) of this Bill, including making an original, additional, reduced or jeopardy assessment based in whole or in part on an estimate under section 95

of the TAA.

12.6. Penalties

(Main reference: Clause 8 of the Draft GMTA Bill)

Comment: It is not clear how column 3 of the table in section 211 of the TAA will be calculated in relation to Excess Profit defined in the OECD Guidelines as opposed to taxable income. Clause 8 must be reviewed given the lack of clarity with regards to its interaction with section 211 of the TAAt. It is also proposed that this penalty be aligned to section 212 of the TAA.

Response: Partially accepted. Clause 8 provides that, for failure to comply with any obligation under clause 2, an administrative non-compliance penalty of up to R50,000 may be imposed by the Commissioner, which penalty is regarded as a monthly fixed amount administrative penalty imposed under section 210 and section 211 of the TAA for purposes of Chapter 15 of the TAA. This means that the penalty increases monthly under section 211(2) of the TAA until the earlier of the date the non-compliance with clause 2 is remedied or the end of the 35 or 47 months periods referred to in section 211(2), as the case may be.

As the quantum of the penalty is determined by clause 8, column 3 of the Table in section 211(1) is not applicable and the reference thereto in clause 8 will be corrected. However, for purposes of any other non-compliance with the Draft GMT Bill and Draft GMTA Bill, section 210 and the Table in section 211 are applicable.

The monthly penalty structure has been aligned with section 212 of the TAA, so that the maximum R50 000 penalty is doubled, if the amount of Top-up Tax not paid as a result of the failure to comply, exceeds R5 000 000, and is tripled, if the amount exceeds R10 000 000.

Comment: Chapter 3 of the administrative guidance on the GloBE Model Rules provides for Transitional Penalty Relief to apply in respect of the Transition Period (i.e. relief to be provided as concerns Fiscal Years beginning on or before 31/12/2026 but not including a Fiscal Year that ends after 30/6/2028). Accordingly, during the Transition Period, no penalties or sanctions should apply in connection with the filing of a GloBE Information Return where a tax administration considers that an MNE has taken “reasonable measures” to ensure the correct application of the GloBE Rules in such return. This is supported by the complexity of the GLoBE Model Rules and obligations, and the current administrative burden imposed on South African headquartered MNEs, specifically in respect of CFCs. Alternatively, clear and unambiguous guidance must be provided as to when penalties may be imposed in regulations.

Response: Noted. Clause 8 already provides that the Commissioner "may impose" a fixed amount administrative penalty under section 210 of the TAA of up to R50 000 a month for failure to file a return or GIR in accordance with clause 2. The wording "may impose" contrasts with the use of "must impose" in section 210 of the TAA. This wording makes the imposition and the amount of the penalty discretionary up to the specified maximum and as such is intended to cater for initial interpretive and operational challenges during the transition period relating to the implementation of the Draft GMT Bill and this Bill. The normal remittance, objection and appeal remedies under Chapter 15 of the TAA will also apply, so additional regulations are not necessary.

Comment: The TAA does not make specific provision under sections 210 and 211 for the remittance of the penalty where the taxpayer has shown to have taken "reasonable measures" to ensure the correct application of the GloBE rules. This is despite the fact that other tax Acts do provide for remittance grounds unique to the specific tax type regulated, which is catered for in the TAA under section 215(5) which provides that if a tax Act other than the TAA provides for remittance grounds for a penalty, SARS may despite the provisions of section 216, 217 or 218 of the TAA remit the 'penalty' or a portion thereof under such grounds.

Response: Comment misplaced. As noted in the response to the previous comment, the imposition of the penalty is discretionary and this is intended to deal with cases where "reasonable measures" are taken. Additional grounds for remittance on the same basis in the Draft GMTA Bill than in the Chapter 15 of the TAA will be a duplication.

Comment: The penalty liability must specifically be imposed on the designated local entity and not all domestic constituent entities.

Response: Not accepted. The Top-up Tax under the Draft GMT Bill is imposed on each Domestic Constituent Entity, which has a primary liability for the tax and primary accountability for compliance with the return and payment obligations. The optional appointment of a Designated Local Entity (DLE) to file on behalf of other Domestic Constituent Entities of the MNE Group is meant as a practical measure so that they do not each have to file a GIR with SARS.

The DLE of a MNE Group is appointed by other Domestic Constituent Entities of that MNE to submit the GIR to SARS *on their behalf*. Accordingly, a DLE acts at most in a secondary 'agent capacity' for the other Domestic Constituent Entities and the latter cannot thereby abdicate primary accountability for their compliance. The choice of the specific Domestic Constituent Entity appointed as DLE is theirs, and their liability or non-compliance cannot shift to the chosen DLE that would also be liable to a penalty given its own individual non-compliance.

12.7. Record keeping and extension of period

(Main reference: Clause 9 of the Draft GMTA Bill)

Comment: Clause 9(2) requires that records, books of account or documents need to be retained for an extended period of six years for GMT purposes. This may give rise to administrative difficulties for taxpayers as they may potentially be unable to

assess what information or records are required for purposes of the GMT vs information that is applicable for other tax returns submissions (for which the record keeping period is five years). It is proposed that the period for record keeping and period for limitations for issuance of assessments under sections 29(3) and 99(1) of the TAA, respectively, must not exceed five years.

Response: Partially accepted. A longer record keeping period of seven years (not six years) is required as the GloBE Model Rules envisage the revisiting of GloBE Information Returns after five years to take account of certain deferred tax liabilities claimed that have not reversed (i.e. have not crystalised) within this period. The GIR for the fifth year, which will take up any adjustments in this regard, must only be submitted 15 months after the end of the year, so it may only be in the process of preparing (and evaluating) this return that the need for a reversal is detected. The extension of the period of limitations to six years has, however, been dropped, since the adjustment is made in the fifth year, so there is no need to revisit the first year.

12.8. Administration of the Act

(Main reference: Clause 10 of the Draft GMTA Bill)

Comment: Clause 10 states that the Commissioner must administer the Draft GMT Bill and the Draft GMTA Bill in accordance with, where applicable, the provisions of the TAA. Providing that the TAA will apply "where applicable", introduces ambiguity, as it is not clear when the TAA will apply and when it will not apply. It could be interpreted that the Commissioner has the discretion to decide when the TAA will be applicable. It is proposed that the Draft GMTA Bill should specify that administrative requirements and procedures for purposes of the performance of any duty, power or obligation or the exercise of any right in terms of the SA GloBE legislation are, to the extent not regulated by the Draft GMTA Bill, regulated by the TAA.

Response: Accepted. The introductory wording to clause 1 and the provisions of clause 10 have been changed to provide more clarity in this regard.

12.9. Short title and commencement

(Main reference: Clause 12 of the Draft GMTA Bill)

Comment: This commencement provision should use the same wording as that in the commencement provision of the Draft GMT Bill to avoid any confusion.

Response: Partially accepted. For purposes of an administration Bill specific to the administration of a money Bill, the commencement date of the administration Bill is generally aligned to the commencement of the money Bill. This caters for any change to the commencement date of the Draft GMT Bill. However, the words "and applies to Fiscal Years beginning on or after that date" will be added to clause 12 to ensure certainty in this regard.

Comment: Given the short timeframe provided by NT for the implementation of this legislation, it is submitted that SARS set up a unit, team or person dedicated to addressing the anticipated practical in a timeous manner.

Response: Noted. This will form part of the operational implementation of this Bill, which generally caters for stakeholder input as well as a published standard operating procedure.

2024 Draft Tax Administration Laws Amendment Bill

13. TAX ADMINISTRATION LAWS AMENDMENT BILL

13.1. Amendment to the definition of "provisional taxpayer"

(Main reference: Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962; clause 2 of the draft TALAB)

Comment: It is recommended that the requirement in para 2(5)*(a)* be deleted as it relates to provisional taxpayers as such act of exemption automatically will make the labour broker a provisional taxpayer and cannot be a pre-requirement.

Response: Accepted. The wording has been amended as proposed.

13.2. Timing of VAT on imported services

(Main reference: Section 14 of the Value-Added Tax Act, 1991; clause 9 of the draft TALAB)

Comment: The proposed extension of the timeframe for accounting for VAT on imported services from 30 to 60 days is a welcomed and is a positive development. However, the continued reliance on the *invoice date* as the basis for this timeframe does not adequately reflect the foreign payment processes employed by most vendors. Typically, invoices from foreign suppliers are processed differently compared to those from local suppliers, with the former often being recorded in the Enterprise Resource Planning (ERP) system only upon payment. Due to varying payment terms, the payment date may significantly differ from the invoice date.

It is therefore submitted that VAT on imported services be accounted for within 60 days from the *date of payment*. This approach aligns with the actual timing of the financial transaction and allows for the application of the foreign currency exchange rate prevailing at the time of payment, ensuring accuracy in VAT calculations.

Response: Not accepted. International benchmarking done by SARS indicates that South Africa's time of supply rules, based on the earlier of invoice or payment date, are aligned with general practice.

Comment: While this change is welcomed, in practice such sourcing of invoices is often a lot longer than one or two months. It is proposed that the period be extended further to 90 days from the proposed 60 days which will align closer to what happens

in practice.

Response: Not accepted. The 60 days granted is in addition to the period in the normal reporting cycle (generally monthly or bi-monthly) and the 25 days for submission of a return.

13.3. Overpayments of VAT on the importation of goods and imported services

(Main reference: Section 16 of the Value-Added Tax Act, 1991; clause 10 of the draft TALAB)

Comment: Given that section 7(1)*(c)* contains a self-assessment requirement, it is proposed that the word "levied" instead of "charged" should be used, in line with the wording used in section 7(1) of the Value-Added Tax Act and to avoid confusion where no VAT was actually "charged" to the vendor by *anyone*.

Response: Accepted. The wording has been amended as proposed.

13.4. Non-resident vendors with no or a limited physical presence in South Africa

(Main reference: Sections 23, 44 and 46 of the Value-Added Tax Act, 1991; clauses 11, 12 and 13 of the draft TALAB)

Comment: The proposed amendments to section 23 are intended to ease the administrative burden of opening a South African banking account for certain vendors that typically do not have a sufficient or any physical presence in South Africa. Whilst we do not comment on the proposed amendment to section 23, it seemingly contradicts the proposed amendment to section 44(3)*(d)* which seeks to insert the wording "in the Republic".

The aforesaid insertion will prevent the Commissioner from making a refund payment unless the vendor has furnished the Commissioner in writing with the particulars of the enterprise's banking account or account with a similar institution "in the Republic".

For example, this will affect electronic services providers who occasionally incur expenses in South Africa in relation to their taxable enterprise activities and who are therefore entitled to VAT refunds, notwithstanding that they do not have a physical presence in South Africa.

It is consequently proposed that no change be made to the current wording of section 44(3)*(d)*.

Response: Not accepted. If a vendor has sufficient business presence in South Africa to generate VAT refunds, it is appropriate for that vendor to open a South African bank account and be subject to the normal Know Your Client procedures in South Africa.

Comment: The proposed amendment to section 46 of the Value-Added Tax Act, does not seem to envisage any causality as it relates to the receipt and payments of

monies and funds from or to South Africa on behalf of the non-resident and therefore will include any person with such role as relates to countries other than RSA.

To ensure proper jurisdiction and causality, as relates to such an onerous obligation, it is submitted that only persons who receive and make payments of monies or funds on behalf of the person as relates to its South African activities, should be included in this provision.

Response: Accepted. The proposed amendment has been amended to clarify that only persons responsible for accounting for the receipt and payment of monies or funds in respect of any enterprise of the non-resident vendor *in the Republic* will be the natural person responsible for the duties imposed on the non-resident vendor under the Value-Added Tax Act.

13.5. Implementing the Constitutional Court judgment regarding tax records access

(Main reference: Section 46 of the Promotion of Access to Information Act, 2000; clause14 of the draft TALAB)

Comment: Though we note the pragmatic approach of amending PAIA in the draft Bill, following the *Arena* case, it is noted that the "executive custodian" of this legislation is the Department of Justice and that the Portfolio Committee of Justice and Constitutional Development should invariably also review any amendments to PAIA. PAIA is a "Constitutional statute", and the TAA is not and therefore the TAA is invariably subordinate to PAIA.

Response: Noted. There was consultation with the Minister of Justice and Constitutional Development prior to including the proposed amendment in the draft Tax Administration Laws Amendment Bill, 2024, released for public comment. The amendment has been withdrawn as it will be included in an omnibus Bill to be introduced by the Minister of Justice and Constitutional Development.

13.6. Right of appearance of SARS officials and natural persons appearing on behalf of the taxpayer and provision for cost orders in favour of SARS

(Main reference: Section 12 of the Tax Administration Act, 2011; clause15 of the draft TALAB)

Comment: Section 12(1) was initially inserted to expand on the old section 81 of the Income Tax Act, 1962 (CSARS could only give right of appearance for tax court matters) and give SARS leeway that senior SARS officials could appear in chambers *ex parte* in the high court as well without having to brief a registered legal practitioner, for example, for search warrants. These would practically only be in a high court or lower court.

Section 12(2) was to specifically acknowledge that only SARS officials who legally had the right of appearance could represent SARS in actual court proceedings.

Given the purpose of section 12(1), it is unclear why SARS officials would need to or

could appear in judge's chambers *ex parte* in courts higher than the high court. This provision seems superfluous and requires Treasury to clarify which matters the SCA and Constitutional Court hear in chambers *ex parte*.

Response: Comment misplaced. Section 12(1) gives senior SARS officials the right of appearance both *ex parte* in a judge's chambers (with respect to a High Court judge) and in the listed courts. Section 12(2) then makes it clear that only a senior SARS official who is a duly admitted and enrolled legal practitioner is permitted to represent SARS in the listed courts. This has been a long-standing practice and has not given rise to difficulties in the past. The only aim of the proposed amendment is to expand this right of appearance in court for senior SARS officials to the Supreme Court of Appeal and the Constitutional Court. The commentator appears to be reading section 12(1) as only applying to a right of appearance in *ex parte* proceedings, which is not the case.

Comment: The proposal to cross reference section 12(1) to section 12(2) changes the scheme of section 12 and results in only SARS officials who have right of appearance being able to appear *ex parte*, reducing the scope of right of appearance, which does not seem to be the intention.

Response: Accepted. The proposed amendment to section 12(2) has been reworded to remove any uncertainty that may exist in this regard.

Comment: The proposed amendment introduces significant changes in Tax Court representation, necessitating further refinement to ensure fair and effective taxpayer representation while maintaining the integrity of tax proceedings.

A "fit and proper" test is introduced without specifying any criteria or process that should be followed in determining this test. Although "fit and proper" is a known term in the legal fraternity, this test is now being expanded to potentially all natural persons without certainty as to its application. What is clear, including from the *Poulter case*, is that there is no requirement to have a legal qualification or have knowledge of legal procedure as part of this enquiry.

Clarity is required on how the "fit and proper" criteria will be applied compared to enrolled legal practitioners. The lack of legal qualification should specifically be excluded as a requirement to ensure no doubt.

Response: Noted. The proposed amendment grants the president of the tax court the discretion to decide whether the person appearing on behalf of the taxpayer is a fit and proper person to appear on the taxpayer's behalf. The test of being a "fit and proper" person is used in a number of different Acts, particularly in the context of determining if a person is "fit and proper" to be appointed to a specific office, position, role or profession. What is "fit and proper" is determined in the context of these appointments. In the tax court, should the president of the tax court regard it necessary, the president may take cognisance of the case law in this regard in order to determine whether the person meets the test for the conduct of the proceedings in the tax court.

Comment: There is uncertainty as to whether taxpayers will be held to the same

ethical standards and court etiquette as legal practitioners, creating a disparity in expertise between SARS legal professionals and taxpayer representatives. The address these concerns, submit that the “fit and proper” criteria be defined in alignment with the Legal Practice Act, 2014, to ensure consistency.

Response: Not accepted. The Legal Practice Act, 2014, does not define the concept of a “fit and proper” person and, in any event, deals with the admittance of legal practitioners who must adhere to a strict code of conduct. Accordingly, the applicable code of conduct would generally exclude most non-legal professionals. However, as set out above, the “fit and proper” concept is used in a number of different Acts and is interpreted by the courts against the case law to determine whether the person meets this test in each particular context. This should provide the president of the tax court with a basis to determine if a person is “fit and proper” in the context of proceedings in the tax court.

Comment: Questions arise about the ability of untrained individuals, including those with questionable backgrounds, to represent taxpayers effectively. SARS will be represented by trained legal professionals, while taxpayers may rely on individuals lacking legal knowledge.

Response: Noted. The taxpayer has the discretion to select the person who will represent them in court proceedings in the tax court, and subsequently must satisfy themself that the person will be suitable for this purpose. Individuals with questionable backgrounds would be unlikely to be considered “fit and proper”.

Comment: Additionally, natural persons representing taxpayers should be required to register with a professional body or be recognised as tax practitioners. Enhancing Tax Court rules to implement clear procedures for assessing and confirming a representative’s fitness to appear in court would also be beneficial.

Response: Partially accepted. Compelling a natural person who wishes to appear on behalf of a taxpayer to belong to a professional body or be a recognised tax practitioner would limit the taxpayer’s right of representation in this regard. As an example, a family member would be prevented from representing another family member. The discretion afforded to the president of the tax court is, however, intended to ensure that the person representing the taxpayer is able to do so in a manner that will not prejudice the conduct of the proceedings in the tax court.

Any amendments that may be required to the dispute resolution rules to accommodate the processes to be followed in this regard will be made and circulated for public comment as is normally the case.

Comment: The proposed amendment provides that where a senior SARS official appears *ex parte* as envisaged in section 12(1) in judge’s chambers, SARS should be able to have taxed the cost of that proceeding as if a private legal practitioner had appeared. There seems no rational reason why SARS would require this provision as there would be no cost order against another party as the proceedings are *ex parte* in section 12(1).

It is also objectionable that SARS seeks to create a cost at a level of a private legal practitioner e.g. senior counsel, when no such cost exists and in fact no such

equivalent person appeared on SARS' behalf. Should SARS envisage some form of recovery from a taxpayer of non-party to proceedings of "deemed cost", such proposal is also objectionable as SARS initiated the proceedings at its own will and direction. Furthermore, such proposal would seem Constitutionally questionable.

Our views and objections remain similar if the intention was to create a fee recovery at deemed cost in other proceedings as well.

Response: Not accepted. As costs can only be awarded by the court that hears the matter, the cost recovery does not relate to any appearances on behalf of SARS in *ex parte* applications in a judge's chambers by a senior SARS official who is not a legal practitioner.

The proposed amendment provides that where a senior SARS official who is a duly admitted and enrolled legal practitioner appeared on behalf of SARS or the Commissioner in any proceedings in a High Court, Supreme Court or Constitutional Court, and costs are awarded in favour of SARS, fees and costs may be taxed and recovered in the same manner as if such functions had been performed by a legal practitioner in private practice.

Legal precedent for the recovery of legal costs by a governmental entity already exists, for example the recovery of legal costs by the State Attorney. (See for example section 6 of the State Attorney's Act, 1957, which provides for legal costs recovery by a State Attorney, or any person employed in an office of State Attorney and admitted and entitled to practise, in the same manner as if such functions had been performed by a practitioner in private practice.)

In awarding costs, the court would have regard to the level of experience of the SARS staff involved and the usual limits on cost recovery would apply. Barring SARS from recovering costs in respect of its internal resources implicitly encourages the use of external attorneys and counsel, where costs are recoverable, leading to additional costs for taxpayers in the majority of cases where SARS is successful.

The proposed amendment to section 12 of the Tax Administration Act allows a natural person, who is not a legal practitioner, to appear on behalf of the taxpayer in tax court proceedings, should the president of the tax court regard that person as a "fit and proper" person to so represent the taxpayer. The dispute resolution rules will be expanded to prescribe the legal costs that may be recovered by the taxpayer where a natural person who is not a legal practitioner appears on the taxpayer's behalf. Where a legal practitioner appears on behalf of the taxpayer in the tax court, the legal costs will be recovered in accordance with the Rules of the High Court as is presently the case under section 130 of the Act.

13.7. Expanding the provision requiring the presentation of relevant information in person

(Main reference: Section 47 of the Tax Administration Act, 2011; clause 16 of the draft TALAB)

Comment: The provisions of section 47 are already contentious as this section compels responses to SARS officials' questions under threat of criminal sanction in

section 233 without judicial process and is already a “circumvention” of the more formal section 50 Inquiry process.

Its initial incarnation was therefore specifically limited to verification and audit which is a “relevant information” process. The proposed expansion of this power to “expedite” (i.e. merely makes things faster) recovery of tax is overly broad and highly subjective. It also seems that this proposal lacks appreciation for how invasive this SARS power for taxpayers is and that such invasive powers should be limited where not absolutely necessary.

Response: Partially accepted. The proposed amendment has been amended to now only include proceedings where the taxpayer has requested debt relief, which will enable SARS to expedite the relevant proceedings, including a request to amend or withdraw a previous decision by SARS not to give debt relief, to the benefit of both the taxpayer and SARS. These proceedings, as is the case in other jurisdictions with similar interview proceedings, are not judicial proceedings. However, nothing prevents a person from challenging the notice to appear through internal review proceedings, such as under section 9 of the TAA, compliant to the Tax Ombud or seeking relief in a High Court.

Comment: Furthermore, the expansion to administrative matters such as a write-off and taxpayer-initiated processes like compromises is wholly inappropriate and arguably does not meet the reasonability requirements in section 36 of the Constitution. SARS can clearly perform or evaluate both processes without such an invasive power.

Response: Partially accepted. As is stated in the Memorandum of Objects to the draft Bill, the purpose of section 47 of the Tax Administration Act, is to shorten a verification or audit by providing a process to dispose of the matter through a face-to-face discussion. This avoids unnecessary correspondence and is beneficial to both taxpayers and SARS.

The proposed amendment has been amended to now only include proceedings where the taxpayer has requested debt relief, which will enable SARS to resolve and expedite the relevant proceedings to the benefit of both the taxpayer and SARS, which is in line with the intention of the section.

It is unclear on what basis an interview to clarify information provided to SARS by the taxpayer, during proceedings initiated by the taxpayer, will limit a right in terms of the Constitution or bring section 36 of the Constitution relating to the limitation of rights into play. The legislation does not preclude the interviewee from being accompanied by a legal or other professional advisor. This is an existing common law right and hence there is no prejudice to the taxpayer. A section 47 interview at a SARS designated location is by no means unique to South Africa, as such interviews are quite common to other tax authorities, such as the ATO (Australia), HMRC (UK) and IRS (USA).

13.8. Clarifying provisions relating to original assessments

(Main reference: Section 91 of the Tax Administration Act, 2011; clause 19 of the draft TALAB)

Comment: Proposed amendment seeks to clarify SARS' power to issue auto-assessments, this being in response to concerns raised that the current legislative framework does not provide for this. We are grateful that there is a proposal to address the concerns raised. However, it is submitted that the current wording of the proposed subsection (4) should be reconsidered.

In practice, SARS issues auto-assessments in situations where a tax Act may require a taxpayer to submit a return and is not only relevant where there is no obligation to submit. The current wording implies that auto-assessments may be issued only in cases where a tax Act or the Commissioner does not require the taxpayer to submit a return. The wording should be changed to align with what SARS is doing in practice.

> *Response:* Accepted. The proposed amendment has been reworded to make it clear that SARS can issue an assessment based on an estimate whether the taxpayer is required to submit a return or not.

Comment: The current proposal, whilst it is welcomed, does not clarify the responsibilities for SARS and the taxpayer in the circumstances where an auto-assessment is issued. SARS does address this in the communication sent to taxpayers who are auto assessed, but we believe that it should be clarified within the legislation. The legislation should clarify roles and responsibilities of taxpayers and SARS where an auto-assessment is issued.

> *Response:* Comment misplaced. The roles and responsibilities of SARS and taxpayers are specified in the annual notice to submit returns issued in terms of section 25 of the Tax Administration Act, read with section 66(1) of the Income Tax Act, 1962, and when an auto-assessment is issued in terms of section 95 of the Tax Administration Act.

Comment: The proposed amendment expands the scope of original assessment to include instances where the "*taxpayer voluntarily submits a return*". All returns are submitted by taxpayers under legal compulsion or direction by the CSARS and it is unclear in which circumstances a taxpayer will "voluntarily submit a return". Auto assessed returns are not submitted voluntarily as they are compelled by section 95(6) of the Tax Administration Act, 2011. The submission of a return is the only procedure available to a taxpayer to correct or amend an estimated assessment, issued by SARS unilaterally, where the taxpayer does not agree with such auto-assessment.

The expansion of section 91 to include instances where a *"taxpayer voluntarily submits a return*" should be deleted as there are no such returns.

> *Response:* Comment misplaced. Section 66(5A) of the Income Tax Act, 1962, has long made provision for the voluntary submission of a return and provides that any person who is not required to furnish a return in respect of any year of assessment in terms of the Act, may for the purpose of having that person's liability for normal tax determined on assessment furnish such a return within three years after the end of such year of assessment.

Comment: Our concerns regarding SARS using section 95 as the basis for introducing and implementing the auto-assessment regime remains as per our

previous submissions, since there are fundamental issues with SARS' approach to "correcting" an avoidance and compulsion section to also apply to a normal compliance process.

Response: Not accepted. In 2020, SARS launched the auto-assessment initiative on a wide scale. SARS issued simplified prepopulated returns to taxpayers based on third- party data sufficient for this purpose, available to SARS. These taxpayers were afforded the option to either accept or reject the prepopulated returns to facilitate ease of compliance.

Acceptance of the prepopulated return would lead to an original assessment being issued by SARS, whereas the rejection of the prepopulated return would require the taxpayer to submit a full return containing the correct information as determined by the taxpayer, with an original assessment subsequently being issued by SARS based on the return submitted by the taxpayer.

As explained in the Memorandum of Objects of the Tax Administration Laws Amendment Act, 2020, the set of amendments introduced at the time created a framework for SARS to make an estimated assessment where no return is required or there is no failure to pay tax, to support and further enhance the auto-assessment initiative. It is clear that these amendments enable SARS to also make assessments based on estimations where no tax is due, or a refund is due to the taxpayer.

This in essence changed the nature of section 95, from a provision where SARS could only issue estimated assessments if a taxpayer failed to submit a return or relevant material as required or owed SARS money, to a more balanced provision where this ability is housed together with the ability of SARS to issue assessments based on estimations to ease the compliance burden on taxpayers of having to submit a return.

In 2021 SARS implemented a pure auto-assessment model instead of the hybrid model of accepting or rejecting a simplified pre-populated return. Under the auto-assessment model, SARS issues an assessment based on an estimation informed by the third-party data sufficient for this purpose available to SARS. Should a taxpayer disagree with the assessment, the taxpayer has the opportunity to submit a return reflecting the correct information. SARS may then issue a reduced or additional assessment, as the case may be, based on the return submitted by the taxpayer. Should SARS decide not to issue a reduced assessment or additional assessment, the taxpayer has the option to object to and, if necessary, appeal the original auto-assessment issued by SARS. The auto-assessment process in no way denies the taxpayer the usual rights and remedies available to the taxpayer.

From the discussion above, it is clear that section 95 is no longer a compulsion and avoidance provision alone. To include auto-assessments in the framework of section 95 was a service orientated policy decision that relieves the administrative burden of taxpayers who previously had to file returns.

13.9. Introduction of alternative dispute resolution proceedings at the objection stage of a dispute

(Main reference: Section 104 of the Tax Administration Act, 2011; clause 20 of the

draft TALAB)

Comment: The amendment is a positive step reflecting SARS and National Treasury's responsiveness, but clarity is required on the mechanics and implications to protect taxpayers' rights and avoid procedural delays.

Response: Accepted. The current dispute resolution rules will be reviewed in order to make provision for the introduction of ADR proceedings at the objection phase of the dispute and will also make provision for all the procedural steps in this regard. The proposed amendments to the rules will be circulated for public comment as is usually the case.

Comment: The proposed amendments aim to introduce ADR proceedings prior to SARS considering a taxpayer's objection. Many taxpayers hope that this will assist in ensuring that they have a "new ear" at SARS to consider the matter. However, no draft rules have been issued, but if an approach similar to PART C of the Dispute Rules is followed, then it would be factual issues or SARS system issues i.e. not technical interpretational matters that will be dealt with in this process. The rule regarding 90 days after the proceedings begin may similarly apply, though even at appeal, this process seldom meets this deadline.

We can unfortunately not support this proposal as we do not believe that it will result in a "new SARS ear" to review the matter and also does not detract from the fact that many of these matters would not arise if the quality of SARS assessments were to improve, including assessments arising due to SARS system challenges. We would have preferred that these operational matters rather be improved than adding another process in law.

Response: Noted. The taxpayer may elect to make use of alternative dispute resolution (ADR) at objection stage. It is not obligatory. In the SARS 2023/24 Annual Report it was stated that 97% of tax appeals were resolved using the ADR process currently available at appeal stage, and 95% in the 2022/23 financial year [page 40]. It is clear that the majority of tax disputes are thus resolved by making use of ADR.

Furthermore, comparative research has indicated that many other tax jurisdictions make ADR available at objection stage. This has greatly assisted in the early resolution of disputes, rendering further costly litigation for both parties unnecessary. It is submitted that the introduction of ADR at objection stage will have the same effect and assist taxpayers to attain the early resolution of their disputes without incurring unnecessary legal expenses.

Comment: Proposed amendments is open to abuse by SARS officials who merely want to win time as they can take an unspecified time to "set down" the matter for ADR, then 90 days to finalise the process which also can be extended and then for no good reason, just withdraw and move back to the objection process. SARS officials therefore have to "put nothing on the table" though taxpayers have to still comply with the whole objection process, including the cost and time associated with such process.

Response: Not accepted. The ADR proceedings, whether at the objection or

appeal stage of a dispute, are voluntary processes that can be terminated at any time. If the taxpayer is of the view that the proceedings are delaying the finalisation of the taxpayer's dispute, the taxpayer may terminate the proceedings and move forward to the next stage of dispute resolution. However, if the proceedings are successful, it will significantly shorten the time-period within which the taxpayer's objection will be finalised.

The current dispute resolution rules will be reviewed in order to make provision for the procedural steps and relevant time-periods in this regard. The procedures and time-periods may not necessarily be the same as the current framework for ADR proceedings during the appeal stage of a dispute. The proposed amendments will be circulated for public comment as is usually the case.

Comment: To ensure the effectiveness of this amendment, we recommend that clear, specific timeframes related to the ADR process be updated to align with the proposed expanded process and that the current ADR rules should also be revised to align with the expanded process, ensuring that if proceedings are suspended during ADR, they resume from the point of suspension if ADR is unsuccessful. Furthermore, clarify the procedural steps if the ADR outcome is unfavourable i.e. will a second ADR process be allowed if the taxpayer opts to return to the objection and appeal.

Response: Accepted. The current dispute resolution rules will be reviewed in order to make provision for the introduction of ADR proceedings at the objection phase of the dispute and will also make provision for all the procedural steps in this regard.

Comment: ADR should be headed by truly independent arbitrators; for neutrality not SARS employees.

Response: Noted. Current ADR proceedings in terms of the dispute resolution rules are not an arbitration process as indicated by the commentator, but a process of facilitation. Rule 16 of the dispute resolution rules deals with the appointment of the facilitator and provides that a facilitator *may* be a SARS official, must be a person of good standing who has appropriate experience in the field of tax, and must be acceptable to both parties. In other words, a facilitator is only required to facilitate the ADR proceedings if the parties so agree and the proposed facilitator is acceptable to both parties.

13.10.Removing the grace period for a new company to appoint a public officer

(Main reference: Section 246 and 247 of the Tax Administration Act, 2011; clause 25 and 26 of the draft TALAB)

Comment: The proposed changes to the appointment of public officers are generally welcomed. The removal of the mandatory one-month period for appointing a public officer allows newly formed companies to have their directors and public officers in place at formation. Additionally, the default appointment rule, which designates senior officials as the public officer if one is not appointed during formation, is seen as a positive development.

However, there are concerns regarding the ability to remove oneself from the role of

public officer, especially if automatically appointed. Recent rulings have emphasised greater scrutiny of public officers' actions, with decisions increasingly subject to judicial review, leading to potential civil and criminal liabilities. This growing risk may deter individuals from accepting the role of public officer.

Response: Noted. The proposed amendments do not envisage a default appointment. If no public officer is appointed at the time of formation, the proposed amendments will treat senior officials of the company, in a hierarchy of seniority, as if they were the public officer of the company until such time as the company has appointed a public officer. It is a deliberate choice to start the list of senior officials with the company directors and secretary since they have fiduciary duties to the company and an extensive set of responsibilities in terms of the Companies Act. These senior officials of the company are in the position to ensure that the company appoints a public officer. As soon as a public officer is duly appointed, the deeming provisions will no longer apply.

Currently, SARS processes allow an outgoing public officer to appoint a new public officer through their company eFiling login profile.

Comment: With regards to the default list of who will be considered to be the public officer or where SARS can designate a suitable person to represent the company as public officer, the fairness and commercial viability of the process is queried.

Response: Comment misplaced. The default list or SARS' power to treat a person as public officer only exists as long as the company has not appointed a public officer. As soon as the company appoints the public officer, that person will assume the responsibilities of the public officer and any person previously treated as the public officer will be relieved of their duties as public officer.

13.11. Amendments not included in draft Bill released for public comment

(Main reference: Sections 42A, 51, 110 and 111 of the Tax Administration Act, 2011; new clauses to be added to draft Bill)

The chairperson of the tax board is nominated from a panel compiled by the Minister of Finance in terms of section 111 of the Tax Administration Act. Currently, the panel consists of legal practitioners appointed by the Minister in consultation with the Judge-President of the Division of the High Court with jurisdiction in the area where the tax board is to sit.

Workshops held with industry on the draft Bill released for public comment pointed out that restricting persons who may be nominated as a chairperson of the tax board to legal practitioners omits a valuable resource of expertise that is not drawn upon, being registered tax practitioners belonging to a recognised controlling body.

In line with the 2024 Budget Review proposal that *"SARS review the dispute resolution process to improve its efficiency*", it is proposed that section 111 of the Act be amended to include registered tax practitioners who belong to a recognised

controlling body under section 240A of the Act, in the panel from which the chairman of the tax board may be appointed, due to their specific expertise in the area of tax. This will require consequential amendments to sections 42A, 51 and 110 of the Act where the competencies of a legal practitioner are specifically required.

ANNEXURE A: LIST OF COMMENTATORS

1. AJM
2. Association for Savings and Investment South Africa (ASISA)
3. Banking Association South Africa (BASA)
4. BDO Tax Services (Pty) Ltd
5. Bowmans
6. British American Tobacco South Africa (BATSA)
7. Business Unity South Africa
8. Chartered Institute for Business Accountants (CIBA)
9. Cliffe Dekker Hofmeyr Inc
10. COSATU
11. Deloitte & Touche
12. Department of Transport
13. Department of Trade Industry and Competition
14. ENSafrica
15. Ernst & Young (EY)
16. Future Growth
17. Government Employees Pension Fund
18. Independent Municipal and Allied Trade Union (IMATU)
19. Institute of Retirement Funds Africa's (IRFA)
20. KPMG
21. Metal Concentrators SA
22. Mineral Council South Africa (MCSA)
23. Motus
24. MTN South Africa
25. MWEB
26. National Association of Automotive Component and Allied Manufacturers (NAACAM)
27. NWU
28. Office of the Tax Ombud (OTO)
29. Old Mutual
30. PetroSA
31. PKF Durban
32. PwC
33. Richards Bay Industrial Development Zone Company SOC Ltd (RBIDZ)
34. South African Insurance Association (SAIA)

35. South African Institute of Chartered Accountants (SAICA)
36. South African Institute of Professional Accountants (SAIPA)
37. South African Iron and Steel Institute (SAISI)
38. SARS
39. Shepstone and Wylie Attorneys
40. SNG Grant Thornton
41. South African Institute of Taxation
42. Southern African Venture Capital and Private Equity Association
43. State Security Agency (SSA)
44. Stonehage Fleming Financial Services
45. Sun International
46. Sydney Mtsweni
47. Takealot Group
48. Telkom
49. The Digital Council Africa (DCA)
50. The Fuels Industry Association of South Africa
51. The South African Property Owners Association (SAPOA)
52. The University of Stellenbosch (SU)
53. Towers Watson
54. Toyota South Africa
55. University of Cape Town (UCT)
56. Unicus Tax Specialists SA
57. Universities South Africa (USAf)
58. University of the Free State (UFS)
59. University of Pretoria (UP)
60. UWC Finance Dept
61. VAT IQ
62. Vodacom
63. Webber Wentzel
64. WITS University
65. Yellow tree

66.

Individuals

1. Adv Annemie Triegaardt
2. Jacques Potgieter
3. Johan Coetzer
4. Kobus van den Bergh
5. Prof Philip Haupt
6. Sydney Mtsweni