NATIONAL TREASURY

REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

TAXATION LAWS AMENDMENT BILL, 2022

16 January 2023

[W.P. – '22]

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1. INCOME TAX: INDIVIDUALS, SAVINGS AND EMPLOYMENT

1.1 REVIEWING THE TIMING OF ACCRUAL AND INCURRAL OF VARIABLE REMUNERATION

[Applicable provision: Section 7B of the Income Tax Act, No. 58 of 1962 ("the Act")]

I. Background

Section 7B of the Act, which came into effect in 2013 makes provision for the matching of the timing between accrual and payment of various forms of variable remuneration. As a result, any amount of variable remuneration paid by an employer to an employee is deemed to accrue to the employee on the date during the tax year in which the amount is paid. Consequently, variable remuneration is taxed on the date when the amount is paid to the employee as opposed to the date that the amount would ordinarily accrue to the employee under the general accrual rules, had section 7B not been enacted.

In 2019, changes were made to the definition of "variable remuneration" in section 7B of the Act to extend the scope of amounts falling within the ambit of such definition to include night shift allowance, standby allowance and reimbursements. Currently, section 7B of the Act includes the following amounts in the definition of "variable remuneration":

- overtime pay, bonuses or commission as contemplated in the "remuneration" definition contained in paragraph 1 of the Fourth Schedule to the Act;

- an allowance or advance paid in respect of transport expenses as contemplated in section 8(1)(*b*)(ii) of the Act;

- an amount which the employee becomes entitled to as a result of unutilised leave;

- any night shift or standby allowance; or

- any amount paid or granted for a reimbursement as contemplated in section 8(1)(*a*)(ii) of the Act.

II. Reasons for change

Whilst changes were made to section 7B of the Act to extend the scope of variable remuneration, Government is however cognisant of the fact that the current list stipulated in section 7B of the Act may not fully cater for all types of variable remuneration. Although the inclusion of commission in the list specified in section 7B of the Act caters for performance-based payments that form part of the employee's salary, it does not cater for instances where such payments are for example calculated based on units produced. This is due to the fact that the common meaning of "commission" refers to a percentage-based payment, as opposed to an amount determined based on units produced.

For example, a box packer working for a packaging company is, in terms of the employment contract, entitled to a basic salary of R8,000 per month. The said employee can also, over and above his/her monthly basic salary, be entitled to an incentive payment of R2 per box packed when the employee has packed 2 000 boxes or more in one calendar month. The payment may however be subject to the employer's quality control processes of evaluating the quality of boxes packed by the employee. If the quality control process is completed in a month subsequent to the one when the employee met the incentive target, the variable remuneration should, from a practical perspective, become due and payable to the employee when the employer's quality control processes are completed (i.e. at this point when the suspensive condition is lifted and the employee is unconditionally entitled to receive his/her performance-based compensation).

Further to the above, the current provisions of section 7B of the Act need to be clarified to cater for instances where any type of variable remuneration accrues to the employee and the employee dies before the date of payment of the variable remuneration.

III. Proposal

To ensure that performance-based variable payments that form part of the employee's salary in the informal sector are catered for, it is proposed that changes be made to the definition of "variable remuneration" in section 7B of the Act to include amounts of remuneration that are determined based on the employee's work performance.

In order to cater for instances where variable remuneration accrues to the employee and the said employee dies before the date of payment of the variable remuneration, it is proposed that changes be made to section 7B of the Act to insert a proviso clarifying that where the employee is deceased before the date of payment, the amount of variable remuneration is deemed to accrue to the employee on the day prior to the date of employee's death.

IV. Effective date

The amendments will come into operation on 1 March 2023 and apply in respect of amounts accrued or expenditure incurred on or after that date.

1.2 APPORTIONING THE INTEREST EXEMPTION AND LIMITING THE CAPITAL GAINS TAX ANNUAL EXCLUSION WHEN AN INDIVIDUAL CEASES TO BE TAX RESIDENT

[Applicable provisions: Section 10(1)(i) of the Act and paragraph 5(1) of the Eighth Schedule to the Act]

I. Background

Paragraphs (*b*) and (*c*) of section 9H(2) of the Act provide that a natural person's year of assessment is deemed to have ended on the date immediately before the day on which that person ceased to be a resident for South African tax purposes. Furthermore, that person's subsequent tax year is deemed to commence on the day on which that person ceased to be tax resident for South African tax purposes. This effectively creates 2 years of assessment during a single 12-month tax period which would ordinarily consist of a single year of assessment beginning on 1 March and ending at the end of February the following year.

In turn, section 10(1)(*i*) of the Act makes provision for an exemption in respect of the aggregate interest earned by an individual during a year of assessment (this however specifically excludes interest earned from a Tax-Free Investment). As such, individuals 65 years and older on the last day of the year of assessment are afforded an interest exemption, currently in the amount of R34 500, Individuals younger than 65 on the last day of the year of assessment are afforded an interest exemption currently in the amount of R23 800.

Further to the above, paragraph 5(1) of the Eighth Schedule to the Act allows an individual a capital gains tax (CGT) annual exclusion, currently in the amount of R40 000 per year of assessment. As is evident from the above, both the interest exemption and annual exclusion apply per year of assessment.

II. Reasons for change

At issue is the two years of assessment which are created during the single 12-month tax period when a natural person ceases to be a South African tax resident. By way of illustration, when a natural person ceases to be a South African tax resident on 1 June 2021, his or her year of assessment as a South African tax resident would have begun on 1 March 2021 but would be deemed to have ended on 31 May 2021, this constitutes a 3-month year of assessment. His or her year of assessment as a non-South African tax resident would have thus begun on 1 June 2021 and ended on 28 February 2022, constituting a 9-month year of assessment. Both years of assessment (the 3-month and 9-month periods respectively) would fall within a single 12-month tax period.

As a result of the natural person having these two years of assessment in the single 12-month tax period, the natural person may double-up on the interest exemption as well as the CGT annual exclusion (as the exemption and annual exclusion are available per year of assessment and are currently not apportioned in instances where the year of assessment is less than 12-month). This is contrary to the policy rationale for section 10(1)(*i*) and paragraph 5(1) of the Eighth Schedule. As such, an individual who is younger than 65 years on the last day of the year of assessment would be able to claim an interest exemption of R47 600 (R23 800 for the 3-month period and another R23 800 for the 9-month period) as well as a CGT annual exclusion of R80 000 (R40 000 for the 3-month period and R40 000 for the 9-month period) during the 12-month period 1 March 2021 to 28 February 2022.

III. Proposal

To address this anomaly, Government proposes the following changes:

- Apportioning the interest exemption: Section 10(1)(*i)* of the Act

  Where any persons' year of assessment is less than 12 months, the amount that shall be exempt from tax in terms of section 10(1)(*i*) (i) of the Act (which is R34 500) or section 10(1)(*i*) (ii) of the Act (which is R23 800), shall be the amount that bears to the amount referred to in either section 10(1)(*i*) (i) of the Act or section 10(1)(*i*) (ii) of the Act the same ratio as the number of days in that year of assessment bears to 365 days.

- Limiting the capital gains tax annual exclusion: Paragraph 5(1) of the Eighth Schedule to the Act

  Where any persons' year of assessment is less than 12 months, the total annual exclusion for years of assessment during the period of 12 months commencing in March and ending at the end of February the immediately following year must not exceed R 40 000. As such, taxpayers may utilise the annual capital gains tax exclusion as best suits them, provided that the cumulative annual capital gains tax exclusion utilised during the tax year does not exceed the annual capital gains tax exclusion allowable.

IV. Effective date

The amendments will come into operation on 1 March 2023 and apply in respect of years of assessment commencing or after that date.

1.3 REVIEWING THE TRANSFER OF TOTAL INTEREST IN A RETIREMENT ANNUITY FUND

[Applicable provision: Definition of "retirement annuity fund" in section 1(1) of the Act]

I. Background

The definition of "retirement annuity fund" in section 1(1) read with the Second Schedule to the Act makes provision for members of retirement annuity funds to transfer their interest from one retirement annuity fund to another. Generally, transfers are only permissible provided that certain conditions are met, for example, if the individual is transferring to a similar type of retirement fund, or from a less restrictive to a more restrictive retirement fund, and in the case of retirement annuity fund members, if the total interest in the transferor fund is transferred. As a result of paragraph (*b*)(xii)(*bb*) of the proviso to the definition of "retirement annuity fund" as contained in section 1(1) of the Act, retirement annuity fund members with more than one contract in a particular retirement annuity fund are restricted from transferring one or more contracts from one retirement annuity fund to another. As such, any transfers by members of retirement annuity funds need to be transfers of one hundred percent of their interest in that retirement annuity fund.

II. Reasons for change

While members of a retirement annuity fund are restricted with regards to the proportion of their interest that can be transferred into another retirement annuity fund, an anomaly arises as members of a preservation fund are not restricted regarding the proportion of their interest that can be transferred into another retirement fund

III. Proposal

To address this anomaly, and ensure greater flexibility for retirement annuity fund members, it is proposed that changes be made in the legislation to allow retirement annuity fund members to transfer one or more contracts in a particular retirement annuity fund to another retirement annuity fund. The ability to effect such transfers will however be subject to the following conditions, including certain conditions aimed at ensuring that the current *de-minimis* thresholds are not contravened:

- The value of any member's interest being transferred into another approved retirement annuity fund should be in excess of one and a half times the prevailing retirement interest *de-minimis* (as the current *de-minimis* is R247 500, the amount transferred into the new retirement annuity fund should exceed R371 250).

- If the individual is not transferring the total member's interest in any approved retirement annuity fund, the value of the remaining member's interest after the transfer should be in excess of one and a half times the prevailing retirement interest de-minimis (as the current de-minimis is R247 500, the balance remaining in the transferor fund in the event that only some of the contracts are transferred should exceed R371 250); and

- If the individual is transferring the total interest in any approved retirement fund into another approved retirement annuity fund, the above-mentioned conditions (be it in relation to the amount being transferred or the remaining balance post transfer) will not apply.

IV. Effective date

The amendments will come into operation on 1 March 2023 and apply in respect of years of assessment commencing on or after that date.

1.4 CLARIFYING THE COMPULSORY ANNUITISATION AND PROTECTION OF VESTED RIGHTS WHEN TRANSFERRING TO A PUBLIC SECTOR FUND

[Applicable provision: Section 1(1) of the Act, the definitions of "pension fund", and "provident fund"]

I. Background

On 1 March 2021, the retirement reform amendments came into effect. The main objective of these amendments was to enhance preservation of retirement fund interests during retirement, and to ensure uniform tax treatment across the various retirement funds. This would result in provident funds being treated similar to pension and retirement annuity funds and provident preservation funds being treated similar to pension preservation funds with regard to the requirement to annuitise retirement benefits. The retirement reform amendments were subject to the protection of vested rights. The protection of vested rights therefore means that the value of all accumulated retirement interests in provident and provident preservation funds before 1 March 2021 will not be subject to compulsory annuitisation. As a result, historic vested rights (those that arose prior to 1 March 2021) were segregated from new rights (those arising after 1 March 2021). The protection of vested rights therefore applies as follows:

- any member of a provident or provident preservation fund as at 1 March 2021 will not be required to annuitise any historic vested rights;

- new vested rights in relation to members 55 years or older as at 1 March 2021 will remain protected provided the member remains in that same fund;

- historic vested rights may be transferred into another retirement fund without forfeiting the members vested rights protection (irrespective of the number of transfers effected).

II. Reasons for change

It has come to Government's attention that the current provisions of the legislation would result in the protection of historic vested rights being forfeited if a transfer is effected into a public sector fund. This is due to the fact that paragraphs (*a*), (*b*) and (*d*) of the definition of pension fund in section 1(1) read together with paragraphs (*a*), (*b*) and (*c*) of the definition of provident fund in section 1(1) do not make any reference to the protection of vested rights for individuals who were members of a provident or provident preservation fund as at 1 March 2021. As a result, members of a provident or provident preservation fund who transfer the value of their retirement interest into a public sector fund after 1 March 2021 (for example in the instance of a transfer into a municipal provident or provident preservation fund) would lose the protection of their vested rights benefits accumulated prior to 1 March 2021. The loss of protection of said vested rights is against the policy intention of the retirement reform amendments.

III. Proposal

To address this anomaly, Government proposes to amend the definition of "pension fund" and "provident fund" in section 1 of the Act to ensure that historic vested rights remain protected even if transferred to a public sector fund (irrespective of the date on which such transfer is effected).

IV. Effective date

The amendments will come into operation on 1 March 2023 and apply in respect of years of assessment commencing on or after that date.

1.5 CLARIFYING PARAGRAPH (eA) OF "GROSS INCOME" DEFINITION REGARDING PUBLIC SECTOR FUNDS

[Applicable provision: Paragraph (*e*A) of the definition of "gross income" in section 1(1) of the Act]

I. Background

With effect from 1 March 2021, the retirement reforms that require mandatory annuitisation for provident funds came into effect. The main objective of these reforms was to enhance the preservation of retirement fund interests during retirement, and to ensure uniform tax treatment across the various retirement funds. These reforms included amendments that paragraph (a), (b) and (c) were inserted into the definition of a "provident fund" specifically for public sector provident funds. The means that with effect from 1 March 2021 any public sector fund, that operates similarly to provident funds would fall under paragraph (a), (b) or (c) of the definition of a "provident fund" and no longer under the definition of a "pension fund".

II. Reasons for change

At issue is the fact that despite the above-mentioned changes paragraph (eA) of the definition of "gross income" in section 1(1) of the Act is silent on public sector funds that fall within paragraph (a) of the definition of "provident fund". In order to provide clarity with regards to amounts transferred by members of a public sector provident fund, established by law, whilst still in service of the same employer, the refence to provident fund as contemplated in paragraph (a) of the definition of "provident fund" should be included in paragraph (eA) of the definition of "gross income".

III. Proposal

To provide clarity and to confirm the policy intent of similar treatment of amounts transferred by members of all public sector provident funds, whilst still in service of the same employer. It is proposed that clarification be made in paragraph (eA) of the definition of "gross income" in section 1(1) of the Act to include the reference to public sector provident funds, established by law.

IV. Effective date

The amendments are deemed to have come into operation on 1 March 2021 and apply in respect of years of assessment commencing on or after that date.

1.6 RETIREMENT OF A PROVIDENT FUND MEMBER ON GROUNDS OTHER THAN ILL-HEALTH

[Applicable provision: Paragraph 4(3) of the Second Schedule to the Act]

I. Background

With effect from 1 March 2021, the retirement reforms that require mandatory annuitisation for provident fund members came into effect. These retirement reforms resulted in uniform tax treatment across those various types of retirement funds, thus doing away with the need to differentiate between the various types of retirement funds for retirement purposes.

Paragraph 4(3) of the Second Schedule to the Act however retains a level of distinction as it stipulates that in the event that a member of a provident fund retires from said fund before he or she reaches the age of 55 years and such retirement is for reasons other than ill-health, any lump sum benefits received by or accrued to said member shall be taxed as a withdrawal benefit as opposed to as a retirement benefit.

II. Reasons for change

As from 1 March 2021, it is no longer a requirement to differentiate between a pension, retirement annuity, and provident fund for retirement purposes, as these funds now operate in the same way. That said, an anomaly exists as paragraph 4(3) of the Second Schedule to the Act still results in differentiated tax treatment for provident fund members and members of other types of retirement funds (this due to the fact that the provisions of paragraph 4(3) do not apply to any other types of retirement funds).

III. Proposal

To address this anomaly and ensure uniform treatment across all types of retirement funds, Government proposes that paragraph 4(3) of the Second Schedule to the Act be repealed.

IV. Effective date

The amendments will come into operation on 1 March 2023 and apply in respect of years of assessment commencing on or after that date.

1.7 CLARIFYING THE APPLICABILITY OF TAX-NEUTRAL TRANSFER FROM A PENSION TO A PROVIDENT FUND

[Applicable provision Paragraph 6(1)(*a*) of the Second Schedule to the Act]

I. Background

Before 2021, transfers to a provident or provident preservation fund would be taxable if the transfer was effected from a fund that had mandatory annuitisation requirements. With effect from 1 March 2021, the retirement reforms that require mandatory annuitisation of provident funds came into effect. As a result, a system of uniform tax treatment across the various retirement funds was introduced. This would result in provident funds being treated similar to pension and retirement annuity funds.

With effect from 1 March 2021, changes were made to paragraph 6(1)(*a*) of the Second Schedule to the Act with the intention of making transfers to a provident or provident preservation fund tax neutral, irrespective of the type of retirement fund the funds were transferred from.

II. Reasons for change

It has come to Government's attention that the changes made in 2019 to the provisions of paragraph 6(1)(*a*) of the Second Schedule to the Act, which came into effect in 2021, create an anomaly in that transfers from a pension fund to a provident fund would not be tax neutral to the extent that the amount transferred relates to contributions made to that pension fund prior to 1 March 2021. This is against the policy rationale for the tax neutrality of transfers to a provident or provident preservation fund to apply to amounts contributed in the transferor fund both pre and post 1 March 2021.

III. Proposal

In order to address this anomaly, it is proposed that consequential amendments be made to paragraph 6(1)(*a*) of the Second Schedule to the Act to ensure that contributions to a pension fund made before 1 March 2021 also receive tax neutral transfer status.

IV. Effective date

The amendments are deemed to have come into operation on 1 March 2021 and apply in respect of years of assessment commencing on or after that date.

2. INCOME TAX: BUSINESS (GENERAL)

2

2.1 CLARIFYING THE DEFINITION OF CONTRIBUTED TAX CAPITAL

[Applicable provision: Definition of "contributed tax capital" in section 1(1) of the Act and the insertion of a further proviso to the definition]

I. Background

"Contributed tax capital" ("CTC") is a notional tax amount, defined in the Act, which is derived from contributions made to a company by holders of a class of shares as consideration for the issue of that class of shares by that company. It is reduced by any capital amount that is subsequently transferred back by the company to shareholders of that class of shares (commonly known as a capital distribution) utilising that notional tax amount so received. Government identified a possible exploitation of the CTC provisions whereby a company authorises a distribution for the benefit of all its shareholders within the same class of shares but essentially apportions that distribution to include a targeted capital distribution through a reduction of CTC to only certain shareholders (usually those who would be liable for dividends tax) and not all shareholders within that same class of shares.

II. Reasons for change

To curb the above-mentioned abuse, an announcement was made in the 2021 Budget Review regarding the changes to the definition of CTC. In line with the 2021 Budget announcement, during the 2021 legislative cycle, the following proposed changes aimed at addressing tax avoidance concerns were made in the definition of CTC and included in the 2021 draft Taxation Laws Amendment Bill (TLAB) that was published for public comment on 28 July 2021:

- Changes were made to the definition of CTC to clarify the principle that shareholders within the same class of shares should share equally in the allocation of contributed tax capital as a result of a distribution.

- In view of the fact that the proposed changes were aimed at curbing abuse, it was proposed that these changes should apply retrospectively and be deemed to have come into operation on the date of publication of the 2021 draft TLAB for public comment, i.e. 28 July 2021.

After receipt of public comments on the 2021 Draft TLAB, the following changes were made to the 2021 TLAB that was tabled by the Minister in Parliament on 11 November 2021:

- General repurchase of listed share (share buy backs) by companies listed on the JSE or other South African recognised exchanges were excluded from the proposed anti-avoidance measure.

- The effective date was postponed from the date of publication of the 2021 draft TLAB for public comment, i.e. 28 July 2021 to 1 January 2022.

Following the tabling of the 2021 TLAB by the Minister in Parliament, further comments were raised by the taxpayers and stakeholders in this regard. At issue is that the proposed amendments may impact on legitimate transactions and may have adverse effects on both market liquidity and participation in the global markets. To give both National Treasury and stakeholders more time to deliberate on the impact of the proposed amendments, changes were made in the 2021 Taxation Laws Amendment Act to postpone the effective date of the above-mentioned amendment from 1 January 2022 to 1 January 2023.

III. Proposal

In order to facilitate the desired policy outcome of ensuring an equal and proportionate distribution of CTC to all shareholders and to limit the impact of that proposed amendment on certain identified legitimate business transactions, it is proposed that the amendments made in the definition of contributed tax capital in the 2021 Taxation Laws Amendment Act be withdrawn and be replaced with the following amendments:

- an initial measure to test whether CTC had been equally applied to:

    - a distribution to the shares within a class of shares that are sharing in the distribution; or

    - the consideration for a list of targeted transactions to the shares within a class of shares that are part of the targeted transactions.

In order to curb any potential abuse because of the above-mentioned proposed amendment and especially because of the proposed provision for a targeted transaction allowance, where a company might now be in a position to merely disproportionately allocate an amount of CTC in relation to a shareholder's entire shareholding in a class, for its acquisition, cancellation or redemption, it is proposed that the following changes be made to the definition of CTC in section 1 of the Act:

- an introduction of an additional anti-avoidance measure that will require a company to limit the amount of CTC transferred as consideration for the acquisition, cancelation or redemption per share when that amount per share exceeds the total amount of CTC in respect of that class of shares divided by the total number of issued shares within that class of shares.

IV. Effective date

The amendments are deemed to have come into operation on 19 January 2022.

2.2 REFINING THE REVERSAL OF THE NIL BASE COST RULES APPLICABLE TO INTRAGROUP TRANSACTIONS

[Applicable provision: Section 45 of the Act]

I. Background

The corporate reorganisation rules in Part III of Chapter II of the Act allow for the tax neutral transfer of assets between companies that are part of the same group. In particular, section 45 of the Act, dealing with intra-group transactions, allows for a tax deferral where one company transfers an asset or a business as a going concern to the other company and both companies form part of the same group of companies at the end of that transaction. However, these intra group transaction rules are subject to anti-avoidance measures aimed at limiting or discouraging abuse by taxpayers of the tax neutral transfer of assets, namely, a zero-base cost rule. The zero-base cost anti-avoidance measure applies to the transfer of assets in exchange for debt or a non-equity share issued by a fellow group company of an acquirer or company disposing of an asset in terms of an intra-group transaction. In terms of the zero-base cost anti-avoidance measure, the holder of the debt or non-equity shares is deemed to have acquired the debt or non-equity shares for an amount of expenditure equal to nil.

II. Reasons for change

In 2020, changes were made to section 45 of the Act, by inserting subsection (3B), aimed at removing the potential double taxation arising in instances where an intra-group transaction is subject to the zero-base cost anti-avoidance rule resulting in a zero-base cost for the holder of a debt or non-equity share that facilitated or funded an intra-group transaction and then subsequently a de-grouping or deemed de-grouping occurs and the de-grouping rules also reverse the tax deferral benefits.

In 2021, further changes were made in subsection (3B), to give effect to the reversal of the application of the zero-base cost anti-avoidance rule in instances when the early asset disposal rule applies, only to the extent to which the debt or non -equity share facilitated or funded an asset that is disposed of early and in respect of which the provisions of the Act are applied to ring-fence the deferred capital gain, capital loss, taxable income or assessed loss.

It has come to Government's attention that there are further instances that should result in the reversal of the nil base cost rules (i.e. reinstatement of the base cost of tainted debt or non-equity shares used to fund an intra-group transaction). The first instance entails when an asset is disposed of beyond an 18-month period outside of the corporate reorganisation rules. Upon disposal of an asset, previously acquired in terms of an intra-group transaction, outside of the reorganisation rules, tax is paid on the difference between the value of that asset and the rolled over base cost of the asset as is intended and the situation no longer poses any risk to the fiscus in respect of the tax previously deferred. The other instance is where a transferee company is no longer part of the same group of companies as a controlling company in relation to a transferor company as, when triggered, de-grouping reverses the tax deferral of the intra-group transaction.

III. Proposal

It is proposed that changes be made in the legislation to extend the rules dealing with the reversal of the zero-base cost anti-avoidance rules and ensure that base cost is restored for holders of debt and non-equity shares used to facilitate the transfer of assets in terms of an intra-group transaction in the abovementioned scenarios.

IV. Effective date

The amendments will come into operation on 1 January 2022 and apply in respect of years of assessment commencing on or after that date.

2.3 CLARIFYING THE RULE THAT TRIGGERS RECOUPMENT UNDER THE DEBT FORGIVENESS RULES

[Applicable provision: Section 19 of the Act]

I. Background

In 2018, legislative changes were made to the Act relating to the debt forgiveness rules that trigger tax consequences in respect of a waiver, cancellation, reduction or discharge of a debt owed by a taxpayer. The changes introduced the currently applicable concept of a "debt benefit" with the aim of taxing any benefit to a debtor resulting from a concession or compromise of a debt entered into with a creditor. Consequently, the concept of a "debt benefit" results in a regime that triggers a recoupment in terms of section 19 which deals with normal tax implications in respect of a debt that was previously used to fund tax deductible expenditure (i.e. operating expenses of the acquisition of allowance assets). On the other hand, paragraph 12A of the Eighth Schedule to the Act deals with capital gains tax implications in respect of a debt in respect of which a debt benefit arises.

In triggering a recoupment referred to above under section 19, the following specific provisions apply. In the first instance, a recoupment must be accounted for where an allowance asset that was funded using debt is not disposed of in a year of assessment prior to the year of assessment in which a debt benefit arises in respect of the debt used to fund that allowance asset. Secondly, where an allowance asset that was funded using debt was disposed of in a year of assessment prior to a year of assessment in which a debt benefit arises, a recoupment must be accounted for when the debt benefit arises to the extent that the recoupment that would have been determined had the debt benefit occurred in the year of disposal exceeds the recoupment that was determined on disposal of that allowance asset.

II. Reasons for change

It has come to Government's attention that the provision aimed at triggering a recoupment, in the instance that an allowance asset is disposed of in a year of assessment prior to the debt benefit, creates an unintended anomaly as it does not apply to all allowance assets disposed of in an earlier year of assessment. An allowance asset funded using debt may have been disposed of at a capital loss or may have been eligible for a scrapping allowance. In this scenario, the provision does not apply as reference is made to the amount of the recoupment determined in the earlier year of assessment, which is not applicable in this case. A full recoupment of the debt benefit should be accounted for in such a scenario.

III. Proposal

In order to address this anomaly, it is proposed that clarification be made in the legislation that this provision also applies to trigger a recoupment in a subsequent year of assessment if the disposal of an allowance asset in a prior year of assessment resulted in a scrapping allowance or a capital loss. In this regard, changes are proposed in section 19(6A) of the Act to clarify that a debt benefit arising in respect of a debt that funded any allowance asset that was disposed of in a prior year of assessment, irrespective of the tax implications thereof, must be treated as an amount recovered or recouped for purposes of section 8(4)(*a*) and only reduced by so much that was previously recovered or recouped (if any) on the prior disposal of that allowance asset. However, in determining the amount recovered or recouped, such debt benefit must be limited to allowances claimed in respect of the funded asset and take into account any amounts applied to reduce the base cost of such asset in terms of paragraph 12A of the Eighth Schedule.

IV. Effective date

The amendments will come into operation on 1 January 2023 and apply in respect of years of assessment commencing on or after that date.

2.4 REVIEWING THE DEBTORS' ALLOWANCE PROVISIONS TO LIMIT THE IMPACT ON LAY-BY ARRANGEMENTS

[Applicable provision: Section 24 of the Act]

I. Background

Section 24 of the Act dealing with credit agreements and debtors allowance contains two main provisions that set out the tax treatment of the sale of property where the sale price is paid over a period of time. Section 24(1) provides that where a taxpayer enters into any agreement with any other person for the sale of any property in respect of which ownership or transfer is passed from the taxpayer to that other person after the receipt by the taxpayer of the whole or a certain portion of the amount payable to the taxpayer under the agreement, the whole of that amount due under the agreement is deemed to have accrued to the taxpayer on the day on which the agreement was entered into resulting in an upfront inclusion in the income of the seller.

In turn, section 24(2) provides for a debtors' allowance that may be claimed as a deduction against the income of the seller, the object of which is to subject the profit under the agreement to tax on a cash-flow basis. In this regard, the debtors' allowance is only available in respect of agreements that are at least 12 months long and in terms of which at least 25 per cent of the amount due to the taxpayer is only payable in a subsequent year of assessment. Currently, the Commissioner has the discretion to grant a debtors' allowance to the taxpayer, in respect of amounts deemed to have accrued under the first provision but have not been received at the end of the taxpayer's year of assessment.

II. Reasons for change

South African consumers have long been using lay-by agreements as a means of purchasing household goods, school uniforms and stationery for their dependants. Lay-by arrangements are sale arrangements that enable the consumer to purchase goods and pay for such goods over a period of time, generally between three to six months, without incurring interest. Lay-by arrangements are a form of a saving as they enable the larger population to purchase goods outside instalment sale credit arrangements, thereby reducing the level of indebtedness. It has come to Government's attention that, following the effects of the COVID-19 pandemic on household incomes and the current economic climate, most consumers are purchasing school uniforms and stationery by way of lay-by arrangements.

At issue is that the current provisions of section 24 of the Act do not extend to cover the abovementioned South African scenario of a lay-by agreement. Accordingly, a seller under a lay-by arrangement is subject to the provisions of section 24(1) of the Act and is required to recognise an upfront inclusion of the sale price in full. However, due to the fact that lay-by arrangements generally last for periods much shorter than 12 months (typically between three to six months), the seller will not benefit from the debtors' allowance contained in section 24(2) of the Act. The upfront inclusion of lay-by proceeds without any allowable deduction creates an adverse tax result, which is expected to increase as more consumers are choosing to enter into lay-by arrangements due to financial constraints.

III. Proposal

In order to mitigate against the adverse effect of an upfront inclusion of proceeds from lay-by arrangements, it is proposed that the current provisions of section 24 be amended. In this regard, it is proposed that a new subsection be introduced in section 24 of the Act that makes provision for a taxpayer to claim as an allowance against income, all amounts which are deemed to have accrued but which have not been received by that taxpayer at the end of the taxpayer's year of assessment. This is subject to a condition that any allowance claimed must be included in the taxpayer's income in the following year of assessment.

IV. Effective date

The amendments will come into operation on 1 January 2023 and apply in respect of years of assessment ending on or after that date

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

3

3.1 IMPACT OF IFRS 17 INSURANCE CONTRACTS ON THE TAXATION OF SHORT-TERM INSURERS

[Applicable provision: Section 28 of the Act]

I. Background

In 2012, amendments were made to section 28 of the Act to move away from the system that was partially aligned with the system of regulatory reserves under which SARS had the authority to make tax adjustments to these calculations. The new tax system was based on the regulatory regime for short-term insurers and removed SARS's discretion to make adjustments or disallow reserves. As such, amounts recoverable by a short – term insurer from enforcing subrogation rights were included in the gross income of that insurer on the basis of actual receipts. These amounts include, for example, salvages of damaged property, recoveries from unrelated third parties associated with the insured event and amounts reimbursed by a reinsurer.

In 2015, amendments were made to section 28 of the Act in anticipation of the Solvency Assessment and Management (SAM) framework introduced by the then Financial Service Board (now Financial Sector Conduct Authority) to replace the regulatory regime applicable to insurers. Instead of following the SAM framework, it was decided to rather allow short-term insurers deductions for amounts recognised as liabilities in accordance with International Financial Reporting Standards (IFRS). The SAM framework recognises all future income on a policy upfront and is therefore not suitable as a basis for tax calculation. After the amendments, section 28(3) of the Act allows IFRS insurance liabilities adjusted for reinsurance assets, deferred acquisition costs and deferred revenue relating to premiums and claims to be deducted when determining the taxable income of the short-term insurer. The total amounts deducted in terms of section 28(3) of the Act must be included in the income of that short-term insurer in the following year of assessment in terms of section 28(4) of the Act.

II. Reasons for change

In May 2017, the International Accounting Standards Board issued a new accounting standard for insurers, called IFRS 17 Insurance Contracts that is to be applied to all insurance contracts for all accounting periods commencing on or after 1 January 2023. The accounting standard, IFRS 17 replaced the currently applicable accounting standard on insurance contracts, IFRS 4 Insurance Contracts.

The reasons for the proposed amendments to section 28 of the Act are as follows:

- In order to mitigate the tax impact as a result of the difference between the methodologies applied in IFRS 4 and IFRS 17 in determining the deduction in respect of insurance liabilities under section 28(3) of the Act;

- Currently, an amount recoverable by a short-term insurer from salvages and third-party recoveries are taxed upon receipt in accordance with section 28(2)(e) of the Act. Under IFRS 4, salvages and third-party recoveries are recognised separately from insurance contract liabilities on the statement of financial position while under IFRS 17, salvages and third-party recoveries are included in the determination of the total insurance contract liabilities. Given that the salvages and third-party recoveries immediately before transition would not have been taxed, these amounts would need to be included in the taxable income of the short-term insurer in the year of transition;

- The disclosure requirement under IFRS 17 that sets off certain asset balances which were disclosed as separate balances under IFRS 4 against insurance contract liabilities relating to liability for remaining coverage should not create a tax liability; and

- To update the terminology in section 28 of the Act so that it is in line with IFRS 17.

The change in the accounting treatment and measurement of insurance contract liabilities, salvages and third-party recoveries and premium debtors resulting from the transitioning from IFRS 4 to IFRS 17 will have an impact on the taxation of short -term insurers. Based on the discussion during public consultation with the insurance industry, in most cases, the impact on short -term insurers will be minimal, however in few cases, the result will be an increase in taxable income of the short-term insurer stemming from a reduction of the amount deductible under section 28(3) of the Act after the implementation of IFRS 17. This will have the effect that the amount to be added back under section 28(4), which was determined under IFRS 4, will exceed the amount that will be determined under IFRS 17 and will not be shielded by the amount determined under IFRS 17 at the end of that year of assessment.

In addition, in 2019, section 28 of the Act was amended in order to provide clarification on the tax treatment of IFRS liabilities of a foreign reinsurer that is a long-term insurer that conducts insurance business through a branch in South Africa and falls under the ambit of section 28 of the Act. The amendment allows a foreign reinsurer that is a long-term insurer that conducts insurance business through a branch in South Africa to deduct insurance liabilities based on the concept of "adjusted IFRS value" as used in section 29A of the Act. The changes to the definition of "adjusted IFRS value" in section 29A of the Act as a result of the Implementation of IFRS 17 have necessitated consequential amendments to section 28 (3A) of the Act.

III. Proposal

A. Aligning the current definitions and terminology to IFRS 17

(i) It is proposed that the terminology in section 28 of the Act be amended so that it is in line with the IFRS 17 such that section 28(2)(a) of the Act will refer to "insurance revenue" for insurance contracts and net earned premiums for investment contracts that are determined in accordance with IFRS as reported by the insurer to shareholders in the audited annual financial statements. In addition, section 28(3)(a) of the Act allows for a tax deduction of unearned premium reserve which is recognised as a provision for purposes of IFRS 4. However, given that the amount that was disclosed in the IFRS 4 statement of comprehensive income as "gross written premium" will be replaced by an amount disclosed as "insurance revenue" which is equal to gross written premium less movement in the unearned premium reserve, section 28(3)(a) of the Act will be deleted.

(ii) In order to address cell captive arrangements and other arrangements where premium income is not specifically included in "insurance revenue" mentioned above, it is proposed that premium income earned in relation to an investment contract entered into by a "cell captive insurer" as defined in section 1 of the Insurance Act in respect of 'first party risks' as defined in Insurance Act be included in taxable income.

(iii) The liabilities relating to claims are specifically referred to as liabilities for incurred claims ('LIC') under IFRS 17. It is proposed that section 28(3) of the Act specifically refers to the liabilities for incurred claims in respect of the policies of the insurer, net of amounts recognised in reinsurance contracts for liabilities for incurred claims, which are determined in accordance with IFRS as reported by the insurer to shareholders in the audited annual financial statements.

B. Amendments with respect to foreign reinsurers in section 28(3A) of the Act

It is proposed that with regard to foreign reinsurers that are long-term insurers that conduct insurance business through a branch in South Africa and fall under the ambit of section 28 of the Act, changes to be made to the "adjusted IFRS value" definition in section 29A of the Act be mirrored in section 28(3A).

C. Amendments with respect to section 28(4) of the Act

(i) Section 28(4) of the Act provides for the inclusion in income of insurance liabilities deducted by the short-term insurer in the prior year of assessment. In the year of transition, the impact of insurance and reinsurance receivables and payables other than those forming part of the liability for incurred claims would form part of 'insurance revenue' thus resulting in double tax. In addition, the definition of the proposed "phasing-in amount" should exclude from this amount the impact of insurance and reinsurance receivables and payables other than those forming part of the liability for incurred claims. Therefore, it is proposed that a specific deduction be afforded in the first year of assessment commencing on or after 1 January 2023 for the net amounts of insurance premium or reinsurance premium debtors and amounts of reinsurance premium payable taken into account in determining the liabilities for remaining coverage at the end of the last year of assessment commencing on or after 1 January 2022 but before 1 January 2023, had IFRS 17 been applied at the end of the year of assessment.

(ii) Lastly, the phasing-in amount will be reduced or increased by the amount of insurance premium and reinsurance premium debtors less the amount of reinsurance premiums payable, at the end of the latest year of assessment commencing on or after 1 January 2022 but before 1 January 2023, had IFRS 17 been applied, other than amounts forming part of the liability for incurred claims.

D. Transitional measures: Phasing-in amount and phasing-in period

In order to mitigate the tax impact as a result of the difference between the methodologies underlying IFRS 4 and IFRS 17 in determining the deduction under section 28(3) and 28(3A) of the Act, it is proposed that the following transitional measures aimed at reducing the financial impact on certain short-term insurers be made in section 28 of the Act:

- A phasing in period of three years be provided to short-term insurers to cater for the introduction of IFRS 17.

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

- For the purposes of determining the taxable income derived by any short-term insurer from carrying on short-term insurance business, the short-term insurer must, in the first year of assessment commencing or of after 1 January 2023:

    - include in its income an amount equal to the difference between amounts recoverable by that short-term insurer in respect of claims incurred under short-term policy issued by that short-term insurer at the end of the last year of assessment commencing on or after 1 January 2022, but before 1 January 2023, that has not been received by that short-term insurer by the end of that year of assessment;

    - deduct the liabilities for remaining coverage calculated for the lastest year of assessment commencing on or after 1 January 2022, but before 1 January 2023, had IFRS17 been applied at the end of that year of assessment; and

    - deduct the net amounts of insurance premium or reinsurance premium debtors, and amounts of reinsurance premium payable, taken into account in determining the liabilities for remaining coverage at the end of the lastest year of assessment commencing on or after 1 January 2022, but before 1 January 2023, had IFRS 17 been applied at the end of that year of assessment.

- Two thirds of the phasing in amount will be deductible or included in the income of that short-term insurer in the first year of assessment commencing on or after 1 January 2023. Similarly, one third of the phasing in amount will be deductible or included in the income of that short-term insurer in the first year of assessment commencing on or after 1 January 2024.

- Where, a short-term insurer or foreign re-insurer conducting insurance business through a branch ceases to conduct business during the phasing-in period, no phasing-in deduction or inclusion is to be allowed for that year of assessment.

IV. Effective date

The amendments will come into operation on 1 January 2023 and apply in respect of years of assessment commencing on or after that date.

3.2 IMPACT OF IFRS 17 INSURANCE CONTRACTS ON THE TAXATION OF LONG-TERM INSURERS

[Applicable provision: Section 29A of the Act]

I. Background

In 2016 and 2017, amendments were made to section 29A of the Act in anticipation of the Solvency Assessment and Management (SAM) framework introduced by the then Financial Service Board (now Financial Sector Conduct Authority) to replace the regulatory regime applicable to insurers. The SAM framework recognises all future income on a policy upfront and is therefore not suitable as a basis for calculating tax. The amendments introduced definitions and terminology aligned to IFRS 4 into section 29A, for example, the definitions of “adjusted IFRS value” and “negative liability”.

Broadly, the definition of “adjusted IFRS value” means liabilities in respect of policies of the insurer, adjusted for amounts of reinsurance assets, negative liabilities, deferred tax liabilities, deferred acquisition costs and deferred revenue, which are determined in accordance with IFRS as reported in the audited annual financial statements.

II. Reasons for change

In May 2017, the International Accounting Standards Board issued a new accounting standard for insurers, called IFRS 17 Insurance Contracts that is to be applied to all insurance contracts for all accounting periods commencing on or after 1 January 2023.

The implementation of IFRS 17 may have a material impact on the liquidity of some companies in the insurance industry. Based on the discussions during public consultation with the insurance industry, the impact on long-term insurers will be an increase in their taxable income after the implementation of IFRS 17. In addition, certain terminology in IFRS 17 has changed and requires changes to section 29A of the Act.

III. Proposal

It is proposed that terminology be updated so that it aligns with IFRS 17. In addition, in order to mitigate the tax impact as a result of the difference between the methodologies underlying IFRS 4 and IFRS 17, it is proposed that the following changes be made in section 29A of the Act, dealing with the tax treatment of long-term insurers:

A. Aligning the current definitions and terminology to IFRS 17

- Definition of “value of liabilities”

It is proposed that the definition of “value of liabilities” be amended to refer to all other liabilities that are allocated to a fund but are not dealt with in the ‘adjusted IFRS value’ definition. Therefore, the definition will no longer refer to expenditure not paid by the last day of the year of assessment, because the liability for incurred claims item is reclassified from current liabilities under IFRS 4 to insurance contract liabilities under IFRS17.

- Definition of "adjusted IFRS value"

The implementation of IFRS 17 introduces a clear distinction in the accounting recognition and disclosure between insurance contract liabilities in terms of IFRS 17 and investment contract liabilities in terms of IFRS 9. Therefore, it is proposed that changes be made to refer specifically to "investment contract liabilities" instead of the current general reference to liabilities. In order to align the definition with the terminology used in IFRS17, it is proposed that symbol L be amended to refer to the aggregate amounts of:

- the aggregate amounts of insurance contract liabilities, investment contract liabilities and reinsurance contract liabilities;

- reduced by insurance contract assets, reinsurance contract assets and the liability for incurred claims.

In general, IFRS 17, states that, subsequent to initial recognition, the liability of a group of insurance contracts comprises the liability for remaining coverage and the liability for incurred claims. This change in the treatment of liability for incurred claims has created an anomaly because under IFRS 4, liability for incurred claims was allowed to be accounted for as a current liability, and as a result it did not form part of the 'adjusted IFRS value' definition but was rather included as part of 'value of liabilities' definition. Therefore, it is proposed that the definition of "adjusted IFRS value" be amended so that the liability for incurred claims be dealt with separately in order to prevent the liability for incurred claims being limited as part of the zeroisation requirement of symbol L in the formula.

B. Transitional measures: Phasing in amount and period of phasing-in

- Phasing-in period: It is proposed that a phasing-in period of six years be introduced by adjusting the "adjusted IFRS value" per policyholder and risk policy funds.

- Phasing in amount: The "phasing-in amount" will be the difference between the amount by which the "value of liabilities" determined at the end of the latest year of assessment commencing on or after 1 January 2022 but before 1 January 2023 less the amounts for premium debtors and policy loans determined in accordance with IFRS as reported by the insurer to shareholders in the audited annual financial statements at the end of that year of assessment, exceeds the "value of liabilities" amount had IFRS 17 and the definitions of "adjusted IFRS value" and "value of liabilities" as amended by the Taxation Laws Amendment Act, 2022 ,been applied at the end of that year of assessment; or vice versa. Premium debtors and policy loans are deducted or added when calculating the "phasing-in amount" because these amounts were previously disclosed as assets under IFRS 4. However, under IFRS 17, insurance contract liabilities will be determined and presented net of premium debtors and policy loans. It is further proposed that any previous "phasing-in amount" that emanated from the amendments made in 2016 and 2017 for the IFRS 4 methodology should not be included in calculating the proposed "phasing-in amount". Likewise, to eliminate circularity, a phasing- in amount that will form part of the adjusted IFRS value should be excluded when determining the proposed phasing-in amount.

IV. Effective date

The amendments will come into operation on 1 January 2023 and apply in respect of years of assessment commencing on or after that date.

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4. INCOME TAX: BUSINESS (INCENTIVES)

4

4.1 INTERACTION BETWEEN THE APPLICATION OF THE ASSESSED LOSS RESTRICTION RULES AND CAPITAL EXPENDITURE REGIME FOR MINING OPERATIONS

[Applicable provisions: Section 20(1) of the Act]

I. Background

The mining industry is unique, and government recognises its capital outlays and delayed income with a special tax regime in the Act. Section 36 read with section 15 of the Act makes provision for a taxpayer that derives income from mining operations, to accelerate the deduction of any capital expenditure actually incurred during any year of assessment, subject to certain limitations, ordering rules and ring-fencing provisions.

The limitations considered in determining the taxable income from mining operations limits the capital expenditure to the amount of taxable income derived from mining operations in respect of a mine or a combination of mines, depending on the extent of that taxpayer's mining operations. These limitations are further managed through an ordering rule that requires the applicable taxable income derived from mining operations (against which the capital expenditure will be set-off) to be calculated before applying the deductions contemplated in section 15(*a*) of the Act, but after the set-off of any balance of assessed loss incurred by the taxpayer in relation to such mine or mines from any previous year which has been carried forward from the preceding year of assessment.

II. Reasons for change

In line with the 2020 and 2021 Budget announcements, during the 2021 legislative cycle, changes that form part of the corporate tax package to broaden the tax base and reduce the headline corporate income tax rate in a revenue neutral manner were effected in the Act. One of these measures included the restriction of the offset of the balance of assessed losses carried forward to 80 per cent of taxable income.

It has come to government's attention that there is an anomaly in the ordering between the application of the new assessed loss restriction rules in section 20 of the Act and the current capital expenditure regime applicable to mining operations in terms of section 36(7C) of the Act.

III. Proposal

To address this anomaly, it is proposed that clarification be made in section 20 of the Act, dealing with restriction of assessed losses, by inserting an ordering rule stating that the calculation of the assessed loss restriction in terms of section 20 of the Act should be determined before considering the capital expenditure deduction in terms of section 36 of the Act.

The example below illustrates how the proposal is intended to work.

Example

Company XYZ operates 3 mines and has both mining and non-mining income. Current-year taxable income before applying section 20 and section 15(a) in conjunction with section 36 of the Act consists of R2,000 in non-mining income and R3,000 in mining income. Collectively, the total income is R5,000 and the company has an assessed loss balance brought forward of R8,000, which exceeds 80 per cent of taxable income at this point. The company may deduct R4000 (80 per cent of R5000), leaving taxable income of R1000. Please note that the de minimis rule has not been applied here – the low numbers are for the purposes of simplicity.

The numbers in italics are recorded on a per-mine basis and to distinguish mining from non-mining income given that the per-mine ring-fencing provision in section 36(7F) of the Act needs to be applied to determine how much capital expenditure can be redeemed. Mine 1 and Mine 3 each have a balance of capital expenditure to redeem. For Mine 1, this must be restricted to the lower of this mine's taxable income following the application of section 20 (i.e. R300) and total mining income (i.e. R600). Hence, R300 is redeemed. For Mine 3, no capital expenditure can be redeemed as the lower amount is zero in respect of Mine 3's taxable income. In total, R300 is redeemed and the company has a taxable income of R700.

		Non-mining	Mine 1	Mine 2	Mine 3	Total (mining)	Total
	Taxable income before assessed loss provisions (s20) and capex (s36)	**2 000**	**3 000**	**3 000**	**(3 000)**	**3 000**	**5 000**
	Current year loss		(1 500)	(1 500)	3 000	0	0
	Taxable income after current year loss	2 000	1 500	1 500	0	3 000	5 000
s20	Assessed loss b/f	(2 000)	(2 000)	(2 000)	(2 000)	(6 000)	(8 000)
s20	restricted to 80% of taxable income	*(1 600)*	*(1 200)*	*(1 200)*	*0*	*(2 400)*	(4 000)
	Taxable income following s20 application	*400*	*300*	*300*	*0*	*600*	**1 000**
	Balance of assessed loss c/f	*(400)*	*(800)*	*(800)*	*(2 000)*		*(4 000)*
	Capex balance		(4 000)	0	(2 000)	(6 000)	(6 000)
s36	Redemption of capex (mining & per-mine ring-fencing to apply)		(300)	0	0	(300)	(300)
	Taxable income / (loss) for the year	***400***	***0***	***300***	***0***		**700**
	Capex balance c/f		*(3 700)*	*0*	*(2 000)*		*(5 700)*

IV. Effective date

The amendments are deemed to have come into operation on 19 January 2022.

4.2 INTERACTION BETWEEN THE APPLICATION OF THE INTEREST LIMITATION RULES AND CAPITAL EXPENDITURE REGIME FOR MINING OPERATIONS

[Applicable provision: Sections 23M of the Act]

I. Background

The Act contains rules in section 23M dealing with the limitation of interest deductions in respect of debt owed to persons not subject to tax. The main aim of these rules is to limit excessive interest deductions in respect of debt owed to persons not subject to tax in South Africa, if the debtor and the creditor are in a controlling relationship.

II. Reasons for change

In line with the 2020 and 2021 Budget announcements, during the 2021 legislative cycle, changes that form part of the corporate tax package to broaden the tax base and reduce the headline corporate income tax rate in a revenue neutral manner were effected in the Act. One of these measures included the strengthening of rules dealing with limitation of interest deduction in respect of debts owed to certain persons not subject to tax in section 23M of the Act.

Concerns have been raised regarding the interaction between the application of the interest limitation rules in section 23M of the Act and the current capital expenditure regime applicable to mining operations in terms of section 36 of the Act. At issue is the application of the provisions of section 23M of the Act to the interest of non-producing mining operations that forms part of capital expenditure of such mining operations.

III. Proposal

To address this, it is proposed that clarification be made in section 23M of the Act that the interest limitation rules will not be applied to the interest incurred on a loan utilised for mining purposes during any period prior to the commencement of production or during any period of non-production, as contemplated in paragraph (b) of the definition of capital expenditure in section 36(11) of the Act.

IV. Effective date

The amendments will come into operation on 31 March 2023 and apply in respect of years of assessment ending on or after that date.

4.3 TAX TREATMENT OF AN ASSET AQUIRED AS A GOVERNMENT GRANT IN KIND

[Applicable provision: section 11(*e*) of the Act]

I. Background

The Act contains a special tax regime in section 12P and the Eleventh Schedule, dealing with the tax treatment of government grants in order to ensure that there is a more streamlined tax treatment of the various government grants from all the spheres of government. Under this regime, government grants are tax exempt in the hands of taxpayers that receive them.

The special tax regime for government grants also makes provision for limitation on deductions of items funded by government grants. The limitation of deductions is aimed at preventing a scenario where taxpayers, in addition to receiving tax free government funding, also benefit from tax deductions when they expend the government funding or allowances in respect of assets acquired using that government funding.

II. Reasons for change

At issue is the application of the limitation on deductions in respect of government grants in kind. Any government grant in kind is currently not subject to such limitation of deductions because a taxpayer that receives a government grant in kind will, as a result of general tax principles, not have incurred any expenditure and consequently, such taxpayer will have no tax cost to deduct allowances for assets acquired using government grant funding.

It has come to government's attention that when a government grant in kind is acquired, the deduction provisions in respect of wear and tear in section 11*(e)* of the Act give rise to a double benefit because they apply to the value of the asset and not the expenditure or cost incurred by the taxpayer. This create s an anomaly as, with cash government grants, the receipt of a government grant in kind is exempt from tax but the assets subsequently acquired using such cash government grants do not qualify for wear and tear allowances as the assets are treated as not having tax attributes in respect of which allowances can be deducted.

III. Proposal

To address this anomaly, government proposes that changes be made in the legislation to align the tax treatment of an asset acquired as a government grant in kind with the tax treatment of assets acquired using a cash government grant for purposes of section 11*(e)*. In order to achieve this, it is proposed that the rule that provides for wear and tear allowances based on the value of assets should not apply to assets acquired by a taxpayer as or with a government grant as defined in section 12P(1) of the Act. As a result, assets that are acquired by a taxpayer in the form of a government grant or with a government grant will, not be eligible for wear and tear allowances.

IV. Effective date

The amendments are deemed to have come into operation on 29 July 2022 and apply in respect of years of assessment ending on or after that date.

4.4 EXTENSION OF THE RESEARCH AND DEVELOPMENT TAX INCENTIVE SUNSET DATE

[Applicable provision: Section 1 of the Taxation Laws Second Amendment Act, 2011]

I. Background

The current R&D tax incentive was introduced on 1 November 2006 and has undergone various design changes to better tailor it to meet its objectives. The most significant of these changes was the introduction of a pre-approval process in 2012. The pre-approval process is administered by the Department of Science and Innovation (DSI), supported by an adjudication committee that evaluates applications and makes recommendations to the Minister of Higher Education, Science and Innovation. The R&D tax incentive allows for operating expenses incurred directly and solely for the purpose of conducting R&D to be deductible at 150 per cent if the R&D is approved by the Minister of Higher Education, Science and Innovation.

II. Reasons for change

On 15 December 2021, Government published a discussion document titled *Reviewing the Design, Implementation and Impact of South Africa's Research and Development Tax Incentive*. This review (which included a survey) sought to determine whether to extend the R&D tax incentive beyond its sunset date and, if so, in what form. Following the review and consultation with interested parties, government has determined that the R&D tax incentive should continue. Given the sunset date of 1 October 2022 and to provide taxpayers with certainty, it was announced in the 2022 Budget Review that the incentive be extended in its current form until 31 December 2023.

The review also identified improvements required to enhance simplicity and certainty with respect to eligibility for the incentive.

III. Proposal

In addition to proposing that the incentive be extended in its current form until 31 December 2023, it is proposed that a more detailed announcement be included in the 2023 Budget. However, to provide continuity and certainty for taxpayers, a separate document that outlines the intended changes to the incentive based on the review and public consultation was published for public comment on 7 October 2022. This provided the public with more opportunity to provide comments and assist in formulating more concrete proposals to be included in the 2023 Budget.

IV. Effective date

The amendments are deemed to have come into operation on 14 December 2011.

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5. INCOME TAX: INTERNATIONAL

5

5.1 UPDATING A REFERENCE TO A DEFINITION IN THE INSURANCE ACT, 2017, IN THE DETERMINATION OF NET INCOME OF CFCs

[Applicable provision: Section 9D of the Act]

I. Background

In general, where a resident shareholder has an interest in the participation rights of a controlled foreign company (CFC), an amount of net income of the CFC is imputed in the resident's income. However, there are certain exclusions which result in no imputation for the resident holding the participation rights in a CFC. Amongst those exclusions, where a resident will not have to account for a portion of the net income of a CFC, is where the participation rights are held by an insurer in a policyholder fund and the participation rights can be directly attributed to a linked policy as defined in section 1 of the Long-term Insurance Act, 1998 ("The Long-term Insurance Act").

An exclusion also applies to the extent that the participation rights are directly attributable to a policy as defined in section 29A of the Act of which the amount of the policy benefits is not guaranteed by the insurer and is to be determined solely by reference to the value of particular assets or categories of assets.

Prior to 1 July 2018, the definition of “linked policy” in the Long-term Insurance Act was defined as “a long-term policy of which the amount of the policy benefits is not guaranteed by the long-term insurer and is to be determined solely by reference to the value of particular assets or categories of assets which are specified in the policy and are actually held by or on behalf of the insurer specifically for the purposes of the policy”.

However, on 1 July 2018, the Insurance Act, 2017 (“the Insurance Act”) deleted the definition of “linked policy” from the Long-term Insurance Act and from that date new definitions in the Insurance Act apply. The Insurance Act defines ‘‘linked’’ in Schedule 2 to mean “where the insurance obligations under an insurance policy are: (a) not fully guaranteed or partially guaranteed; and (b) determined solely by reference to the value of particular assets or categories of assets which are specified in the insurance policy and are actually held by or on behalf of the insurer specifically for the purposes of the insurance policy, less deductions specifically provided for in the insurance policy”. In addition, Schedule 2 to the Insurance Act contains a definition of ‘‘market related’’ which means “where the insurance obligations under an insurance policy are not partially guaranteed, fully guaranteed or linked”.

II. Reasons for change

On 1 July 2018, the Insurance Act deleted the definition of "linked policy" from the Long-term Insurance Act and definitions in the Insurance Act became effective. This necessitates an amendment to be made to the Income Tax Act due to the current exclusion where a resident will not have to account for a portion of the net income of a CFC if the participation rights are held by an insurer in a policyholder fund and the participation rights are directly attributable to a “linked policy” as defined in section 1(1) of the Long-term Insurance Act or to a policy of which the amount of the policy benefits is not guaranteed by the insurer and is to be determined wholly by reference to the value of particular assets or categories of assets.

III. Proposal

Consideration was given whether the definitions of “linked” and “market related” in the Insurance Act could be used in formulating the exclusions in paragraph (C) of the proviso to section 9D(2) taking into account that long-term insurance companies conduct their business by holding assets in their policyholder funds that are appropriate for the nature of the policyholder liabilities determined for those tax funds. A reference to "market related" policies only could have the unintended consequence of excluding policies that are essentially market related type policies such as policies where the full market return on the underlying assets is credited to the policyholder's investment account for which a policyholder liability is determined, but are not classified as such because of a particular policy feature which is insignificant in relation to the policyholder liability determined for the investment account component for the policy. Therefore, it is proposed that the reference to “linked policy”, as defined in section 1 of the Long-term Insurance Act, be replaced with a reference to policies that are “linked” as defined in Schedule 2 to the Insurance Act.

IV. Effective date

The amendments will come into operation on the date of promulgation of the Taxation Laws Amendment Act, 2022.

5.2 CLARYING THE DEEMING PROVISION IN RESPECT ROYALTIES DERIVED BY CFCs

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

I. Background

The most important rule contained in the controlled foreign company (CFC) provisions is that the net income of a CFC must be calculated as if the CFC is a taxpayer for South African tax purposes and as if the CFC is a resident in terms of the "gross income" definition, sections 7(8), 10(1)(*h*), 25B, 28 and paragraphs 2(1)(*a*), 24, 70, 71, 72 and 80 of the Eighth Schedule to the Act.

In general, withholding tax on royalties, as envisaged in section 49B of the Act, applies to royalties from a source within South Africa paid by any person, that may or may not be a resident, to a foreign person for the use of intellectual property belonging to that person or for the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information, or the rendering of or the undertaking to render any assistance or service in connection with the application or utilisation of such knowledge or information. This withholding tax on royalties can potentially be reduced or eliminated by a tax treaty.

Section 10(1)(*l*) of the Act provides an exemption in respect of the amount of any royalty, as defined in section 49A of the Act, which accrues to a non-resident, subject to exceptions relating to royalty income of a South African permanent establishment or in the case of an individual, who was physically present for more than 183 days in South Africa.

As stated above, a CFC is deemed to be a resident for the purposes of certain sections of the Act, such as section 10(1)(*h*) of the Act. In general, section 10(1)(*h*) provides an exemption in respect of interest derived by a non-resident. It is, therefore, clear that, under current law, a CFC is deemed to be a resident in relation to interest from a South African source derived by it, but not in relation to royalties as defined in section 49A of the Act derived by it.

II. Reasons for change

At issue is that a non-resident company that is a CFC should not be able to benefit from the income tax exemption for royalties in section 10(1)(*l*) of the Act. Those royalties should be taken into account in determining net income. If the CFC is subject to the withholding tax on royalties then section 9D(9)(*d*)(ii) grants an exemption in determining the net income of the CFC.

III. Proposal

It is proposed that the deeming provisions in section 9D(2A) of the Act be extended to include section 10(1)(*l*) of the Act. The effect will be to deny CFCs the income tax exemption for non-residents recipients of South African sourced royalties.

IV. Effective date

The amendments will come into operation on 1 January 2023 and apply in respect of years of assessment commencing on or after that date.

5.3 CLARIFYING THE TREATMENT UNDER CFC RULES OF AMOUNTS FROM HYBRID EQUITY INSTRUMENTS AND THIRD PARTY BACKED SHARES DEEMED TO BE INCOME

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

I. Background

As a general matter, passive income means passive receipts and accruals that consist of dividends, interests, royalties, rents, annuities, insurance premiums, and similar income of a passive nature. The term “passive income” is not defined in the Act.

Th e controlled foreign company (CFC) rules contain an exclusion for the payor and payee for intra CFC interest, royalties, rental income, insurance premiums or income of a similar nature as long as both the payor and payee CFCs are part of the same group of companies.

In terms of hybrid equity instrument and third party backed share rules, certain dividends or foreign dividends received by or accrued to a recipient during any year of assessment in respect of a share or equity instrument are deemed, in relation to that recipient, to be an amount of income accrued to that recipient if that share or equity instrument constitutes a hybrid equity instrument at any time during that year of assessment.

II. Reasons for change

At issue is whether the reclassification to income of certain dividends or foreign dividends in terms of the hybrid equity instrument and third party backed share rules mentioned above falls into the exclusions for the payee for intra-CFC hybrid equity instruments as income of ‘a similar nature’. That is not the case and the effect is that the deemed income is not tax neutral for the payee CFC.

III. Proposal

In order to ensure a neutral tax treatment in the CFC rules, it is proposed that changes be made in section 9D(9)(fA), by inserting a new subparagraph (iA) which makes specific reference for the exclusion of the deemed income of the payee CFC for hybrid equity instruments in terms of section 8E of the Act , third party backed instruments in terms of section 8EA of the Act as well as any similar amounts adjusted in terms of section 31 of the Act, between the CFCs.

IV. Effective date

The amendments will come into operation on 1 January 2023 and apply in respect of years of assessment commencing on or after that date.

5.4 CLARIFYING THE EXCLUSION OF PARTICIPATORY INTEREST IN INVESTMENT SCHEMES FROM THE DEFINITION OF FOREIGN DIVIDEND

[Applicable provision: Definition of a “foreign dividend” in section 1(1) of the Act]

I. Background

In general, a “foreign dividend” is defined in the Act as an amount paid or payable by a foreign company in respect of a share in that foreign company. Specifically excluded from the definition of “foreign dividend” is any amount paid or payable that constitutes a redemption of a participatory interest in an arrangement or scheme contemplated in paragraph (*e*)(ii) of the definition of “company”.

Paragraph (*e*)(ii) of the definition of “company” includes any portfolio comprised in any investment scheme carried on outside the Republic that is comparable to a portfolio of a collective investment scheme in participation bonds or a portfolio of a collective investment scheme in securities in pursuance of any arrangement in terms of which members of the public as defined in section 1 of the Collective Investment Schemes Control Act, 2002 are invited or permitted to contribute to and hold participatory interests in that portfolio through shares, units or any other form of participatory interest.

II. Reasons for change

It has come to Government’s attention that, in certain instances, foreign law does not only deal with redemptions but also the sale of shares, units or other form of participatory interest to the arrangement or scheme or to the management company of the arrangement or scheme.

III. Proposal

Based on the above, it is, therefore, proposed that the term “or other disposal” be included in the exclusion from the definition of a “foreign dividend” to cater for any amounts that constitute the sale of shares, units or other form of participatory interest in a portfolio of a foreign collective investment scheme. Lastly, it is proposed that a clarification be made to cater for various permutations that may exist, for example, disposal to the arrangement or scheme or to the management company of that arrangement or scheme.

IV. Effective date

The amendments will come into operation on the date of promulgation of the Taxation Laws Amendment Act, 2022

6. VALUE ADDED TAX

6

6.1 REVIEWING THE SECTION 72 DECISION WITH REGARD TO CROSS-BORDER LEASES OF FOREIGN-OWNED SHIPS, FOREIGN-OWNED AIRCRAFT AND FOREIGN-OWNED ROLLING STOCK FOR USE IN RSA

[Applicable provision: Proviso (xiii) to the definition of “enterprise” in section 1(1) of the Value-

Added Tax Act, 1991 (“the VAT Act”]

I. Background

In 2019, changes were made to section 72 of the VAT Act, which provide the Commissioner with the discretionary powers to make arrangements or decisions as to the manner in which the provisions of the VAT Act or the calculation, or payment of tax or the application of any rate of zero per cent or any exemption from tax provided for in terms of the VAT Act, shall be applied, provided that the Commissioner is satisfied that, as a consequence of the manner in which any vendor or class of vendors conducts his, her or their business, trade or occupation, difficulties, anomalies or incongruities have arisen or may arise in regard to the application of the VAT Act. These changes have an impact on the arrangements or decisions made in terms of this section before 21 July 2019. Some of the arrangements and decisions made in terms of section 72 of the VAT Act before 21 July 2019, which are impacted by these changes refer to the VAT treatment of cross-border leases of foreign-owned ships, foreign-owned aircraft and foreign-owned rolling stock for use in South Africa.

As such, in 2020, changes were made to the definition of “enterprise” in section 1(1) of the VAT Act by introducing a new proviso (xiii) to the definition, aimed at excluding such a lessor from the definition of “enterprise” in instances where the lessee imports the following goods, namely, ships, aircraft and rolling stock for use in or partly in South Africa and the lessor of the above-mentioned goods is not resident in South Africa and is not a registered vendor in terms of the VAT Act, subject to the lessee declaring the VAT on the importation of the above-mentioned goods.

II. Reasons for change

It has come to Government’s attention that the new proviso does not extend to apply to instances where the foreign lessor enters into a separate agreement with a South African resident lessee for purposes of leasing any foreign-owned parts relating to such foreign-owned ships, foreign-owned aircraft or foreign-owned rolling stock, for example, aircraft engines.

III. Proposal

It is proposed that changes be made to the above-mentioned proviso (xiii) of the definition of “enterprise” in section 1(1) of the Act by extending the scope to include any lease agreement entered into between a foreign resident lessor and a South African resident lessee with regard to the leasing of any foreign-owned parts relating to the foreign-owned ships, foreign-owned aircraft or foreign-owned rolling stock, if all the current requirements of the proviso (xiii) to the definition of "enterprise" in section 1(1) of the VAT Act are met. The lease agreements for the foreign-owned parts may be stand-alone agreements where the lessee leases only the foreign-owned parts such as aircraft engines.

IV. Effective date

The amendments will come into operation on 1 January 2023.

6.2 REVIEWING THE SECTION 72 DECISION WITH REGARD TO THE VAT TREATMENT OF THE REGISTRATION OF CERTAIN FOREIGN SUPPLIERS

[Applicable provision: New section 23(2A) of, the VAT Act]

I. Background

In 2019, changes were made to section 72 of the VAT Act, which provide the Commissioner with the discretionary powers to make arrangements or decisions as to the manner in which the provisions of the VAT Act or the calculation or payment of tax or the application of any rate of zero per cent or any exemption from tax provided for in terms of the VAT Act, shall be applied, provided that the Commissioner is satisfied that, as a consequence of the manner in which any vendor or class of vendors conducts his, her or their business, trade or occupation, difficulties, anomalies or incongruities have arisen or may arise in regard to the application of the VAT Act. These changes have an impact on the arrangements or decisions made in terms of this section before 21 July 2019. Some of the arrangements and decisions made in terms of section 72 of the VAT Act before 21 July 2019, which are impacted by these changes refer to the VAT treatment of the registration of certain foreign suppliers.

II. Reasons for change

The definition of "enterprise" in section 1(1) of the VAT Act, read with the provisions of section 23 of the VAT Act, makes provision for every person who is conducting an enterprise and whose taxable supplies have exceeded the registration threshold or are expected to exceed same, to have a legal requirement to register for VAT in South Africa. This applies regardless of whether or not such a "vendor", as defined, has a physical presence in South Africa.

Consequently, section 23(2) of the VAT Act, makes provision for foreign entities who are required to register for VAT in South Africa in terms of section 23(1) to appoint a representative vendor and to open a banking account with any bank, mutual bank or other similar institution, registered in terms of the Banks Act, 1990, for the purposes of the enterprise carried on in South Africa.

At issue is the administrative compliance challenges encountered by foreign entities with no physical presence in South Africa with the provisions of section 23(2) of the VAT Act. These difficulties include for example, the appointment of the representative vendor in South Africa who is capable of administering the VAT registrations and compliance requirements of multiple entities that form part of the same group of companies and the opening of a South African bank account.

In order to address these administrative compliance challenges, the Commissioner had, before 21 July 2019, issued rulings in terms of section 72 of the VAT Act to foreign entities that formed part of a group of companies to allow one of the group companies that is registered as a vendor in South Africa (that is generally a resident of the Republic that has a fixed place of activities in South Africa), to register a branch in South Africa and account for VAT and submit a single VAT return on behalf of the entire group of foreign entities. This was based on the premise that the entity registered for VAT in South Africa is generally in a better position to complete the VAT returns, issue tax invoices, levy and pay VAT and to account for VAT on behalf of the group of companies.

In view of the fact that the 2019 changes to section 72 of the VAT Act imply that all the rulings issued by the Commissioner before 21 July 2019 are no longer valid after 31 December 2021, at issue is whether changes could be made in the VAT Act to accommodate the rulings dealing with the VAT treatment of the registration of certain foreign suppliers.

III. Proposal

In order to address these concerns, it is proposed that amendments be made to section 23 of the VAT Act by introducing a new subsection (2A) aimed at allowing a resident registered vendor to register a single branch registration in respect of all the non-resident holding companies and subsidiaries that form part of the same group of companies, as defined in section 1(1) of the Income Tax Act, as the registered vendor, subject to certain conditions. It is further proposed that a new subsection be inserted that makes provision for an option to any of the non-resident group companies to register independently as a VAT vendor in South Africa, and not as part of the branch registration.

IV. Effective date

The amendments will come into operation on 1 January 2023.

6.3 REVIEWING THE SECTION 72 DECISION WITH REGARD TO THE VAT TREATMENT OF FLASH TITLE SALES

[Applicable provision: Proviso to the definition of “enterprise” in section 1(1) of the VAT Act]

I. Background

In 2019, changes were made to section 72 of the VAT Act, which provide the Commissioner with the discretionary powers to make arrangements or decisions as to the manner in which the provisions of the VAT Act or the calculation or payment of tax or the application of any rate of zero per cent or any exemption from tax provided for in terms of the VAT Act, shall be applied, provided that the Commissioner is satisfied that as a consequence of the manner in which any vendor or class of vendors conducts his, her or their business, trade or occupation, difficulties, anomalies or incongruities have arisen or may arise in regard to the application of the VAT Act. These changes have an impact on the arrangements or decision made in terms of this section before 21 July 2019. Some of the arrangements and decisions made in terms of section 72 of the VAT Act before 21 July 2019, which are impacted by these changes refer to the VAT treatment of “flash title sales”.

II. Reasons for change

"Flash title" is defined in the Export Regulations as a supply of movable goods by a vendor to a "qualifying purchaser" (QP) contemplated in paragraph (f) of the definition of "qualifying purchaser" in the Export Regulations, which QP (QP1) subsequently supplies the movable goods to another QP (QP2) and ownership of the goods vests in QP1 only for a moment in time before the goods are sold to QP2. Paragraph (f) of the definition of "qualifying purchaser" in the Export Regulations defines a QP as a person who is not a resident of South Africa who acquires goods from a vendor in South Africa with the sole purpose of selling those goods to another person who is not a resident of South Africa.

As such, a vendor may supply the goods to QP1 at the zero-rate under Regulation 8(2)(c) of the Export Regulations, provided that the relevant timelines are met and documentary evidence is obtained. In this regard, the Export Regulations only require that the vendor supplies to QP1 on a flash title basis, that is, the vendor is not required to ensure delivery to, for example, a "designated commercial port". Delivery is at an agreed place in South Africa and QP2 exports the goods. QP1 may sometimes sell to multiple subsequent QPs and may not know who ultimately exports the goods.

At issue is the fact that non-resident entities who take ownership of goods in South Africa and immediately on-sell the goods to other non-resident entities (customers) on a flash-title basis for export by the customers, who do not carry out any other commercial activity in South Africa and who do not have any intention to operate in South Africa, are currently caught under the definition of "enterprise" in section 1(1) of the Act and are subject to administrative requirements of VAT registration in South Africa, even though there is generally no VAT to collect on flash title sales since the exports in these instances qualify to be zero-rated.

In order to address these administrative challenges, the Commissioner had, before 21 July 2019, issued rulings in terms of section 72 of the VAT Act to QP1 to the effect that foreign suppliers and acquirers of goods on a flash -title basis do not have to register for VAT in South Africa.

In view of the fact that the 2019 changes to section 72 of the VAT Act imply that all rulings issued by the Commissioner before 21 July 2019 are no longer valid after 31 December 2021, at issue is whether changes could be made in the VAT Act to accommodate the rulings dealing with the VAT treatment of flash title sales.

III. Proposal

In order to address these concerns, it is proposed that the definition of "enterprise" in section 1(1) of the VAT Act be amended by introducing a new proviso (*xiv)* aimed at excluding from the definition of "enterprise" a "qualifying purchaser" (QP1), as defined in the Export Regulations, who is a non-resident non-registered vendor, who merely takes flash-title ownership of goods in the Republic, provided that the documentary requirements prescribed in regulation 10 of the regulation referred to in paragraph (d) of the definition of "exported" in section 1(1) are complied with". It is further proposed that a further proviso be inserted that makes provision for an option for the provisions to apply to the first mentioned qualifying purchaser if the first-mentioned qualifying purchaser applies to SARS in writing that the said provisions should not apply to it and SARS agrees.

IV. Effective date

The amendments will come into operation on 1 January 2023.

6.4 REVIEWING THE SECTION 72 DECISION WITH REGARDS TO THE VAT TREATMENT OF POOLING ARRANGEMENTS

[Applicable provision: New section 52(3) of the VAT Act]

I. Background

In 2019, changes were made to section 72 of the VAT Act, which provides the Commissioner with the discretionary powers to make arrangements or decisions as to the manner in which the provisions of the VAT Act or the calculation or payment of tax or the application of any rate of zero per cent or any exemption from tax provided for in terms of the VAT Act, shall be applied, provided that the Commissioner is satisfied that as a consequence of the manner in which any vendor or class of vendors conducts his, her or their business, trade or occupation, difficulties, anomalies or incongruities have arisen or may arise in regard to the application of the VAT Act. These changes have an impact on the arrangements or decision made in terms of this section before 21 July 2019. Some of the arrangements and decisions made in terms of section 72 of the VAT Act before 21 July 2019, which are impacted by these changes refer to the VAT treatment of pooling arrangements for incorporated medical practices and pooling arrangements for medical practitioners.

II. Reasons for change

Section 52 of the VAT Act makes provisions for the VAT treatment of pooling arrangements in respect of pools contemplated in section 17 of the Marketing of Agricultural Products Act, 1996, any rental pool scheme operated and managed by any person for the benefit of the owners of time sharing interests in a property time sharing scheme, as defined in section 1 of the Property Time-sharing Control Act, 1983, the owners of sectional title interests in a sectional title scheme, as defined in section 1 of the Sectional Title Act, 1986 and the shareholders in a Shareblock Company, as defined in section 1 of the Shareblocks Control Act, 1980, subject to certain conditions stipulated in that provision.

There are other pooling arrangements, for example pooling arrangements for incorporated medical practices and pooling arrangements for the medical practitioners that are subject to the policies by the Health Professions Council of South Africa ("HPCSA"). These policies or regulations impact the manner in which these practises and practitioners conduct business and lead to enormous complexities, administrative challenges and additional costs.

To address these VAT administrative challenges, before 21 July 2019, the Commissioner had issued rulings in terms of section 72 of the VAT Act, in respect of the pooling arrangements that are created due to the policies of the HPCSA, namely, a pool for the incorporated medical practices and a pool for the medical practitioners. These rulings were issued on a similar basis, as provided for in the provisions of section 52 of the VAT Act.

Based on the ruling, each pool, rather than each individual practice or practitioner, is separately registered as a VAT vendor. In view of the fact that the 2019 changes to section 72 of the VAT Act imply that all the rulings issued by the Commissioner before 21 July 2019 are no longer valid after 31 December 2021, at issue is whether changes could be made to the VAT Act to accommodate the rulings dealing with the VAT treatment of a pool for the incorporated medical practices and a pool for the medical practitioners. In addition, it needs to be considered whether the amendment could incorporate other pooling arrangements and what the parameters of these would be.

III. Proposal

In order to address these concerns, it is proposed that changes be made to section 52 of the VAT Act by introducing a new subsection (3) dealing with the VAT treatment of pooling arrangements established as a manner of complying with the provisions of legislation, regulations or rules of a professional body and applied by taxpayers that are subject to such legislation, regulations or rules of such professional body, subject to certain conditions.

IV. Effective date

The amendments will come into operation on 1 January 2023.

6.5 REVIEWING THE SECTION 72 DECISION WITH REGARDS TO THE VAT TREATMENT OF DOCUMENTARY EVIDENCE FOR REPOSSESSIONS

[Applicable Act provision: Section 20(8) and new section 20(8A) of the Act]

I. Background

In 2019, changes were made to section 72 of the VAT Act, which provide the Commissioner with the discretionary powers to make arrangements or decisions as to the manner in which the provisions of the VAT Act or the calculation or payment of tax or the application of any rate of zero per cent or any exemption from tax provided for in terms of the VAT Act, shall be applied, provided that the Commissioner is satisfied that as a consequence of the manner in which any vendor or class of vendors conducts his, her or their business, trade or occupation, difficulties, anomalies or incongruities have arisen or may arise with regard to the application of the VAT Act. These changes have an impact on the arrangements or decisions made in terms of this section before 21 July 2019. Some of the arrangements and decisions made in terms of section 72 of the VAT Act before 21 July 2019, which are impacted by these changes refer to the VAT treatment regarding documentary evidence required to support notional input tax claims when goods sold under an instalment credit agreement (ICA) are repossessed.

II. Reasons for change

The proper administration of the VAT Act is dependent on being able to follow the trail of documents and transactions. These are usually accomplished with reference to tax invoices. Tax invoices also provide the recipient with the documentation necessary to claim input tax credits, where permitted. With regard to the repossession or surrender of goods under ICA, the VAT Act deems the repossession or surrender to be a supply from the borrower / debtor to the lender in order to permit the lender, who is a registered vendor, to recoup some of the output tax paid at the outset of the ICA. The supporting documentation for this input tax credit is either a tax invoice issued by the lender (self-invoicing) or the VAT 264 declaration (together with the prescribed supporting documents).

In instances where the debtor used the goods in the course or furtherance of its enterprise, prior to the repossession or surrender, the VAT Act permits the lender to self-invoice with regard to the repossession or surrender. However, with regard to repossessions or surrender of goods where the debtor is not a vendor or the debtor is a vendor but did not use the goods in the course or furtherance of their enterprise, the VAT Act requires the creditor to obtain and retain a declaration from the debtor, in the form prescribed by the Commissioner. In practice, this is currently the VAT 264 declaration (together with the prescribed supporting documents) which is required to be completed and signed by the debtor. The reason for this is that since the debtor did not use the goods in the course or furtherance of an enterprise, the deemed supply will not be a taxable one from the debtor. However, since the creditor made a taxable supply of goods when the goods were initially supplied to the debtor under an ICA, the creditor would be entitled to a form of adjustment on the output tax paid, therefore, the VAT Act permits a notional input tax credit in this regard, on possession of a VAT 264 declaration (together with the prescribed supporting documents) from the debtor.

Recognising that the debtor would most probably be a reluctant participant in this deemed transaction and information such as the taxable or otherwise use of the asset by the debtor and the debtor's signature would be difficult to obtain, the Commissioner had, before 21 July 2019, issued rulings in terms of section 72 of the VAT Act, to vendors making supplies under an ICA, to the effect that certain information and the debtor's signature are not required, provided that, *inter alia,* where the goods are repossessed, the lender must be in possession of the relevant court order and / or other applicable notices or letter of demand required in terms of the National Credit Act, 2005, where applicable, to effect a legally sanctioned repossession. A further difficulty that was recognised was the fact that the requirements of section 20(8)(f) have also been difficult to comply with since in instances of repossessions, there is no payment made.

In view of the fact that the 2019 changes to section 72 of the VAT Act imply that all rulings issued by the Commissioner before 21 July 2019 are no longer valid after 31 December 2021, at issue is whether changes could be made in the VAT Act to accommodate the rulings dealing with VAT treatment regarding documentary evidence required to support notional input tax claims when goods sold under an ICA are repossessed.

III. Proposal

In order to address the challenges in relation to the requirements of the signature and the requirement in section 20(8)(f), which states that the lender shall maintain sufficient records to ascertain proof and date of payment on the supply or deemed supply, it is proposed that changes be made to section 20 of the VAT Act by introducing a new subsection (8A) aimed at dealing specifically with the documentary requirements necessary for repossessions or surrender of goods as contemplated in section 8(10) of the VAT Act, subject to certain conditions. As such, consequential amendments will be made in section 20(8) of the VAT Act by removing the reference to supplies made under section 8(10) of the VAT Act, which deals with repossessions and surrender.

IV. Effective date

The amendments will come into operation on 1 January 2023.

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7. CARBON TAX ACT

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7.1 CARBON TAX RATE TRAJECTORY FOR 2023 TO 2025, 2026, 2027 to 2029 and 2030

[Applicable provision: Section 5(2) of the Carbon Tax Act, 15 of 2019 ("the Carbon Tax Act")]

I. Background

The carbon tax design catered for the introduction of the carbon tax in a phased manner i.e. starting off at a relatively modest rate initially with transitional support and exemptions provided to companies during the first phase. Section 5 of the Carbon Tax Act sets out the carbon tax rate for a tax period and the manner in which annual adjustments of the carbon tax rate will be made for the first phase of the tax ending on 31 December 2022 and for tax periods commencing on 1 January 2023:

Section 5(2) provides for annual adjustments of the carbon tax rate by inflation plus 2 percentage points until the end of 2022 and inflationary adjustments from the 2023 tax period onwards. The inclusion of the automatic rate adjustments in the Carbon Tax Act was to ensure that the real tax rates were maintained during this transitional phase and beyond for companies.

In 2021, following an extensive public consultation process by the Department of Forestry, Fisheries and the Environment ("DFFE") and the Presidential Climate Commission ("PCC"), Cabinet approved South Africa's 2nd and 3rd National Determined Contribution ("NDC") mitigation commitments for the period 2020 to 2025 and 2026 to 2030, respectively. This reaffirmed South Africa's commitment to transition to net zero emissions by 2050, and to rapidly reduce emissions to a range of 350 to 420 million tonnes CO 2e by 2025, with the lower bound compatible with the 1,5°C temperature goal.

To help achieve the NDC commitments, a package of measures including the carbon tax and carbon budgets, and sector policy measures consisting of the integrated resource plan ("IRP"), energy efficiency and green transport strategies, and sector emissions targets are noted as the key government policy interventions.

In Budget 2022, government announced its intention to ramp up the carbon price and strengthen the price signals to promote behaviour changes over the short, medium and long term. It proposed increases in the carbon tax rate for the 2023 to 2025 tax periods by a minimum of US$ 1 and increasing gradually to US$20 in 2026 and at least US$30/t$CO_2$e in 2030.

II. Reasons for change

Carbon pricing that predictably and credibly increases over time incentivizes long-term investments in mitigation technologies and practices that are expected to be less expensive than the carbon price in the future (World Bank Group, 2021. *Report of the Task Force on Net Zero* Goals *and Carbon Pricing*. World Bank Group, Washington, DC). The Budget 2022 announcements provides for the phasing in of higher carbon prices and an acceleration of the tax rates from 2026 up to 2050 and beyond. This provides the policy and investor certainty necessary to drive low carbon investments and meet South Africa's NDC and net zero emission commitments. In addition, relatively modest rate changes are proposed for the next three years to ensure an orderly just transition and assist with the economic recovery due to the COVID 19 pandemic.

Maintaining the real marginal carbon tax rate and aligning the carbon tax rate adjustments for the period 2023 to 2025 with the extension of the first phase is an important price signal to companies to continue to transition their activities towards low carbon, cleaner business practices and to take early action. This will be complemented by the extension of the energy efficiency tax incentive and the electricity price neutrality policy commitment to help cushion energy intensive industries and households from potential adverse impacts of higher energy prices during this period. Companies can take advantage of the temporary tax relief to rapidly transform their activities or face higher carbon taxes either through the domestic carbon tax or carbon border adjustments from 2026.

Initial carbon tax modelling analysis shows that the carbon tax will play an important role in bringing down emissions and contribute to emissions cuts ranging from 13 to 26 per cent relative to business as usual by 2035. This analysis assumed an increase in the tax rate by 10 per cent per year from 2016 combined with a gradual reduction of the tax-free allowances. Aligned with the ambitious NDC commitments for 2026 to 2030, a carbon tax rate of US$20 equivalent is proposed for 2026 and increasing to US$30/tCO2e by 2030 to assist with cost effectively reducing emissions and enabling a just transition. This takes into account recommended global carbon prices required to meet the 2°c temperature goal of the Paris Agreement, as follows:

- The High-Level Commission on Carbon Prices of US$ 40 to 80 by 2025 and US$ 50 to 100 by 2030;
- IMF proposal of a minimum carbon price for developing economies ranging from US$ 25 to 50 and global carbon pricing of US$75 by 2030, starting at US$15 in 2022; and
- Proposed implementation of the Carbon Border Adjustment Mechanism (CBAM) by the

EU from 2026 applied at the EU Emissions Trading Scheme (EUETS) carbon price and covering various sectors including iron and steel and fertilisers.

A credible headline carbon tax rate is vital and will go a long way in nudging South Africa onto a sustainable, low carbon and economically competitive growth path and lessen the impact of retaliatory border carbon taxes on carbon intensive exports.

III. Proposal

2023 to 2025 rate change

- It is proposed that amendments are made to Section 5(2) to provide for the carbon tax rate adjustment by R159 for tax periods from 1 January 2023 until 31 December 2023, R190 for tax periods from 1 January 2024 until 31 December 2024 and R236 for tax periods from 1 January 2025 until 31 December 2025.

2026 to 2030 rate change

- It is proposed that a new section 5(2A) be inserted in the Carbon Tax Act to provide for the carbon tax rate increase to R308 for tax periods from 1 January 2026 until 31 December 2026.

- It is proposed that a new section 5(2B) be inserted in the Carbon Tax Act to provide carbon tax rate increase to R347 for tax periods from 1 January 2027 until 31 December 2027, R385 for tax periods from 1 January 2028 until 31 December 2028 and R424 for tax periods from 1 January 2029 until 31 December 2029.

- It is proposed that a new section 5(2C) be inserted in the Carbon Tax Act to provide for the carbon tax rate increase to R462 for tax periods from 1 January 2030 until 31 December 2030.

2031 rate change

- It is proposed that a new section 5(3) be inserted in the Carbon Tax Act to provide for the carbon tax rate increase with effect from 2031 as announced by the Minister in the Budget.

Future periodic adjustments to take into account global carbon pricing

- It is proposed that a new section 5(4) be inserted in the Carbon Tax Act to provide for the future periodic adjustments of carbon tax rate by the Minister in the Budget to take into account the impact of exchange rate movements on the comparability of the rate to global carbon pricing.

IV. Effective date

The amendments will come into operation on 1 January 2023.

7.2 EXTENSION OF THE FIRST PHASE OF CARBON TAX FROM 1 JANUARY 2023 TO 31 DECEMBER 2025: THE ENERGY EFFICIENCY SAVINGS TAX INCENTIVE EXTENSION

[Applicable provision: section 12L of the Income Tax Act]

I. Background

In November 2013, government introduced the energy efficiency savings (EES) tax incentive in section 12L of the Act to encourage investments in energy efficient equipment and business practices by firms. Similar to all the tax incentives available in the Income Tax Act, when the EES tax incentive was introduced, it initially had a sunset date of 1 January 2020.

Accordingly, section 12L of the Act makes provision for a tax deduction from the taxable income of the taxpayer an amount equivalent to the monetary value of actual energy efficiency savings (kWh) achieved by the taxpayer in a year of assessment, subject to a certificate of approval issued by the South African National Energy Development Institute.

The EES tax incentive forms part of the revenue recycling measures under the Carbon Tax Act. In 2019, the EES tax incentive was extended for an additional 3 years from 1 January 2020 to 1 January 2023 to align it with the first phase of the carbon tax. Up to December 2020, about 265 project activities and EES were approved and contributed to emission reductions of around 26 million tonnes. In the 2022 Budget, it was proposed that the first phase of carbon tax and the EES tax incentive would be extended for 3 years from 1 January 2023 to 31 December 2025.

II. Reasons for change

Additional short-term tax relief will help aid the economic recovery by lowering the energy costs of businesses and stimulating new investments in energy efficiency. An extension of the EES tax incentive for three years from 1 January 2023 to 31 December 2025, complemented by real increases in the carbon tax rate during this period, will still maintain a dynamic incentive on the margin for companies to reduce greenhouse gas emissions and help to stimulate new energy efficient practices and industries.

III. Proposal

In line with the 2022 Budget proposal, it is proposed that the EES tax incentive be extended by three years from 1 January 2023 to 31 December 2025. As such, it is proposed that amendments be made in section 12L of the Income Act to extend the current sunset date from years of assessment ending before 1 January 2023 to years of assessment ending before 1 January 2026.

IV. Effective date

The amendments will come into operation 1 January 2023.

7.3 EXTENSION OF FIRST PHASE OF CARBON TAX FROM 1 JANUARY 2023 TO 31 DECEMBER 2025: ELECTRICITY PRICE NEUTRALITY COMMITMENT EXTENSION

[Applicable provision: Section 6(2)(c) and (d) of the Carbon Tax Act]

I. Background

The Carbon Tax Act came into effect on 1 June 2019. For the first phase of the carbon tax from 1 June 2019 until 31 December 2022, sections 6(2)(*c*) and (*d*) of the Carbon Tax Act provides a special tax deduction for electricity generators. Taxpayers are able to deduct payments of the electricity generation levy and additional purchases of renewable electricity from their carbon tax liability. The renewable electricity costs are calculated using the renewable premium rates for the different technologies, determined by the Minister of Finance by notice in the *Gazette*. The special tax deduction provision was introduced as a transitional support measure to cushion energy intensive users and households from higher electricity prices in the first phase of the tax. In the 2022 Budget Review, it was proposed that the first phase of carbon tax and the commitment to electricity price neutrality would be extended for 3 years from 31 December 2022 to 31 December 2025.

II. Reasons for change

The proposal for the extension of the electricity price neutrality commitment takes into account impacts of the COVID-19 health pandemic on the domestic economy and aims to provide temporary relief to taxpayers and consumers to support the economic recovery. South Africa also set out ambitious climate change mitigation commitments in the NDC for 2030, and signalled its intention to decarbonise and transition the electricity sector towards alternative, low carbon, clean energy sources and a more competitive market structure. The renewable energy premium deduction will encourage additional purchases of renewable electricity, help address electricity supply constraints and contribute towards achieving South Africa’s emissions commitments.

III. Proposal

To incentivise the uptake of renewable electricity, while protecting households from higher electricity prices over the short term, it is proposed that the commitment to electricity price neutrality provided in section 6(2)(*c*) and (*d*) of the Carbon Tax Act is extended by three years, from 31 December 2022 to 31 December 2025.

IV. Effective date

The amendments will come into operation 1 January 2023.

7.4 LIMITATION OF ELECTRICITY PRICE NEUTRALITY DEDUCTIONS ELECTRICITY GENERATION FROM FOSSIL FUELS

[Applicable provision: Section 6(2) of the Carbon Tax Act]

I. Background

In terms of section 6(2) of the Carbon Tax Act, taxpayers can claim a tax deduction for payments of the electricity generation levy and additional renewable electricity purchases against their carbon tax liability. The following announcements were made in the 2022 Budget Review.

- Limitation of deduction to fuel combustion emissions tax liability

Section 6(2) provides the formula for calculating the final tax payable by electricity generators after deducting the electricity generation levy payment and the renewable electricity purchases. Section 6(2)(b) defines "A" in the formula as the amount of tax payable in respect of a tax period determined in terms of subsection (1). "A" is the gross tax liability for all emissions categories, that is, fuel combustion, industrial process and fugitive emissions. Therefore, the tax deduction for the electricity levy payment and purchases of renewable electricity applies to the total carbon tax liability of a company for greenhouse gas emissions from combustion, industrial processes and fugitive emissions after the tax-free allowances are deducted in subsection (1).

Taxpayers submitted comments on the 2021 TLAB requesting clarity on whether the deduction is applicable to the total carbon tax liability of a taxpayer or only the combustion emissions tax liability. For example, a taxpayer may have energy combustion emissions from other activities such as domestic aviation, as well as process and fugitive emissions. Since the other emissions are not directly related to stationary combustion emissions from electricity generation, there was a view that the electricity price neutrality commitment should be limited to the tax liability for emissions from stationary combustion emissions activities only and excluding non-stationary emissions categories. To address this concern, it was proposed in the 2022 Budget Review, that this deduction be limited to the carbon tax liability for the fuel combustion emissions of a taxpayer.

- Clarification related to taxpayers generating electricity from fossil fuels

To provide clarity to taxpayers on the qualifying activities for which this claim can be made, it is proposed that changes be made to section 6(2) of the Carbon Tax Act to clarify that taxpayers would qualify for a deduction if they generate electricity from fossil fuels and conduct fuel combustion activities under the Intergovernmental Panel on Climate Change (IPCC) Code 1A1 energy industries, 1A2 covering manufacturing industries and construction and 1A4 for other sectors (including heat and electricity recovery from Waste).

II. Reasons for change

- Limitation of deduction to fuel combustion emissions tax liability

Applying the formula in Section 6(2) of the Carbon Tax Act, shows that mathematically the final tax liability for a taxpayer is the same under both scenarios, that is, the deduction against the total carbon tax liability or only the combustion emissions liability. If changes are proposed, this could mean revisions to the formulas in Section 6, which could introduce further complexities. No legislative changes are therefore proposed.

- Clarification related to taxpayers generating electricity from fossil fuels

To remove any ambiguity in the legislation, clarification that “taxpayer in respect of generation of electricity from fossil fuels” in Section 6(2) means activities conducted under the IPCC Code 1A1 energy industries, 1A2 covering manufacturing industries and construction would be necessary and 1A4 for other sectors (including heat and electricity recovery from Waste).

III. Proposal

- Clarification related to taxpayers generating electricity from fossil fuels

Amendments are proposed to section 6(2) of the Carbon Tax Act to clarify that “taxpayer in respect of generation of electricity from fossil fuels” by adding conducting activities under the IPCC Codes 1A1 energy industries, 1A2 covering manufacturing industries and construction and 1A4 for other sectors (including heat and electricity recovery from Waste).

IV. Effective date

The amendments will come into operation on 1 January 2023.

7.5 LIMITING CARBON SEQUESTRATION DEDUCTIONS TO ACTIVITIES WITHIN THE OPERATION CONTROL OF THE TAXPAYER

[Applicable provision: Section 6(4) of the Carbon Tax Act]

I. Background

Amendments were proposed in the 2021 draft Taxation Laws Amendment Bill to limit the carbon sequestration deduction to forestry plantations. After reviewing public comments, the bill was amended to expand the scope of the carbon sequestration deduction to include emissions sequestered in harvested wood products for the paper and pulp activities under IPCC code 1A2D. Further concerns were raised on the certification and verification of sequestered emissions where forestry management and harvested wood products are owned by third parties. In the 2022 Budget Review, amendments were proposed to introduce a limitation on the deduction for forestry management and harvested wood product sequestration activities to only those activities within the operational control of the taxpayer and to exclude sequestration activities managed by third parties.

II. Reasons for change

Taxpayers conducting electricity generation activities in the paper and pulp sector are able to deduct emissions sequestered in forestry plantation and harvested wood products from their energy related emissions. Some of these activities are managed by third parties, and it would be difficult to monitor and verify these activities. The proposed amendments will tighten the sequestration deduction and curtail the possibility of double claims for sequestration by both the third -party taxpayer that undertook the sequestration and the primary taxpayer on whose behalf the sequestration was conducted.

Limiting this deduction to activities within the operational control of the taxpayer will help to address potential administration challenges where activities are not within the taxpayer's operational control and to curb potential abuse.

III. Proposal

It is proposed that changes are made to Section 6(4) of the Carbon Tax Act to limit eligible sequestration activities to activities within the operational control of the taxpayer conducting activities in terms of IPCC code 1A2D for pulp, paper and print and 1A2j for wood and wood products.

IV. Effective date

The amendments are deemed to have come into operation on 1 January 2022.

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8. CUSTOMS AND EXCISE ACT

8

8.1 VAPING: TAXATION OF ELECTRONIC NICOTINE AND NON-NICOTINE DELIVERY SYSTEMS

[Applicable provision Section 58, Schedule No 1 and Schedule No 6 of the Customs & Excise Act, 1964]

I. Background

New generation products (NGPs) which include electronic nicotine delivery systems (ENDS) and electronic non-nicotine delivery systems (ENNDS) have been introduced in the market as harm reduction or reduced risk products compared to traditional tobacco products. These products are battery-powered devices that do not burn or use tobacco leaves, but instead vaporise e-liquid solutions to create an aerosol which the user then inhales. Even though many of the long-term health effects of ENDS use are still unknown, there is growing evidence to demonstrate that these products are not harmless. ENDS on their own carry health risks (World Health Organisation, 2021).

II. Reasons for change

The World Health Organisation (WHO) has advised governments that taxes should be applied to these products, in line with national standards, to prevent uptake, particularly among children and adolescents. South Africa is a signatory to the WHO Framework Convention on Tobacco Control (FCTC) and one of the objectives of the FCTC is to curb the demand and supply of these harmful products through taxation.

III. Proposal

Following the review of public comments received on the draft discussion paper, government proposes to apply a flat excise duty rate of at least R2.90 per millilitre (ml) to both nicotine and non-nicotine solutions.

IV. Effective date

The amendments will come into operation 1 June 2023.

9. CLAUSE BY CLAUSE

CLAUSE 1

Income Tax Act: Amendments to section 1(1)

Sub-clause (a): See notes on **CLARIFYING THE EXCLUSION OF PARTICIPATORY INTEREST IN INVESTMENT SCHEMES FROM THE DEFINITION OF FOREIGN DIVIDEND**

Sub-clause (b): The amendment to the definition of 'gross income' is a technical amendment that seeks to ensure the correct grammatical reference to a specific noun, by inserting the word "an" before the word "annuity".

Sub-clause (c): Definition of 'gross income' - see notes on **CLARIFYING PARAGRAPH (eA) OF GROSS INCOME DEFINITION REGARDING PUBLIC SECTOR FUNDS**

Sub-clause (d): The amendment seeks to correct the grammatical error to correct the word "Listing" to "Listings".

Sub-clause (e): The amendment to the definition of 'living annuity' is a technical amendment that seeks to clarify that a living annuity can still be provided in instances where the fund providing the living annuity is not the same fund the individual was a member of on date of retirement.

Sub-clause (f): The amendment to the definition of 'pension fund' is a technical amendment that seeks to delete the superfluous proviso to paragraph (c) of the definition of 'pension fund' due to the fact that a new proviso was included in the definition of 'pension fund' in the Taxation Laws Amendment Act 2021

Sub-clause (g): Definition of 'pension fund' - see notes on **CLARIFYING THE COMPULSORY ANNUITISATION AND PROTECTION OF VESTED RIGHTS WHEN TRANSFERRING TO A PUBLIC SECTOR FUND**

Sub-clause (h): The amendment to the definition of 'pension preservation fund' is a clarification that seeks to add the reference

proposed amendment to the definition of 'pension preservation fund' is clarification that seeks to add the provident preservation fund to this section to ensure that transfers from pension preservation fund to a provident preservation fund are permissible

Sub-clause (j): Definition of 'provident fund' - see notes on **CLARIFYING THE COMPULSORY ANNUITISATION AND PROTECTION OF VESTED RIGHTS WHEN TRANSFERRING TO A PUBLIC SECTOR FUND**

Sub-clause (k): The amendment to the definition of 'provident preservation fund' is a clarification that seeks to add the reference to section 37C(1)(c) of the Pension Funds Act

Sub-clause (l): Definition of 'retirement annuity fund' - see notes on **REVIEWING THE TRANSFER OF TOTAL INTEREST IN A RETIRMENT ANNUITY FUND**

CLAUSE 2

Income Tax Act: Amendments to section 7B

See notes on **REVIEWING THE TIMING OF THE ACCRUAL AND INCURRAL OF VARIABLE REMUNERATION**

CLAUSE 3

Income Tax Act: Amendments to section 7C

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

CLAUSE 4

Income Tax Act: Amendments to section 9D

Sub-clause (a): See notes on **UPDATING A REFERENCE TO A DEFINITION IN THE INSURANCE ACT, 2017 IN THE DETERMINATION OF NET INCOME OF CFCs**

Sub-clause (b): See notes on **CLARIFYING THE DEEMING PROVISION IN RESPECT ROYALTIES DERIVED BY CFCs**

Sub-clause (c): See notes on **CLARIFYING THE TREATMENT UNDER CFC RULES OF AMOUNTS FROM HYBRID EQUITY INSTRUMENTS AND THIRD PARTY BACKED SHARES DEEMED TO BE INCOME**

CLAUSE 5

Income Tax Act: Amendment to section 10

See notes on **APPORTIONING INTEREST EXEMPTION AND LIMITING CAPITAL GAIN TAX ANNUAL EXCLUSION WHEN AN INDIVIDUAL CEASES TO BE TAX RESIDENT**

CLAUSE 6

Income Tax Act: Amendment to section 10B

The amendment seeks to correct the cross referencing

CLAUSE 7

Income Tax Act: Amendment to section 10C

The amendment is a technical amendment that seeks to correct the cross referencing to the relevant provision in the definition of ‘provident fund’

CLAUSE 8

Income Tax Act: Amendments to section 11

Sub-clause (a): The amendments are aimed at making the legislation more gender neutral.

Sub-clause (b): See notes on **TAX TREATMENT OF AN ASSET ACQUIRED AS A GOVERNMENT GRANT IN KIND**

CLAUSE 9

Income Tax Act: Amendments to section 12L

See notes on **EXTENSION OF FIRST PHASE OF CARBON TAX FROM 1 JANUARY 2023 TO 31 DECEMBER 2025: THE ENERGY EFFICIENCY SAVINGS TAX INCENTIVE EXTENSION**

CLAUSE 10

Income Tax Act: Amendments to section 19

See notes on **CLARIFYING THE RULE THAT TRIGGERS RECOUPMENT UNDER THE DEBT FORGIVENESS RULES**

CLAUSE 11

Income Tax Act: Amendments to section 23

The amendment is a technical correction which seeks to update the wording as a matter of style and consistency with the wording in section 23(*o*).

CLAUSE 12

Income Tax Act: Amendments to section 23M

See notes on **INTERACTION BETWEEN THE APPLICATION OF THE INTEREST LIMITATION RULES AND CAPITAL EXPENDITURE REGIME FOR MINING OPERATIONS**

CLAUSE 13

Income Tax Act: Amendments to section 24

See notes on **REVIEWING THE DEBTOR'S ALLOWANCE PROVISIONS TO LIMIT THE IMPACT ON LAY BY ARRANGEMENTS**

CLAUSE 14

Income Tax Act: Amendment to section 28

See notes on **IMPACT OF IFRS 17 INSURANCE CONTRACTS ON THE TAXATION OF SHORT-TERM INSURERS**

CLAUSE 15

Income Tax Act: Amendments to section 29A

See notes on **IMPACT OF IFRS 17 INSURANCE CONTACTS ON THE TAXATION OF LONG-TERM INSURERS**

CLAUSE 16

Income Tax Act: Amendments to section 45

See notes on **REFINING THE REVERSAL OF THE NIL BASE COST RULES APPLICABLE TO INTRA-GROUP TRANSACTIONS**

CLAUSE 17

Income Tax Act: Amendments to section 64FA

The inclusion is a consequential amendment to the 2021 provision for situations where no dividends tax is payable by reason of an agreement for the avoidance of double taxation.

CLAUSE 18

Income Tax: Amendments to section 64K

The amendment is a consequential amendment to the 2021 provision for situations where no dividends tax is payable by reason of an agreement for the avoidance of double taxation.

CLAUSE 19

Income Tax Act: Amendments to paragraph 4 of the Second Schedule to the Act

See notes on **RETIREMENT OF A PROVIDENT FUND MEMBER ON GROUNDS OTHER THAN ILL-HEALTH**

CLAUSE 20

Income Tax Act: Amendment to paragraph 11 of the Fourth Schedule to the Act

The amendment is a technical amendment that seeks to replace '; or' with a full stop at the end of the paragraph

CLAUSE 21

Income Tax Act: Amendments to paragraph 3 of the Seventh Schedule to the Act

The amendment is a technical amendment that firstly seeks to correct a grammatical error with reference to the spelling of employees' tax, and secondly seeks to make the paragraph more gender neutral.

CLAUSE 22

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

See notes on **APPORTIONING INTEREST EXEMPTION AND LIMITING CAPITAL GAIN TAX ANNUAL EXCLUSION WHEN AN INDIVIDUAL CEASES TO BE TAX RESIDENT**

CLAUSE 23

Income Tax Act: Amendments to the Eleventh Schedule to the Act

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

CLAUSE 24

Customs and Excise Act: Amendments to section 48 and part 2 of Schedule 1

Sub-clauses (a) & (b): The amendments align the provisions across various parts of Schedule No.1.

CLAUSE 25

Customs and Excise Act: Amendments to Section 58, Schedule No 1 and Schedule No 6

See notes on **VAPING: TAXATION OF ELECTRONIC NICOTINE AND NON-NICOTINE DELIVERY SYSTEMS**

CLAUSE 26

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

The amendments make provision for the continuation of certain amendments of Schedules to the Customs and Excise Act and the VAT Act

CLAUSE 27

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

Sub-clause (a): See notes on **REVIEWING THE SECTION 72 DECISION WITH REGARD TO CROSS-BORDER LEASES OF FOREIGN-OWNED SHIPS, FOREIGN OWNED AIRCRAFT AND FOREIGN OWNED ROLLING STOCK FOR USE IN RSA**

Sub-clause (b): See notes on **REVIEWING THE SECTION 72 DECISION WITH REGARD TO THE VAT TREATMENT OF FLASH TITLE SALES**

CLAUSE 28

Value-Added Tax: Amendments to section 9

The amendment is a technical correction aimed at clarifying the date of the time of supply and is consequential to amendments made in 2021 regarding the VAT treatment of temporary letting of immovable property.

CLAUSE 29

Value-Added Tax: Amendments to section 16

Sub-clause (a): The amendments to section 16(2)(*c*): See notes on **REVIEWING THE SECTION 72 DECISION WITH REGARD TO THE VAT TREATMENT OF DOCUMENTARY EVIDENCE FOR REPOSSESSIONS**

Sub-clauses (b) and (c): The amendments are technical corrections and are consequential to amendments made in 2021 regarding the VAT treatment of temporary letting of immovable property.

CLAUSE 30

Value-Added Tax: Amendments to section 18D

The amendment corrects a spelling error and is consequential to amendments made in 2021 regarding the VAT treatment of temporary letting of immovable property.

CLAUSE 31

Value-Added Tax: Amendments to section 20

See notes on **REVIEWING THE SECTION 72 DECISION WITH REGARD TO THE VAT TREAMENT OF DOCUMENTARY EVIDENCE FOR REPOSSESSIONS**

CLAUSE 32

Value-Added Tax: Amendments to section 23

See notes on **REVIEWING THE SECTION 72 DECISION WITH REGARD TO THE VAT TREATMENT OF REGISTRATION OF FOREIGN SUPPLIERS**

CLAUSE 33

Value-Added Tax: Amendments to section 52

See notes on **REVIEWING THE SECTION 72 DECISION WITH REGARD TO THE VAT TREATMENT OF POOLING ARRANGEMENTS**

CLAUSE 34

Taxation Laws Amendment Act 25 of 2011: Amendments to section 1

See notes on **EXTENSION OF THE RESEARCH AND DEVELOPMENT TAX INCENTIVE SUNSET DATE**

CLAUSE 35

Taxation Laws Amendment Act of 2013: Amendments to section 13

The amendment postpones the effective date of amendments to sections 8F(3)*(b)*(ii), 8F(3)(*c*)(ii) and 8F(3)(*d*) from 1 January 2023 to 1 January 2024.

CLAUSE 36

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

The amendment postpones the effective date of amendments to sections 8FA(3)(*b*)(ii),

8FA(3)(*c*)(ii) and 8FA(3)(*d*) from 1 January 2023 to 1 January 2024.

CLAUSE 37

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

The amendment postpones the effective date of amendments to section 23M from 1 January 2023 to 1 January 2024

CLAUSE 38

Carbon Tax Act: Amendments to section 5

See notes on **CARBON TAX RATE TRAJECTORY FOR 2023 TO 2025, 2026, 2027 TO 2029 AND 2030**

CLAUSE 39

Carbon Tax Act: Amendments to section 6

Sub-clause (a): See notes on **LIMITATION OF ELECTRICITY PRICE NEUTRALITY DEDUCTIONS TO ELECTRICITY GENERATION FROM FOSSIL FUELS**

Sub-clauses (b) and (c): See notes on **EXTENSION OF FIRST PHASE OF CARBON TAX FROM 1 JANUARY 2023 TO 31 DECEMBER 2025: ELECTRICITY PRICE NUETRALITY COMMITMENT EXTENSION**

Sub-clause (d): See notes on **LIMITING CARBON SEQUESTRATION DEDUCTION TO ACTIVITIES WITHIN THE OPERATIONAL CONTROL OF THE TAXPAYER**

CLAUSE 40

Taxation Laws Amendment Act, 2019: Amendment to section 50

See notes on **CLARIFYING THE APPLICABILITY OF TAX NEUTRAL TRANSFERS FROM A PENSION TO A PROVIDENT FUND**

CLAUSE 41

Taxation Laws Amendment Act, 2021: Amendment to section 4

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

CLAUSE 42

Taxation Laws Amendment Act, 2021: Amendment to section 18

See notes on **INTERACTION BETWEEN THE APPLICATION OF THE ASSESSED LOSS RESTRICTION RULES AND CAPITAL EXPENDITURE REGIME FOR MINING OPERATIONS**

CLAUSE 43

Short title and commencement