Taxation Laws Amendment Bills, 2009

11 June 2009

National Treasury & SARS

Standing Committee On Finance

Giving Effect to 2009 Budget Proposals

- This Bill gives effect to tax proposals announced in 2009 February Budget
- All proposals in Chapter 4 of Budget Review and Annexure C
- Bill considered in terms of existing parliamentary arrangements
  - Next year in terms of Money Bills Amendment Procedure and Related Matters Act
- This is first presentation after Bills published for public comment
  - Deadline for public comment is 26 June 2009
  - Public hearings 24 June 2009
  - Revised Bill scheduled to be tabled in August

Full Process

- The current Bills remain under the informal process:
  - Bills released: 1 June
  - NT/SARS Briefing: 11 June
  - Taxpayer hearing: 24 June
  - Comments due: 26 June
  - NT/SARS/Taxpayer round table: 30[?] June
  - NT/SARS response: 8 July
- Post-informal process (adjustments to Bills):
  - State Law Advisors: July
  - Parliament Law Officer review: 1st half of August
  - Formal introduction and final Standing Committee on Finance report-back: 2nd half of August

Overview

Key Policy Objectives & Process

Tax Policy Objectives for 2009/10

- Raising sufficient revenue as economy slows down
- Boosting household confidence, via PIT relief
  - Fiscal drag and real tax relief, change in brackets, primary rebate and some thresholds
- Supporting mining and private sector investment
  - Delay in implementation of the Mineral and Petroleum Resources Royalty Act (2008) until 2010
  - 2008 industrial policy tax incentives implemented in 2009
- Protecting the environment for future generations
  - Green tax budget to support environmental initiatives
  - Main aim is to change behaviour, as not significant from revenue perspective
  - Promote sustainable development, energy efficiency and investment in new technologies

Summary of Main Tax Proposals

- **Rates and thresholds**
  - Personal Income Tax
  - Monetary thresholds
- **Individuals:**
  - Travel (Car) Allowances: Repeal of deemed kilometre method
  - Retirement savings
  - Learnership allowance
  - Portable spousal deduction
- **Business:**
  - Certified emissions reductions
  - Energy efficiency
  - New Dividends Tax
  - Telecommunications license conversion
  - International Submarine telecommunication cables
  - Improvements on leased government land
  - Liquidating, winding up or deregistration of exclusive residence companies
  - Shelf company start ups and small business relief
  - VCC
- **International:**
  - Conversion of the Controlled Foreign Company (CFC) ruling exemptions
  - Foreign portfolio dividends
- **Special Entities:**
  - PBO list
  - PBO + Club approval
  - Films
- **Indirect taxes:**
  - Indirect tax treatment of share block companies

Summary of Other Tax Proposals

- The electricity levy will be implemented from 1 July 2009,
  - This levy was initially due to be implemented 1 October 2008; and
  - This levy is implemented via regulations (as opposed to legislation)
- Delay of the implementation of the Mineral and Petroleum Resources Royalty Act for 1 May 2009 to 1 March 2010 and a few amendments to some administrative provisions
- Increase in the general fuel levy and the road accident fund levy effective as from April 2009
- Increases in the excise duties on tobacco products and alcoholic beverages effective as from 11 February 2009
- Introduction of a tax on incandescent light bulbs as from 1 October 2009 – amendments to Customs and Excise regulations
- Proposed amendments to the *ad valorem* excise duties on motor vehicles to include a carbon component as form 1 March 2010

Summary of Tax Administration Proposals

- Interest
  - Refunds on allowed objections
  - Compounding
- Allocation of payments to debt
- Settlement procedure
- Employees' tax and provisional tax
- Alignment of SDL and UIF contributions with PAYE
- Value-Added tax
- Customs and Excise

Tax Revenue Trends

- 2009/10 tax proposals result in gross tax revenue foregone of R13.5 bn & net tax revenue forgone R4.6 bn
- Actual tax revenue for 2008/09 as at 31 March 2009 is R625 bn
  - R16.9 bn below the February 2008 projection
  - R2.6 bn below the later revised February 2009 projection
- 2009 Feb Budget projection of tax revenue for 2009/10 is R659 bn.
- Early indications (end of May 2009) are that we already down by R8 bn on the expected revenue for 2009/10.
- Given the much steeper slowdown in economic growth in this fiscal year, actual tax revenues will be significantly lower than the February Budget projections.

Summary of main tax proposals

Table 4.5 Summary effects of tax proposals, 2009/10

R million		Effect of tax proposals
Tax revenue		663 879
Non-tax revenue[1]		11 602
Less: SACU payments		-27 915
Main budget revenue (before tax proposals)		**647 565**
Budget 2009/10 proposals:		**-4 575**
Personal income tax	**-13 550**	
Adjust personal income tax rate structure	-13 000	
Adjustment in monetary thresholds (medical scheme contributions and savings)	-550	
Business taxes	**-1 000**	
Industrial policy	-1 000	
Indirect taxes	**9 975**	
Increase in general fuel levy	4 890	
Electricity tax	2 780	
Incandescent light bulb levy	20	
Air passenger departure tax	120	
Plastic bag levy	15	
Diamond export levy	50	
Increase in excise duties on tobacco products and alcoholic beverages	2 100	
Main budget revenue (after tax proposals)		**642 990**

1. Includes mining leases and ownership.

Tax Revenue Estimates vs. Actual

R million	Actual 2008/09 (A)	Budget - Feb 2008 2008/09 (1)	MTBPS – Oct 2008 2008/09 (2)	Revised - Feb 2009 2008/09 (3)
PIT	**195,115**	191,046	201,000	199,000
CIT	**165,378**	156,471	158,924	162,000
STC	20,018	20,000	18,200	20,000
VAT	**154,340**	167,028	167,000	154,919
FUEL	**24,884**	26,434	25,500	24,480
Specific Excise	19,903	20,401	20,500	20,420
Customs Duties	**22,654**	31,073	26,500	23,780
Total tax	**625,095**	**642,089**	**641,919**	**627,693**

Tax Revenue Estimates

				Revised vs.	Actual vs.		Actual vs.	
R million	Feb (B)	Feb (E)	March (E)	**Budget**	**Budget**		**Revised**	
Tax Revenue	**Budget**	**Revised**	**Actual**		**R mn**	**%**	**R mn**	**%**
1999/00	193,886		200,959		7,073	3.65%		
2000/01	213,689	216,786	220,274	3,097	6,585	3.08%	3,488	1.61%
2001/02	236,843	252,205	252,298	15,362	15,455	6.53%	93	0.04%
2002/03	268,506	280,095	282,210	11,589	13,704	5.10%	2,115	0.76%
2003/04	**310,025**	**303,318**	**302,508**	**-6,707**	**-7,517**	**-2.42%**	**-810**	**-0.27%**
2004/05	333,694	345,261	354,980	11,567	21,286	6.38%	9,719	2.81%
2005/06	372,774	417,050	417,334	44,276	44,560	11.95%	284	0.07%
2006/07	456,786	489,662	495,515	32,876	38,729	8.48%	5,853	1.20%
2007/08	556,562	571,063	572,871	14,501	16,309	2.93%	1,808	0.32%
2008/09	**642,089**	**627,693**	**625,095**	**-14,396**	**-16,994**	**-2.65%**	**-2,598**	**-0.41%**

Detailed Review

Key Amendments

Personal Income Tax Table

Table 4.6 Personal income tax rate and bracket adjustments, 2008/09 and 2009/10

2008/09		2009/10	
Taxable income	**Rates of tax**	**Taxable income**	**Rates of tax**
R0 – R122 000	18% of each R1	R0 – R132 000	18% of each R1
R122 001 – R195 000	R21 960 + 25% of the amount above R122 000	R132 001 – R210 000	R23 760 + 25% of the amount above R132 000
R195 001 – R270 000	R40 210 + 30% of the amount above R195 000	R210 001 – R290 000	R43 260 + 30% of the amount above R210 000
R270 001 – R380 000	R62 710 + 35% of the amount above R270 000	R290 001 – R410 000	R67 260 + 35% of the amount above R290 000
R380 001 – R490 000	R101 210 + 38% of the amount above R380 000	R410 001 – R525 000	R109 260 + 38% of the amount above R410 000
R490 001 and above	R143 010 + 40% of the amount above R490 000	R525 001 and above	R152 960 + 40% of the amount above R525 000
Rebates		**Rebates**	
Primary	R8 280	Primary	R9 756
Secondary	R5 040	Secondary	R5 400
Tax threshold		**Tax threshold**	
Below age 65	R46 000	Below age 65	R54 200
Age 65 and over	R74 000	Age 65 and over	R84 200

Threshold: Tax-Free Interest

(cls. 15(1)(d) & 82; sec. 10(1)(i(xv) and para. 5(1) of the 8th Schedule)

- As part of the annual policy to encourage savings, the tax-free interest-income ceiling will be increased:
  - from R19 000 to R21 000 for persons below the age 65; and
  - from R27 500 to R30 000 for persons aged 65 and above
- The tax-free income ceilings for foreign dividends and interest will be increased from R3 200 to R3 500
- The annual exclusion ceiling for capital gains and losses for individuals will be increased from R16 000 to R17 500

Threshold: Provisional Tax for Taxpayers 65+

(cl. 78; para. 18(1)(d) of the 4th Schedule)

- Individuals 65 years and older are exempt from provisional tax if they are not company directors and only receive employment income, interest, rental or dividends amounting to taxable income of up to R80 000
- This threshold must strike a balance between reducing paperwork for pensioners and leaving them with liabilities on assessment that may lead to cash flow difficulties
- It is proposed that this threshold be increased to R120 000 in view of recent increases in the tax threshold for those 65 and older

Threshold: Medical Scheme Contributions

(cls. 32 & 81; sec. 18(1) & (5) & para. 12A(1) of the 7th schedule)

- From 1 March 2009, monthly monetary caps for tax-deductible contributions to medical schemes increases:
  - from R570 to **R625** for each of the first two beneficiaries, and
  - from R345 to **R380** for each additional beneficiary
- These deductions are to be converted into non-refundable tax credits by 2011/12. The proposed tax credits will effectively apply at a 30 per cent rate
- The concept of fringe benefit tax-free medical scheme contributions will be removed.
  - All contributions by an employer will be regarded as taxable and the employee will be permitted to claim a tax deduction (or a credit) for contributions up to the cap
  - This measure reduces administration/compliance; the net tax impact should be neutral for both employee and employer

Travel (Motor Vehicle) Allowances: Total Usage

Individual taxpayers: Allowances - Travelling allowance (code 3701)				
	2004/05 *[87.0% assessed]*		**2005/06** *[71.0% assessed]*	
Individual taxpayers - Travel allowances – 3710 taxable income	**Number of taxpayers**	**Allowance received per taxpayer Rand**	**Number of taxpayers**	**Allowance received per taxpayer Rand**
< 0 – 150 000	233,828	24,951	163,757	24,212
150 001 – 200 000	92,736	39,990	79,954	37,019
200 001 – 300 000	126,357	52,235	150,458	50,112
300 001 – 400 000	61,483	69,408	61,983	65,213
400 001 +	75,129	90,816	77,024	85,056
Total	589,533	46,195	533,176	46,998

Travel (Motor Vehicle) Allowances: Deemed Versus Actual

Individual taxpayers - Deductions	2004/05 *[87.0% assessed]* Number of taxpayers	2004/05 *[87.0% assessed]* Amount / deduction allowed per taxpayer Rand	2005/06 *[71.0% assessed]* Number of taxpayers	2005/06 *[71.0% assessed]* Amount / deduction allowed per taxpayer Rand
Current pension fund contributions	1,538,094	**7,949**	1,488,331	**8,441**
Current retirement annuity fund	1,214,332	**5,299**	1,129,507	**5,650**
Medical expenses (total)	1,291,518	**8,583**	1,188,546	**8,994**
Travel expenses – fixed cost (4014)	**517,646**	**35,819**	**449,918**	**33,046**
Travel expenses – actual cost (4015)	**13,832**	**28,289**	**12,730**	**29,521**
Other	132,486	**29,895**	103,924	**34,815**

Repeal Of Deemed Kilometer Method

(cls. 12(1)(a) & 75(b); repeal of sec. 8(1)(b)(ii) & para. 1 of the 4th Schedule)

- **Background**
  - Taxpayers should be allowed to deduct business travel as opposed to commuting
  - The first 18 000 km travelled in a year are deemed to be private travel, with the next 14 000 km deemed to be business travel
  - Many taxpayers use this method to effectively claim commuting expenses
- **Proposal**
  - The deemed kilometre method is repealed
  - Taxpayers can still claim business travel expenses for actual kilometers recorded in a log book (but withholding is increased from 60 to 80 per cent)

Pre-Retirement Lump Sum Benefits

Taxable income from lump sum benefits	Rate of tax
Not exceeding R22 500	0 per cent of taxable income
Exceeding R22 500 but not exceeding R600 000	18 per cent of taxable income exceeding R22 500
Exceeding R600 000 but not exceeding R900 000	R103 950 plus 27 per cent of taxable income exceeding R600 000
Exceeding R900 000	R184 950 plus 36 per cent of taxable income exceeding R900 000

Retirement Lump Sum Benefits

Taxable income from lump sum benefits	**Rate of tax**
Not exceeding R300 000	0 per cent of taxable income
Exceeding R300 000 but not exceeding R600 000	R0 plus 18 per cent of taxable income exceeding R300 000
Exceeding R600 000 but not exceeding R900 000	R54 000 plus 27 per cent of taxable income exceeding R600 000
Exceeding R900 000	R135 000 plus 36 per cent of taxable income exceeding R900 000

Lump Sum Benefits

(Appendix I: paras. 9 & 10)

- Both lump sum tables work in tandem
- Each lump sum is taxed under the applicable table taking into account prior lump sums
- Example:
  - Facts: Taxpayer receives a R400 000 pre-retirement withdrawal, and receives another R300 000 on retirement
  - Result: The R400 000 is taxed under the pre-retirement table. The R300 000 is taxed under the retirement table using rates for amounts of R400 001 to R700 000.

Minor Beneficiary Funds

(cls. 8(1)(j), 15(1)(b) & 71(1)(c); repeal of para. (eC) of sec. 1 ("gross income" definition), sec. 10 (I) (gE); repeal of par. 3(iv) proviso of 2nd Schedule)

- **Background**
  - Minor beneficiary funds were created to protect the interest of orphans under FSB supervision
  - The funds are used for payment of maintenance, school fees etc…
  - In 2008, the funds became subject to tax similar to annuities, meaning no tax exists on death for the lump sum transfer or on growth, but PAYE exists on payout.
- **Proposal**
  - The PAYE system is costly and most payouts are below the taxable threshold
  - To simplify administration, lump sum payments to a fund will be taxed but payouts from a fund will be exempt

Payout of Employer Pension Surpluses

(cls. 8(1)(i) & 12(1)(b)-(c); Repeal of Par. (eB) of ("gross income" definition); sec. 8(4)(a) & (b))

- **Background**
- When an actuarial surplus is paid to an employer as approved by the pension board, it is treated as gross income
- This charge is premised on the employer obtaining a deduction for the initial payments to the fund
- However, if a taxpayer acquires a business with a pension surplus, the amount paid for the surplus is a non-capital expenditure

- **Proposal**
- Receipt of an employer-surplus will not be included as gross income to the extent a non-deductible payment was made in respect of that surplus

Employer-Provided Post-Retirement Medical Aid

(cl. 16(1)(i); sec. 11(wA))

- **Background**
- Some employers provide post-retirement medical aid for employees but these benefits are a contingent liability on the company's books
- To get this (potentially costly) liability off the books, employers make lump sum payments to the employee or buy a life insurance annuity

- **Proposal**
- Employers should be allowed to immediately deduct the lump sum paid for the life insurance annuity
- However, the payment can only be deducted immediately if acting as a final once off payment - the employer must have no further obligation

Learnership Allowance Simplification

(cl. 25; sec. 12H)

- **Background**
- A pre-existing tax incentive exists to encourage employers to utilise learnerships for training
- However, the incentive has too many variables giving rise to making it difficult to calculate
- The current incentives also unfairly penalise employee switching of jobs

- **Proposal**

Characteristics of learners	Value of basic deduction	Value of completion deduction
Basic	R 30 000 p.a.	R 30 000 p.a.
Disabled learner	R 50 000 p.a.	R 50 000 p.a.

- The basic allowance will be proportionately allocated even if employment changes
- Completing allowances are awarded at the end (to the ending employer)

Portable Spousal Deduction

(cl. 5; sec. 4A)

- **<u>Background</u>**
- Each estate has an automatic R3.5 million deduction
- Married couples use planning strategies (e.g. trusts) to guarantee their children inherit R7 million of assets free of estate duty.
- These strategies are expensive for taxpayers due to fees and ongoing compliance costs

- **<u>Proposal</u>**
- The deduction becomes portable/ transferable between spouses.
- If a spouse inherits all the assets, R3.5 million is added the deduction (for a total of R7 million)
- In the event of multiple concurrent spouses, the R3.5 million is divided according to the value of assets that each spouse inherits

Exemption of Certified Emission Reductions

(cl. 28; sec. 12K)

- **<u>Background</u>**
- CERs represent emission reductions that are verified and certified by the Department of Energy and only exist once issued by the UNFCCC Executive Board of the Clean Development Mechanism.
- Despite Kyoto Protocol support, there has been little uptake of CDM projects within South Africa. This lack of uptake mainly stems from the high financial (and bankable) hurdle rates given the risk associated with CDM project activities.

- **<u>Proposal</u>**
- It is proposed that disposals of CERs be wholly exempted from income tax in respect of any person that carries the CDM project registration and implements that project

Energy Efficiency: Basics

(cl. 29; sec. 12L)

- Background
  - SA depends too heavily on fossil-fuels for energy
  - Energy generated from fossil fuels is increasingly costly in financial terms and negatively impacts the environment
  - Energy efficiency is one of the fastest and most effective ways to address concerns on climate change and energy security
  - Energy efficiency is about maintaining productive outputs with fewer energy inputs (not about simply reducing energy consumption)

- Proposal
  - Taxpayers may claim an annual notional allowance for energy savings achieved in the production of income
  - An energy savings certificate from SANEDI is required to claim the allowance
  - The allowance is claimed for the incremental reduction from the pre-existing energy baseline that occurred during the year

Energy Efficiency: Formula

- Basic formula

  Energy efficiency

  <u>savings in kwh (x) Applied rate</u>

  2 (or a number by the Minister)
- Savings is largely measured by comparing baselines from the start versus the end of the year
- The rules for savings will be set by Department of Energy regulation (which will presumably be based on the International Measurement and Valuation Protocol)
- The applied rate represents the lowest feed-in-tariff set by National Energy Regulator guidelines

Ad Valorem emissions tax rate on motor vehicles (Y)

Emission component	
CO_2 g/km	CO_2 emissions tax rate
100	0.0%
110	0.0%
120	0.0%
140	1.3%
160	2.7%
180	4.0%
200	5.3%
220	6.7%
240	8.0%
260	9.3%
280	10.7%
300	12.0%
320	12.0%

Conversion of STC to Dividends Tax

- Background
  - The general rules governing the new Dividends tax were enacted in 2008
  - The Taxation Laws Amendment Bill, 2009 contains supporting amendments to the new Dividends tax
  - The new Dividends Tax will replace the STC on a date set by Ministerial notice (sometime after tax treaties are ratified increasing certain dividend rate ceilings from zero to 5 per cent)

- Basics of 2008 Proposal
  - The new Dividends Tax will have a 10 per cent rate falling on the shareholders
  - The new Dividends Tax has a number of exemptions (e.g. pension funds; company-to-company) and allows for treaty reductions
  - The new Dividends Tax will impose a withholding obligation on the company payor (or a regulated intermediary)

Dividends Tax: Pre-Sale Dividend Stripping

(cls. 35 & 87; sec. 22B & para. 43A of the 8th Schedule)

- Background
  - Dividends to company shareholders will be exempt while the sale of shares by company shareholders will remain subject to a 14 per cent charge
  - This differential encourages company sellers to convert sale proceeds to dividends
  - If the target company sold lacks available cash, the target company frequently turns to borrowings backed by the purchaser

- Proposal:
  - Pre-sale dividends directly or indirectly funded by purchasers will be treated as sales proceeds subject to CGT
  - Purchaser funding will be deemed to exist if two years before the sale:
    - The purchaser makes a contribution of assets for target shares;
    - The target company borrows funds from the purchaser
    - The target company’s borrowing is guaranteed or otherwise secured by the purchaser; or
    - The loan funding the dividend is otherwise obtained by reason of or in consequence of the purchase

Dividends Tax: Share Distributions

(cls. 8(1)(h) & 67; sec. 1 ("dividend" definition) & 64R)

- Background:
  - The distribution of capitalisation shares is not a dividend and is accordingly not taxable under the old STC or the new Dividends Tax
  - The lack of tax exists because the company's assets remain in tact, but the rule fails to account for the fact that value may have changed at the shareholder level
- Proposal:
  - The distribution of shares are exempt under the new Dividends Tax only to the extent that the proportionate equity share interests of the shareholders remain unchanged
  - A share distribution with an optional election to choose other consideration is always subject to the new Dividends Tax
  - A change by a company in the preferences, limitations, rights or other terms associated with certain shares similarly triggers tax if proportionate interests in the company change

Dividends Tax: Deemed Dividends

(cls. 64-66; secs. 64O, 64P & 64Q)

- Background
  - The STC contains deemed dividend rules to protect the STC base by taxing loans and other transactions that extract value from the company without being a "formal dividend"
  - The new Dividends Tax currently lacks "deemed dividend" rules to protect the base
- Proposal:
  - The new rules are narrower than the STC deemed dividend rules to better cater for commercial realities and practical enforcement
  - Transactions undertaken by SA companies potentially constituting deemed dividends are divided into four categories
    - Loans, advances or debts
    - Cross-border transfer pricing
    - Re-domiciling of domestic companies to a foreign location
    - The yield from hybrid debt operating as disguised shares
  - Deemed dividends qualify for same exemptions as domestic dividends

Telecommunications License Conversions

(cls. 47 & 90; sec. 40D; para. 67D of the 8th Schedule;)

- **Background**
  - The disposal of a capital asset generally triggers CGT
  - A variation in rights conferred by a license conversion constitutes a disposal which attracts CGT even though the conversion is imposed by government
- **Proposal**
  - License conversions in the telecommunications industry will not be a disposal for CGT purposes and will instead be treated as a 'rollover event'
  - 'Rollover treatment' means the license conversion is not taxable and any gain (loss) is deferred until the sale of the new license

International Submarine Telecommunications Cables

(cls. 16 (b)-(d) & 22(1)(e); sec. 11(f) and 12D(1)("affected asset" definition))

- Background
  - South African telecommunication companies are seeking access to an international submarine telecommunications cable to enhance the quality of domestic telecommunication services and to reduce high bandwidth costs
  - Access to the submarine cable can be obtained through either joint ownership or an indefeasible right of use (IRU)
  - The costs incurred for joint ownership or an IRU of the cable are currently not deductible

- Proposal
  - A deduction of 5 per cent per annum is allowed for the cost of acquiring submarine cables or telecommunication lines by direct joint ownership
  - A deduction of 5 per cent per annum for the premium paid for an IRU will be allowed as long as the IRU has a minimum lifespan of at least 20 years

Improvements on Leased Government Land

(cl. 16 (f); sec. 11(g)(vi)

- Background
  - A lessee can deduct the cost of improvements on land (e.g. buildings or other fixtures) as long as the improvements constitute gross income to the lessor
  - Certain lessors (e.g. government) are tax exempt
  - A deduction can be claimed irrespective, however, if the improvement is made pursuant to a Public-Private-Partnership agreement
  - The exempt lessor prohibition undermines government's ability to use land as a mechanism to promote infrastructure development (unless a Public-Private-Partnership is involved)

- Proposal
  - The prohibition against deducting improvements for exempt lessors no longer applies if government-owned land is leased for a period of 20 years or more

Liquidation of Residence Companies

(cls. 3(1)(b) 52(1)(e) & 89; 9(16) of the transfer duty; sec. 64 para. 51A of the 8th Schedule;; sec. 64B(5)(k))

- Background
  - If a company in liquidation distributes assets (including a domestic residence) to a natural person, the distribution results in CGT, STC and transfer duty
  - Many natural persons have residences, which they use solely for domestic purposes, in companies because of previously existing tax benefits
  - An annual company fee is now levied to keep these companies active
- Proposal
  - For a two-year window period, a liquidating distribution of a domestic residence by a company is treated as a CGT 'roll-over event' if this residence is the sole asset of the company
  - 'Rollover treatment' means all capital gains and losses are deferred until the residence is sold by the natural person
  - The distribution is exempt from STC and transfer duty

Shelf Company Start Ups and Small Business Relief

(cls. 23 and 79; sec. 12E4(a)(ii)(hh); par 3(f)(iii) of the 6th Schedule)

- Background
  - Micro businesses and small business corporations qualify for special relief for income tax purposes
  - This relief is available provided that these business do not violate the anti-multiple shareholding prohibition
  - The anti-multiple shareholding prohibition prevents shelf companies from qualifying for relief because the seller of shelf companies holds multiple shelf companies

- Proposal
  - The anti-multiple shareholding prohibition will not apply during the period that a shelf company is inactive or dormant
  - A shelf company is inactive or dormant until the company trades or holds assets exceeding the value of R5 000

Venture Capital Company (VCC)

(cl. 27 ; sec. 12J)

- **Background**
  - The VCC incentive was introduced in 2008 to encourage retail investment in VCCs that provide risk capital to small business and junior mining companies.
  - The proposed amendments aim to simplify some of the requirements relating to VCC pre-approval by SARS
- **Proposal**
  - SARS will no longer be required to make upfront approvals of VCC activities that must occur within 36 months of formation (e.g. percentage allocation of investment expenditure to small businesses)
  - Relaxation of non-qualifying income requirements by allowing up to 20% (from 10%) of gross income of the VCC to be derived from non-core activities
  - Deletion of the requirement that the VCC must commit at least 10% of its expenditure to a company with a book value less than R5m
  - Investee companies will no longer be required to engage in a trade within 18/36 months after the VCCs investment, however they must not be engaged in an impermissible trade
  - Investee company will no longer have to spend sums invested by VCCs within 18/36 months, only the impermissible trade and cap on passive income tests remain
  - The maximum deduction allowed for listed companies investing in VCCs (incl. s41 companies) will be increased to 40% of the equity shares in a VCC (up from 10%) to allow for anchor investors

Conversion of CFC Ruling Exemption

- **Background**
  - South Africa has objective anti-avoidance rules that prevent SA residents from shifting "tainted income" offshore through controlled foreign companies (CFCs)
  - In 2006, a special rulings system was introduced to provide SARS with authority to grant waivers from "tainted income" treatment on a case-by-case basis
  - The problem with the special rulings process is that the process tends to border on determining policy as opposed to administration
- **Proposal**
  - The proposal merges the special CFC rulings into the objective legislation

Conversion of CFC Ruling Exemption

(cl. 14; sec. 9D(1)("foreign business establishment" definition); proviso to 9D(2A) & 9D(10))

Clarification of Foreign Business Establishment definition

- The definition is clarified to ensure it is economical meaningful
- The revised definition opens with a conceptual framework:
  - The foreign business establishment must consist of a fixed place;
  - Be located outside South Africa; and
  - Must be conducted continuously and regularly
- The proposal takes into account certain activities of CFC group members if located in the same foreign country
- The proposal also requires the establishment to be located in the foreign country solely or mainly for non-tax avoidance reasons

Merger of high-taxed CFC rulings into objective legislation

- CFCs will be exempt from tax in South Africa if subject to high foreign country taxes
- To be viewed as highly taxed, the CFC must be:
  - subject to a rate of tax of at least 20% in a foreign country in which it is incorporated; and
  - The net income as an aggregate must be subject to a global level of foreign tax of at least 75% of the amount of tax that would have been imposed had the CFC been located in South Africa

JSE Listed Foreign Portfolio Dividends

(cls. 15 (1)(i) & 54(1)(a); secs. 10(1)(k)(ii)(bb) & 64D(i)("dividend definition"))

Background

- Foreign dividends are generally taxed at marginal rates, but an exemption exists for foreign dividends declared by companies with a dual listing (JSE and recognised foreign exchange)
- This exemption matches the current STC exemption at the shareholder level

Proposal

- Proposal eliminates exemption for dual listed foreign companies
- Foreign portfolio dividends distributed by foreign companies listed on the JSE will now be taxed at 10%
- The new charge matches the 10% charge imposed under new Dividends Tax (similar to domestic dividends)
- The new charge applies only once the Dividends Tax goes into effect

Additional PBO Activities

(cls. 94-96; paras. 3(h) & 4(p) of Part I and par 3(p) of Part II of the 9th Schedule)

Background

- Agricultural Trusts do not qualify for PBO tax exemption, even though the trusts were mandated by the Department of Agriculture
- Donations made to the FSB Consumer Education Foundation do not qualify for tax deductible donations in the hands of the donor, even though initiated by the FSB

Proposal

- A PBO exemption will be added for entities such as Agricultural Trusts that perform transformation services for emerging farmers
- Contributions made to the FSB Consumer Education Foundation (an entity required by law to perform educational programmes for financial services and products) will qualify for tax deductible donations

Retrospective Approval and Provisional Tax Status for PBOs and Clubs

(cls. 43 & 44; secs. 30(3B) & 30A(4) & para. 1 of the 4th Schedule)

Background

- PBOs and clubs need SARS approval before obtaining exemption
- When the partial system of taxation of trading activities was introduced for PBOs and Clubs in 2005, it was initially believed that these entities should be subject to provisional tax like any other taxable entity

Proposal

- *Retroactive Approval:*
  - SARS may retroactively approve tax exemption status provided that the entities were substantially compliant with current tax exemption requirements
  - This change allows entities that delayed their approval process after formation to re-enter the system at a later date
- *Provisional Tax:* Provisional tax status of PBOs and clubs will be eliminated based on administrative/compliance concerns

Refinement of Film Incentives

(cls. 15(k) & 39; sec. 10(1)(zG) & 24F()("film owner" definition) & (8))

- Assisting DTI film grants (general R10m ceiling per film)
  - In recognition of the fact that local film production is a key strategic industry, DTI provides film grants that the Income Tax currently exempts when paid to the recipient (DTI special purpose vehicle)
  - Proposal allows a tax-free assignment to film owners
- 100% immediate write-off of legitimate film costs
  - Borrowing currently allowed up to 10 years if at-risk
  - Proposal is to extend repayment to 15 years so as to assist legitimate local film productions (due to the decline in risk-free interest rates) BUT:
    - Trigger an interest charge on recoupment for failure to repay loan as compensation to government for the time value of money; and
    - Require a 14% cash contribution to protect the at-risk rule

Indirect Tax of Share Block Companies

(cls. 1 & 2; secs. 1 (“fair value” and “property” definitions) & 3(1A)

- **Background**
  - When immovable property is sold, it is subject to the transfer duty (from the second sale onwards – the first sale is normally subject to VAT if sold by a developer)
  - Transfer duty should also apply when there is a sale of fractional ownership shares in companies mainly containing immovable property
- **Proposal**
  - The definition of “property” in the Transfer Duty Act will be expanded to include a share in a share block company because a share block company is economically equivalent to a direct interest in immovable property
  - The fair value of the share block company will be measured without regard to its liabilities and the seller will become jointly liable for any unpaid transfer duty

Interest

(TL2AB clauses 14 and 37, ITA section 88 and VAT section 36)

- The Income Tax and Value-Added Tax Acts do not require SARS to pay interest on refunds to taxpayers when objections are allowed
- This non-payment of interest is arguably contrary to one of the core principles on which the constitutionality of the “pay now argue later” principle is based
- It is proposed that these Acts be amended to:
  - clarify that payment is not suspended due to objection
  - formalise the circumstances where payment will be required despite objection
  - provide for interest where a payment made pending consideration of an objection is refunded

Interest (Continued)

(TL2AB clauses 16, 44 and 50, ITA s89*quin*, SDL s11, UIC s12)

- The current simple interest charge requires special ordering rules for set off of payments against penalties, interest, and capital
- As part of the modernisation agenda and the switch to consolidated taxpayer accounts, it is proposed that SARS switch on a phased basis to the commercial practice of charging compound interest
- It is proposed that the Commissioner be given the discretion to determine:
  - which tax types the new method will apply to; and
  - the date of application of this new method
- It is expected that the first phase will be apply to all payroll taxes (i.e. PAYE, SDL and UIF contributions) and customs and excise duties.

Allocation of Payments to Debt

(TL2AB clause 1)

- In accordance with commercial practice, the proposed amendment enables SARS to apply a payment allocation rule that generally sets payments off against the oldest outstanding debt, if the taxpayer does not designate the purpose of any payment made in terms of the applicable tax act.

Settlement Procedure

(TL2AB clause 15, ITA section 88A)

- When the settlement procedures were introduced into legislation in 2003, the underlying assumption was that the settlement of disputes would only commence after the relevant assessment
- Operational uncertainty exists as to whether settlements may be concluded prior to assessments
- It is proposed that the legislation be clarified to ensure that settlement procedures are limited to post-assessment.

Employees’ Tax and Provisional Tax

(TLAB clause 79, TL2AB clauses 20 and 22, ITA 4th schedule paragraphs 14, 19 and 20)

- In order to improve control over employees’ tax and improve timeliness of data, it is proposed that the Commissioner may request employer reconciliations of employees’ tax more frequently than once a year
- A concern has been raised that less sophisticated taxpayers may not always be able to accurately estimate their taxable income for purposes of the second provisional tax payment
  - In order to address this concern the Commissioner is enabled to prescribe an alternative method for determining an estimate of taxable income for a class of taxpayers.
  - If the designated taxpayers follow the prescribed method the 20% penalty will be waived automatically.

Alignment of SDL and UIF Contributions with Employees' Tax

(TL2AB clauses 41 to 43, 47 to 49, SDL s6, 7 and 7A, UIC s8, 9 and 9A)

- It is proposed that:
  - The obligation to provide employer reconciliations for employees' tax be extended to SDL and UIF contributions
  - The ability to issue estimated assessments for employees' tax where an employer has failed to submit a return or a return is not satisfactory be extended to SDL and UIF contributions
  - Additional tax provisions be aligned by allowing for any decision to impose any penalty or not to remit any penalty be subject to objection and appeal

Value-Added Tax

(TL2AB clauses 33 and 36, VATA sections 1 and 23)

Biometrical information:

- In order to combat the exceptionally high levels of fictitious persons applying for VAT registration, it is proposed that the Commissioner may obtain biometrical information when considering the person's application for registration as a vendor
- Biometrical information so obtained may not be disclosed to any other person

Customs Modernisation

(TL2AB clause 31, C&E section 119A)

- The proposed amendment seeks to facilitate the implementation of SARS customs modernisation by empowering the Commissioner to make rules to provide the necessary regulatory framework where the enabling provisions for implementation are
  - urgently required; and
  - it is not possible to effect timeously the necessary amendment to the Act
- Any such rules must be consistent with the objectives of the provisions of the Act to which they relate