

C

Additional tax policy and administrative adjustments

This annexure should be read with Chapter 4 of the *Budget Review*. It elaborates on some of the proposals contained in the chapter, clarifies certain matters and presents additional technical proposals arising from the annual tax policy process.

Personal income tax

The proposed tax schedule in Table 4.4 in Chapter 4 compensates individuals for the effect of inflation. The effects of these proposals are set out in tables C.1, C.2 and C.3.

Table C.1 Annual income tax payable and average tax rates, 2022/23 (taxpayers below 65)

| Taxable income (R) | 2021/22 rates (R) | Proposed 2022/23 rates (R) | Tax change (R) | % change | Average tax rates | |
|--------------------|-------------------|----------------------------|----------------|----------|-------------------|-----------|
| | | | | | Old rates | New rates |
| 85 000 | – | – | – | – | – | – |
| 90 000 | 486 | – | -486 | -100.0% | 0.5% | 0.0% |
| 100 000 | 2 286 | 1 575 | -711 | -31.1% | 2.3% | 1.6% |
| 120 000 | 5 886 | 5 175 | -711 | -12.1% | 4.9% | 4.3% |
| 150 000 | 11 286 | 10 575 | -711 | -6.3% | 7.5% | 7.1% |
| 200 000 | 20 286 | 19 575 | -711 | -3.5% | 10.1% | 9.8% |
| 250 000 | 31 990 | 30 495 | -1 495 | -4.7% | 12.8% | 12.2% |
| 300 000 | 44 990 | 43 495 | -1 495 | -3.3% | 15.0% | 14.5% |
| 400 000 | 74 100 | 71 840 | -2 260 | -3.0% | 18.5% | 18.0% |
| 500 000 | 106 725 | 103 405 | -3 320 | -3.1% | 21.3% | 20.7% |
| 750 000 | 200 817 | 196 663 | -4 154 | -2.1% | 26.8% | 26.2% |
| 1 000 000 | 302 673 | 297 811 | -4 862 | -1.6% | 30.3% | 29.8% |
| 1 500 000 | 507 673 | 502 811 | -4 862 | -1.0% | 33.8% | 33.5% |
| 2 000 000 | 726 409 | 718 547 | -7 862 | -1.1% | 36.3% | 35.9% |

Source: National Treasury

Table C.2 Annual income tax payable and average tax rates, 2022/23 (taxpayers aged 65 to 74)

| Taxable income (R) | 2021/22 rates (R) | Proposed 2022/23 rates (R) | Tax change (R) | % change | Average tax rates | |
|--------------------|----------------------|----------------------------------|----------------|----------|-------------------|-----------|
| | | | | | Old rates | New rates |
| 120 000 | – | – | – | – | – | – |
| 150 000 | 2 673 | 1 575 | -1 098 | -41.1% | 1.8% | 1.1% |
| 200 000 | 11 673 | 10 575 | -1 098 | -9.4% | 5.8% | 5.3% |
| 250 000 | 23 377 | 21 495 | -1 882 | -8.1% | 9.4% | 8.6% |
| 300 000 | 36 377 | 34 495 | -1 882 | -5.2% | 12.1% | 11.5% |
| 400 000 | 65 487 | 62 840 | -2 647 | -4.0% | 16.4% | 15.7% |
| 500 000 | 98 112 | 94 405 | -3 707 | -3.8% | 19.6% | 18.9% |
| 750 000 | 192 204 | 187 663 | -4 541 | -2.4% | 25.6% | 25.0% |
| 1 000 000 | 294 060 | 288 811 | -5 249 | -1.8% | 29.4% | 28.9% |
| 1 500 000 | 499 060 | 493 811 | -5 249 | -1.1% | 33.3% | 32.9% |
| 2 000 000 | 717 796 | 709 547 | -8 249 | -1.1% | 35.9% | 35.5% |

Source: National Treasury

Table C.3 Annual income tax payable and average tax rates, 2022/23 (taxpayers aged 75 and over)

| Taxable income (R) | 2021/22 rates (R) | Proposed 2022/23 rates (R) | Tax change (R) | % change | Average tax rates | |
|--------------------|----------------------|----------------------------------|----------------|----------|-------------------|-----------|
| | | | | | Old rates | New rates |
| 150 000 | – | – | – | – | – | – |
| 200 000 | 8 802 | 7 578 | -1 224 | -13.9% | 4.4% | 3.8% |
| 250 000 | 20 506 | 18 498 | -2 008 | -9.8% | 8.2% | 7.4% |
| 300 000 | 33 506 | 31 498 | -2 008 | -6.0% | 11.2% | 10.5% |
| 400 000 | 62 616 | 59 843 | -2 773 | -4.4% | 15.7% | 15.0% |
| 500 000 | 95 241 | 91 408 | -3 833 | -4.0% | 19.0% | 18.3% |
| 750 000 | 189 333 | 184 666 | -4 667 | -2.5% | 25.2% | 24.6% |
| 1 000 000 | 291 189 | 285 814 | -5 375 | -1.8% | 29.1% | 28.6% |
| 1 500 000 | 496 189 | 490 814 | -5 375 | -1.1% | 33.1% | 32.7% |
| 2 000 000 | 714 925 | 706 550 | -8 375 | -1.2% | 35.7% | 35.3% |

Source: National Treasury

Customs and excise duty

Government proposes that the excise duties in the Customs and Excise Act (1964, section A of part 2 of schedule 1) be amended with effect from 23 February 2022 to the extent shown in Table C.4.

Table C.4 Specific excise duties, 2021/22 – 2022/23

| Tariff item | Tariff subheading | Article description | 2021/22 Rate of excise duty | 2022/23 Rate of excise duty |
|---------------|-------------------|---|--------------------------------|--------------------------------|
| 104.00 | | PREPARED FOODSTUFFS; BEVERAGES, SPIRITS AND VINEGAR; TOBACCO | | |
| 104.01 | 19.01 | Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 per cent by mass of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5 per cent by mass of cocoa calculated on a totally defatted basis not elsewhere specified or included: | | |
| 104.01.10 | 1901.90.20 | Traditional African beer powder as defined in Additional Note 1 to Chapter 19 | 34,7c/kg | 34,7c/kg |
| 104.10 | 22.03 | Beer made from malt: | | |
| 104.10.10 | 2203.00.05 | Traditional African beer as defined in Additional Note 1 to Chapter 22 | 7,82c/li | 7,82c/li |
| 104.10.20 | 2203.00.90 | Other | R115.08/li aa | R121.41/li aa |
| 104.15 | 22.04 | Wine of fresh grapes, including fortified wines; grape must (excluding that of heading 20.09): | | |
| 104.15.01 | 2204.10 | Sparkling wine | R15.51/li | R16.52/li |
| 104.15 | 2204.21 | In containers holding 2 li or less: | | |
| 104.15 | 2204.21.4 | Unfortified wine: | | |
| 104.15.03 | 2204.21.41 | With an alcoholic strength of at least 4.5 per cent by volume but not exceeding 16.5 per cent by vol. | R4.74/li | R4.96/li |
| 104.15.04 | 2204.21.42 | Other | R230.18/li aa | R245.15/li aa |
| 104.15 | 2204.21.5 | Fortified wine: | | |
| 104.15.05 | 2204.21.51 | With an alcoholic strength of at least 15 per cent by volume but not exceeding 22 per cent by vol. | R7.92/li | R8.36/li |
| 104.15.06 | 2204.21.52 | Other | R230.18/li aa | R245.15/li aa |
| 104.15 | 2204.22 | In containers holding more than 2 li but not more than 10 li: | | |
| 104.15 | 2204.22.4 | Unfortified wine: | | |
| 104.15.13 | 2204.22.41 | With an alcoholic strength of at least 4.5 per cent by volume but not exceeding 16.5 per cent by vol. | R4.74/li | R4.96/li |
| 104.15.15 | 2204.22.42 | Other | R230.18/li aa | R245.15/li aa |
| 104.15 | 2204.22.5 | Fortified wine: | | |
| 104.15.17 | 2204.22.51 | With an alcoholic strength of at least 15 per cent by volume but not exceeding 22 per cent by vol. | R7.92/li | R8.36/li |
| 104.15.19 | 2204.22.52 | Other | R230.18/li aa | R245.15/li aa |
| 104.15 | 2204.29 | Other: | | |
| 104.15 | 2204.29.4 | Unfortified wine: | | |
| 104.15.21 | 2204.29.41 | With an alcoholic strength of at least 4.5 per cent by volume but not exceeding 16.5 per cent by vol. | R4.74/li | R4.96/li |
| 104.15.23 | 2204.29.42 | Other | R230.18/li aa | R245.15/li aa |
| 104.15 | 2204.29.5 | Fortified wine: | | |
| 104.15.25 | 2204.29.51 | With an alcoholic strength of at least 15 per cent by volume but not exceeding 22 per cent by vol. | R7.92/li | R8.36/li |
| 104.15.27 | 2204.29.52 | Other | R230.18/li aa | R245.15/li aa |
| 104.16 | 22.05 | Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances: | | |
| 104.16 | 2205.10 | In containers holding 2 li or less: | | |
| 104.16.01 | 2205.10.10 | Sparkling | R15.51/li | R16.52/li |

Table C.4 Specific excise duties, 2021/22 – 2022/23 (continued)

| Tariff item | Tariff subheading | Article description | 2021/22 Rate of excise duty | 2022/23 Rate of excise duty |
|---------------|-------------------|---|--------------------------------|--------------------------------|
| 104.16 | 2205.10.2 | Unfortified: | | |
| 104.16.03 | 2205.10.21 | With an alcoholic strength of at least 4.5 per cent by volume but not exceeding 15 per cent by vol. | R4.74/li | R4.96/li |
| 104.16.04 | 2205.10.22 | Other | R230.18/li aa | R245.15/li aa |
| 104.16 | 2205.10.3 | Fortified: | | |
| 104.16.05 | 2205.10.31 | With an alcoholic strength of at least 15 per cent by volume but not exceeding 22 per cent by vol. | R7.92/li | R8.36/li |
| 104.16.06 | 2205.10.32 | Other | R230.18/li aa | R245.15/li aa |
| 104.16 | 2205.90 | Other: | | |
| 104.16 | 2205.90.2 | Unfortified: | | |
| 104.16.09 | 2205.90.21 | With an alcoholic strength of at least 4.5 per cent by volume but not exceeding 15 per cent by vol. | R4.74/li | R4.96/li |
| 104.16.10 | 2205.90.22 | Other | R230.18/li aa | R245.15/li aa |
| 104.16 | 2205.90.3 | Fortified: | | |
| 104.16.11 | 2205.90.31 | With an alcoholic strength of at least 15 per cent by volume but not exceeding 22 per cent by vol. | R7.92/li | R8.36/li |
| 104.16.12 | 2205.90.32 | Other | R230.18/li aa | R245.15/li aa |
| 104.17 | 22.06 | Other fermented beverages (for example, cider, perry, mead, saké); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included: | | |
| 104.17.03 | 2206.00.05 | Sparkling fermented fruit or mead beverages; mixtures of sparkling fermented beverages derived from the fermentation of fruit or honey; mixtures of sparkling fermented fruit or mead beverages and non-alcoholic beverages | R15.51/li | R16.52/li |
| 104.17.05 | 2206.00.15 | Traditional African beer as defined in Additional Note 1 to Chapter 22 | 7,82c/li | 7,82c/li |
| 104.17.07 | 2206.00.17 | Other fermented beverages, unfortified, with an alcoholic strength of less than 2.5 per cent by volume | R115.08/li aa | R121.41/li aa |
| 104.17.09 | 2206.00.19 | Other fermented beverages of non-malted cereal grains, unfortified, with an alcoholic strength of at least 2.5 per cent by volume but not exceeding 9 per cent by vol. | R115.08/li aa | R121.41/li aa |
| 104.17.11 | 2206.00.21 | Other mixtures of fermented beverages of non-malted cereal grains and non-alcoholic beverages, unfortified, with an alcoholic strength of at least 2.5 per cent by volume but not exceeding 9 per cent by vol. | R115.08/li aa | R121.41/li aa |
| 104.17.15 | 2206.00.81 | Other fermented apple or pear beverages, unfortified, with an alcoholic strength of at least 2.5 per cent by volume but not exceeding 15 per cent by vol. | R115.08/li aa | R121.41/li aa |
| 104.17.16 | 2206.00.82 | Other fermented fruit beverages and mead beverages, including mixtures of fermented beverages derived from the fermentation of fruit or honey, unfortified, with an alcoholic strength of at least 2.5 per cent by volume but not exceeding 15 per cent by vol. | R115.08/li aa | R121.41/li aa |
| 104.17.17 | 2206.00.83 | Other fermented apple or pear beverages, fortified, with an alcoholic strength of at least 15 per cent by volume but not exceeding 23 per cent by vol. | R92.07/li aa | R98.06/li aa |
| 104.17.21 | 2206.00.84 | Other fermented fruit beverages and mead beverages including mixtures of fermented beverages derived from the fermentation of fruit or honey, fortified, with an alcoholic strength of at least 15 per cent by volume but not exceeding 23 per cent by vol. | R92.07/li aa | R98.06/li aa |
| 104.17.22 | 2206.00.85 | Other mixtures of fermented fruit or mead beverages and non-alcoholic beverages, unfortified, with an alcoholic strength of at least 2.5 per cent by volume but not exceeding 15 per cent by vol. | R115.08/li aa | R121.41/li aa |

Table C.4 Specific excise duties, 2021/22 – 2022/23 (continued)

| Tariff item | Tariff subheading | Article description | 2021/22 Rate of excise duty | 2022/23 Rate of excise duty |
|---------------|-------------------|--|--------------------------------|--------------------------------|
| 104.17.25 | 2206.00.87 | Other mixtures of fermented fruit or mead beverages and non-alcoholic beverages, fortified, with an alcoholic strength of at least 15 per cent by volume but not exceeding 23 per cent by vol. | R92.07/li aa | R98.06/li aa |
| 104.17.90 | 2206.00.90 | Other | R230.18/li aa | R245.15/li aa |
| 104.21 | 22.07 | Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent vol. or higher; ethyl alcohol and other spirits, denatured, of any strength: | | |
| 104.21.01 | 2207.10 | Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent vol. or higher | R230.18/li aa | R245.15/li aa |
| 104.21.03 | 2207.20 | Ethyl alcohol and other spirits, denatured, of any strength | R230.18/li aa | R245.15/li aa |
| 104.23 | 22.08 | Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent vol.; spirits, liqueurs and other spirituous beverages: | | |
| 104.23 | 2208.20 | Spirits obtained by distilling grape wine or grape marc: | | |
| 104.23 | 2208.20.1 | In containers holding 2 li or less: | | |
| 104.23.01 | 2208.20.11 | Brandy as defined in Additional Note 7 to Chapter 22 | R207.17/li aa | R220.63/li aa |
| 104.23.02 | 2208.20.19 | Other | R230.18/li aa | R245.15/li aa |
| 104.23 | 2208.20.9 | Other: | | |
| 104.23.03 | 2208.20.91 | Brandy as defined in Additional Note 7 to Chapter 22 | R207.17/li aa | R220.63/li aa |
| 104.23.04 | 2208.20.99 | Other | R230.18/li aa | R245.15/li aa |
| 104.23 | 2208.30 | Whiskies: | | |
| 104.23.05 | 2208.30.10 | In containers holding 2 li or less | R230.18/li aa | R245.15/li aa |
| 104.23.07 | 2208.30.90 | Other | R230.18/li aa | R245.15/li aa |
| 104.23 | 2208.40 | Rum and other spirits obtained by distilling fermented sugarcane products: | | |
| 104.23.09 | 2208.40.10 | In containers holding 2 li or less | R230.18/li aa | R245.15/li aa |
| 104.23.11 | 2208.40.90 | Other | R230.18/li aa | R245.15/li aa |
| 104.23 | 2208.50 | Gin and Geneva: | | |
| 104.23.13 | 2208.50.10 | In containers holding 2 li or less | R230.18/li aa | R245.15/li aa |
| 104.23.15 | 2208.50.90 | Other | R230.18/li aa | R245.15/li aa |
| 104.23 | 2208.60 | Vodka: | | |
| 104.23.17 | 2208.60.10 | In containers holding 2 li or less | R230.18/li aa | R245.15/li aa |
| 104.23.19 | 2208.60.90 | Other | R230.18/li aa | R245.15/li aa |
| 104.23 | 2208.70 | Liqueurs and cordials: | | |
| 104.23 | 2208.70.2 | In containers holding 2 li or less: | | |
| 104.23.21 | 2208.70.21 | With an alcoholic strength by volume exceeding 15 per cent by vol. but not exceeding 23 per cent by vol. | R92.07/li aa | R98.06/li aa |
| 104.23.22 | 2208.70.22 | Other | R230.18/li aa | R245.15/li aa |
| 104.23 | 2208.70.9 | Other: | | |
| 104.23.23 | 2208.70.91 | With an alcoholic strength by volume exceeding 15 per cent by vol. but not exceeding 23 per cent by vol. | R92.07/li aa | R98.06/li aa |
| 104.23.24 | 2208.70.92 | Other | R230.18/li aa | R245.15/li aa |
| 104.23 | 2208.90 | Other: | | |
| 104.23 | 2208.90.2 | In containers holding 2 li or less: | | |
| 104.23.25 | 2208.90.21 | With an alcoholic strength by volume exceeding 15 per cent by vol. but not exceeding 23 per cent by vol. | R92.07/li aa | R98.06/li aa |
| 104.23.26 | 2208.90.22 | Other | R230.18/li aa | R245.15/li aa |
| 104.23 | 2208.90.9 | Other: | | |
| 104.23.27 | 2208.90.91 | With an alcoholic strength by volume exceeding 15 per cent by vol. but not exceeding 23 per cent by vol. | R92.07/li aa | R98.06/li aa |
| 104.23.28 | 2208.90.92 | Other | R230.18/li aa | R245.15/li aa |

Table C.4 Specific excise duties, 2021/22 – 2022/23 (continued)

| Tariff item | Tariff subheading | Article description | 2021/22 Rate of excise duty | 2022/23 Rate of excise duty |
|---------------|-------------------|--|--------------------------------|--------------------------------|
| 104.30 | 24.02 | Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes: | | |
| 104.30 | 2402.10 | Cigars, cheroots and cigarillos containing tobacco: | | |
| 104.30.01 | 2402.10.10 | Imported from Switzerland | R4528.85/kg net | R4823.22/kg net |
| 104.30.03 | 2402.10.90 | Other | R4528.85/kg net | R4823.22/kg net |
| 104.30 | 2402.20 | Cigarettes containing tobacco: | | |
| 104.30.05 | 2402.20.10 | Imported from Switzerland | R9.39 /10 cigarettes | R9.91 /10 cigarettes |
| 104.30.07 | 2402.20.90 | Other | R9.39 /10 cigarettes | R9.91 /10 cigarettes |
| 104.30 | 2402.90.1 | Cigars, cheroots and cigarillos of tobacco substitutes: | | |
| 104.30.09 | 2402.90.12 | Imported from Switzerland | R4528.85/kg net | R4823.22/kg net |
| 104.30.11 | 2402.90.14 | Other | R4528.85/kg net | R4823.22/kg net |
| 104.30 | 2402.90.2 | Cigarettes of tobacco substitutes: | | |
| 104.30.13 | 2402.90.22 | Imported from Switzerland | R9.39 /10 cigarettes | R9.91 /10 cigarettes |
| 104.30.15 | 2402.90.24 | Other | R9.39 /10 cigarettes | R9.91 /10 cigarettes |
| 104.35 | 24.03 | Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences: | | |
| 104.35 | 2403.1 | Smoking tobacco, whether or not containing tobacco substitutes in any proportions: | | |
| 104.35.01 | 2403.11 | Water pipe tobacco specified in Subheading Note 1 to Chapter 24 | R250.22/kg net | R265.24/kg net |
| 104.35 | 2403.19 | Other: | | |
| 104.35.02 | 2403.19.10 | Pipe tobacco in immediate packings of a content of less than 5 kg | R250.22/kg net | R265.24/kg net |
| 104.35.03 | 2403.19.20 | Other pipe tobacco | R250.22/kg net | R265.24/kg net |
| 104.35.05 | 2403.19.30 | Cigarette tobacco | R422.34/kg | R445.57/kg |
| 104.35 | 2403.91 | "Homogenised" or "reconstituted" tobacco: | | |
| 104.35.07 | 2403.91.20 | Imported from Switzerland | R880.88/kg | R929.33/kg |
| 104.35.09 | 2403.91.80 | Other | R880.88/kg | R929.33/kg |
| 104.35 | 2403.99 | Other: | | |
| 104.35.15 | 2403.99.30 | Other cigarette tobacco substitutes | R422.34/kg | R445.57/kg |
| 104.35.17 | 2403.99.40 | Other pipe tobacco substitutes | R250.22/kg net | R265.24/kg net |
| 104.35.19 | 2403.99.90 | Other | R880.88/kg | R929.33/kg |
| 104.37 | 24.04 | Products containing tobacco, reconstituted tobacco, nicotine, or tobacco or nicotine substitutes, intended for inhalation without combustion; other nicotine containing products intended for the intake of nicotine into the human body: | | |
| 104.37 | 2404.11 | Containing tobacco or reconstituted tobacco: | | |
| 104.37 | 2404.11.1 | Containing reconstituted tobacco: | | |
| 104.37.01 | 2404.11.11 | Imported from Switzerland, put up for retail sale in the form of sticks | R7.05 /10 sticks | R7.43 /10 sticks |
| 104.37.03 | 2404.11.13 | Imported from Switzerland, other | R880.88/kg | R929.33/kg |
| 104.37.05 | 2404.11.15 | Other, put up for retail sale in the form of sticks | R7.05 /10 sticks | R7.43 /10 sticks |
| 104.37.07 | 2404.11.19 | Other | R880.88/kg | R929.33/kg |
| 104.37 | 2404.11.9 | Other: | | |
| 104.37.11 | 2404.11.91 | Put up for retail sale in the form of sticks | R7.05 /10 sticks | R7.43 /10 sticks |
| 104.37.13 | 2404.11.99 | Other | R880.88/kg | R929.33/kg |
| 104.37 | 2404.19 | Other: | | |
| 104.37.15 | 2404.19.20 | Other, put up for retail sale in the form of sticks | R7.05 /10 sticks | R7.43 /10 sticks |
| 104.37.17 | 2404.19.90 | Other | R880.88/kg | R929.33/kg |

Source: SARS

Additional policy and administrative amendments

Additional tax amendments proposed for the upcoming legislative cycle are set out below.

Individuals, employment and savings

Reviewing the timing of accrual and incurral of variable remuneration

Section 7B of the Income Tax Act (1962) allows for the taxation of variable remuneration to be deferred to the date when the amount is paid to the employee rather than when it accrues to the employee. The act provides that any amount of variable remuneration paid by the employer to the employee is deemed to accrue to the employee on the date during the tax year in which the amount is paid.

Under the Income Tax Act, variable remuneration includes: (i) overtime pay, bonuses or commission; (ii) an allowance or advance paid for transport expenses; (iii) an amount the employee becomes entitled to as a result of unused leave; (iv) any night shift or standby allowance; or (v) any amount paid or granted for a reimbursement as contemplated in the act.

Government is aware that this list may not fully cater for all types of variable remuneration. While the inclusion of commission caters for performance-based payments that form part of the employee's salary in the formal sector, it does not cater for the informal sector, where such payments may be calculated based on units produced (because the word "commission" means a percentage-based payment and is not determined based on units produced). Government proposes that changes be made to section 7B to cater for these performance-based variable payments.

Apportioning the interest exemption and capital gains tax annual exclusion when an individual ceases to be tax resident

In 2012, section 9H(2)(b) of the Income Tax Act was clarified to provide that, when an individual ceases to be a South African tax resident, their year of assessment is deemed to have ended on the date immediately before the day their tax residency ceased. The section further provides that the individual's next succeeding year of assessment will start on the day on which tax residency is ceased. As a result, the individual has two years of assessment during the 12-month period, which means the individual may be able to double-up on certain exemptions or exclusions that are allowed per year of assessment. This goes against the policy rationale of the provisions of the act. To address this anomaly, government proposes that the legislation be changed to apportion the interest exemption and capital gains annual exclusion in such instances.

Retirement provisions

Reviewing the transfer of total interest in a retirement annuity fund

The Income Tax Act allows members of retirement funds to transfer their retirement interest from one retirement fund to another. This provision is subject to certain conditions, 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 funds – if the total interest in the transferor fund is transferred. These conditions result in retirement annuity fund members with more than one contract in a particular fund being restricted from transferring one or more contracts from one retirement annuity fund to another. However, members of a preservation fund are not restricted on the proportion of their retirement interest that can be transferred into another fund. To address this anomaly, government proposes changing the legislation to allow fund members to transfer one or more contracts in a particular retirement annuity fund, subject to certain conditions to ensure that the current minimum thresholds are not contravened.

Clarifying the compulsory annuitisation and protection of vested rights when transferring to a public-sector fund

In 2013, retirement fund reform amendments were made to the Income Tax Act regarding the annuitisation requirements for provident funds and provident preservation funds. These amendments were intended to preserve retirement fund interests during retirement and to ensure uniform tax treatment across the various retirement funds. This would result in provident funds being treated similarly to pension and retirement annuity funds, and provident preservation funds being treated similarly to pension preservation funds, regarding the requirement to annuitise retirement benefits. These amendments came into effect on 1 March 2021, subject to the protection of vested rights. As a result, historical vested rights (those that arose before 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 who are 55 years or older as at 1 March 2021 will remain protected provided the member remains in that same fund.
- Historical vested rights may be transferred into another retirement fund without forfeiting their vested rights protection (irrespective of the number of transfers effected).

It has come to government's attention that the current provisions would forfeit the protection of historical vested rights if a transfer is made into a public-sector fund. This is because the pension fund and provident fund definitions 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. To address this anomaly, government proposes amending the pension and provident fund definitions to ensure that historical vested rights remain protected even if they are transferred to a public-sector fund.

Clarifying paragraph (eA) of gross income regarding public-sector funds

In 2021, the retirement reforms that require mandatory annuities for provident funds came into effect. These reforms included amendments that cater for public-sector pension funds that operate like provident funds. As such, with effect from 1 March 2021, members of provident funds (including public-sector pension funds that operate like provident funds) are required to receive their benefits as annuities on retirement. At issue is the fact that, despite the above-mentioned changes regarding the annuitisation of public-sector funds, paragraph (eA) of the definition of gross income in section 1 does not mention public-sector funds that fall within paragraph (a) of the definition of provident fund. Government proposes that paragraph (eA) be clarified to ensure that gross income includes all public-sector funds. These amendments will take effect from 1 March 2022.

Retirement of a provident fund member on grounds other than ill health

In 2021, the retirement reforms that require mandatory annuities for provident funds came into effect. As a result, it is no longer necessary to differentiate between a pension and provident fund for retirement purposes, as these funds now operate in the same way. Paragraph 4(3) of the Second Schedule to the Income Tax Act treats pension and provident funds differently. According to this paragraph, if a member of a provident fund who is younger than 55 retires from that fund for reasons other than ill health, any lump sum received shall be taxed as a withdrawal benefit rather than a retirement benefit. This does not apply to members of pension or retirement annuity funds. To address this anomaly, government proposes to delete paragraph 4(3) of the Second Schedule to the act.

Clarifying the applicability of tax-neutral transfers from a pension to a provident fund

Before the mandatory annuitisation of provident funds came into effect in 2021, transfers to a provident or provident preservation fund would be taxable if the transfer was made from a fund that had mandatory annuitisation requirements. From 1 March 2021, and in accordance with paragraph 6(1)(a) of the Second Schedule to the Income Tax Act, transfers to a provident or provident preservation fund would be tax-neutral irrespective of the type of retirement fund from which the retirement interests were transferred. Both before and after 1 March 2021, the policy intent is for these transfers to be tax-neutral. It has come to government's attention that the current provisions of paragraph 6(1)(a) create an anomaly: transfers from a pension fund to a provident fund related to contributions made before 1 March 2021 are not tax neutral. Government proposes that contributions to a pension fund before 1 March 2021 also receive tax-neutral transfer status.

Business (general)*Clarifying the tax treatment of collateral arrangement provisions*

In 2021, amendments were proposed in the Taxation Laws Amendment Bill to clarify that the use of collateral for purposes other than subsequent collateral arrangements or proposed limited regulated transactions is against the policy rationale for the introduction of these provisions, and could result in the avoidance of securities transfer tax or capital gains tax. The effective date for the proposed amendments was 1 January 2022. After reviewing the public comments on the bill, government decided to postpone the effective date for these amendments to 1 January 2023 to give both the National Treasury and affected stakeholders more time to consider the impact of the proposed amendments. Government proposes to review the impact of the 2021 amendments during the 2022 legislative cycle.

Clarifying the definition of contributed tax capital

In 2021, amendments were proposed in the Taxation Laws Amendment Bill to address tax avoidance concerns and clarify the definition of contributed tax capital. The effective date for the proposed amendments was 1 January 2022. After reviewing the public comments on the bill, government decided to postpone the effective date for these amendments to 1 January 2023 to give both the National Treasury and affected stakeholders more time to consider the impact of the proposed amendments. Government proposes to review the impact of the 2021 amendments during the 2022 legislative cycle.

Refining the reversal of the nil base cost rules applicable to intra-group transactions

The intra-group transaction rules in the Income Tax Act allow tax to be deferred when assets are disposed of between companies within the same group. The nil base cost rule aims to limit the ability of taxpayers to cash out on the sale consideration from a tax-deferred intra-group transaction. In 2021, amendments were made to these rules in the corporate reorganisation provisions, clarifying the application of the reversal of the nil base cost rules in instances where a group company acquires an asset in terms of a tax-deferred intra-group transaction and disposes of it within 18 months, triggering the reversal of the tax deferral benefit. Amendments were also made to allow for a reversal of the nil base cost rules when a transferee company is no longer part of the same group of companies as a transferor company. It has come to government's attention that there are further instances that should result in the reversal of the nil base cost rules that have not been taken into account in the 2021 amendments. For example, when an asset is disposed of beyond an 18-month period outside of the corporate reorganisation rules and a transferee company is no longer part of the same group of companies as a controlling company in relation to a transferor company. Government proposes that further refinements be made to the intra-group transactions rules in the corporate reorganisation provisions to account for these instances.

Clarifying the rule that triggers recoupment under the debt forgiveness rules

According to the debt forgiveness rules, an additional recoupment is triggered if an asset is disposed of during a year of assessment and the debt that was used to fund the acquisition of that asset is forgiven in a subsequent year of assessment. Government proposes clarifying that this provision is also intended to apply in a subsequent year of assessment if the disposal of the asset in a prior year of assessment resulted in a scrapping allowance or capital loss.

Reviewing the debtors' allowance provisions to limit the impact on lay-by arrangements

Section 24 of the Income Tax Act makes provision for the debtors allowance to be claimed as a deduction against a taxpayer's income if the taxpayer has entered into an agreement with any other person in which the taxpayer transfers property ownership to that person after the taxpayer has received the whole or a certain portion of the amount payable in terms of the agreement. This is provided that the agreement is at least 12 months long and at least 25 per cent of the amount due to the taxpayer is only payable in a subsequent year of assessment. In terms of this provision, the whole of the amount due is deemed to have accrued to the taxpayer on the day on which the agreement was entered into and included in the taxpayer's income upfront. It has come to government's attention that lay-by arrangements do not benefit from the above-mentioned debtors allowance rules because such arrangements are for periods shorter than 12 months. To remedy this, government proposes that the current debtors allowance rules be reviewed to limit the adverse effect on lay-by arrangements.

Business (financial sector)

Impact of IFRS17 insurance contracts on the taxation of insurers

The International Accounting Standards Board issued International Financial Reporting Standard (IFRS) 17 insurance contracts on 18 May 2017 to replace IFRS4 insurance contracts, which were issued in March 2004 on an interim basis. IFRS17 insurance contracts aim to provide a global uniform and comprehensive standard on insurance accounting for insurers. They will be effective for reporting periods starting on or after 1 January 2023. The implementation of IFRS17 insurance contracts may have a material impact on the valuation method for insurance contract liabilities and insurers' cash-flow and profit profiles. To mitigate this impact, government proposes that changes be made to the income tax provisions dealing with the taxation of insurers.

Study on the tax treatment of amounts received by or accrued to portfolios of collective investment schemes

In 2018, amendments in the Taxation Laws Amendment Bill were proposed to clarify and provide certainty on the tax treatment for trading profits of collective investment schemes. Government proposed that profits arising from frequent trading by collective investment schemes be treated as income rather than capital. After reviewing the public comments, government decided to withdraw the proposed amendments to allow more time to find solutions with the industry. Over the past two years, further concerns have been raised. Government proposes that a discussion document dealing with the tax treatment of amounts received by or accrued to portfolios of collective investment schemes be published for public comment before any amendments are proposed to the tax legislation.

Business (incentives)

Tax treatment of mining operations

Interaction between the application of the assessed loss restriction rules and capital expenditure regime for mining operations

In 2021, changes were made to section 20 of the Income Tax Act to restrict the use of assessed losses carried forward as part of the corporate income tax restructuring to broaden the tax base and reduce the corporate tax rate. It has come to government's attention that there is an anomaly in the interaction between the new assessed loss restriction rules in section 20 and the current capital expenditure regime applicable to mining operations in terms of section 36 of the act. Government proposes that the legislation be clarified to ensure that the assessed loss restriction in terms of section 20 of the act is calculated before taking into account the capital expenditure deduction for mining operations in terms of section 36 of the act.

Interaction between the application of the interest limitation rules and capital expenditure regime for mining operations

In 2021, changes were made in section 23M of the Income Tax Act to strengthen the rules dealing with the limitation of interest deductions on debts owed to persons not subject to tax. Concerns have been raised regarding the interaction between the application of the interest limitation rules in section 23M 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 to the interest expense of non-producing mining operations that forms part of capital expenditure of such mining operations. Government proposes clarifying in the legislation that the interest limitation rules in section 23M will not be applied to the interest expense of non-producing mining operations that forms part of capital expenditure of such mining operations in terms of section 36 of the act.

Tax treatment of an asset acquired as government grant in kind

The Income Tax Act provides a tax exemption for any government grant received or accrued under a programme or scheme listed in terms of the Eleventh Schedule or approved under the national annual budget process and gazetted by the Minister of Finance. Furthermore, any expenditure funded by a government grant that has been received or accrued, other than a government grant in kind, must be reduced for the purpose of claiming allowances for trading stock and allowance assets. This reduction is required because a taxpayer receiving a government grant does not incur the expenditure – it is settled by the government grant. It has come to government's attention that when a government grant in kind is acquired, the provisions for wear and tear allowance in section 11(e) are applicable because they apply to the value of the asset and not the expenditure or cost incurred by the taxpayer. This creates an anomaly in the system as, similar to a cash government grant, the receipt of a government grant in kind is exempt from tax but the assets received should not qualify for wear and tear allowances. 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.

International

Updating the definitions and terms relating to the Insurance Act in the determination of net income of controlled foreign companies

In general, where a resident shareholder has an interest in the participation rights of a controlled foreign company (CFC), an amount of the CFC's net income will be imputed into the resident shareholder's taxable income. However, there are certain exclusions that result in no imputation to the resident shareholder's taxable income. One of the exclusions relates to the participation rights that are held in a

policyholder fund of an insurer. The participation rights can be directly attributable to a linked policy or they are directly attributed to a policy where the amount of the policy benefit is not guaranteed by the insurer and is to be determined solely by reference to the value of the particular assets or categories of assets. With the Insurance Act coming into effect on 1 July 2018, the definitions in the Long-term Insurance Act (1998), such as the "linked policy" definition, have been deleted and new definitions have been inserted in the Insurance Act. It is proposed that this exclusion be amended to refer to the appropriate provisions of the Insurance Act.

Clarifying the deeming provisions in respect of royalties derived by CFCs

The most important rule contained in the CFC provisions is that the net income of the CFC must be calculated as if the CFC is a taxpayer for South African tax purposes and as if the CFC is a resident when applying certain provisions of the act. For example, a CFC is deemed to be a resident in relation to interest derived from a South African source. However, section 9D(2A) does not mention royalties derived by the CFC. Government proposes that the deeming provision be extended to cater for royalties.

Clarifying the treatment of amounts from hybrid equity instruments deemed to be income under CFC rules

The CFC rules contain an exclusion applicable to a payor and payee for intra-CFC interest, royalties, rental income, insurance premium or income of a similar nature, provided both the payor and payee are part of the same group of companies. In terms of hybrid equity instrument rules, certain dividends in relation to the recipient are deemed to be income. To ensure neutral tax treatment, it is proposed that specific reference be made to the exclusion of the payee company's deemed income for hybrid equity instruments between CFCs.

Clarifying the exclusion of participatory interests in foreign collective investment schemes from the definition of foreign dividend

The Income Tax Act defines a foreign dividend as an amount paid by a foreign company in respect of a share in that company. Specifically excluded as a foreign dividend are any amounts that constitute the redemption of a participatory interest in a foreign portfolio of collective investment scheme. It has come to government's attention that, in certain instances, foreign law does not only deal with redemptions but also the sale of units, shares or interest to the foreign management company of the scheme. It is therefore proposed that the term "or other disposal" be included to cater for any amounts that constitute the sale of a participatory interest in a foreign collective investment scheme's portfolio.

Value-added tax

Reviewing section 72 arrangements and decisions

In 2019, changes were made to section 72 of the Value-Added Tax (VAT) Act (1991), which deals with the SARS Commissioner's discretion to make arrangements or decisions regarding the application of the act to specific situations where the manner in which a vendor or class of vendors conducts their business leads to difficulties, anomalies or incongruities. These changes affected the arrangements or decisions made on or before 21 July 2019. In the past two years, government reviewed the impact of these decisions to ascertain whether they should be discontinued or extended in accordance with the new provisions of section 72. As a result, changes were made to the VAT legislation in this regard. It is proposed that further changes be made to account for further reviews of some of the section 72 decisions.

Updating the regulations prescribing electronic services

With effect from 1 April 2019, the regulations prescribing electronic services were amended to broaden the scope of electronic services that are subject to South African VAT, in line with the Organisation for

Economic Co-operation and Development/Group of 20 Base Erosion and Profit Shifting Action 1 Report. Government proposes to review the current regulations to account for further developments in this area.

Carbon tax

Clarifying the electricity generation levy and renewables deduction for electricity generation from fossil fuels

In terms of section 6(2) of the Carbon Tax Act (2019), taxpayers generating electricity can claim a tax deduction for electricity generation levy payments and additional renewable electricity purchases. 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 act to clarify that taxpayers would qualify for a deduction if they generate electricity from fossil fuel and conduct fuel combustion activities under the Intergovernmental Panel on Climate Change (IPCC) Code 1A1 energy industries and 1A2 covering manufacturing industries and construction.

Limiting the carbon sequestration deduction for forestry management and harvested wood products to activities within the operational control of the taxpayer

In 2021, amendments were proposed in the 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. Government proposes 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 conducting paper and pulp activities. This will help to address potential administration challenges where activities are not within the taxpayer's operational control and to curb potential abuse. In consultation with the Department of Forestry, Fisheries and the Environment, the National Treasury will gazette rules for the sequestration deduction for public comment. These amendments will take effect on 1 January 2022.

Customs and excise duty

Advance rulings under the Customs and Excise Act

There are currently no provisions in the Customs and Excise Act (1964) enabling the SARS Commissioner to issue advance rulings. It is proposed that an enabling framework for advance rulings be provided in the act.

Time of entry for break-bulk cargo imported by sea, air and rail

There is currently no provision in the Customs and Excise Act enabling the SARS Commissioner to prescribe the period within which entry must be made in respect of loose or break-bulk cargo imported by sea, air or rail. Government proposes that the act be amended to allow the Commissioner to make rules for the entry time of any category of goods, which may include break-bulk cargo imported by sea, air or rail.

Clarifying the requirements for invoices in respect of import and export goods

Because of existing uncertainty, it is proposed that amendments be made to the Customs and Excise Act to clarify the legislative requirements for invoices in respect of import and export goods.

Progress with the review of the diesel refund administration

Draft amendments to the diesel refund notes and rules to the Customs and Excise Act were published for public comment in 2020 and 2021. Industry-specific workshops were conducted in the second half of 2021 to refine and finalise the proposed reforms. Government proposes that legislation effecting these amendments be put forward.

Tax administration*Refunds of dividends tax by SARS to regulated intermediaries*

It is proposed that the Income Tax Act be amended to allow a regulated intermediary to recover refundable dividends tax from SARS in instances where the refundable amount exceeds the dividends tax withheld by the regulated intermediary at least one year after the amount became refundable.

Review of provisional tax system

Government proposes a review of the provisional tax system given changing circumstances and international developments, with the intention of publishing a discussion paper on this subject.

Once-off electronic services supplies by non-resident suppliers to a recipient in South Africa

It is proposed that a specific exception to the rule that a non-resident supplier register as a vendor when electronic supplies exceed R1 million a year – an exception that already applies to resident suppliers – be considered. This will prevent unnecessary registrations, costs and administrative burden for both non-resident suppliers and SARS.

Review of domestic legal framework to effect joint audits

Government proposes that the South African domestic legal framework, particularly the Tax Administration Act (2011), be amended to make provision for the full use of joint audits with other tax administrations in order to improve the effective exchange of information under international tax agreements.

Imposition of understatement penalty for employment tax incentives improperly claimed

Given the abuse of employment tax incentives, government proposes that the Employment Tax Incentive Act (2013) be amended to impose understatement penalties on reimbursements that are improperly claimed.

Removal of statutory recognised controlling body

A statutory recognised controlling body has indicated that it is no longer appropriate for it to be listed as a recognised controlling body in terms of the Tax Administration Act. It is proposed that this body be removed from the list.

Tax compliance status for taxpayers under business rescue

SARS cannot reflect a taxpayer as being tax compliant if it has outstanding tax debts unless the taxpayer has entered into an instalment payment agreement or compromise agreement with SARS or, where the tax debt is disputed, a suspension of payment has been granted. This may not be possible in the earliest stages of a business rescue, which may negatively affect the prospects of the rescue being successful. It is proposed that empowering SARS to assist in these cases, under certain conditions, be investigated.

Tax compliance status system abuse

SARS has noted increased abuse of the tax compliance status system. Taxpayers that are economically active may file a nil (zero-income) or otherwise inaccurate returns to meet the requirement that there are no outstanding returns, among other abuses. It is proposed that approaches to ensuring that the system provides a more accurate reflection of the actual tax compliance status of taxpayers be investigated.

■ Technical corrections

In addition to the amendments described above, the 2022 tax legislation will make various technical corrections, which mainly cover inconsequential items – typing errors, grammar, punctuation, numbering, incorrect cross-references, updating and removing obsolete provisions, removing superfluous text, and incorporating regulations and commonly accepted interpretations into formal law. Technical corrections also include changes to effective dates and the proper coordination of transitional tax changes.

Other technical corrections relate to modifications following the implementation of the tax law. Although tax amendments go through an intensive comment and review process, new issues arise once the law is applied (including obvious omissions and ambiguities). These issues typically arise when tax returns are prepared for the first time after the tax legislation is applied. These technical corrections are limited to recent legislative amendments.

This page was left blank intentionally.