C

2023 BUDGET REVIEW

ADDITIONAL TAX POLICY AND ADMINISTRATIVE ADJUSTMENTS

national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

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 4.5 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, 2023/24

Taxable income (R)	2022/23 rates (R)	Proposed 2023/24 rates (R)	Tax change (R)	% change	Average tax rates	
					Old rates	New rates
85 000	–	–	–	–	–	–
90 000	–	–	–	–	–	–
100 000	1 575	765	-810	-51.4%	1.6%	0.8%
120 000	5 175	4 365	-810	-15.7%	4.3%	3.6%
150 000	10 575	9 765	-810	-7.7%	7.1%	6.5%
200 000	19 575	18 765	-810	-4.1%	9.8%	9.4%
250 000	30 495	28 797	-1 698	-5.6%	12.2%	11.5%
300 000	43 495	41 797	-1 698	-3.9%	14.5%	13.9%
400 000	71 840	69 272	-2 568	-3.6%	18.0%	17.3%
500 000	103 405	100 272	-3 133	-3.0%	20.7%	20.1%
750 000	196 663	191 942	-4 721	-2.4%	26.2%	25.6%
1 000 000	297 811	292 284	-5 527	-1.9%	29.8%	29.2%
1 500 000	502 811	497 284	-5 527	-1.1%	33.5%	33.2%
2 000 000	718 547	709 604	-8 943	-1.2%	35.9%	35.5%

Source: National Treasury

Table C.2 Annual income tax payable and average tax rates, 2023/24 (taxpayers aged 65 to 74)

Taxable income (R)	2022/23 rates (R)	Proposed 2023/24 rates (R)	Tax change (R)	% change	Average tax rates	
					Old rates	New rates
120 000	–	–	–	–	–	–
150 000	1 575	321	-1 254	-79.6%	1.1%	0.2%
200 000	10 575	9 321	-1 254	-11.9%	5.3%	4.7%
250 000	21 495	19 353	-2 142	-10.0%	8.6%	7.7%
300 000	34 495	32 353	-2 142	-6.2%	11.5%	10.8%
400 000	62 840	59 828	-3 012	-4.8%	15.7%	15.0%
500 000	94 405	90 828	-3 577	-3.8%	18.9%	18.2%
750 000	187 663	182 498	-5 165	-2.8%	25.0%	24.3%
1 000 000	288 811	282 840	-5 971	-2.1%	28.9%	28.3%
1 500 000	493 811	487 840	-5 971	-1.2%	32.9%	32.5%
2 000 000	709 547	700 160	-9 387	-1.3%	35.5%	35.0%

Source: National Treasury

Table C.3 Annual income tax payable and average tax rates, 2023/24 (taxpayers aged 75 and over)

Taxable income (R)	2022/23 rates (R)	Proposed 2023/24 rates (R)	Tax change (R)	% change	Average tax rates	
					Old rates	New rates
150 000	–	–	–	–	–	–
200 000	7 578	6 176	-1 402	-18.5%	3.8%	3.1%
250 000	18 498	16 208	-2 290	-12.4%	7.4%	6.5%
300 000	31 498	29 208	-2 290	-7.3%	10.5%	9.7%
400 000	59 843	56 683	-3 160	-5.3%	15.0%	14.2%
500 000	91 408	87 683	-3 725	-4.1%	18.3%	17.5%
750 000	184 666	179 353	-5 313	-2.9%	24.6%	23.9%
1 000 000	285 814	279 695	-6 119	-2.1%	28.6%	28.0%
1 500 000	490 814	484 695	-6 119	-1.2%	32.7%	32.3%
2 000 000	706 550	697 015	-9 535	-1.3%	35.3%	34.9%

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 22 February 2023 to the extent shown in Table C.4.

Table C.4 Specific excise duties, 2022/23 – 2023/24

Tariff item	Tariff subheading	Article description	2022/23 Rate of excise duty	2023/24 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:**		
104.01.05	1901.90.13	Preparations for making alcoholic beverages (excluding those of subheading 1901.90.20) as defined in Additional Note 2 to Chapter 19	34,7c/kg	34,7c/kg
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
104.05	**21.06**	**Food preparations not elsewhere specified or included:**		
104.05.10	2106.90.13	Preparations for making alcoholic beverages as defined in Additional Note 1 to Chapter 21	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	R121.41/li aa	R127.40/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	R16.52/li	R16.64/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.	R4.96/li	R5.20/li
104.15.04	2204.21.42	Other	R245.15/li aa	R257.23/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.	R8.36/li	R8.77/li
104.15.06	2204.21.52	Other	R245.15/li aa	R257.23/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.	R4.96/li	R5.20/li
104.15.15	2204.22.42	Other	R245.15/li aa	R257.23/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.	R8.36/li	R8.77/li
104.15.19	2204.22.52	Other	R245.15/li aa	R257.23/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.	R4.96/li	R5.20/li
104.15.23	2204.29.42	Other	R245.15/li aa	R257.23/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.	R8.36/li	R8.77/li
104.15.27	2204.29.52	Other	R245.15/li aa	R257.23/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	R16.52/li	R16.64/li

Table C.4 Specific excise duties, 2022/23 – 2023/24 *(continued)*

Tariff item	Tariff subheading	Article description	2022/23 Rate of excise duty	2023/24 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.	R4.96/li	R5.20/li
104.16.04	2205.10.22	Other	R245.15/li aa	R257.23/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.	R8.36/li	R8.77/li
104.16.06	2205.10.32	Other	R245.15/li aa	R257.23/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.	R4.96/li	R5.20/li
104.16.10	2205.90.22	Other	R245.15/li aa	R257.23/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.	R8.36/li	R8.77/li
104.16.12	2205.90.32	Other	R245.15/li aa	R257.23/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	R16.52/li	R16.64/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	R121.41/li aa	R127.40/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.	R121.41/li aa	R127.40/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.	R121.41/li aa	R127.40/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.	R121.41/li aa	R127.40/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.	R121.41/li aa	R127.40/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.	R98.06/li aa	R102.89/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.	R98.06/li aa	R102.89/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.	R121.41/li aa	R127.40/li aa

Table C.4 Specific excise duties, 2022/23 – 2023/24 *(continued)*

Tariff item	Tariff subheading	Article description	2022/23 Rate of excise duty	2023/24 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.	R98.06/li aa	R102.89/li aa
104.17.90	2206.00.90	Other	R245.15/li aa	R257.23/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	R245.15/li aa	R257.23/li aa
104.21.03	2207.20	Ethyl alcohol and other spirits, denatured, of any strength	R245.15/li aa	R257.23/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	R220.63/li aa	R231.51/li aa
104.23.02	2208.20.19	Other	R245.15/li aa	R257.23/li aa
104.23	**2208.20.9**	**Other:**		
104.23.03	2208.20.91	Brandy as defined in Additional Note 7 to Chapter 22	R220.63/li aa	R231.51/li aa
104.23.04	2208.20.99	Other	R245.15/li aa	R257.23/li aa
104.23	**2208.30**	**Whiskies:**		
104.23.05	2208.30.10	In containers holding 2 li or less	R245.15/li aa	R257.23/li aa
104.23.07	2208.30.90	Other	R245.15/li aa	R257.23/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	R245.15/li aa	R257.23/li aa
104.23.11	2208.40.90	Other	R245.15/li aa	R257.23/li aa
104.23	**2208.50**	**Gin and Geneva:**		
104.23.13	2208.50.10	In containers holding 2 li or less	R245.15/li aa	R257.23/li aa
104.23.15	2208.50.90	Other	R245.15/li aa	R257.23/li aa
104.23	**2208.60**	**Vodka:**		
104.23.17	2208.60.10	In containers holding 2 li or less	R245.15/li aa	R257.23/li aa
104.23.19	2208.60.90	Other	R245.15/li aa	R257.23/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.	R98.06/li aa	R102.89/li aa
104.23.22	2208.70.22	Other	R245.15/li aa	R257.23/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.	R98.06/li aa	R102.89/li aa
104.23.24	2208.70.92	Other	R245.15/li aa	R257.23/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.	R98.06/li aa	R102.89/li aa
104.23.26	2208.90.22	Other	R245.15/li aa	R257.23/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.	R98.06/li aa	R102.89/li aa
104.23.28	2208.90.92	Other	R245.15/li aa	R257.23/li aa

Table C.4 Specific excise duties, 2022/23 – 2023/24 *(continued)*

Tariff item	Tariff subheading	Article description	2022/23 Rate of excise duty	2023/24 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	R4823.22/kg net	R5061.01/kg net
104.30.03	2402.10.90	Other	R4823.22/kg net	R5061.01/kg net
104.30	**2402.20**	**Cigarettes containing tobacco:**		
104.30.05	2402.20.10	Imported from Switzerland	R9.91 /10 cigarettes	R10.40 /10 cigarettes
104.30.07	2402.20.90	Other	R9.91 /10 cigarettes	R10.40 /10 cigarettes
104.30	**2402.90.1**	**Cigars, cheroots and cigarillos of tobacco substitutes:**		
104.30.09	2402.90.12	Imported from Switzerland	R4823.22/kg net	R5061.01/kg net
104.30.11	2402.90.14	Other	R4823.22/kg net	R5061.01/kg net
104.30	**2402.90.2**	**Cigarettes of tobacco substitutes:**		
104.30.13	2402.90.22	Imported from Switzerland	R9.91 /10 cigarettes	R10.40 /10 cigarettes
104.30.15	2402.90.24	Other	R9.91 /10 cigarettes	R10.40 /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	R265.24/kg net	R278.31/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	R265.24/kg net	R278.31/kg net
104.35.03	2403.19.20	Other pipe tobacco	R265.24/kg net	R278.31/kg net
104.35.05	2403.19.30	Cigarette tobacco	R445.57/kg	R467.54/kg
104.35	**2403.91**	**"Homogenised" or "reconstituted" tobacco:**		
104.35.07	2403.91.20	Imported from Switzerland	R929.33/kg	R975.15/kg
104.35.09	2403.91.80	Other	R929.33/kg	R975.15/kg
104.35	**2403.99**	**Other:**		
104.35.15	2403.99.30	Other cigarette tobacco substitutes	R445.57/kg	R467.54/kg
104.35.17	2403.99.40	Other pipe tobacco substitutes	R265.24/kg net	R278.31/kg net
104.35.19	2403.99.90	Other	R929.33/kg	R975.15/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	**2404.1**	**Products intended for inhalation without combustion:**		
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	R7.43 /10 sticks	R7.80 /10 sticks
104.37.03	2404.11.13	Imported from Switzerland, other	R929.33/kg	R975.15/kg
104.37.05	2404.11.15	Other, put up for retail sale in the form of sticks	R7.43 /10 sticks	R7.80 /10 sticks
104.37.07	2404.11.19	Other	R929.33/kg	R975.15/kg
104.37	**2404.11.9**	**Other:**		
104.37.11	2404.11.91	Put up for retail sale in the form of sticks	R7.43 /10 sticks	R7.80 /10 sticks
104.37.13	2404.11.99	Other	R929.33/kg	R975.15/kg
104.37	**2404.19**	**Other:**		
104.37.15	2404.19.20	Other, put up for retail sale in the form of sticks	R7.43 /10 sticks	R7.80 /10 sticks
104.37.17	2404.19.90	Other	R929.33/kg	R975.15/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

Apportioning the tax-free investment contribution limitation and limiting the retirement funds contributions deduction when an individual ceases to be a tax resident

In 2022, the Income Tax Act (1962) was amended to provide that, when an individual ceases to be a South African tax resident, the annual interest exemption applicable to individuals in terms of section 10(1)(*i*) is apportioned and the capital gains tax annual exclusion applicable to individuals in terms of paragraph 5(1) of the Eighth Schedule to the act is limited. To ensure there is alignment with the act's other provisions for individuals ceasing to be tax residents, it is proposed that further changes be made to section 12T(4)(a) to apportion the tax-free investment contribution limitation and section 11F(2)(a) to apportion the annual limit on the deduction of the retirement funds contributions.

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

The Income Tax Act contains anti-avoidance rules aimed at curbing the tax-free transfer of wealth to trusts using low-interest or interest-free loans, advances or credit. These rules deem any interest foregone in respect of low-interest or interest-free loans, advances or credit to a trust to be a donation subject to a donations tax. The deemed donation is calculated as the amount by which the official rate of interest exceeds any amount of interest incurred in this regard. These anti-avoidance rules have certain exclusions. For example, the rules do not apply if the low-interest or interest-free loan, advance or credit is used to purchase a primary residence for the person advancing that low-interest or interest-free loan, advance or credit to the trust, company or spouse of such person. The above-mentioned exclusion does not fully encompass what constitutes a primary residence in terms of the Eighth Schedule of the act. It has also come to government's attention that, in instances where the low-interest or interest-free loan, advance or credit is denominated in foreign currency, the rules do not provide clarity on how and when this amount should be converted to South African rands. This affects the calculation of the deemed donation. It is proposed that amendments be made to the legislation to provide clarity in this regard.

Retirement provisions

Clarifying the amount of employer contribution to a retirement fund to be deductible

Section 11F(4) of the act deems an employer contribution to a retirement fund as a contribution made by the employee, and it is calculated as the amount equal to the cash equivalent of the value of the taxable benefit. However, there is no requirement that the calculated cash equivalent be included in the employee's income, as is the case in sections 6A and 6B of the act. This is against the policy rationale of the act's provisions. To address this, it is proposed that the act be amended to require that the cash equivalent of the taxable benefit for employer retirement fund contributions be included in an employee's income before a tax deduction is allowed.

Transfers between retirement funds by members who are 55 years or older

In 2022, changes were made to the act to allow for tax-neutral transfers between retirement funds by members who are 55 years or older in instances where transfers of retirement interests in relation to a member who has reached normal retirement age has not yet opted to retire. It has come to government's attention that there are some instances where active contributing pension and provident fund members who have reached retirement age and been subjected to involuntary transfers to another pension or provident fund may still be subject to tax. To address this, it is proposed that members of pension or provident funds who have reached the normal retirement age as stipulated in the rules of that fund but have not yet opted to retire must, as part of the involuntary transfer, be able to have their retirement interest transferred from a less restrictive to a more restrictive retirement fund without incurring a tax liability. The value of the retirement interest, including any growth thereon, will remain ring-fenced and preserved in the receiving pension or provident fund until the member elects to retire from that fund. This means that these members will not be entitled to the payment of a withdrawal benefit in respect of the amount transferred.

Business (general)

Reviewing Practice Note 31 of 1994 and Practice Note 37 of 1995

In 1994 and 1995, the South African Revenue Service (SARS) issued Practice Note 31 of 1994, entitled *Interest paid on moneys borrowed*, and Practice Note 37 of 1995, entitled *Deduction of fees paid to accountants, bookkeepers and tax consultants for the completion of income tax returns*. On 16 November 2022, SARS issued a notice informing the public of the intention to withdraw both practice notes, with effect from years of assessment starting on or after 1 March 2023, due to the increasing abuse of the tax deduction concession provided for in Practice Note 31 and the fact that Practice Note 37 does not incorporate the requirements of the term "registered tax practitioner" contained in the Tax Administration Act (2011). After reviewing the public comments received on the withdrawal of the practice notes, government will consider the impact of the proposed withdrawal and whether changes could be made in the tax legislation to accommodate legitimate transactions affected by such withdrawal. In light of this proposal, SARS also intends to delay and align the withdrawal of the practice notes with the effective date of any legislation arising from the proposed considerations.

Clarifying anti-avoidance rules dealing with third-party backed shares

The act contains anti-avoidance rules targeting debt-like equity instruments – for example, third-party backed shares – and deeming any dividend or foreign dividend received by or accrued to any person in respect of a third-party backed share as income. The anti-avoidance rules do not apply if the funds derived from the issue of the shares in question are used to directly or indirectly acquire equity shares of an operating company. At issue is the fact that these rules do not deem any dividend or foreign dividend received by or accrued to any person in respect of a third-party backed share as income when the shares in that operating company are no longer held by the person who initially acquired them. Government proposes that the legislation be clarified in this regard.

Contributed tax capital

Contributed tax capital is the consideration received by or accrued to a company in exchange for the issue of shares of a particular class, on or after the date on which that company becomes a resident of South Africa, and an amount equal to the market value of all the shares in that company of that class immediately before the date on which that company becomes a resident. It is reduced by any amounts referred to as capital distributions, transferred by the company to the shareholders. It has come to government's attention that the following amendments are needed to the definition of contributed tax capital.

Addressing the abuse of the definition of contributed tax capital

Government has identified a structure where a foreign holding company that holds shares in a valuable South African operating company through a foreign intermediary could avoid dividends tax by changing the tax residency of the foreign intermediary to South Africa. When this takes place, the contributed tax capital is recognised as an amount equal to the market value of its shares. The South African operating company then distributes dividends to the new South African tax resident company, and such dividends are exempt from tax because dividends between South African companies are not subject to tax. When the new South African company makes distributions to the foreign holding company, the distributions are shielded by contributed tax capital and regarded as capital distributions, and are not subject to dividends tax in the hands of the foreign holding company. These capital distributions are also not subject to capital gains tax in the hands of the foreign holding company if the underlying investment in South Africa is not in immovable property. To address this abuse, government proposes that amendments be made to the tax legislation.

Converting contributed tax capital from foreign currency to rands

After a company changes its tax residence to South Africa, it is possible for that company's functional currency and share capital to be denominated in a currency other than the rand. Although the act contains specific rules dealing with the conversion of amounts denominated in foreign currency to rands, these rules do not specifically cater for the conversion of contributed tax capital to rands. Government proposes that the legislation be clarified in this regard.

Corporate reorganisation rules

Clarifying the interaction between the debt reduction rules and the disposal of assets exclusion rule for dormant group companies

In 2017, changes were made to the debt relief rules in section 19 and paragraph 12A of the Eighth Schedule to the Income Tax Act. Section 19 deals with income tax implications for debt that was previously used to fund tax-deductible expenditure, such as operating expenses, and where deductions may be claimed for assets such as trading stock and allowance assets. Paragraph 12A of the Eighth Schedule deals with capital gains tax implications for debt that was used to acquire capital or allowance assets. Both these rules contain a dormant company exemption, which applies when a debt is owed between companies that form part of the same group of companies. A debtor company is regarded as being dormant if it has not conducted trading activities in the year of assessment in which the debt benefit arose nor in the year of assessment preceding that year. However, this exemption does not apply if the debt was used to fund an asset that was subsequently disposed of in terms of the corporate reorganisation transactions provided in Part III of Chapter II of the act. At issue is whether the disposal in terms of the corporate reorganisation transactions is envisaged to take place subsequent to the asset's acquisition, but prior to the debt reduction, or whether the disposal is meant to take place subsequent to the acquisition and the debt reduction. When changes were made to the debt relief rules in 2017, the policy rationale was that the exclusion from applying the dormant company rule should not restrict the timing of the disposal under the corporate reorganisation rules. Government proposes clarifying the legislation to reflect this policy rationale.

Clarifying the interaction of provisions on the acquisition of assets in exchange for shares

The act contains provisions dealing with the acquisition of assets in exchange for shares. These provisions prescribe a base cost for assets acquired by companies in exchange for the issue of that company's shares to the seller equal to the sum of the market value of the shares and, where applicable, the amount of the capital gain triggered by the application of the anti-value shifting rules. In 2021, further changes were made in the tax legislation to make provision for the deemed base cost to apply to corporate reorganisation transactions. At issue is whether allowances in respect of an asset acquired in exchange for shares issued to the seller may be determined according to the deemed base cost. Government proposes that the legislation be clarified in this regard.

Refining the provisions applicable to unbundling transactions

In 2020, changes were made to unbundling transaction rules to curb tax avoidance where unbundling transactions are used to distribute shares of unbundled companies to tax-exempt persons or non-resident investors. As such, tax is not deferred on an unbundling transaction in respect of any equity share that is distributed by an unbundling company to any shareholder that is a disqualified person and holds at least 5 per cent of the equity shares in the unbundling company immediately before the transaction.

These changes result in the pro-rata operation of the anti-avoidance rule and ensure a more equitable outcome in unbundling transactions, because only shares distributed to persons who are not disqualified persons will benefit from rollover relief. In 2021, further changes were made to the rules to allow shareholders in an unbundling company that only partially qualifies for tax deferral to benefit from an increase in the base cost of the shares in the unbundled company to the extent that the unbundling company did not qualify for tax deferral in accordance with its respective shareholding. Government proposes that further consideration should be given to whether it is appropriate to apportion tax paid by the unbundling company between the unbundling company shares and the unbundled company shares, and to situations where the unbundling company is not in a taxable position due to having capital losses or assessed losses.

Clarification of the interest limitation rules

In 2021, changes were made to the Income Tax Act as part of the corporate tax package to broaden the tax base and reduce the headline corporate income tax rate in a revenue-neutral manner. One of these measures included strengthening the rules dealing with the limitation of interest deductions for debts owed to certain persons not subject to tax in section 23M of the act. It has come to government's attention that these measures require further clarification in the following areas.

Clarifying the definition of "adjusted taxable income"

The definition of "adjusted taxable income" in section 23M(1) of the act means taxable income calculated before applying the interest limitation rules, including the addition of any assessed loss or balance of assessed loss allowed to be set off against income in terms of section 20. There is uncertainty stemming from the inclusion of the terms "assessed loss" and "balance of assessed loss". Government proposes that the legislation be amended to align with the policy intent that only the balance of assessed losses from the prior year be added in the adjusted taxable income calculation.

Introducing a definition of the term "creditor"

Currently, section 23M(1) of the act defines "debt" and "debtor", but it does not define the term "creditor". Government proposes that this definition be added to section 23M of the act.

Clarifying the treatment of exchange gains and losses

Section 23M(7) of the act provides that any exchange difference deducted from the income of a person as contemplated in sections 24I(3) or (10A) of the act is deemed to have been incurred by that person. While section 23M(7) deems exchange losses to be incurred, a corresponding deemed accrual does not apply to exchange gains. This could result in exchange gains not being taken into account as interest received or accrued for purposes of section 23M of the act. Government proposes that exchange gains be classified as interest received or accrued for the purposes of section 23M of the act.

Clarifying the application of the proviso to section 23M(2) of the act

The proviso to section 23M(2) contains a formula that reduces the amount of interest disallowed for deduction based on the extent to which withholding tax on interest must be withheld under Part IVB of the chapter. However, it does not adequately specify that this adjustment should only apply in the case of interest flowing to non-residents. Government proposes that the legislation be clarified in this regard.

Extending the provisions of section 23M(6) of the act to apply to South African lending institutions

Section 23M(6) generally makes provision for the exemption from the application of interest limitation rules where the creditor provides a loan to a taxpayer with funds granted by a lending institution – in this instance, a foreign bank. Government proposes that section 23M(6) of the act be amended to extend this exemption to apply to South African lending institutions.

Reviewing the outcome of the interaction between the "controlling relationship" definition in section 23M(1) and the rule in section 23M(2)(c) of the act

In 2021, changes were made to the definition of "controlling relationship" in section 23M(1) by adding a connected person test. In addition, further changes were made to section 23M(2)(c) by inserting a group companies test in instances where the creditor is not in a controlling relationship with the debtor. Government will review how the definition of "controlling relationship" in section 23M(1) and the provisions of 23M(2) interact in light of the intended policy outcome.

Business (financial sector)

Tax treatment of deposit insurance scheme

In 2020, government announced the establishment of a deposit insurance scheme to protect depositors in the event of a bank failure, which in turn will contribute to the stability of the South African financial system. It was also envisaged that each bank would make stipulated contributions to the scheme. In 2022, Parliament passed the legislation dealing with the deposit insurance scheme. Government proposes that tax legislation be amended to address the tax implications of the scheme.

Reviewing the Sharia-compliant financing arrangements

In 2010, legislation dealing with Sharia-compliant financing arrangements was introduced in various tax acts. Government proposes to extend the provisions dealing with Sharia-compliant arrangements and ensure alignment across all the tax acts.

Refining the provisions dealing with the impact of International Financial Reporting Standard 17 insurance contracts on the taxation of insurers

In 2022, changes were made in the tax treatment of short- and long-term insurers in sections 28 and 29A of the act to accommodate the new accounting standard for insurers, International Financial Reporting Standard (IFRS) 17, to be applied to all insurance contracts for accounting periods starting on or after 1 January 2023. It has come to government's attention that certain third-party cell captive arrangements are treated as reinsurance arrangements for IFRS purposes. As a result, there are reinsurance assets and liabilities recognised for IFRS purposes in relation to a portion of cell profits due to or from the cell owner. For tax purposes, these are not true commercial reinsurance arrangements, and these balances should be disregarded in determining a cell captive insurer's taxable income. In addition, cell captive arrangements effected in terms of preference share arrangements may be accounted for under IFRS17 or IFRS9. Insurance contract liabilities (IFRS17) and investment contract liabilities (IFRS9) are both included in the "adjusted IFRS value" definition in section 29A of the act. Where a separate liability is recognised in respect of profits due to the cell owner, it may be possible that such a liability may also be included in the "value of liabilities" definition in section 29A of the act, resulting in the double-counting of the liability. To address this issue, government proposes that reinsurance contracts relating to an owner as contemplated in the definition of "cell structure" in section 1 of the Insurance Act (2017) be disregarded. In addition, changes should be made to the definition of "value of liabilities" in section 29A of the Income Tax Act to exclude any other liabilities relating to a cell owner.

Business (incentives)

Clarifying the meaning of "person" in the provisions dealing with public benefit organisations, recreational clubs and associations

The act contains special tax dispensation for public benefit organisations, recreational clubs and associations due to their non-profit status. Because these entities enjoy a special tax dispensation, various rules exist that limit the manner in which these entities operate or require greater accountability and stricter governance. These include requirements that the entity must have three unconnected persons who accept fiduciary responsibility and that no single person may directly or indirectly control the decision-making powers of the entity. At issue is whether the word “person” in these requirements refers to a natural person or a juristic person. Government proposes amending the legislation to clarify that “person” in this context refers to a natural person.

Clarifying the timeframes of compliance requirements for industrial policy projects

In 2021, changes were made to the act to allow for a discretionary extended compliance period of up to two additional years for companies with approved industrial policy projects to comply with the provisions of section 12I in cases where there were bona fide reasons for non-compliance due to business-related disruptions caused by the COVID-19 pandemic. At issue is the uncertainty over the interaction between the skills development criteria and the extended compliance period. Government will consider further legislative amendments to clarify the intention of providing taxpayers with additional time to meet the section 12I requirements and the extent to which the incentive criteria should be met over the extended compliance period.

International

Extending the anti-avoidance provision to cover foreign dividends from shares listed in South Africa

Section 10B of the act exempts foreign dividends received or accrued from shares listed on a South African stock exchange from normal tax. This exemption was introduced because these foreign dividends may be subject to dividends tax. It has come to government’s attention that schemes have been devised to exploit this exemption. The scheme involves South Africans investing in the shares of a non-resident company listed on a South African stock exchange and the non-resident company directly or indirectly investing in interest-bearing financial instruments in South Africa. The result is that a deduction for an interest expense is not matched with a taxable foreign dividend. It is proposed that the round-tripping anti-avoidance provision for foreign dividends be amended to include foreign dividends received or accrued from shares listed on a South African stock exchange if the foreign dividends are directly or indirectly funded by amounts that were deductible in South Africa.

Interaction between the anti-avoidance rule and exemption applying to foreign dividends

The act contains an anti-avoidance rule in terms of which the participation exemption does not apply to a foreign dividend if any amount of the foreign dividend arises directly or indirectly from an amount that is deductible from the income of any person under the Income Tax Act. The policy rationale for this measure is that a deductible amount should not be received by a resident or a controlled foreign company (CFC) as an exempt amount. A further exemption that applies to foreign dividends limits the effective tax rate for foreign dividends accruing to residents to a rate of 20 per cent. This exemption has the effect that amounts that are allowed to be deducted for income tax at a rate of 27 per cent or marginal tax rates are taxed at a rate of only 20 per cent where the anti-avoidance provision applies. It is proposed that the exemption to tax foreign dividends at 20 per cent should not apply where the anti-avoidance rule is applicable.

Clarifying the foreign business establishment exemption for controlled foreign companies

The act contains anti-avoidance rules in section 9D aimed at taxing South African residents on an amount equal to the net income of a CFC. To strike a balance between protecting the tax base and enabling South African multinationals to compete offshore, the CFC rules contain exemptions for certain types of income. For example, amounts that are attributable to a foreign business establishment of a CFC, as defined in section 9D, are excluded from the net income of the CFC. A foreign business establishment consists of a fixed place of business located outside South Africa that is used or will continue to be used for the business of the CFC for at least one year. To be so defined, a foreign business establishment must also satisfy requirements relating to the nature of the business. For example, the fixed place of business should be suitably staffed with onsite managerial and operational employees of that CFC. The fixed place of business should be suitably equipped and have suitable facilities for conducting the primary operations of the business. The definition of a foreign business establishment allows for the structures, employees, equipment and facilities of another company to be taken into account if these are all located in the same country as the CFC's fixed place of business, the other company is subject to tax in the same country where the CFC's fixed place of business is located and it forms part of the same group of companies as the CFC. It has come to government's attention that some taxpayers are retaining certain management functions but outsourcing other important functions for which the CFC is also being compensated by its clients. This is against the policy rationale of the definition of a foreign business establishment. It is proposed that the tax legislation be clarified such that, to qualify as a foreign business establishment, all important functions for which a CFC is compensated need to be performed by the CFC or by the other company meeting the requirements listed above.

Taxation of non-resident beneficiaries of trusts

The gradual relaxation of exchange control regulations has led to an increase in applications to SARS for confirmation of tax compliance status of a person for purposes of transferring funds offshore via authorised dealers. Government is concerned about the difference between the rules covering the normal tax treatment of income attributed to beneficiaries of trusts in section 25B of the act and the rules covering the tax treatment of capital gains in relation to beneficiaries in paragraph 80 of the Eighth Schedule to the act. Paragraph 80 makes provision for capital gains to be attributed only to beneficiaries who are South African tax residents. The paragraph does not allow for capital gains to flow through to non-resident beneficiaries. Those capital gains for non-resident beneficiaries are taxed in the trusts and the trust is liable for the payment of the tax. Thereafter, distributions can be made to non-resident beneficiaries. In contrast, section 25B does not distinguish between beneficiaries who are and are not South African tax residents. The flow through of amounts from South African tax resident trusts to non-resident beneficiaries makes it difficult for SARS to collect income tax from those non-resident beneficiaries as it is more complicated to enforce recovery actions against non-residents. To address this, it is proposed that changes be made to section 25B to align it with the provisions of paragraph 80.

Refining the participation exemption for the sale of shares in foreign companies

Paragraph 64B of the Eighth Schedule of the act contains a participation exemption relating to the sale of shares in foreign companies and section 10B contains a participation exemption relating to foreign dividends from foreign companies. The main aim of these exemptions is to encourage the repatriation to South Africa of foreign dividends and the proceeds on the sale of shares in foreign companies to non-connected non-residents. Government has identified certain transactions that do not achieve this aim but for which the participation exemption for the sale of shares in foreign companies applies. These transactions include, for example, instances where restructuring of a group of companies entails the sale of shares to recently formed non-resident companies although there is no change in the ultimate shareholders. Government proposes changing the tax legislation to not grant the participation exemption if the sale of shares is to a non-resident company that formed part of the same group of companies as the company disposing of the shares, or the shareholders are substantially the same as the shareholders of any company in the group of companies disposing of the shares.

Refining the participation exemption for the foreign return of capital from a CFC

The participation exemption relating to the sale of shares in foreign companies is subject to certain qualifying requirements. One of these requirements is that the South African tax resident selling the shares in a foreign company should have held those shares for at least 18 months prior to the sale. In 2012, changes were made to the act to extend the participation exemption to apply in respect of the foreign return of capital from a CFC. However, the participation exemption for the foreign return of capital from a CFC does not have a similar 18-month holding requirement. To close this loophole, it is proposed that a similar holding requirement be introduced for the participation exemption in respect of the foreign return of capital from a CFC.

Value-added tax

Reviewing the value-added tax (VAT) treatment of specific supplies in the short-term insurance industry

In 2013, SARS first issued Binding General Ruling 14, which deals with the VAT treatment of specific supplies in the short-term insurance industry. This was updated in 2018 and 2020. In 2019, changes were made to section 72 of the VAT Act (1991), which related to the SARS Commissioner's discretionary powers over VAT decisions. These changes affected decisions made before 21 July 2019, including Binding General Ruling 14. Government proposes making changes to the VAT Act to clarify the VAT treatment of specific supplies in the short-term insurance industry.

Clarifying the VAT treatment of prepaid vouchers in the telecommunications industry

In the early years of the mobile telecommunications industry in South Africa, subscribers to mobile telecommunication services could use prepaid vouchers only to purchase the services offered by that mobile telecommunication company such as calls and short message services. The evolution of the industry and technological advances have made it possible for prepaid vouchers to also be used for other services provided by third parties where the mobile telecommunication company acts as an agent of that third party – for example, data offerings and mobile money services. The VAT Act does not provide clarity in instances where prepaid vouchers are used for services provided by a third party, the mobile telecommunication company is acting as an agent and/or those third-party-provided services are regarded as exempt supplies or non-taxable supply in the VAT Act. It is proposed that changes be made to the act to provide clarity.

VAT treatment of temporary letting of residential property
Clarifying the meaning of "adjusted cost" relating to temporary letting of residential property

With effect from 1 April 2022, a new section 18D was introduced in the VAT Act to clarify the VAT treatment of temporary letting of residential property. Consequential amendments were made to other sections of the VAT Act including section 10, which deals with how to determine the value of supply of goods and services. At issue is whether the term "adjusted cost" contemplated in section 10(29) of the VAT Act also includes the cost of the land. It is proposed that section 10(29) be clarified in this regard.

Clarifying the rule dealing with recovery of the previous declared output tax

In general, section 18D(5) of the VAT Act makes provision for a vendor that previously made an output tax adjustment under section 18D(2) of the act to reclaim that tax through a deduction under section 16(3)(o) in the tax period after the vendor exits the temporarily applied period of 12 months. However, section 18D(5) (c) refers to a situation in which section 18(1) of the act applies. This creates an anomaly as section 18D(5) (c) can never apply in the given circumstances. To address this anomaly, it is proposed that section 18D(5) (c) of the VAT Act be deleted.

Clarifying VAT rules dealing with documentary requirements for gold exports

The main purpose of gold refineries is to refine and smelt gold or ore received from various customers, namely depositors. In most instances, the refineries also act as agents and sell or export gold on behalf of these depositors. Gold from more than one depositor is typically required to make up the volume ordered for sale or export. When the depositor delivers their gold to the refinery, the refinery issues a sale of gold certificate to the depositor and the value of the gold deposited is determined using that day's morning, afternoon or spot London Bullion Market Association gold price. After the refining or smelting, it is difficult to determine which depositor's gold is sold or exported because the gold loses its original identity during refinery and smelting. As a result, depositors find it difficult to obtain the documentary evidence to support the application of the zero rate on a transaction-by-transaction basis in relation to their gold as contemplated in the regulations issued in terms of section 74(1) of the VAT Act read with paragraph (d) of the definition of "exported" in section 1(1). To address this, it is proposed that changes be made to the VAT Act.

Regulations on the domestic reverse charge relating to valuable metal

Effective from 1 July 2022, government introduced regulations aimed at foreclosing schemes and malpractices to claim undue VAT refunds from SARS by vendors operating in the value chain relating to high-risk goods containing gold. These regulations allowed vendors a transitional period of one month – from 1 July 2022 to 1 August 2022 – to comply with the requirements. This implied that registered vendors must account for and pay VAT for transactions falling within the ambit of the regulations in the August 2022 tax period. It has come to government's attention that the regulations require further clarification in the areas outlined below.

Clarifying the definition of "residue"

Currently, Regulation 1 defines "residue" to mean any debris, discard, tailings, slimes, screening, slurry, waste rock, foundry sand, beneficiation plant waste or ash. At issue is whether this definition relates only to residue as a result of mining operations and does not include residue as a general concept. It is proposed that this be clarified.

Clarifying the definition of "valuable metal"

Currently, Regulation 1 defines "valuable metal" to mean any goods containing gold in the form of jewellery, bars, blank coins, ingots, buttons, wire, plate, granules, or in a solution or residue or similar forms, including any ancillary goods or services. This definition excludes supplies of goods produced from raw materials by any holder as defined in section 1 of the Mineral and Petroleum Resources Development Act (2002) or by any person contracted to such holder to carry on mining operations at the mine where the holder carries on mining operations. It also excludes a supply of goods contemplated in section 11(1)(*f*), (*k*) or (*m*) of the VAT Act. At issue is the fact that some vendors interpret the phrase "any goods containing gold in the form of jewellery, bars, blank coins, ingots, buttons, wire, plate, granules" to mean that the gold component must be in the prescribed forms, as opposed to goods containing gold supplied in the prescribed forms. It is therefore proposed that the policy rationale for the definition be clarified.

Clarifying exclusions from the definition of "valuable metal"

The definition of "valuable metal" excludes supplies of goods produced from raw materials by any holder or by any person contracted to such holder as explained in the preceding proposal. There is uncertainty over the scope of the exclusion relating to holders or persons contracted to holders. It is proposed that the definition be clarified to remove uncertainty and curb possible abuse.

Introducing a de minimis rule in the definition of "valuable metal"

The definition of "valuable metal" does not take into account the gold content and leads to unintended consequences in instances where jewellery or other goods are gold plated with a thin layer of gold. It is proposed that a de minimis rule be introduced in the definition to provide guidance in relation to this type of jewellery or other goods that are gold plated with a thin layer of gold. A de minimis rule refers to the Latin maxim, which means that law does not concern itself with trivialities, for example matters too small or insufficiently meaningful to be taken into consideration.

Aligning the definition of "valuable metal" with the Precious Metals Act (2005)

It is proposed that the definition of "valuable metal" be amended to include gold in the form of a sponge or powder, as these forms are included in the Precious Metals Act.

Clarifying the transitional measures

As noted above, the regulations contained transitional measures allowing vendors one month to ensure that they comply with the requirements. It has come to government's attention that some vendors do not fully understand the application of the transitional measures. As a result, government proposes amending the regulations to clarify that the transitional measures require registered vendors to account for and pay VAT for transactions falling within the ambit of the regulations in the tax period covering 1 August 2022.

Clarifying the responsibilities of the recipient of valuable metal

In terms of Regulation 3(e), the recipient of valuable metal is required to issue a statement to the supplier within 21 days of the end of the calendar month during which the tax has been accounted and paid for detailing, among other things, the percentage of the gold content within the valuable metal. At issue is the fact that the recipient may not always be in a position to determine this gold content. It is proposed that the regulations be changed to transfer the responsibility for declaring the percentage of the gold content from the recipient to the supplier. This will account for recipients that do not in the ordinary course of business use specialised instruments to measure the gold content in goods, such as computer equipment.

Carbon tax

Extending the utilisation period in the Carbon Offsets Regulations

The Carbon Offsets Regulations, which came into effect on 1 June 2019, make provision for a utilisation period up to 31 December 2022 for carbon offsets from projects under taxable activities. When this utilisation period was included in the regulations, it was aligned with the initial first phase of the carbon tax. In the 2022 Budget, the first phase of the carbon tax was extended by three years from 1 January 2023 to 31 December 2025. It is proposed that the utilisation period also be changed in the Carbon Offsets Regulations to align it with the extension of the first phase of the carbon tax. These amendments will take effect from 1 January 2023.

Aligning the fuel emission factors with methodological guidelines and regulations

In October 2022, the Department of Forestry, Fisheries and the Environment gazetted amended methodological guidelines for quantifying greenhouse gas emissions. The amendments include updated carbon dioxide emission factors for domestic (tier 2) emissions reporting for existing fuel types and added fuel types. The updated emission factors will take effect for the department's 2023 reporting period, covering emissions during 2022. To align the Carbon Tax Act (2019) with these guidelines, it is proposed that a new table be inserted into schedule 1 of the act to provide the tier 2 emission factors. Further changes to the emission factors may be added to the Tax Laws Amendments Act (2023) if the department publishes further updates. The amendments will take effect from 1 January 2023.

Table C.5 : Emission factors to be added in schedule 1 for country-specific tier 2 carbon dioxide reporting (stationary and non-stationary emission categories)

Type of change	Fuel Type	CO2 EF (kgCO2/TJ)	Net Calorific Value (NCV)	NCV unit	Net Calorific Value (TJ/Tonne)	Density (kg/l)
New Tier 2 Emission Factors	Aviation Gasoline	65,752	NU	NU	NU	0.714
	Diesel	74,638	35.5	MJ/l	0.0355	0.8255
	Heavy Fuel Oil	73,090	NU	NU	NU	0.994
	Jet Kerosene	73,463	34.4	MJ/l	0.0344	0.794
	LPG	64,852	46.29	MJ/kg	0.04629	NU
	Paraffin	64,640	NU	NU	NU	0.765
	Petrol	72,430	32.5	MJ/l	0.0325	0.7405
New fuel type	Refuse Derived Fuel	83,000	23.8	MJ/kg	0.0238	-
	Sawdust	110,000	14.6	MJ/kg	0.0146	-
	Waste Tyres	85,000	33.7	MJ/kg	0.0337	-

**'NU' denotes that the value was not updated*

Adjusting the formula for fugitive emission factors

Section 4(2) of the Carbon Tax Act provides the formulas to be used to calculate total greenhouse gas emissions. In 2019, changes were made to the formula for fugitive emissions to provide for converting the unit of the emission factors for the different greenhouse gases from volume to mass by multiplying by a density factor, followed by multiplying by 1 000 to convert to tonnes. This is accurate for some Intergovernmental Panel on Climate Change code activities but not all, depending on the units of measurement in which the emission factors are expressed. It is proposed that the formula be changed to only multiply certain emission factors by 1 000.

Customs and excise duty

Specifying conditions for deferment of duties

Standard 4.15 of the General Annex of the Revised Kyoto Convention provides that "[w]here national legislation provides for the deferred payment of duties and taxes, it shall specify the conditions under which such facility is allowed." It is proposed that the SARS Commissioner be enabled to prescribe conditions under which deferment of duties will be allowed by rules.

Single window for advance passenger information and passenger number record data

Following an assessment of South Africa's approach to collecting advance passenger information (API) and passenger name record (PNR) data, it is proposed that a single window be established to collect API and PNR data. As the Department of Home Affairs is responsible for the collection of such data, carriers will be allowed to submit the required data to the Department of Home Affairs, which will distribute the information to other relevant government entities such as SARS. An amendment is also proposed to ensure the protection of personal information in this regard.

Traveller management system

SARS is implementing a modern online traveller management system, which has been piloted on a voluntary basis at King Shaka International Airport since November 2022. The system is aimed at strengthening SARS's capability to facilitate legitimate traveller movements, providing travellers with clarity and certainty regarding their obligations, easing compliance, detecting non-compliance and improving enforcement of legislation by SARS and other agencies. It is proposed that the Customs and Excise Act be amended to provide for the declaration of the required information before arrival in or departure from South Africa.

Amending the processes and procedure for provisional payments

There are currently no provisions in the act relating to the liquidation of provisional payments that serve as security in certain circumstances and that are not claimed back by the trader. Government proposes amending the act to enhance the current processes and procedure for such payments below a specified amount or that remain unliquidated after a specified period and to introduce a prescription period for unclaimed amounts.

Tax administration

Aligning tax registration requirements for non-resident employers

It has been noted that non-resident employers may not have representative employers in South Africa for purposes of employees tax. They are, as a result, not liable to deduct or withhold tax from the remuneration that is paid to their employees who render services in South Africa. Nevertheless, given that they pay remuneration, they are required to register with SARS as employers. They are liable for skills development levies and unemployment insurance contributions, which many pay. It is proposed that the various provisions be aligned to ensure consistency.

Varying employees' tax withholding in respect of remuneration

The Fourth Schedule to the Income Tax Act allows employers to request a variation in employees' tax withholding to take into account foreign taxes paid. However, such a variation does not apply to remuneration arising from share options and similar schemes. This could result in cash flow implications for the affected employees, as they will only be entitled to claim a foreign tax credit when they complete their annual tax returns. It is proposed that SARS be empowered to vary the basis for withholding under these circumstances.

Expanding the general disclosure provisions for section 18A approved organisations

In terms of the Tax Administration Act (2011), SARS may disclose a list of public benefit organisations approved in terms of sections 18A and 30 of the Income Tax Act. As a broader range of entities than public benefit organisations may be granted approval to issue receipts for tax-deductible donations in terms of section 18A, it is proposed that SARS be explicitly empowered to disclose all entities with a section 18A approval.

Extending the time period to submit a return where taxpayers disagree with an auto-assessment

SARS may make an assessment based on an estimate where a taxpayer does not submit a return. The taxpayer may, within 40 days from the date of the assessment, request SARS to make a reduced or additional assessment by submitting a true and full return. It is proposed that SARS be empowered to extend the period within which the taxpayer is required to submit their request to SARS by public notice. This will allow the deadline for the request to be aligned with the end of the filing season for non-provisional taxpayers.

Aligning with anti-money laundering and combating the financing of terrorism developments

Amendments are proposed to align with the National Strategy on Anti-Money Laundering, Counter Financing of Terrorism and Counter Financing of Proliferation, achieve consistency with the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act (2022) and take account of other developments related to the Financial Action Task Force.

TECHNICAL CORRECTIONS

In addition to the amendments described above, the 2023 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.