



**NATIONAL  
TREASURY**

**REPUBLIC OF SOUTH AFRICA**  

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**CLAUSE BY CLAUSE EXPLANATION**  
**TO THE**  
**DRAFT EXPLANATORY MEMORANDUM**  
**(TLAB) 2010**



## CLAUSE 1

Transfer Duty: Amendment of section 1

The amendment inserts a missing “and” into the definition of “property.”

## CLAUSE 2

Transfer Duty: Insertion of section 3A

See notes on **ISLAMIC FINANCING**.

## CLAUSE 3

Transfer Duty: Amendment of section 9

Paragraph (a): The proposed amendment deletes superfluous language. The relief applies “in terms of” the reorganisations listed (i.e. as so defined) without regard to other reorganisation rules listed. Because the election language is no longer part of the definitions, application of the elections is no longer relevant and can be removed.

See notes on **TERMINATING RESIDENTIAL ENTITIES**.

## CLAUSE 4

Estate Duty: Amendment of section 4A

Paragraph (a): The proposed amendment updates a reference in accordance with the amendments of the Taxation Laws Amendment Act, 2009.

Paragraph (b): The proposed amendment corrects an oversight in the 2009 legislation allowing for a portable spousal deduction. The proposed amendment addresses the question of a simultaneous death of two spouses. Under these circumstances, the deceased spouse with the smallest “estate net value” is deemed to die first (with the unused portable spousal deduction shifting to the other deceased spouse).

## CLAUSE 5

Income Tax: Fixing of rates of normal tax and amendment of certain amounts for purpose of Act 58 of 1962

See notes on **INCOME TAX: RATES AND THRESHOLDS** and Appendix. I

## CLAUSE 6

Income Tax: Amendment of section 1.

Paragraph (a): See notes on **COMPANY LAW REFORM**.

Paragraph (b): The proposed amendment adjusts the language contained in the definition of “company” to the extent the definition relates to foreign collective investment schemes so as to more accurately reflect the definition’s intention.

Paragraph (c): See notes on **COMPANY LAW REFORM**.

Paragraph (d): See notes on **FOREIGN FISCALLY TRANSPARENT ENTITIES**.

Paragraphs (e), (f) and (g): See notes on **COMPANY LAW REFORM**.

Paragraph (h): Given its widespread use throughout the Income Tax Act, the “foreign company” definition is moved to section 1 as required by local drafting conventions.

Paragraph (i): See notes on **DIVIDENDS TAX: DEFINITION OF FOREIGN DIVIDEND**.

Paragraph (j): See notes on **FOREIGN FISCALLY TRANSPARENT ENTITIES**.

Paragraph (k): See notes on **MULTIPLE REPORTING CURRENCIES**.

Paragraph (l): See notes on **PROFESSIONAL SPORT SUBSIDISATION OF AMATEUR SPORT**.

Paragraphs (m) and (n): See notes on **EMPLOYER-PROVIDED LONG-TERM INSURANCE**.

Paragraph (o): See notes on **REGIONAL HEADQUARTER COMPANY REGIME**.

Paragraph (p): Improved cross-reference.

Paragraph (q): See notes on **COMPANY LAW REFORM**.

Paragraphs (r): Prior to the Taxation Laws Amendment Act, 2008, the Income Tax Act did not expressly make provision for preservation funds, which existed largely through interpretation of the Income Tax Act (read with the Pension Funds Act). This situation created a number of technical difficulties in respect of the choices available to persons seeking to preserve their retirement savings. In order to overcome these difficulties, the Taxation Laws Amendment Act, 2008 codified preservation funds by inserting definitions of “pension preservation fund” and “provident preservation fund” in the Income Tax Act. As part of this codification process, any pension fund or provident fund that was conducting business as a preservation fund before the Taxation Laws Amendment Act, 2008 was required to submit the fund rules to the SARS before 30 September 2009. In practice however, SARS requires that the rules of a preservation fund be submitted to the Financial Services Board for approval prior to the submission to SARS. Certain funds, having followed this procedure, did not receive approval from the Financial Services Board before 30 September 2009. As a result, these funds were not able to submit their rules to SARS before 30 September 2009, thereby technically losing their tax status as preservation funds with effect from 1 October 2009. It is therefore proposed that registration be allowed on or before 30 September 2010 to remedy this anomaly outside the direct control of the funds.

Paragraphs (s) and (t): See notes on **PARTIAL WIND-UP OF UMBRELLA FUNDS**.

Paragraph (u): See notes on paragraph (r).

Paragraph (v): See notes on **REGIONAL INVESTMENT FUND REGIME**.

Paragraph (w): See notes on **FOREIGN FISCALLY TRANSPARENT ENTITIES** (also see notes on paragraphs (x) and (y)).

Paragraphs (x) and (y): Given the term's use throughout the Income Tax Act, a formal definition is added for collective schemes as well as definitions for their various subcategories.

Paragraph (z): See notes on paragraph (r).

Paragraphs (zA) and (zB): See notes on **PARTIAL WIND-UP OF UMBRELLA FUNDS**.

Paragraph (zC): See notes on paragraph (r).

Paragraph (zD): See notes on **REGIONAL INVESTMENT FUND REGIME**.

Paragraph (zE): The amendment corrects the style of a cross-reference.

Paragraph (zF): See notes on **SEVERANCE EMPLOYMENT PAYMENTS**.

Paragraph (zG): See notes on **COMPANY LAW REFORM**.

Paragraph (zH): See notes on **TRANSFER PRICING**.

Paragraph (zI): See notes on **CORPORATE REORGANISATIONS INVOLVING PLANTATIONS**.

## **CLAUSE 7**

Income Tax: Amendment of section 5

See notes on **SEVERANCE EMPLOYMENT PAYMENTS**.

## **CLAUSE 8**

Income Tax: Amendment of section 6

See notes on **DISCONTINUATION OF STANDARD INCOME TAX ON EMPLOYEES**.

## **CLAUSE 9**

Income Tax: Amendment of section 7A

See notes on **SEVERANCE EMPLOYMENT PAYMENTS**.

## **CLAUSE 10**

Income Tax: Amendment of section 8

See notes on **EMPLOYER-PROVIDED MOTOR VEHICLES.**

#### **CLAUSE 11**

Income Tax: Amendment of section 8B

See notes on **COMPANY LAW REFORM.**

#### **CLAUSE 12**

Income Tax: Amendment of section 8C

See notes on **EXECUTIVE SHARE SCHEMES.**

#### **CLAUSE 13**

Income Tax: Amendment of section 8E

Paragraphs (a) and (b): See notes on **COMPANY LAW REFORM.**

Paragraph (c): The proposed amendment aligns subsection (2) of section 8E with the concept of accrual, which forms the basis of dividend taxation.

#### **CLAUSE 14**

Income Tax: Amendment of section 9

Paragraph (a): The proposed amendment seeks to update the wording of the Income Tax Act in line with the current concept of the three spheres of government in the Constitution.

Paragraph (b): See notes on **COMPANY LAW REFORM.**

#### **CLAUSE 15**

Income Tax: Substitution of section 9C

The definition of “qualifying share” in section 9C(1) refers to “an equity share contemplated in section 44”. The definition of “equity share” was moved from section 44 to section 41 in 2009. The proposed amendment accordingly corrects this moved cross-reference.

#### **CLAUSE 16**

Income Tax: Amendment of section 9D

Paragraph (a): See notes on **REGIONAL HEADQUARTER COMPANY REGIME**

Paragraph (b): See note on Clause 6(h).

Paragraph (c): See notes on **COMPANY LAW REFORM.**

Paragraphs (d) and (e): See notes on **REGIONAL HEADQUARTER COMPANY REGIME.**

Paragraph (f): See notes on **TRANSFER PRICING**.

Paragraph (g): See notes on **MULTIPLE REPORTING CURRENCIES**.

Paragraph (h): See notes on **ABANDONED HYPERINFLATIONARY CURRENCIES**.

Paragraphs (i) and (j): See notes on **MULTIPLE REPORTING CURRENCIES**.

Paragraph (k): The reference to “net income” of a controlled foreign company complicates the compliance and enforcement associated with the high-tax exception. Taxpayers must simply compare the foreign tax payable by the controlled foreign company against the amount of South African tax payable in respect of the controlled foreign company had that company been a domestic resident.

Paragraph (l): See notes on **MULTIPLE REPORTING CURRENCIES**.

Paragraph (m): The proposed amendment deletes superfluous language. Amounts exempt by tax treaty are not included in income by virtue of section 108, which incorporates income tax treaties into domestic law.

#### **CLAUSE 17**

Income Tax: Amendment of section 9E

See note on Clause 6(h).

#### **CLAUSE 18**

Income Tax: Amendment of section 10

Paragraph (a): The proposed amendment seeks to update the wording of the Income Tax Act in line with the current concept of the three spheres of government in the Constitution.

Paragraph (b): See notes on **COMPANY LAW REFORM**.

Paragraph (c): The proposed amendment updates a cross-reference.

Paragraphs (d) and (e): See notes on **CHARGE FOR TERMINATING SECTION 10(1)(d) ENTITIES**.

Paragraph (f): See notes on **COMPANY LAW REFORM**.

Paragraph (g): See notes on **EMPLOYER-PROVIDED LONG-TERM INSURANCE SCHEMES**

Paragraphs (h) and (i): See notes on **RATES AND THRESHOLDS**.

Paragraph (j): See notes on **REGIONAL HEADQUARTER COMPANY REGIME**

Paragraph (k): The location of the “or” must be changed in light of the new paragraph (dd).

Paragraph (l): See notes on **COMPANY LAW REFORM**.

Paragraph (m): See notes on **EXECUTIVE SHARE SCHEMES**

Paragraph (n): See notes on **REGIONAL HEADQUARTER COMPANY REGIME**

Paragraph (o): See notes on **COMPANY LAW REFORM**

Paragraph(p): The proposed amendment deletes superfluous language. Amounts exempt by tax treaty are not included in income by virtue of section 108, which incorporates income tax treaties into domestic law.

Paragraph (q): See notes on **COMPANY LAW REFORM**

Paragraphs (r), (s), (t) and (u): See notes on **FOREIGN DIVIDEND PARTICIPATION EXEMPTION**.

Paragraph (v): See notes on **COMPANY LAW REFORM**

Paragraph (w): See notes on **SEVERANCE EMPLOYMENT PAYMENTS**

Paragraph (x): The amendment removes an unnecessary comma.

Paragraph (y): See notes on **MICRO-BUSINESS TURNOVER TAX**

## **CLAUSE 19**

Income Tax: Amendment of section 11:

Paragraph (a): The amendment limits the operation of the provision to assets covered by subsection (1) of section 12E and not by the whole of that section.

Paragraph (b): Paragraph (d) deals with the cost of repairs while paragraph (e) deals with depreciation of assets. In terms of paragraph (i) and (iv) of the proviso to paragraph (e), the cost of repairs and the cost of replacement assets must be taken into account when determining depreciation. These provisions are not applied in practice and are therefore repealed.

Paragraph (c): This amendment adds the word "and" at the end of paragraph (vii) of the proviso to paragraph (e). Paragraph (viii) was deleted by the Revenue Laws Amendment Act, 2007, together with the connecting word "and". This word is now reinserted for clarity.

Paragraphs (d), (e), (f) and (g): See notes on **IMPROVEMENTS ON GOVERNMENT LAND**.

Paragraph (h): The proposed amendment seeks to update the wording of the Income Tax Act in line with the current concept of the three spheres of government in the Constitution.

Paragraph (i): See notes on **EMPLOYER-PROVIDED LONG-TERM INSURANCE SCHEMES**.

## CLAUSE 20

Income Tax: Amendment of section 11D

See notes on **IMPROVEMENTS ON GOVERNMENT LAND**.

## CLAUSE 21

Income Tax: Substitution of section 11E

See notes on **PROFESSIONAL SPORT SUBSIDISATION OF AMATEUR SPORTS (and COMPANY LAW REFORM)**.

## CLAUSE 22

Income Tax: Amendment of section 12D

See notes on **IMPROVEMENTS ON GOVERNMENT LAND**

## CLAUSE 23

Income Tax: Amendment of section 12E

Paragraph (a): See notes on **COMPANY LAW REFORM**

Paragraph (b): This addition of the word “co-operative” is consistent with prior amendments that include co-operatives within the ambit of small business company relief.

Paragraph (c): Subsection (4)(a)(ii)(cc) contains a reference to section 10(1)(e)(i), (ii) or (iii). This subsection was reworded and renumbered in 2009. The amendment updates the reference accordingly.

Paragraphs (d), (e),(f): See notes on **TERMINATING COMPANIES AND SMALL/MICRO-BUSINESS RELIEF**

Paragraph (g): See notes on **MICRO-BUSINESS TURNOVER TAX**

## CLAUSE 24

Income Tax: Amendment of section 12F

See notes on **IMPROVEMENTS ON GOVERNMENT LAND**

## CLAUSE 25

Income Tax: Amendment of section 12H

The amendment replaces the term “allowance” with the term “deduction” as a matter of consistency with other references within the learnership incentive.



## **CLAUSE 26**

Income Tax: Amendment of section 12I(1A)

See notes on **IMPROVEMENTS ON GOVERNMENT LAND**

## **CLAUSE 27**

Income Tax: Amendment of section 12L

Paragraph (a): The amendment replaces the term "baseline" in the definition of "energy efficiency savings certificate" in subsection (1) with the term "reporting period energy use" to more accurately reflect the underlying technical terminology.

Paragraphs (b) and (c): Both amendments correct cross-references.

## **CLAUSE 28**

Income Tax: Amendment of section 12M

The amendment reverses the ordering of section 12M versus section 11(a). Medical lump sums are potentially deductible under section 12M as an initial matter with section 11(a) applying only to the extent section 12M does not apply (and the deduction is not prohibited by virtue of section 23B(3)). This change means that taxpayers can generally deduct medical lump sums upfront without regard to the spreading required under section 23H.

## **CLAUSE 29**

Income Tax: Insertion of section 12N

See notes on **IMPROVEMENTS ON GOVERNMENT LAND.**

## **CLAUSE 30**

Income Tax: Amendment of section 13

See notes on **IMPROVEMENTS ON GOVERNMENT LAND.**

## **CLAUSE 31**

Income Tax: Amendment of section 13*bis*

See notes on **IMPROVEMENTS ON GOVERNMENT LAND.**

## **CLAUSE 32**

Income Tax: Amendment of section 13*ter*

See notes on **IMPROVEMENTS ON GOVERNMENT LAND.**

## **CLAUSE 33**

Income Tax: Amendment of section 13*quat*

Paragraph (a): See notes on **IMPROVEMENTS ON GOVERNMENT LAND.**

Paragraphs (b) and (c): The amendments delete references to matters that no longer apply.

#### **CLAUSE 34**

Income Tax: Amendment of section 13*quin*

Paragraph (a): The proposed amendment corrects a word in the translated version of the Act.

Paragraph (b): See notes on **IMPROVEMENTS ON GOVERNMENT LAND.**

#### **CLAUSE 35**

Income Tax: Amendment of section 13*sex*(1)

See notes on **IMPROVEMENTS ON GOVERNMENT LAND.**

#### **CLAUSE 36**

Income Tax: Amendment of section 18

See notes on **INCOME TAX: RATES AND THRESHOLDS.**

#### **CLAUSE 37**

Income Tax: Amendment of section 18A

Paragraphs (a) and (b): The proposed amendment seeks to update the wording of the Income Tax Act in line with the current concept of the three spheres of government in the Constitution.

Paragraph (c): See notes on **DONATIONS TO TRANSFRONTIER CONSERVATION AREAS.**

Paragraphs (d), (e), (f) and (g): The proposed amendment seeks to update the wording of the Income Tax Act in line with the current concept of the three spheres of government in the Constitution.

Paragraph (h): The proposed amendment seeks to clarify the provision by adding a full reference.

#### **CLAUSE 38**

Income Tax: Insertion of section 20C

See notes on **REGIONAL HEADQUARTER COMPANY REGIME.**

### **CLAUSE 39**

Income Tax: Amendment of section 22

Paragraph (a): See notes on **DEVALUED FINANCIAL INSTRUMENTS HELD AS TRADING STOCK.**

Paragraph (b): See notes on **COMPANY LAW REFORM.**

### **CLAUSE 40**

Income Tax: Amendment of section 22B

See notes on **COMPANY LAW REFORM.**

### **CLAUSE 41**

Income Tax: Amendment of section 23:

See notes on **EMPLOYER-PROVIDED LONG-TERM INSURANCE SCHEMES.**

### **CLAUSE 42**

Income Tax: Amendment of section 23B

See notes on **EMPLOYER-PROVIDED LONG-TERM INSURANCE SCHEMES.**

### **CLAUSE 43**

Income Tax: Insertion of section 23H

See notes on **EMPLOYER-PROVIDED LONG-TERM INSURANCE SCHEMES.**

### **CLAUSE 44**

Income Tax: Insertion of section 23I

The proposed amendment seeks to update the wording of the Income Tax Act in line with the current concept of the three spheres of government in the Constitution.

### **CLAUSE 45**

Income Tax: Insertion of section 24E

See notes on **PROFESSIONAL SPORT SUBSIDISATION OF AMATEUR SPORTS.**

### **CLAUSE 46**

Income Tax: Amendment of section 24H

See notes on **FOREIGN FISCALLY TRANSPARENT ENTITIES.**

#### **CLAUSE 47**

Income Tax: Amendment of section 24I

Paragraph (a): See notes on **MULTIPLE REPORTING CURRENCIES**.

Paragraphs (b), (c) and (d): See notes on HEADQUARTER COMPANY REGIME.

#### **CLAUSE 48**

Income Tax: Insertion of section 24JA

See notes on **ISLAMIC FINANCING**.

#### **CLAUSE 49**

Income Tax: Amendment of section 25BA

See notes on clause 6(b).

#### **CLAUSE 50**

Income Tax: Amendment of section 25D

Paragraphs (a) and (b): See notes on **MULTIPLE REPORTING CURRENCIES**.

Paragraph (c): See notes on REGIONAL HEADQUARTER COMPANY REGIME.

#### **CLAUSE 51**

Income Tax: Amendment of section 28

See notes on **SHORT-TERM INSURER LIABILITY CALCULATIONS**.

#### **CLAUSE 52**

Income Tax: Amendment of section 29A

Paragraphs (13) and (14) are transitional provisions dealing with situations where insurers had not established the four separate funds envisaged by 1 January 2000. These provisions are now deleted as obsolete because more than sufficient time has elapsed since that date to adjust compliance systems.

#### **CLAUSE 53**

Income Tax: Amendment of section 30

Paragraph (a): See notes on **COMPANY LAW REFORM**

Paragraph (b): The cut-off date is deleted in recognition of the fact that testamentary trusts will remain an ongoing practice.

Paragraph (c): The proposed amendment seeks to update the wording of the Income Tax Act in line with the current concept of the three spheres of government in the Constitution.

Paragraphs (d), (e) and (f): See notes on **PBO, SECTION 10(1)(d) AND CLUB TERMINATIONS.**

#### **CLAUSE 54**

Income Tax: Amendment of section 30A

Paragraph (a): See notes on **COMPANY LAW REFORM**

Paragraphs (b), (c), (d) and (e): See notes on **PBO, SECTION 10(1)(d) AND CLUB TERMINATIONS.**

#### **CLAUSE 55**

Income Tax: Insertion of section 30B

See notes on **TERMINATING SECTION 10(1)(d) ENTITIES** (and **SYNCHRONISING PBO, SECTION 10(1)(d) AND CLUB TERMINATIONS**)

#### **CLAUSE 56**

Income Tax: Amendment of section 31

See notes on **TRANSFER PRICING.**

#### **CLAUSE 57**

Income Tax: Amendment of section 36

See notes on **IMPROVEMENTS ON GOVERNMENT LAND.**

#### **CLAUSE 58**

Income Tax: Insertion of Part IA in Chapter I

See notes on **CROSS-BORDER INTEREST EXEMPTION**

#### **CLAUSE 59**

Income Tax: Amendment of section 38

See notes on **COMPANY LAW REFORM.**

#### **CLAUSE 60**

Income Tax: Amendment of section 40A

See notes on **COMPANY LAW REFORM.**

#### **CLAUSE 61**

Income Tax: Amendment of section 41

Paragraph (a): See notes on **DEVALUED FINANCIAL INSTRUMENTS HELD AS TRADING STOCK.**

Paragraph (b): See notes on clause 6(h).

Paragraph (c): See notes on **COMPANY LAW REFORM.**

Paragraph (d): See notes on clause 6(h).

Paragraph (e): See notes on **COMPANY LAW REFORM.**

Paragraph (f): See notes on **REGIONAL HEADQUARTER COMPANY REGIME**

Paragraphs (g) and (h): See notes on **DEFAULT ELECTIONS INVOLVING INTRA-GROUP ROLLOVERS.**

Paragraph (i): See notes on **CORPORATE REORGANISATIONS INVOLVING PLANTATIONS.**

#### **CLAUSE 62**

Income Tax: Amendment of section 42

Paragraphs (a), (b), (c): See notes on **LISTED SHARE-FOR-SHARE REORGANISATIONS.**

Paragraph (d): See notes on clause 6(b).

Paragraph (e): See notes on **LISTED SHARE-FOR-SHARE REORGANISATIONS.**

Paragraphs (f) and (g): See notes on **DEFAULT ELECTIONS INVOLVING INTRA-GROUP ROLLOVERS.**

#### **CLAUSE 63**

Income Tax: Amendment of section 44

Paragraph (a): See notes on **DEFAULT ELECTIONS INVOLVING INTRA- GROUP ROLLOVERS.**

Paragraphs (b), (c) and (d): See notes on **COMPANY LAW REFORM.**

## CLAUSE 64

Income Tax: Amendment of section 45

Paragraph (a): See notes on **DEFAULT ELECTIONS INVOLVING INTRA-GROUP ROLLOVERS.**

Paragraph (b): The proposed amendment technically adjusts part of the intra-group de-grouping charge in a manner that is consistent with the current philosophy of taxing the greatest deferred gain in the case of a de-grouping charge after multiple transfers.

Paragraph (c): See notes on **COMPANY LAW REFORM.**

Paragraphs (d) and (e): See notes on **DEFAULT ELECTIONS INVOLVING INTRA-GROUP ROLLOVERS.**

## CLAUSE 65

Income Tax: Amendment of section 46

Paragraph (a): See notes on **COMPANY LAW REFORM.**

Paragraph (b): The proposed amendment seeks to update the wording of the Income Tax Act in line with the current concept of the three spheres of government in the Constitution.

## CLAUSE 66

Income Tax: Amendment of section 47

See notes on **DEFAULT ELECTIONS INVOLVING INTRA- GROUP ROLLOVERS.**

## CLAUSE 67

Income Tax: Amendment of section 56

The amendment corrects the omission of municipalities from the exclusion of Donations Tax in respect of donations made to Government by taxpayers.

## CLAUSE 68

Income Tax: Amendment of section 64B

Paragraph (a): See notes on **COMPANY LAW REFORM.**

Paragraphs (b), (c), (d) and (e): See notes on **REGIONAL HEADQUARTER COMPANY REGIME.**

Paragraphs (f) and (g): See notes on **COMPANY LAW REFORM.**

Paragraph (h): The proposed amendment deletes a superfluous “and.”

Paragraphs (i) and (j): See notes on **TERMINATING RESIDENTIAL ENTITIES**.

#### **CLAUSE 69**

Income Tax: Amendment of section 64C

Paragraphs (a) and (b): See notes on **COMPANY LAW REFORM**.

Paragraph (c): See notes on **TRANSFER PRICING**.

Paragraph (d): With the elimination of “profits” from the dividend calculation (see notes on **COMPANY LAW REFORM**), a new deemed dividend calculation is required for domestic companies that shift tax residence abroad. Under the revised rule, the deemed dividend equals the gross value of the exiting company’s assets less the company’s debt and less contributed tax capital. This rule is in line with the pending Dividends Tax.

Paragraph (e): Loans made by a company in respect of listed shares are currently disregarded from the deemed dividend rules. The proposed rule extends this relief to loans made by a connected person of the listed company. For instance, the deemed dividend rules do not apply if a wholly owned subsidiary of a listed parent company makes a loan to a listed shareholder of the parent company. In either instance, disguised dividends are unlikely due to corporate governance concerns.

Paragraphs (f) and (g): See notes on **COMPANY LAW REFORM**.

Paragraph (h): In 2009, an exclusion was created for otherwise taxable deemed dividends if the amounts were economically equivalent to capital contributions by a shareholder. However, the exclusion currently contains a technical flaw that denies relief in group situations. The rule is accordingly revised to address the main concern – capital contributions to subsidiaries that have direct or indirect share cross-holdings in the shareholder company.

#### **CLAUSE 70**

Income Tax: Amendment of section 64D

See notes on **DIVIDENDS TAX: WITHHOLDING BY THE TRANSFER SECRETARY**.

#### **CLAUSE 71**

Income Tax: Amendment of section 64E

Paragraph (a): See notes on **REGIONAL HEADQUARTER COMPANY REGIME**.

Paragraph (b): See notes on **COMPANY LAW REFORM**.

#### **CLAUSE 72**

Income Tax: Amendment of section 64F

See notes on **TERMINATING RESIDENTIAL ENTITIES**.



### **CLAUSE 73**

Income Tax: Amendment of section 64G

See notes on **DIVIDENDS TAX: WITHHOLDING BY REGULATED INTERMEDIARIES.**

### **CLAUSE 74**

Income Tax: Amendment of section 64H

See notes on **DIVIDENDS TAX: WITHHOLDING BY REGULATED INTERMEDIARIES.**

### **CLAUSE 75**

Income Tax: Amendment of section 64O

The change is collateral to the revised transfer pricing rules (see notes on **TRANSFER PRICING**).

### **CLAUSE 76**

Income Tax: Amendment of section 64Q

See notes on **COMPANY LAW REFORM.**

### **CLAUSE 77**

Income Tax: Amendment of section 80L

See notes on **TRANSFER PRICING.**

### **CLAUSE 78**

Income Tax: Amendment of paragraph 11 of the First Schedule

See notes on **COMPANY LAW REFORM.**

### **CLAUSE 79**

Income Tax: Amendment of paragraph 1 of the Second Schedule

See notes on **POST-RETIREMENT COMMUTATION (CONVERSION) OF ANNUITIES INTO LUMP SUMS**

### **CLAUSE 80**

Income Tax: Amendment of paragraph 2 of the Second Schedule

Paragraphs (a), (b) and (c): See notes on **SEVERANCE EMPLOYMENT PAYMENTS**  
Paragraph (d): See notes on **COMPANY LAW REFORM.**

Paragraph (e): See notes on **SEVERANCE EMPLOYMENT PAYMENTS.**

Paragraph (f): See notes on **POST–RETIREMENT COMMUTATION (CONVERSION) OF ANNUITIES INTO LUMP SUMS.**

Paragraph (g): The amendment corrects a missing cross-reference relating to a 2009 amendment that allowed retirement lump sums stemming from retrenchments to qualify for retirement lump sum relief.

Paragraph (h): The proposed amendment clarifies that item (iA) applies to amounts assigned in terms of divorce orders granted after 13 September 2007 but where the assignee (i.e. the non-member) has not yet elected to have the assigned benefits paid out in cash or transferred to another fund. In this case, the person to whom the benefits are assigned (i.e. the non-member spouse) is liable for the tax.

#### **CLAUSE 81**

Income Tax: Amendment of paragraph 3 of the Second Schedule

See notes on **POST–RETIREMENT COMMUTATION (CONVERSION) OF ANNUITIES INTO LUMP SUMS.**

#### **CLAUSE 82**

Income Tax: Insertion of paragraph 3A in the Second Schedule

See notes on **POST–RETIREMENT COMMUTATION (CONVERSION) OF ANNUITIES INTO LUMP SUMS.**

#### **CLAUSE 83**

Income Tax: Amendment of paragraph 4 of the Second Schedule

See notes on **RETIREMENT FUND PAY-OUTS TO NON-MEMBERS.**

#### **CLAUSE 84**

Income Tax: Amendment of paragraph 6 of the Second Schedule

Paragraph (a): The amendment corrects a missing cross-reference relating to a 2009 amendment that allowed retirement lump sums stemming from retrenchments to qualify for retirement lump sum relief.

Paragraph (b): The proposed amendment clarifies that the applicable funds cover any of the five retirement funds.

#### **CLAUSE 85**

Income Tax: Amendment of paragraph 1 of the Sixth Schedule

See notes on **MICRO-BUSINESS TURNOVER TAX.**

#### **CLAUSE 86**

Income Tax: Amendment of paragraph 3 of the Sixth Schedule

See notes on **MICRO-BUSINESS TURNOVER TAX.**

**CLAUSE 87**

Income Tax: Amendment of paragraph 5 of the Sixth Schedule

See notes on **MICRO-BUSINESS TURNOVER TAX.**

**CLAUSE 88**

Income Tax: Amendment of paragraph 6 of the Sixth Schedule

See notes on **MICRO-BUSINESS TURNOVER TAX.**

**CLAUSE 89**

Income Tax: Amendment of paragraph 7 of the Sixth Schedule

See notes on **MICRO-BUSINESS TURNOVER TAX.**

**CLAUSE 90**

Income Tax: Amendment of paragraph 1 of the Seventh Schedule

In order to reduce the compliance and administration consequences that arise whenever the repurchase rate changes, it is proposed that the “*official rate*” of interest be specifically linked to the repurchase rate (that is repurchase rate plus one per cent). The official rate will automatically adjust at the beginning of the month following the month during which the Reserve Bank changes the repurchase rate.

**CLAUSE 91**

Income Tax: Amendment of paragraph 7 of the Seventh Schedule

See notes on **EMPLOYER-PROVIDED MOTOR VEHICLES.**

**CLAUSE 92**

Income Tax: Amendment of paragraph 13 of the Seventh Schedule

See notes on **EMPLOYER-PROVIDED INDEMNITY INSURANCE.**

**CLAUSE 93**

Income Tax: Amendment of paragraph 2 of the Eighth Schedule

See notes on **COMPANY LAW REFORM.**

**CLAUSE 94**

Income Tax: Amendment of paragraph 12 of the Eighth Schedule

An exclusion currently exists for otherwise-existing capital gains resulting from debt cancellations if the amounts at issue are taxable under other provisions. This exclusion should be extended to cover amounts taxed as fringe benefits.

#### **CLAUSE 95**

Income Tax: Amendment of paragraph 20 of the Eighth Schedule

The proposed amendment clarifies the interaction of section 9C(5) in relation to the expenditure calculations associated with capital gains base cost.

#### **CLAUSE 96**

Income Tax: Amendment of paragraph 29 of Eighth Schedule

See notes on **COMPANY LAW REFORM**.

#### **CLAUSE 97**

Income Tax: Amendment of paragraph 31 of Eighth Schedule

See notes on clause 6(b).

#### **CLAUSE 98**

Income Tax: Amendment of paragraph 38 of Eighth Schedule

The amendment deletes a superfluous provision.

#### **CLAUSE 99**

Income Tax: Amendment of paragraph 42 of the Eighth Schedule

The current use of the term “share” is in error because the anti-avoidance provision relates to financial instruments.

#### **CLAUSE 100**

Income Tax: Amendment of paragraph 43 of Eighth Schedule

Paragraph (a): See notes on **MULTIPLE REPORTING CURRENCIES**.

Paragraph (b): See notes on **REGIONAL HEADQUARTER COMPANY REGIME** (see notes also on **MULTIPLE REPORTING CURRENCIES**).

#### **CLAUSE 101**

Income Tax: Insertion of paragraph 43B in Eighth Schedule

See notes on **ABANDONED HYPERINFLATIONARY CURRENCIES**.

#### **CLAUSE 102**

Income Tax: Amendment of paragraph 43B of Eighth Schedule

See notes on **MULTIPLE REPORTING CURRENCIES**.

#### **CLAUSE 103**

Income Tax: Amendment of paragraph 45 of Eighth Schedule

A simplifying rule was enacted in 2009 to assist taxpayers when selling a primary residence. Under this simplifying rule, no capital gain or loss exists if the total sale does not exceed R2 million. The loss aspect of the rule actually works to the detriment of taxpayers and is accordingly repealed.

#### **CLAUSE 104**

Income Tax: Amendment of paragraph 51 of the Eighth Schedule

See notes on **TERMINATING RESIDENTIAL ENTITIES**.

#### **CLAUSE 105**

Income Tax: Insertion of paragraph 51A of the Eighth Schedule

See notes on **TERMINATING RESIDENTIAL ENTITIES**.

#### **CLAUSE 106**

Income Tax: Amendment of paragraph 61 of Eighth Schedule

In 2009, collective investment schemes (other than property schemes) became taxable as flow-through entities for ordinary revenue purposes with the intent of retaining pre-existing law in relation to capital gains – i.e. with the scheme being exempt from capital gains tax as opposed to the unit holder remaining subject to the tax. The amendment is adjusted to better reflect this intention. The revised language is consistent with much of the capital gains tax language currently applicable to collective investment schemes in property.

#### **CLAUSE 107**

Income Tax: Amendment of paragraph 62 of Eighth Schedule

The proposed amendment seeks to update the wording of the Income Tax Act in line with the current concept of the three spheres of government in the Constitution.

#### **CLAUSE 108**

Income Tax: Amendment of paragraph 64B

Paragraph (a): See notes on **COMPANY LAW REFORM**.

Paragraph (b): See notes on **REGIONAL HEADQUARTER COMPANY REGIME**.

Paragraphs (c) through (k): See notes on **COMPANY LAW REFORM**.

Paragraph (l): See notes on clause 6(b) and **COMPANY LAW REFORM**.

Paragraphs (m) and (n): See notes on **COMPANY LAW REFORM**.

#### **CLAUSE 109**

Income Tax: Amendment of paragraph 67A of the Eighth Schedule

See notes on clause 6(b).

#### **CLAUSE 110**

Income Tax: Amendment of paragraph 74 of the Eighth Schedule

See notes on **COMPANY LAW REFORM**.

#### **CLAUSE 111**

Income Tax: Amendment of paragraph 78 of Eighth Schedule

See notes on **COMPANY LAW REFORM**.

#### **CLAUSE 112**

Income Tax: Amendment of paragraph 96 of the Eighth Schedule

The proposed amendment corrects drafting style in relation to a reference.

#### **CLAUSE 113**

Income Tax: Amendment of paragraph 1 of the Tenth Schedule

The amendment corrects the current definition of an 'oil and gas right' so as to properly include conversions of old order rights that occur under Items 4 and 5 to Schedule II of the Mineral and Petroleum Resources Development Act, 2002. Under the proposed amendment, the conversion of old order rights (i.e. OP26 sub-lease rights) to new order rights (i.e. rights under the definition of 'oil and gas right') will now technically qualify for fiscal stability relief under the Tenth Schedule to the Act (as was always intended).

#### **CLAUSE 114**

Income Tax: Amendment of paragraph 4 of the Tenth Schedule

See notes on **MULTIPLE REPORTING CURRENCIES**.

#### **CLAUSE 115**

Income Tax: Amendment of paragraph 5 of the Tenth Schedule

The proposed amendment clarifies the interaction of the pre-existing OP 26 tax provisions and the Tenth Schedule. Losses under the pre-existing OP 26 can be carried over into the new regime without any further 12 per cent uplift.

#### **CLAUSE 116**

Income Tax: Amendment of paragraph 6 of the Tenth Schedule

See notes on **COMPANY LAW REFORM**

#### **CLAUSE 117**

Custom & Excise: Amendment of Schedule 1

This provision acts as enabling provision in respect of annual Custom and Excise changes to Appendix II.

#### **CLAUSE 118**

Custom & Excise: Continuation of amendments of Schedules

This provision backdates recent Customs and Excise changes.

#### **CLAUSE 119**

Value-Added Tax: Amendment of section 1

See notes on **GOODS SUPPLIED TO FOREIGN-GOING MILITARY SHIPS OR AIRCRAFT.**

#### **CLAUSE 120**

Value-Added Tax: Amendment of section 8

See notes on **DEBT-BURDENED ASSETS UPON CESSATION OF AN ENTERPRISE.**

#### **CLAUSE 121**

Value-Added Tax: Insertion of section 8A

See notes on **ISLAMIC FINANCING.**

#### **CLAUSE 122**

Value-Added Tax: Amendment of section 10

The proposed amendment clarifies that the R100 000 reduction that is applied against the deemed output charge when leaving the Value-Added Tax system cannot reduce the output charge below zero.

#### **CLAUSE 123**

Value-Added Tax: Amendment of section 18

See notes on **MICRO-BUSINESS EXIT AND RE-ENTRY INTO THE VAT SYSTEM**

#### **CLAUSE 124**

Value-Added Tax: Deletion of section 23(8).

See notes on **MICRO-BUSINESS TURNOVER TAX.**

#### **CLAUSE 125**

Revenue Laws: Amendment of Schedule 1 to the Revenue Laws Amendment Act, 2006

The proposed amendment exempts certain forms of liquidating dividends from the Secondary Tax on Companies when associated with certain FIFA providers.

#### **CLAUSE 126**

Revenue Laws: Insertion of paragraph 17 in Schedule 1 to the Revenue Laws Amendment Act, 2006

The amendment exempts up to R750 of FIFA-related items from employee fringe benefits tax should employers provide FIFA-related items to employees.

#### **CLAUSE 127**

Securities Transfer Tax Act: Amendment of section 8

The proposed amendment deletes superfluous language. The relief applies "in terms of" the reorganisations listed (i.e. as so defined) without regard to other reorganisation rules listed. Because the election language is no longer part of the definitions, application of the elections is no longer relevant and can be removed.

#### **CLAUSE 128**

Securities Transfer Tax Act: Insertion of 8A

See notes on **ISLAMIC FINANCING.**

#### **CLAUSE 129**

Revenue Laws: Amendment of section 125 of the Revenue Laws Amendment Act, 2007

See notes on **PROFESSIONAL SPORT SUBSIDISATION OF AMATEUR SPORT.**



### **CLAUSE 130**

Royalty Act: Amendment of section 1

See notes on **CROSS-BORDER TRANSFER OF MINERAL RESOURCES**.

### **CLAUSE 131**

Royalty Act: Amendment of section 2

See notes on **CROSS-BORDER TRANSFER OF MINERAL RESOURCES**.

### **CLAUSE 132**

Royalty Act: Amendment of section 5

Paragraphs (a) and (b): See notes on **NOTIONAL UPLIFTMENT OF EXPENDITURE FOR MINERAL RESOURCES** (and a clarification that parties subject to the royalty can utilise deductible items as an offset even if not actually deducted under the Income Tax Act).

Paragraph (c): See comment under clause 133.

### **CLAUSE 133**

Royalty Act: Amendment of section 6

The amendment adjusts the gross sales when the amount differs from the amount received. The variation would normally transpire in the case of exchange rate fluctuations. For instance, assume an extractor transfers a mineral resource for USD20 000 when 5 Rand equals 1US Dollar. Also assume the extractor does not take out a forward exchange contract and receives payment of R80 000 (when 4 Rand equals 1US Dollar). As a result, the amount received with the amendments is less than the amount accrued due to the appreciation of the Rand against the Dollar. The difference of R20 000, is subtracted from gross sales. Similarly, if the amount received is greater than the amount accrued, gross sales will be adjusted upwards. Corresponding adjustments are allowed for the purposes of calculating EBIT.

### **CLAUSE 134**

Royalty Act: Insertion of section 6A

See notes on **APPLICATION OF SCHEDULE 2**.

### **CLAUSE 135**

Royalty Act: Insertion of section 8A

See notes on **ROLL-OVER RELIEF**

#### **CLAUSE 136**

Royalty Act: Amendment of Schedule 1

See notes on revised **SCHEDULAR TREATMENT FOR VANADIUM**

#### **CLAUSE 137**

Royalty Act: Amendment of Schedule 2

Paragraph (a): Coal - The specification of coal is inconsistent with the minimum sale principles required in Schedule 2 for specified minerals. Based on industry information received, the minimum condition for coal was amended to a minimum calorific value of 19.0MJ/kg.

Paragraph (b): Iron Ore - The range of 61-64% Fe content for iron ore created difficulties because depending on the interpretation, the range may have resulted in a charge against iron ore beneficiated and transferred above the minimum of 61%. This interpretation would have resulted in a higher royalty charge for those extractors that beneficiated as compared with those extractors that transferred iron ore at the minimum condition. Based on input from the iron ore industry it was decided to amend the specified condition for iron ore to: plant feed with a minimum 61.5% Fe content.

Paragraphs (c) through (f): Mineral Sands - The specified condition for mineral sands consisting of Ilmenite, Rutile and Zircon is not in keeping with current industry practices. These specified conditions are amended as follows:

- Ilmenite – a minimum of 80% FeTiO<sub>3</sub>
- Rutile – a minimum of 70% TiO<sub>2</sub> concentrate
- Zircon – a minimum of 90% ZrO<sub>2</sub> +SiO<sub>2</sub>+HfO<sub>2</sub>

Paragraph (g): See notes on **SCHEDULAR TREATMENT FOR VANADIUM**

#### **CLAUSE 138**

Revenue Laws: Amendment of section 4 of the Revenue Laws Amendment Act, 2008

Paragraph (a): See notes on **DIVIDENDS TAX: DEFINITION OF FOREIGN DIVIDEND** and on **COMPANY LAW REFORM**.

Paragraph (b): See notes on **COMPANY LAW REFORM**.

#### **CLAUSE 139**

Revenue Laws: Amendment of section 47 of the Revenue Laws Amendment Act, 2008

See notes on **COMPANY LAW REFORM**

#### **CLAUSE 140**

Revenue Laws: Amendment of section 49 of the Revenue Laws Amendment Act, 2008

See notes on **COMPANY LAW REFORM**

#### **CLAUSE 141**

Revenue Laws: Amendment of section 50 of the Revenue Laws Amendment Act, 2008

See notes on **COMPANY LAW REFORM**

#### **CLAUSE 14224**

Revenue Laws: Amendment of section 52 of the Revenue Laws Amendment Act, 2008

See notes on **COMPANY LAW REFORM**

#### **CLAUSE 143**

Revenue Laws: Amendment of section 85 of the Revenue Laws Amendment Act, 2008

See notes on **COMPANY LAW REFORM**

#### **CLAUSE 144**

Taxation Laws: Amendment of section 3 of the Taxation Laws Amendment Act, 2009

See notes on **TERMINATING RESIDENTIAL ENTITIES**

#### **CLAUSE 145**

Taxation Laws: Amendment of section 7 of the Taxation Laws Amendment Act, 2009

Paragraph (a): Consistent with the revised dividend definition, the current definition will be amended to exclude open market purchases by a listed company of its own shares.

Paragraph (b): See notes on **COMPANY LAW REFORM**

#### **CLAUSE 146**

Taxation Laws: Amendment of section 12 of the Taxation Laws Amendment Act, 2009

In 2009, section 9D was amended by the introduction of a so-called "high tax exemption". The amendment was intended to operate in favour of taxpayers and was made with retrospective effect. It appears, however, that certain taxpayers had, at the time that the 2009 amendments came into effect, already filed income tax returns based on the law as the law applied prior to the amendment. In order to address this particular problem, the 2009 amendment will only apply in respect of returns submitted to SARS on or after 1 September 2009 (i.e. the date that the amendment took effect).

#### **CLAUSE 147**

Taxation Laws: Amendment of section 51 of the Taxation Laws Amendment Act, 2009

See notes on **TERMINATING RESIDENTIAL ENTITIES**

#### **CLAUSE 148**

Taxation Laws: Amendment of section 53 of the Taxation Laws Amendment Act, 2009

See notes on **DIVIDEND TAX: TRANSITIONAL ISSUES.**

#### **CLAUSE 149**

Taxation Laws: Amendment of section 54 of the Taxation Laws Amendment Act, 2009

See notes on **DIVIDEND TAX: TRANSITIONAL ISSUES.**

#### **CLAUSE 150**

Taxation Laws: Amendment of section 59 of the Taxation Laws Amendment Act, 2009

The proposed amendment corrects the reference for the definition of "beneficiary fund" (i.e. section 1 of the Pension Funds Act, 1956).

#### **CLAUSE 151**

Taxation Laws: Amendment of section 60 of the Taxation Laws Amendment Act, 2009

The proposed amendment corrects the amendment made to paragraph 4(4) of the Second Schedule to the Income Tax Act in 2009. The member spouse remains liable for tax on retirement payments made to a divorced spouse before 1 March 2009.

#### **CLAUSE 152**

Taxation Laws: Amendment of section 69 of the Taxation Laws Amendment Act, 2009

Paragraphs (a) to (c): The definition of "dividend" in paragraph 19(3)(b) of the Eighth Schedule to the Income Tax Act was amended in 2009. This amendment was intended to take effect when the Dividends Tax is brought into operation. However, an amendment to the existing definition is required so as to also exclude capital distributions when the new Dividends Tax takes effect.

#### **CLAUSE 153**

Taxation Laws: Amendment of section 74 of the Taxation Laws Amendment Act, 2009

See notes on **TERMINATING RESIDENTIAL ENTITIES**

#### **CLAUSE 154**

Taxation Laws: Amendment of section 78 of the Taxation Laws Amendment Act, 2009

See notes on **COMPANY LAW REFORM**

#### **CLAUSE 155**

Taxation Laws: Amendment of Appendix I of the Taxation Laws Amendment Act, 2009

The proposed amendment clarifies the words in paragraph 6 of Appendix I pertaining to personal service providers. This paragraph should apply only to personal service providers that are companies.

#### **CLAUSE 156**

Short title and commencement

This clause contains the default effective date of amendments to the Income Tax Act, 1962.