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NATIONAL
TREASURY

REPUBLIC OF SOUTH AFRICA

DRAFT EXPLANATORY MEMORANDUM

ON THE

DRAFT TAXATION LAWS AMENDMENT BILL, 2009

[W.P. –- ‘08]

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INTRODUCTION

The Taxation Laws Amendment Bill, 2009, introduces amendments to the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Value-Added Tax Act, 1991, the Pension Funds Act, 1956, the Mineral and Petroleum Resources Royalty Act, 2008, the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, the Revenue Laws Amendment Act, 2008, and introduces measures relating to sharing of general fuel levy revenue.

EXPLANATION OF MAIN AMENDMENTS

MEDICAL SCHEME CONTRIBUTIONS

Current Law

In terms of section 18 of the Income Tax Act, taxpayers may deduct their contributions to registered medical schemes. The contributions may be for the benefit of the taxpayer, his or her spouse and any other dependant as defined in the Medical Schemes Act, 1998. Deductions for medical scheme contributions are subject to monthly ceilings that are subject to annual adjustment.

Employer contributions to employee medical schemes are generally added to the taxable income of the employee. However, an exemption exists for amounts contributed to registered medical schemes. This exemption has the same ceilings as the monthly deduction ceilings available if the taxpayer claimed the deductions under section 18.

Reasons for change

The dual medical scheme taxpayer deduction and employer fringe benefit exemptions give rise to undue complexities and evasion. For example, a taxpayer may claim the medical scheme deduction in his or her annual personal income tax return even though the same taxpayer has already obtained the benefit of the monthly exemption. While this practice is illegal, the current rules create a situation where enforcement may be compromised.

Proposal

It is proposed that the fringe benefit exclusion for medical scheme contributions be removed. The net effect of this change is to require employees to claim a deduction of medical scheme contributions, whether such contributions are made by the employee or by the employer on behalf of the employee. It should be noted that the net tax effect of the change will be neutral for both employers and employees.

SPECIAL MEASURES RELATING TO THE SHARING OF GENERAL FUEL LEVY REVENUE

Current Law

The Minister of Finance in his 2005 Budget Speech announced the repeal of the regional services council (RSC) levies and regional establishment levies with effect from 1 July 2006.

The primary reason for repeal of the RSC levies and Joint Services Board (JSB) levies was to alleviate the administrative burden on businesses. The RSC and JSB levies were based on self-declarations by businesses without the municipalities having the ability to audit these payments. Consequently, these levies took on the nature of voluntary taxes, and compliance deteriorated to the point where municipalities employed collection agencies to enforce payment of what they “perceived” was due. In addition to this inefficiency, there was also inequity in that some municipalities received a disproportionate amount of revenue. Johannesburg and Cape Town, for example, benefited unfairly simply because most head offices are located in those centres.

Following the repeal of the RSC and JSB levies, municipal property rates were zero rated. This resulted in a cash flow benefit for municipalities in that they may claim more input tax. In addition all category A and C municipalities received an additional on budget grant to make up for the revenue shortfall.

Reasons for change

To ensure a more secure non-discretionary source of funding, it is proposed to replace the on budget grant to category A municipalities (to partly compensate for the loss in revenue as a result of the scrapping of the RSC and JSB levies) with a more direct source of revenue. Category C municipalities will continue to receive an on budget grant.

Proposal

It is proposed that from 2009/10, 23 per cent of the revenues from the general fuel levy be earmarked for metropolitan (Category A) municipalities. The distribution of this revenue among various metropolitan municipalities is to be phased in over four years. Ultimately, it is envisaged that the distribution of this revenue will be based on fuel sales in each metropolitan municipality.

LUMP SUM BENEFIT CALCULATIONS

Current law

Two main categories exist for lump sum benefits paid by retirement funds. Lump sum benefits may be paid upon retirement (or death) or prior to retirement (e.g. due to resignation or divorce). In 2007, the exemption amount was set at R300 000 (without regard to prior years of service) for lump sums upon retirement, and the complex averaging formula for lump sum benefits upon retirement was removed in favour of a special rates table.

In 2008, the exemption for pre-retirement lump sum benefits was set at R22 500 for 2009/10 (in lieu of the long standing pre-existing threshold of R1 800). It was also announced that the complex averaging formula of section 5(10) applicable to pre-retirement lump sum benefits would be modified in favour of a simplified table.

Reasons for change

Although not technically part of the proposed legislation, it was publicly announced that pre-retirement lump sums would utilise a simplified table (*in lieu* of the complex averaging formula of section 5(10) that is similar to that used for retirement lump sums). The new table was said to be effective from 1 March 2009 (which coincides with the commencement of the year of assessment for natural persons). Both the pre-retirement and the retirement tables are reflected in the rate schedules contained in the explanation for Clause x1 (Tables XII and XIII) in this explanatory memorandum.

Proposal

The proposed legislation brings into effect the 2008 announcement. Also as announced, lump sum benefits will be taxed on a cumulative basis (i.e. subsequent lump sum benefits that accrue will be added and taxed at higher marginal rates). The cumulative nature of the system will generally be the same for both pre-retirement and retirement lump sums in terms of the rate tables. Moreover, the use of the pre-retirement exemption (currently at R22 500) and of the retirement exemption (currently at R300 000) will become part of the tables, thereby also becoming part of the cumulative system.

Stated differently, tax on a given pre-retirement lump sum will be determined by (1) aggregating that pre-retirement lump sum and all lump sum benefits ever received or accrued; (2) applying the pre-retirement lump sum rate table (see paragraph 10*(a)*(i) of Part I of Appendix I to the Taxation Laws

Amendment Bill, 2009) to that aggregate amount; and (3) subtracting a "hypothetical" amount of tax already "paid" on all lump sums received prior to the pre-retirement lump sum at issue (this "hypothetical" amount being determined by applying the current rate table to all lump sum benefits previously received). These rules will be mirrored in the case of retirement lump sum benefits.

Example 1 (deduction mechanism/pre-retirement). Facts. Nthoki is a member of two pension funds when she resigns. Nthoki initially receives a R250 000 pre-retirement lump sum from the first fund. Nthoki subsequently receives another R350 000 pre-retirement lump sum from the second fund.

Result.

(a) The first R22 500 is taxed at rate of zero per cent, and the remaining R227 500 is taxable at rate of 18 per cent. The result is tax payable of R40 950.

(b) In respect of the second R350 000 lump sum, this amount is effectively taxed at a rate of 18 per cent, resulting in tax payable of R63 000.

Example 2 (mixing of pre-retirement and retirement lump sums). Facts. The facts are the same as above, except that Nthoki receives an additional R100 000 lump sum on retirement.

Result. The R100 000 is effectively taxed at a rate of 27 per cent after taking into account the prior pre-retirement lump sums, resulting in tax payable of R27 000.

CLAUSE BY CLAUSE EXPLANATION

CLAUSE x1

Income Tax: Fixing of rates of normal tax and amendment of certain amounts for purposes of the Income Tax Act, 1962

Table I: Current rates for individuals and special trusts:

Taxable Income	**Rate of Tax**
Not exceeding R122 000	18 per cent of the taxable income
Exceeding R122 000 but not exceeding R195 000	R21 960 plus 25 per cent of the amount by which the taxable income exceeds R122 000
Exceeding R195 000 but not exceeding R270 000	R40 210 plus 30 per cent of the amount by which the taxable income exceeds R195 000
Exceeding R270 000 but not exceeding R380 000	R62 710 plus 35 per cent of the amount by which the taxable income exceeds R270 000
Exceeding R380 000 but not exceeding R490 000	R101 210 plus 38 per cent of the amount by which the taxable income exceeds R380 000
Exceeds R490 000	R143 010 plus 40 per cent of the amount by which the taxable income exceeds R490 000

Table II: Proposed rates for individuals and special trusts:

Taxable income	**Rate of tax**
Not exceeding R132 000	18 per cent of the taxable income
Exceeding R132 000 but not exceeding R210 000	R23 760 plus 25 per cent of amount by which taxable income exceeds R132 000
Exceeding R210 000 but not exceeding R290 000	R43 260 plus 30 per cent of amount by which taxable income exceeds R210 000
Exceeding R290 000 but not exceeding R410 000	R67 260 plus 35 per cent of amount by which taxable income exceeds R290 000
Exceeding R410 000 but not exceeding R525 000	R109 260 plus 38 per cent of amount by which taxable income exceeds R410 000
Exceeds R525 000	R152 960 plus 40 per cent of amount by which taxable income exceeds R525 000

Table III: Current rate for trusts (no change proposed):

Taxable Income	**Rate of Tax**
All taxable income	40 per cent of the taxable income

Table IV: Current rate for companies (no change proposed):

Taxable Income	**Rate of Tax**
All taxable income	28 per cent of the taxable income

Table V: Current rate for small business corporations:

Taxable Income	Rate of Tax
Not exceeding R46 000	0 per cent of taxable income
Exceeding R46 000 but not exceeding R300 000	10 per cent of the amount by which the taxable income exceeds R46 000
Exceeding R300 000	R25 400 plus 28 per cent of the amount by which the taxable income exceeds R300 000

Table VI: Proposed rate for small business corporations:

Taxable Income	Rate of Tax
Not exceeding R54 200	0 per cent of taxable income
Exceeding R54 200 but not exceeding R300 000	10 per cent of the amount by which the taxable income exceeds R54 200
Exceeding R300 000	R24 580 plus 28 per cent of the amount by which the taxable income exceeds R300 000

Table VII: Current rates for gold mining companies (no change proposed):

Taxable Income	Rate of Tax
On gold mining taxable income	See formula in paragraph 4(*b*) of Appendix I
On non gold mining taxable income	28 per cent of the taxable income
On non gold mining taxable income if exempt from STC	35 per cent of the taxable income
On recovery of capital expenditure	Greater of average rate or 28 per cent of the taxable income

Table VIII: Current rate for employment companies (no change proposed)

Taxable Income	Rate of Tax
All taxable income	33 per cent of taxable income

Table IX: Current rate for long-term insurance companies (no change proposed)

Taxable Income	Rate of Tax
Taxable income of individual policyholder fund	30 per cent of taxable income
Taxable income of company policyholder fund	28 per cent of taxable income
Taxable income of corporate fund	28 per cent of taxable income

Table X: Current rate for tax holiday companies (no change proposed)

Taxable Income	Rate of Tax
All taxable income	0 per cent of taxable income

Table XI: Current rate for non resident companies (no change proposed):

Taxable Income	Rate of Tax
All taxable income from South African source	33 per cent of taxable income

Table XII: Proposed rates for retirement lump sum withdrawal benefits

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

Table XIII: Proposed rates for retirement lump sum benefits

Taxable income from benefits	**Rate of tax**
Not exceeding R300 000	0 per cent of taxable income
Exceeding R300 000 but not exceeding R600 000	R0 plus 18 per cent of taxable income exceeding R22 500
Exceeding R600 000 but not exceeding R900 000	R54 000 plus 27 per cent of taxable income exceeding R600 000
Exceeding R900 000	R135 000 plus 36 per cent of taxable income exceeding R900 000

Table XIV: Current rebates:

Description	**Amount**
Primary rebate	R8 280
Secondary rebate	R5 040

Table XV: Proposed rebates:

Description	**Amount**
Primary rebate	R9 756
Secondary rebate	R5 400

Income Tax: Monetary thresholds subject to periodic legislative change:

Table XVI: General savings thresholds

Description *(The contents of this column are solely for convenience and shall be of no force or effect)*	**Reference to Income Tax Act, 1962**	**Monetary amount**
Broad-based employee share schemes		
Maximum exemption for shares received by an employee in terms of a broad-based employee share plan	Definition of **"qualifying equity share"** in section 8B(3)	R50 000
Maximum deduction for shares issued by an employer in terms of a broad-based employee share plan	The proviso to section 11(*l*A)	R10 000
Exemption for interest and certain dividends		
Exemption for foreign dividends and interest from a source outside the Republic which are not otherwise exempt	Section 10(1)*(i)*(xv)*(aa)*	R3 500

In respect of persons 65 years or older, exemption for interest from a source within the Republic and dividends (other than foreign dividends) which are not otherwise exempt	Section 10(1)*(i)*(xv)*(bb)*(A)	R30 000
In respect of persons younger than 65 years, exemption for interest from a source within the Republic and dividends (other than foreign dividends) which are not otherwise exempt	Section 10(1)*(i)*(xv)*(bb)*(B)	R21 000
Annual donations tax exemption		
Exemption for donations made by entities	Section 56(2)*(a)* and the proviso thereto	R10 000
Exemption for donations made by individuals	Section 56(2)*(b)*	R100 000
Capital gains exclusions		
Annual exclusion for individuals and special trusts	Paragraph 5(1) of Eighth Schedule	R17 500
Exclusion on death	Paragraph 5(2) of Eighth Schedule	R120 000
Exclusion in respect of disposal of primary residence (based on amount of capital gain or loss on disposal)	Paragraph 45(1)*(a)* of Eighth Schedule	R1,5 million
Exclusion in respect of disposal of primary residence (based on amount of proceeds on disposal)	Paragraph 45(1)*(b)* of Eighth Schedule	R2 million
Maximum market value of all assets allowed within definition of small business on disposal when person over 55	Definition of **"small business"** in paragraph 57(1) of Eighth Schedule	R5 million
Exclusion amount on disposal of small business when person over 55	Paragraph 57(3) of Eighth Schedule	R750 000

Table XVII: Retirement savings thresholds

Description *(The contents of this column are solely for convenience and shall be of no force or effect)*	**Reference to Income Tax Act, 1962**	**Monetary amount**
Deductible retirement fund contributions		
Pension fund monetary ceiling for contributions	Proviso to section 11*(k)*(i)	R1 750
Pension fund monetary ceiling for arrear contributions	Paragraph *(aa)* of proviso to section 11*(k)*(ii)	R1 800
Retirement annuity fund monetary ceiling for contributions (if also a member of a pension fund)	Section 11*(n)(aa)*(B)	R3 500
Retirement annuity fund monetary ceiling for contributions (if not a member of a pension fund)	Section 11*(n)(aa)*(C)	R1 750
Retirement annuity fund monetary ceiling for arrear contributions	Section 11*(n)(bb)*	R1 800
Permissible lump sum withdrawals upon retirement		
Pension fund monetary amount for permissible lump sum withdrawals	Paragraph (ii)*(dd)* of proviso to paragraph *(c)* of definition of **"pension fund"** in section 1	R50 000
Retirement annuity fund monetary amount for permissible lump sum withdrawals	Paragraph *(b)*(ii) of proviso to definition of **"retirement annuity fund"** in section 1	R50 000

Table XVIII: Deductible business expenses for individuals

Description *(The contents of this column are solely for convenience and shall be of no force or effect)*	**Reference to Income Tax Act, 1962**	**Monetary amounts**
Car allowance		
Ceiling on vehicle cost	Section 8(1)*(b)*(iiiA)*(bb)*(A)	R400 000
Ceiling on debt relating to vehicle cost	Section 8(1)*(b)*(iiiA)*(bb)*(B)	R400 000

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Table XIX: Employment-related fringe benefits

Description *(The contents of this column are solely for convenience and shall be of no force or effect)*	**Reference to Income Tax Act, 1962**	**Monetary amounts**
Exempt scholarships and bursaries		
Annual ceiling for employees	Paragraph (ii)*(aa)* of proviso to section 10(1)*(q)*	R100 000
Annual ceiling for employee relatives	Paragraph (ii)*(bb)* of proviso to section 10(1)*(q)*	R10 000
Exempt termination benefits	Section 10(1)*(x)*	R30 000
Medical scheme contributions		
Monthly ceiling for schemes with one beneficiary	Section 18(2)*(c)*(i)*(aa)* and paragraph 12A(1)*(a)* of Seventh Schedule	R625
Monthly ceiling for schemes with two beneficiaries	Section 18(2)*(c)*(i)*(bb)* and paragraph 12A(1)*(b)* of Seventh Schedule	R1 250
Additional monthly ceiling for each additional Beneficiary	Section 18(2)*(c)*(i)*(cc)* and paragraph 12A(1)*(c)* of Seventh Schedule	R380
Awards for bravery and long service	Paragraphs *(a)* and *(b)* of further proviso to paragraph 5(2) of Seventh Schedule	R5 000
Employee accommodation	Paragraph 9(3)*(a)*(ii) of Seventh Schedule	R54 200
Accommodation for expatriate employees	Paragraph 9(7B)(ii) of Seventh Schedule	R25 000
Exemption for *de minimis* employee loans	Paragraph 11(4)*(a)* of Seventh Schedule	R3 000
Additional employer deductions for Learnerships		
Monetary ceiling of additional deduction for the employer when entering into a learnership agreement with an existing employee	Section 12H(2)*(a)*(i)*(bb)*	R20 000
Monetary ceiling of additional deduction for the employer when entering into a learnership agreement with a new employee	Section 12H(2)*(a)*(ii)*(bb)*	R30 000
Monetary ceiling of additional deduction for the employer in the case of completing a learnership agreement (all employees)	Section 12H(2)*(b)*(i)*(bb)*	R30 000
Monetary ceiling of additional deduction for the employer when entering into a learnership agreement with an existing employee with a disability	Section 12H(2A)*(a)*(i)*(bb)*	R40 000
Monetary ceiling of additional deduction for the employer when entering into a learnership agreement with a new employee with a disability	Section 12H(2A)*(a)*(ii)*(bb)*	R50 000
Monetary ceiling of additional deduction for the employer in the case of completing a learnership agreement with an employee with a disability	Section 12H(2A)*(b)*(i)*(bb)*	R50 000

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Table XX: Depreciation

Description *(The contents of this column are solely for convenience and shall be of no force or effect)*	**Reference to Income Tax Act, 1962**	**Monetary amounts**
Small-scale intellectual property	Paragraph *(aa)* of proviso to section 11*(g*C)	R5 000
Urban Development Zone incentive	Section 13*quat*(10A)	R5 million

Table XXI: Miscellaneous

Description *(The contents of this column are solely for convenience and shall be of no force or effect)*	**Reference to Income Tax Act, 1962**	**Monetary amounts**
Low-cost housing		
Maximum cost of residential unit where that residential unit is an apartment in a building	Paragraph *(a)* of definition of **"low-cost residential unit"** in section 1	R250 000
Maximum cost of residential unit where that residential unit is a building	Paragraph *(b)* of definition of **"low-cost residential unit"** in section 1	R200 000
Industrial policy projects		
Maximum additional investment allowance in the case of greenfield projects with preferred status	Section 12I(3)*(a)*	R900 million
Maximum additional investment allowance in the case of other greenfield projects	Section 12I(3)*(a)*	R550 million
Maximum additional investment allowance in the case of brownfield projects with preferred status	Section 12I(3)*(b)*	R550 million
Maximum additional investment allowance in the case of other brownfield projects	Section 12I(3)*(b)*	R350 million
Maximum additional training allowance (per employee)	Section 12I(5)*(a)*	R36 000
Maximum additional training allowance in the case of industrial policy projects with preferred status	Section 12I(5)*(b)*(i)	R30 million
Maximum additional training allowance in the case of other industrial policy projects	Section 12I(5)*(b)*(ii)	R20 million
Minimum cost of manufacturing assets for greenfield projects	Section 12I(7)*(a)*(i)*(aa)*	R200 million
Amounts to be taken into account in determining whether an industrial project constitutes a brownfield project		
	Section 12I(7)*(a)*(i)*(bb)*(A)	R30 million
	Section 12I(7)*(a)*(i)*(bb)*(B)	R200 million
Venture capital companies		
Annual deduction limit (natural persons)	Section 12J(3)	R750 000
Lifetime deduction limit (natural persons)	Section 12J(3)	R2.25 million
Investment threshold (in respect of the acquisition of qualifying shares in a junior mining company)	Section 12J(5)*(e)*(i)	R150 million
Investment threshold (in respect of the acquisition of qualifying shares in companies other than junior mining companies)	Section 12J(5)*(e)*(i)	R30 million
At least 10 per cent of the expenditure incurred by a venture capital company must be incurred in respect of qualifying shares in companies with assets with a book value not exceeding the amount indicated	Section 12J(5)*(e)*(ii)	R5 million

At least 80 per cent of the expenditure incurred by a venture capital company must be incurred in respect of qualifying shares in companies with assets with a book value not exceeding the amount indicated	Section 12J(5)*(e)*(iii)	R10 million
Where a venture capital company incurs expenditure in respect of the acquisition of qualifying shares in a junior mining company, the book value of the assets held by that company must not exceed the amount indicated	Section 12J(5)*(e)*(iii)	R100 million
Presumptive turnover tax		
A person qualifies as a micro business for a year of assessment where the qualifying turnover of that person for that year does not exceed the amount indicated	Paragraph 2(1) of Sixth Schedule	R1 million
Maximum of total receipts from disposal of immovable property and assets of a capital nature by micro business	Paragraph 3*(e)* of Sixth Schedule	R1.5 million
Minimum value of individual assets and liabilities in respect of which a micro business is required to retain records	Paragraphs 14*(c)* and *(d)* of Sixth Schedule	R10 000
Public benefit organisations		
PBO trading income exemption	Section 10(1)*(c*N)(ii)*(dd)*(ii)	R150 000
Deduction of donations to transfrontier parks	Section 18A(1C)*(a)*(ii)	R1 million
Housing provided by a PBO: maximum monthly income of beneficiary household	Paragraph 3*(a)* of Part I of Ninth Schedule and paragraph 5*(a)* of Part II of Ninth Schedule	R7 500
Recreational clubs Club trading income exemption	Section 10(1)*(c*O)(iv)*(bb)*	R100 000
Prepaid expenses Maximum amount of deferral	Paragraph *(bb)* of proviso to section 23H(1)	R80 000
Small business corporations Maximum gross income	Section 12E(4)*(a)*(i)	R14 million
Housing associations Investment income exemption	Section 10(1)*(e)*	R50 000

Table XXII: Administration

Description *(The contents of this column are solely for convenience and shall be of no force or effect)*	**Reference to Income Tax Act, 1962**	**Monetary amounts**
Investment income exempt from provisional tax		
In the case of natural persons below age 65	Paragraph 18(1)*(c)*(ii) of Fourth Schedule	R20 000
In the case of natural persons over age 65	Paragraph 18(1)*(d)*(i) of Fourth Schedule	R120 000
S.I.T.E. threshold	Items *(a)* and *(b)* of paragraph 11B(2) and items *(a)*, *(b)*(ii) and *(b)*(iii) of paragraph 11B(3) of Fourth Schedule	R60 000
Threshold in respect of automatic appeal to High Court	Section 83(4B)*(a)*	R50 million

CLAUSE x2

Income Tax: Amendment of section 1 of the Income Tax Act, 1962

Subclause (a): In 2008, two new retirement definitions were added: one for retirement fund lump sum benefits (i.e. lump sums received upon retirement or death) and one for retirement fund lump sum withdrawal benefits (i.e. lump sums received before retirement due to various causes such as retrenchment, job change and divorce). The proposed amendment adds a single definition ("lump sum benefit") for referring to both forms of benefits.

Subclause (b): The proposed amendment deletes the term "superannuation" because this definition of retirement fund savings is not used in South African parlance. Other changes include the removal of a superfluous "or" as well as the correction of cross-references.

Subclause (c): The proposed amendment is a stylistic change to the divorce aspect of the definition of "pension preservation fund." The amendment makes the language consistent with the style of the other aspects of the definition.

Subclauses (d), (e), (f) and (g): In 2008, legislative changes were made to clarify which forms of movement between the different types of retirement fund are taxable versus which are tax-free. As a theoretical matter, a tax-free movement takes place if the savings being moved move to the same or higher level of restrictiveness (see paragraph 6 of the Second Schedule). Consequently, for example, taxpayers may move savings from a retirement annuity fund to another retirement annuity fund. Savings within pension funds (and pension preservation funds) may be moved to other pension funds (and pension preservation funds) as well as to retirement annuity funds. Savings within provident funds (and provident preservation funds) may be moved to any other form of retirement fund.

- Subclause *(d)*: the proposed amendment aligns paragraph *(b)*(ii) of the proviso to the definition of "pension preservation fund" (which applies in the context of divorce) with the principles set out above. More specifically, savings in both provident funds (plus provident preservation funds) and pension funds (plus pension preservation funds) may be transferred to pension preservation funds free of tax. Savings in retirement annuity funds cannot, however, be transferred to pension preservation funds without tax.

- Subclause *(e)* of the proposed amendment aligns paragraph *(c)* of the proviso to the definition of "pension preservation fund" with the principles set out above. More specifically, the effect of the proposed amendment is that savings in a pension preservation fund may be transferred tax-free to a pension fund, a pension preservation fund and a retirement annuity fund.

- Subclause *(f)* of the proposed amendment aligns paragraph *(b)*(ii) of the proviso to the definition of "provident preservation fund" (which applies in the context of divorce) with the principles set out above. More specifically, savings in provident funds (and provident preservation funds) may only be transferred free of tax to a provident preservation fund. Savings within retirement annuity funds, pension funds and pension preservation funds cannot be transferred to pension preservation funds without tax being triggered.

- Subclause *(g)* of the proposed amendment aligns paragraph *(c)* of the proviso to the definition of "provident preservation fund" with the principles set out above. More specifically, savings in a provident preservation fund may be transferred tax-free to any other retirement fund (on the basis that all other funds are at least as restrictive as a pension preservation fund).

- Subclause *(h)*: The proposed amendment corrects a spelling error.

CLAUSE x3

Income Tax: Amendment of section 7 of the Income Tax Act, 1962

The proposed amendment treats all pre-retirement withdrawals from retirement savings as income accrued if the withdrawal stems from a maintenance order under section 37D(1)*(d)*(iA) of the Pension Funds Act. The recurrent nature limitation has been dropped. The amendment is proposed based on the principle that taxpayers should not receive relief under the lump sum formula for forced payments of maintenance in arrears.

CLAUSE x4

Income Tax: Amendment of section 9 of the Income Tax Act, 1962

The proposed amendment clarifies that lump sum benefits, as is the case with all other forms of retirement fund payouts, fall under the deemed source rules of section 9(1)*(g)*.

CLAUSE x5

Income Tax: Amendment of section 12I of the Income Tax Act, 1962

Section 12I(7)*(b)* contains two requirements relating to tax compliance of a company that wishes to qualify for the section 12I allowance. Section 12I(7)*(b)*(i) requires the submission of a declaration of good standing as to tax compliance, and section 12I(7)*(b)*(ii) requires the submission of a certificate obtained from the Commissioner confirming tax compliance. On the basis that both requirements seek to achieve the same objective, it is proposed that the requirement to make submission of the declaration (as required by section 12I(7)*(b)*(i)) be deleted as superfluous.

CLAUSE x6

Income Tax: Amendment of section 18 of the Income Tax Act, 1962

See notes on **MEDICAL SCHEME CONTRIBUTIONS**.

CLAUSE x7

Income Tax: Amendment of section 30A of the Income Tax Act, 1962

Prior to 2007, recreational clubs were entitled to a blanket exemption. This blanket exemption was eliminated in late 2007 with recreational clubs becoming partially taxable. The 2007 rules, however, only become effective for pre-existing clubs as from 31 March 2009. The proposed amendment delays this effective date to 30 September 2010 on the basis that recreational clubs are facing operational difficulties in preparing for the change.

CLAUSE x8

Income Tax: Amendment of paragraph 1 of the Second Schedule to the Income Tax Act, 1962

See notes on **LUMP SUM BENEFIT CALCULATIONS**.

CLAUSE x9

Income Tax: Amendment of paragraph 2 of the Second Schedule to the Income Tax Act, 1962

The proposed amendment corrects various anomalies reflected in the core charging provision applicable to lump sum benefits.

- Subparagraph *(a)*: No changes to this subsection (which is the charging provision applicable to lump sums received or accrued on retirement) are proposed.

- Subparagraph *(b)*: This subsection is the charging provision applicable to pre-retirement lump sum withdrawals. It applies to lump sum withdrawals on divorce, transfers between funds and all other pre-retirement lump sum withdrawals.

    - Divorce transfers (item (iA)): The proposed amendment provides a closer linkage between pension-related divorce orders and deductions from minimum individual reserves contemplated in section 37D(1)*(d)* of the Pension Funds Act. The first set of rules (under sub-item (AA)) covers attribution of withdrawals back to the member for pre-existing rules relating to divorces granted before 13

September 2007. The second set of rules (under sub-item (BB)) takes into account the “clean-break” principle (where the funds are immediately divided) applicable to divorces granted on or after 13 September 2007.

- o Fund transfers (item iB)): The proposed amendment taxes all transfers from a retirement fund to another retirement fund, with the date of accrual occurring on the date of transfer. (Exceptions to this principle are found in paragraph 6*(b)*, i.e. if savings within a fund move to another fund of equal or greater restrictiveness).

- o All other transfers (item (ii)): The proposed amendment taxes all other pre-retirement lump sum benefits (e.g. upon resignation) in the same manner as under pre-existing law.

CLAUSE x10

Income Tax: Amendment of paragraph 2B of the Second Schedule to the Income Tax Act, 1962

The proposed amendment clarifies the relationship between pre-existing law and the revised system of taxation of retirement lump sums in the context of divorce. Amounts deducted from the minimum individual reserve in the context of divorce are taken into account under the newly revised paragraph 2*(b)*(iA). Amounts not so deducted are subject to pre-existing law (i.e are taxable to the member only upon the member’s accrual (e.g. retirement or resignation)).

CLAUSE x11

Income Tax: Amendment of paragraph 3 of the Second Schedule to the Income Tax Act, 1962

The proposed amendment adds a missing word.

CLAUSE x12

Income Tax: Amendment of paragraph 4 of the Second Schedule to the Income Tax Act, 1962

The proposed amendment limits pre-13 September 2007 accruals to members. This is because the “clean-break” principle cannot apply to divorce orders made before 13 September 2007.

CLAUSE x13

Income Tax: Amendment of paragraph 6 of the Second Schedule to the Income Tax Act, 1962

The proposed amendment clarifies that the relief for certain fund-to-fund transfers is available to all pre-retirement withdrawals. Regarding the deletion of paragraph *(b)* of paragraph 6, see notes on **LUMP SUM BENEFIT CALCULATIONS**.

CLAUSE x14

Income Tax: Amendment of paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962

The proposed amendment explicitly requires monthly withholding for maintenance payments deducted from minimum individual reserves.

CLAUSE x15

Income Tax: Amendment of paragraph 12A of the Seventh Schedule to the Income Tax Act, 1962

See notes on **MEDICAL SCHEME CONTRIBUTIONS**.

CLAUSE x16

Income Tax: Amendment of paragraph 45 of the Eighth Schedule to the Income Tax Act, 1962

Under current law, taxpayers may exclude up to R1,5 million of any capital gain on the sale of a primary residence. As discussed in this year’s Budget Review, it is proposed that taxpayers now be eligible: (i) for a complete exclusion in respect of the disposal of a primary residence where the proceeds from the disposal do not exceed R2 million, or (ii) an exclusion of up to R1,5 million of capital gain for primary residences where the proceeds from the disposal exceed R2 million.

CLAUSE x17

Air Passenger Departure Tax: Amendment of section 47B of the Customs and Excise Act, 1964

The air passenger departure tax was last adjusted for inflation in 2005. The Minister of Finance has therefore proposed an increase in the air passenger tax from R60 to R80 in respect of international departing passengers travelling to Botswana, Lesotho, Namibia and Swaziland, and from R120 to R150 for all other international flight destinations.

The rate changes for Botswana, Lesotho, Namibia and Swaziland will be published by way of notice in the *Gazette*, and the rate change from R120 to R150 for other countries is contained in this Bill.

These changes will generally come into operation for flights commencing on or after 1 October 2009. The new rates will not, however, apply to flight tickets purchased and issued before this Bill is promulgated.

CLAUSE x18

Customs and Excise: Amendment of Schedule No. 1 to the Customs and Excise Act, 1964

This clause provides for the amendment of Schedule No. 1 to the Customs and Excise Act, 1964 referred to in Annexure C of the 2009 Budget Review. These amendments give effect to the taxation proposals which were tabled by the Minister of Finance during his Budget Speech on 11 February 2009 and contain the rates of duty in respect of alcohol and tobacco products.

CLAUSE x19

Value-Added Tax: Amendment of certain amounts for purposes of the Value-Added Tax Act, 1991

This clause provides for the amendment of monetary thresholds reflected in the Value-Added Tax Act, 1991, that are subject to periodic legislative change. The proposed amendments give effect to taxation proposals in respect of VAT registration, tax invoices and tax periods, and reflect the monetary thresholds in respect of such proposals.

CLAUSE x20

Value-Added Tax: Amendment of section 23 in the Value-Added Tax Act, 1991

This clause provides for the increase of the voluntary registration VAT threshold from R20 000 to R50 000, effective only as of the 1 March 2010.

CLAUSE x21

Income Tax: Amendment of section 37D of the Pension Funds Act, 1956

The proposed amendment corrects a cross-reference within the Pensions Funds Act.

CLAUSE x22

Mineral and Petroleum Resources Royalty Act: Amendment of section 18 of the Mineral and Petroleum Resources Royalty Act, 2008

The date of coming into operation of the Mineral and Petroleum Resources Royalty Act, 2008 has been deferred from 1 May 2009 to 1 March 2010. The proposed amendments defer certain sections in this Act for purposes of deferring liability for the royalty and administrative efficiency. For instance, provisions in the Act that trigger the royalty (or relate to liability for the royalty) in respect of transferred mineral resources have been postponed to 1 March 2010. Moreover, registered persons may conclude Fiscal Stability Agreements with the Minister of Finance as early as 1 November 2009. However, such agreements only apply in respect of mineral resources transferred on or after 1 March 2010.

CLAUSE x23

Mineral and Petroleum Resources Royalty (Administration) Act: Amendment of section 2 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008

For administrative efficiency reasons, the proposed amendment requires affected parties that qualify for registration in terms of the Act on 1 November 2009 to pre-register with the Commissioner between 1 November 2009 and 31 January 2010. Affected parties that qualify for registration in terms of the Act after 1 November 2009 have 60 days from that date of qualifying to register with the Commissioner.

CLAUSE x24

Mineral and Petroleum Resources Royalty (Administration) Act: Amendment of section 21 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008

The date of coming into operation for the Mineral and Petroleum Resources (Administration) Act, 2008 has been deferred from 1 May 2009 to 1 March 2010. The proposed amendments defer certain sections in the Act for purposes of administrative efficiency. For instance, provisions in the Act that relate to registration come into operation on 1 November 2009 as registration should take place prior to the onset of the imposition of the royalty. However, administrative provisions in the Act that relate to liability for the royalty like payments, returns, assessments and refunds will only come into operation on 1 March 2010.

CLAUSE x25

Income Tax: Amendment of section 59 of the Revenue Laws Amendment Act, 2008

The proposed amendment sets the effective date at 1 August 2008 for the pre-existing fund-to-fund transfer relief so that these rules are aligned to section 14 transfers occurring under the Pensions Funds Act. The newly proposed fund-to-fund transfer rules apply from 1 March 2009.

CLAUSE x26

See notes on **SPECIAL MEASURES RELATING TO THE SHARING OF GENERAL FUEL LEVY REVENUE**

CLAUSE x27

Short title and commencement:

This clause provides for the name of the Act and its commencement date.