NATIONAL
TREASURY

REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

TAXATION LAWS AMENDMENT BILL, 2023

2 February 2024

[W.P. – '23]

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1.1 APPORTIONING THE TAX-FREE INVESTMENT CONTRIBUTION LIMITATION AND LIMITING THE RETIREMENT FUNDS CONTRIBUTION DEDUCTION WHEN AN INDIVIDUAL CEASES TO BE A TAX RESIDENT

[Applicable provisions: Sections 11F and 12T of the Income Tax Act, No. 58 of 1962 ("the Act")]

I. Background

In 2022, changes were made in the Act to provide that when an individual ceases to be a South African tax resident, the annual interest exemption available to individuals in terms of section 10(1)(*i*) is apportioned; and the capital gains tax annual exclusion available to individuals in terms of paragraph 5(1) of the Eighth Schedule to the Act is limited.

The main aim of the above-mentioned changes was to address an anomaly that arises because of the two years of assessment which are created during a single 12-month tax period when an individual ceases to be a South African tax resident. By way of illustration, when an individual ceases to be a South African tax resident on 1 June 2022, his or her year of assessment as a South African tax resident would have begun on 1 March 2022 but would be deemed to have ended on 31 May 2022, this constitutes a 3-month year of assessment as a South African tax resident. The individual's year of assessment as a non-South African tax resident would have thus begun on 1 June 2022 and ended on 28 February 2023, constituting a 9-month year of assessment as a non-tax resident. Both years of assessment (the 3-month and 9-month periods respectively) would fall within a single 12-month tax period.

II. Reasons for change

It has come to Government's attention that there are other provisions in the Act that contain inconsistencies which result in two years of assessment being created during a single 12-month period when an individual ceases to be a South African tax resident. These provisions include the following:

- section 12T(4)(*a*) of the Act, which provides that for the exemption of returns earned from a Tax-Free Savings Account to apply, aggregate contributions made into said account should not exceed R36 000 during a year of assessment; and

- section 11F(2) of the Act which makes provision for a deduction of aggregate amounts contributed to a retirement fund during a year of assessment. One of the criteria as relates to this deduction is that such deduction must not exceed R350 000 in any year of assessment.

As a result of an individual having two years of assessment in a single 12-month tax period when he or she ceases to be a South African tax resident, the individual may double-up on the Tax-Free Savings Account annual contribution limitation of R36 000 as well as the R350 000 utilised to calculate the allowable section 11F deduction (as the respective limitations are available per year of assessment, and are currently not apportioned or limited in instances where the year of assessment is less than 12 months). This is contrary to the policy rationale for sections 11F and 12T of the Act.

As such, an individual would currently be able to contribute R72 000 to a Tax-Free Savings Account while enjoying tax-free status on returns received from that Tax-Free Savings Account

(R36 000 for the 3-month period and another R36 000 for the 9-month period), as well as a current possible maximum section 11F deduction of R700 000 (R350 000 for the 3-month period and R350 000 for the 9-month period) during the 12-month period 1 March 2022 to 28 February 2023.

III. Proposal

To address this anomaly and ensure alignment with other provisions of the Act, it is proposed that the following changes be made in the Act:

- **Limiting annual Tax-Free Savings Account contributions**: *Section 12T(4)(a) of the Act* - Where any person's year of assessment is less than 12 months, the total contribution limitation that shall apply in terms of section 12T(4)(*a*) of the Act , for years of assessment during the 12-month period commencing in March and ending at the end of February of the immediately following calendar year must not exceed R36 000. As such a taxpayer may utilise the contribution limitation as best suits the taxpayer, provided that the cumulative contributions made during the 12 month period do not exceed the contribution limitation.

- **Limiting the amount utilised to calculate the allowable retirement contribution deduction**: *Section 11F(2)(a) of the Act* - Where any person's year of assessment is less than 12 months, the amount stipulated in section 11F(2)(*a*) of the Act as utilised to calculate the allowable retirement contribution deduction (which is currently R350 000), for years of assessment during the 12 month period commencing in March and ending at the end of February of the immediately following calendar year must not exceed R350 000.

IV. Effective date

The amendments will come into operation on 1 March 2024 and apply in respect of years of assessment commencing on or after that date.

1.2 CLARIFYING ANTI-AVOIDANCE RULES FOR LOW-INTEREST OR INTEREST-FREE LOANS TO TRUSTS

[Applicable provision: Section 7C of the Act]

I. Background

In 2016, anti-avoidance measures aimed at curbing the tax-free transfer of wealth to trusts using low interest or interest free loans, advances or credit were introduced in section 7C of the Act. The tax avoidance structures involved taxpayers transferring assets to trusts where the purchase price that the trust owes in respect of the assets is left outstanding on loan account in favour of that taxpayer but in respect of which no interest or very low interest is charged. As an alternative, taxpayers would advance a low interest or interest-free loan, advance or credit upfront to a trust for the trust to use the money to acquire assets.

Since the introduction of these anti-avoidance measures, taxpayers have been devising variations to the abovementioned structures. For example, companies were introduced in the avoidance structures wherein taxpayers would advance interest free or low interest loans to companies owned by trusts because initially the anti-avoidance measures focused solely on interest free or low interest loans, advances or credit that were made by a natural person or a company (at the instance of a natural person) to trusts. Changes were consequently made in section 7C of the Act in 2017 to strengthen these rules so that interest free or low interest loans, advances or credit that are made by a natural person or a company (at the instance of a natural person) to a company that is a connected person in relation to a trust are also subject to the anti-avoidance measure. In 2020, further changes were made in section 7C of the Act to curb the use of further schemes that avoided the application of the anti-avoidance measures by way of natural persons subscribing for preference shares with no or a low rate of return in a company owned by a trust that is a connected person to those individuals.

II. Reasons for change

A. Determination of the deemed donation in respect of debt denominated in foreign currency

Where the provisions of section 7C of the Act apply, any interest foregone in respect of low interest or interest free loans, advances or credit owed by any trust or company is deemed to be a donation that is subject to 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. However, in instances where the low interest or interest free loan, advance or credit owing by any trust or company is denominated in foreign currency, the provisions of the anti-avoidance measure do not provide guidance to taxpayers on how and when this amount should be translated to South African rands.

B. Exclusion of primary residence from the application of the anti-avoidance measure

A deemed donation is not triggered under the provisions of section 7C of the Act where certain exclusions contained in the provisions apply. For example, there is an exclusion for where the low interest or interest free loan, advance or credit is used by a trust or company to facilitate the acquisition of a primary residence for a person advancing that low interest or interest free loan, advance or credit or a spouse of such person. It has come to Government's attention that this exclusion in respect of a primary residence does not fully encompass what constitutes a primary residence in terms of the Eighth Schedule of the Act when it was intended that the meanings should be aligned.

III. Proposal

C. Determination of deemed donation in respect of debt denominated in foreign currency

It is proposed that changes be made in the legislation to provide guidance on the determination of any deemed donation that is triggered by the application of the anti-avoidance measure in respect of low interest or interest free loans, advances or credit that are denominated in any currency other than South African Rand. It is proposed that the donation be translated by the natural person referred to in section 7C(1)(*a*), 1(*b*), (1A) or (1B) to the currency of the Republic by applying the average exchange rate for that year of assessment.

D. Exclusion of primary residence from the application of the anti-avoidance measure

It is proposed that the exclusion for the acquisition of a primary residence be clarified by also including funding of improvements to the primary residence and by applying the limitations in paragraph 46 relating to the land on which the primary residence is situated to the primary residence. In addition, it is clarified that the exclusion applies to funding used to both acquire and improve a primary residence.

IV. Effective date

The amendments will come into effect on 1 January 2024 and applies in respect of years of assessment commencing on or after that date.

1.3 SOLAR ENERGY TAX CREDIT

[Applicable provisions: New section 6C and section 25 of the Act]

I. Background

The tax system does not generally allow for deductions in respect of personal consumption, for example, expenses incurred in respect of a motor vehicle used for private purposes or expenses incurred in respect of a salary paid to a domestic worker.

However, in certain circumstances, either for purposes of encouraging individuals to save for retirement or for philanthropic purposes, or in instances where the expenditure is directly linked to employment income, the Act allows individuals who derive employment income, and or passive income, a credit or deduction in respect of a limited number of expenses, such as:

- Contributions to retirement funds;
- Medical scheme contributions and other medical expenses;
- Donations to approved Public Benefit Organisations;
- Home office expenses under certain qualifying criteria;
- Wear and tear in respect of certain assets;
- Amounts received for services rendered that are subsequently refunded;
- Bad and doubtful debts that are related to employment subject to certain conditions;
- Legal costs under certain qualifying circumstances;

On the other hand, an individual who carries on a business is also eligible for deductions and allowances provided for in the Act in respect of his or her business expenses.

II. Reasons for change

In response to the severe energy crisis being experienced by the country, Government is proposing various policy measures to the renewable energy mix to improve energy efficiency and reduce pressure on the electricity grid. To encourage households to invest in clean electricity generation capacity, which can supplement electricity supply, Government proposed, in the 2023 Budget Review, a rooftop solar tax incentive for individuals who invest in solar photovoltaic (PV) panels.

III. Proposal

It is proposed that individuals who are liable for personal income tax be granted a solar energy tax credit, which will apply as follows:

A. Solar PV panels eligible for the solar energy tax credit

The solar energy tax credit will apply to solar PV panels:

- which are new and unused, acquired by the individual and brought into use for the first time by the individual on or after 1 March 2023 and before 1 March 2024;
- which have a minimum generation capacity of not less than 275W each;
- which form part of a system that is connected to the distribution board of a residence that is mainly (more than 50 per cent) used by the individual for domestic purposes; and
- in respect of which an electrical certificate of compliance is issued for that property in terms of Electrical Installation Regulations, 2009 after the solar PV panels have been installed.

B. Time period for the solar energy tax credit

To encourage individuals to invest in clean electricity generation capacity as soon as possible, the solar energy tax credit will only be available for a period of 1 year and will apply to new and unused solar PV panels acquired by the individual and that are brought into use for the first time on or after 1 March 2023 and before 1 March 2024.

C. *Amount of the solar energy tax credit allowed as a deduction.*

The amount of the solar energy tax credit allowed as a deduction to an individual is 25 per cent of the cost of the solar PV panels described above, up to a maximum of R15 000.

D. *Meaning of residence for solar energy tax credit*

As indicated above, the energy tax credit applies to new and unused solar PV panels that are installed at a residence that is mainly used by an individual for domestic purposes. This implies that the energy tax credit will apply to individuals who:

- own, rent or occupy residences and acquire new and unused solar PV panels for installation at residences that are mainly used for domestic purposes;
- incur the cost to acquire the solar PV panels.

E. Limitation of solar energy tax credit in respect of assets granted an allowance in terms of section 12B or 12BA of the Act

To ensure that there is no duplication of tax incentives in respect of a solar PV panel, the energy tax credit shall not be allowed for a solar PV panel in respect of which an allowance is granted in terms of section 12B or 12BA of the Act.

IV. Effective date

The amendments are deemed to have come into operation on 1 March 2023 and apply in respect of years of assessment commencing on or after 1 March 2023

1.4 CLARIFYING THE AMOUNT OF EMPLOYER CONTRIBUTION TO A RETIREMENT FUND TO BE DEDUCTIBLE

[Applicable provision: Section 11F of the Act]

I. Background

Section 11F(4) of the Act, read together with paragraphs 2(*h),* 2(*l*), 12D and 13 of the Seventh Schedule to the Act makes provision for contributions made by the employer to a retirement fund, made on behalf of an employee, to be regarded as an amount equal to the cash equivalent of the value of the taxable fringe benefit and be taxable in the employee's hands. In accordance with section 11F(4) of the Act, amounts paid or contributed by an employer to a retirement fund on behalf of an employee are deemed to have been contributed by the employee and are therefore taken into consideration when determining the employee's allowable deduction in terms of section 11F of the Act.

II. Reasons for change

Currently, section 11F(4) of the Act does not have a requirement that the cash equivalent (so calculated as employer contributions to a retirement fund on behalf of an employee) be included in the employee's income when determining the allowable deduction in terms of section 11F of the Act. As a result, even if an employer's contribution to the retirement fund is not subject to fringe benefit tax because the employee's remuneration qualifies for income tax exemption in terms of section 10(1)(*o*)(ii) of the Act, the employee may still be entitled to a deduction in terms of section 11F of the Act.

This anomaly therefore creates a scenario where an employee may be entitled to a deduction of the employer contribution in terms of section 11F of the Act, even though the employee was not subject to fringe benefit tax on that contribution. Further to the above, if all their income is tax exempt, the employer contribution may be carried forward to retirement or withdrawal from their respective retirement fund and be allowed as a deduction against the employee's lump sum or annuity, this again, without the employee having been taxed on such employer contribution.

The above anomaly goes against the policy intent. As is evident in sections 6A and 6B of the Act (which deal with the allowable medical tax credits), the policy intent is for a deduction or tax credit to only be afforded to amounts included in the taxpayer's income (i.e., a deduction or tax credit should not be available for tax exempt amounts).

III. Proposal

To address this anomaly and ensure parity with other provisions of the Act, it is proposed that changes be made in section 11F(4) of the Act so that the deduction in terms of this section only apply to the extent that the cash equivalent (so calculated as employer contributions to a retirement fund on behalf of an employee) is included in the employee's income as a taxable benefit in terms of paragraphs 2(*l*) and 12D of the Seventh Schedule to the Act.

IV. Effective date

The amendments will come into operation on 1 March 2024 and apply in respect of years of assessment commencing on or after that date.

1.5 TRANSFERS BETWEEN RETIREMENT FUNDS BY MEMBERS WHO HAVE REACHED NORMAL RETIREMENT AGE BUT NOT YET OPTED TO RETIRE

[Applicable provisions: Section 1(1) of the Act: definitions of “pension fund”, “provident fund” and “retirement interest”, paragraph 6A of the Second Schedule to the Act]

I. Background

Paragraph 2(1)(*c*) of the Second Schedule to the Act regulates the amount to be included in gross income for any year of assessment, namely, any amount transferred for the benefit of a member of a retirement fund on or after normal retirement age (as defined in the rules of the fund), but before retirement date (as defined in section 1(1) of the Act), less any deductions allowed under paragraph 6A of the Second Schedule to the Act.

Prior to 1 March 2022, paragraph 6A of the Second Schedule to the Act permitted the following deductions when calculating the retirement fund lump sum benefit to be included in gross income:

- Transfers from a pension fund into a pension preservation fund, provident preservation fund or a retirement annuity fund; and

- Transfers from a provident fund into a pension preservation fund, a provident preservation fund or a retirement annuity fund.

With effect from 1 March 2022 transfers into a similar fund by a member of a pension preservation or provident preservation fund (who has reached normal retirement age in terms of the fund rules but has not yet opted to retire from the respective fund) were also included in the ambit of paragraph 6A of the Second Schedule to the Act. As a result, any transfers between preservation funds where the transfer is between similar funds and the member involved has reached normal retirement age in terms of the fund rules but has not yet opted to retire from the relevant fund are tax-free.

II. Reasons for change

It has come to Government’s attention that there are some instances where pension and provident fund members (who have reached normal retirement age in terms of the fund rules but have not yet opted to retire from the respective fund) are being subjected to involuntary transfers to another pension or provident fund, and such transfers are being subjected to tax.

III. Proposal

To address this issue and ensure parity amongst members of retirement funds who have reached normal retirement age in terms of the fund rules but have not yet opted to retire from their respective fund, and are subject to an involuntary transfer, it is proposed that the following changes be made in the Act:

- members of pension or provident funds who have reached normal retirement age as stipulated in the fund rules, but have not yet opted to retire from said fund, and are subject to an involuntary transfer, are able to have their retirement interest transferred to an equally or more restrictive retirement fund, fund without incurring a tax liability; and

- 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.

IV. Effective date

The amendments come into operation on 1 March 2024 and apply in respect of years of assessment commencing on or after that date.

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2. INCOME TAX: BUSINESS (GENERAL)

2.1 REVIEWING THE PRINCIPLES OF PRACTICE NOTE 31 OF 1994

[Applicable provision: New section 11G of the Act]

I. Background

In 1994 Practice Note 31 of 1994, titled "*Interest paid on moneys borrowed"* was issued. Practice Note 31 provides a concession to taxpayers that accrue interest income by enabling them to obtain a deduction in respect of expenditure incurred in the production of interest without the taxpayer having carried on a trade. Such deductions are limited to the taxable interest income as it is intended that they do not give rise to losses.

II. Reasons for change

On 16 November of 2022, SARS issued a notice of its intention to withdraw Practice Note 31 of 1994 with effect from 1 March 2023 with such withdrawal applying in respect of years of assessment commencing on or after that date. Taxpayers were given an opportunity to make representation for legislative amendments as part of National Treasury's Budget 2023 Annexure C in respect of which taxpayer workshops were held in December 2022.

After reviewing public comments received, in the 2023 Budget Review, an announcement was made that Government will consider and review the impact of the proposed withdrawal and whether changes could be made in the tax legislation to accommodate legitimate transactions affected by the withdrawal. In view of this Budget announcement, SARS delayed and aligned the withdrawal of the Practice Notes with the effective date of any legislation arising from the proposed considerations.

III. Proposal

Certainty is one of the cornerstones of a good tax system and clearly legislated tax policies are imperative in ensuring certainty for both taxpayers and SARS. As such, Government proposes that Practice note 31 of 1994 should, following the introduction of a comprehensive concession mechanism following further stakeholder engagement in the 2024 legislative cycle, be withdrawn and proposes to only provide legislative guidance to the extent that deductions dealt with in terms of Practice note 31 of 1994 align with currently prevailing policy.

It is Government's intention that access to funding should not be adversely affected by the proposed withdrawal of practice note 31. As a result, the concession contained in section 11G will apply to any person that incurs interest expenditure in the production of interest income (limited to said interest income) without regard to any shareholding threshold of any back-to-back lending arrangement.

Furthermore, the new section 11G will apply in respect of interest as defined in section 24J and interest deductible under section 11G will be limited to the amount of interest income accrued as a result of its incurral.

IV. Effective date

The amendments will come into effect on 1 January 2025 and apply in respect of years of assessment commencing on or after that date.

2.2 REFINEMENT OF THE APPLICATION OF THE QULAIFYING PURPOSE EXCLUSION FOR HYBRID INSTRUMENTS

[Applicable provision: Section 8EA of the Act]

I. Background

Hybrid instrument anti-avoidance measures were introduced by Government to address concerns of undue tax advantages obtained through the use of equity instruments with debt features to effectively change the nature of taxable interest into tax-exempt dividend income.

The first and third-party backed share anti-avoidance rules were introduced by Government during 2012 to deal with concerns regarding preference shares with dividend yields backed by third parties. These anti-avoidance rules deem dividend yields of third-party backed shares to be treated as income unless the funds derived from the issue of the third-party backed shares are used for a qualifying purpose.

A qualifying purpose for the use of funds derived from the issue of a preference share can include the—

a) direct or indirect acquisition of equity shares in an operating company;
b) acquisition or redemption of any preference shares previously used for any qualifying purpose;
c) settlement of debt used for the purposes set out above and any interest accruing on such debt; or
d) payment of any dividend, foreign dividend as it relates to (b) above.

The first qualifying and third purpose exceptions above to the third-party backed share anti-avoidance only applies when there is a direct or indirect acquisition of an equity instrument in a company that is an operating company at the time of the receipt or accrual of any dividend or foreign dividend in respect of that equity instrument (the qualifying purpose test).

II. Reasons for change

The concept of the qualifying purpose exceptions to the third-party anti-avoidance rules was introduced in an effort by government to mitigate certain identified adverse tax consequences affecting legitimate business acquisition transactions. These exceptions recognise the need for preference share financing in respect of share acquisitions because South African tax law does not generally allow for deductible interest when debt is employed to finance a share acquisition. Essentially, the introduction and amendment of these exceptions meant that preference share funding could continue as a means for acquiring an ownership interest in active operating or start-up companies.

At issue are the tax consequences of a dividend declared by the issuer of a preference share, which was issued for the specified qualifying purpose, after the shares in an operating company financed by the preference share funding were disposed of by the shareholder in the operating company.

The qualifying purpose definition has been amended several times since its inception after engagement with taxpayers and financial sector participants. However, these targeted amendments over a period and especially the legislative wording and structure used to achieve certain results has unintentionally narrowed deviated from the qualifying purpose test by not emphasising all aspects of the policy rationale.

Example: The definition of a qualifying purpose was amended in 2016 to specifically cater for the investment of funds derived from preference share issues in equity shares of start-up companies, by applying the qualifying purpose test whether the company is an operating company at the time of the receipt or accrual of any dividend in respect of those preference shares.

This may lead to a scenario where the qualifying purpose test is considered without the requirement of the ownership of the equity shares in an operating company that underpins the qualifying purpose exemption.

III. Proposal

The current wording of the Act could result in certain dividends or foreign dividends received by or accrued in respect of a third-party backed share not being deemed as income when the shares in that operating company are no longer held by the person who initially acquired them.

It is proposed that the legislation be amended to specifically introduce an ownership requirement, of the equity shares in the targeted operational company by the person that acquired those equity shares, at the time of the receipt or accrual of any dividend or foreign dividend.

To balance the integrity of the anti-avoidance measure but to also acknowledge the—

a) commercial reality of preference share funding arrangements; or
b) impact of corporate actions, especially on listed equity shares, on the person’s ability to still hold the acquired equity shares of the targeted operating company, at the time of the receipt or accrual of any dividend or foreign dividend in respect of the preference shares,

an arrangement where an equity share is no longer held in the operating company may be disregarded in any one of the following two situations:

- the equity shares in the targeted operating company were disposed of and the funds derived from that disposal are used by the issuer of the preference share within 90-days of that disposal;

- the equity shares in the operating company were listed shares and substituted for listed shares in terms of an arrangement that is announced and released as a corporate action as contemplated in the JSE Limited Listing Requirements in the SENS (Stock Exchange News Service) as defined in the JSE Limited Listing Requirements or a corporate action as contemplated in the listings requirements of any other exchange, licensed under the Financial Markets Act, that are substantially the same as the requirements prescribed by the JSE Limited Listing Requirements, where that corporate action complies with the applicable requirement of that exchange.

IV. Effective date

The amendments will come into effect on 1 January 2024 and apply in respect of any dividend or foreign dividend received or accrued during years of assessment commencing on or after that date.

2.3 ADDRESSING EXCESSIVE AMOUNTS OF CONTRIBUTED TAX CAPITAL

[Applicable provision: section 1(1) of the Act: “contributed tax capital” definition]

I. Background

Contributed tax capital (CTC) is a calculated amount for tax purposes that is the amount of tax capital of a class of shares in a company, ensuring that no tax is paid on the return of that amount to shareholders.

An amount of CTC is determined by either: (1) the consideration received by or accrued to a resident company in exchange for the issue of shares of a particular class by that resident company; or (2) the aggregate of the market value of a foreign company when it becomes a tax resident in South Africa together with the consideration subsequently allocated in respect of a particular class of shares. However, CTC is reduced by any amounts, referred to as capital distributions, transferred by the company to the shareholders.

II. Reasons for change

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 that foreign intermediary to South Africa. When this takes place, the deemed CTC amount of that foreign intermediary is equal to the market value of all the shares in that foreign company of that class immediately before the date on which that foreign intermediary becomes a resident. The South African operating company then distributes dividends to the new South African tax resident company (previously the foreign intermediary company), and those 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 CTC if they are treated as a reduction of CTC pursuant to a determination by the directors of the company, i.e. return of capital. The distributions are not subject to dividends tax and also have no impact on capital gains tax in the foreign holding company if the underlying investment in South Africa is not in immovable property.

The offending tax event does not create any additional investment in or benefit to the South Africa economy but merely changes the tax status of the foreign intermediary to that of a South African tax resident by replacing its foreign directors with SA directors, which effectively changes its place of effective management to South Africa. This leads to a permanent erosion of the South African tax base as the distributions from CTC are not subject to tax.

III. Proposal

To address the concern detailed above with the CTC regime it is proposed that the market value amount of the shares in the foreign company becoming a South African tax resident used for contributed tax capital purposes be reduced if the that company holds shares in other South African companies

As such, the market value of the shares must be reduced by an amount equal to the difference between:

(a) the market value of the shares held by that foreign company in each resident company; and
(b) an amount equal to the percentage of shares held by that foreign company in the resident company, of the aggregate CTC in respect of each class of share of each resident company,

immediately before the date on which that foreign company becomes tax resident.
It is also proposed that the anti-avoidance measure only applies to each resident company in which the foreign company holds at least 50 per cent of the equity shares or voting rights immediately before the date on which that foreign company becomes a tax resident in South Africa.

The example below illustrates how the proposal is intended to work.

Example:

Facts:
Non-resident intermediary Company A with a financial year ending on 31 December becomes an SA resident on 2 February 2024. On 1 February 2024, the day before it becomes an SA resident, the market value of the shares in Company A is R600 000 and it has 3 subsidiaries: non-resident Company B (shareholding 100%), resident Company C (shareholding 60% of each of Company C's class A and class B shares) and resident Company D (shareholding 30% and voting rights 80%). The market value of the shares held in Company B is R100 000, Company C is R200 000 and Company D is R300 000. The CTC of Company C is R40 000 for class A shares and R10 000 for class B shares, and of Company D is R200 000.

Results:
Company A's CTC will be: R600 000 – [**Company C** R200 000 – (R40 000 x 60%) – (R10 000 x 60%)] – [**Company D** R300 000 – (R200 000 x 30%)] = R600 000 – R170 000 – R240 000 = R190 000.

IV. Effective date

The amendment will come into operation on 1 January 2024 and applies in respect of any company that becomes a resident on or after that date.

2.4 TRANSLATING CONTRIBUTED TAX CAPITAL FROM FOREIGN CURRENCY TO RANDS

[Applicable provision: New section 25E of the Act]

I. Background

CTC, in the case of each a foreign company becoming resident or any other South African company, is essentially (1) 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 and (2) the consideration received by or accrued to that company in exchange for the issue of shares of a particular class. The CTC amount is reduced by any amounts referred to as capital distributions, transferred by the company to the shareholders.

II. Reasons for change

When 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.

The Act contains specific rules dealing with the translation of amounts received by or accrued to, or expenditure or loss incurred by a person, denominated in foreign currency to Rands. However, these rules do not specifically cater for the translation of contributed tax capital to Rands.

III. Proposal

It is proposed that rules be introduced for the translation of the amount of CTC in relation to a class of shares that are denominated in a foreign currency to the currency of the Republic. More specifically, the proposed amendments will require that companies apply the applicable spot rate on the date that the relevant amount is recognised for income tax purposes.

IV. Effective date

The amendments will come into operation on 1 January 2025

2.5 CLARIFYING THE INTERACTION BETWEEN THE DEBT FORGIVENESS RULES AND THE DISPOSAL OF ASSETS EXCLUSION RULE FOR DORMANT GROUP COMPANIES

[Applicable provisions: section 19 of the Act and paragraph 12A of the Eighth Schedule to the Act]

I. Background

In 2018 changes were made to the debt relief rules in section 19 of the Act and paragraph 12A of the Eighth Schedule to the Act. Section 19 of the Act deals with income tax implications for debt that was previously used to fund tax deductible expenditure, such as operating expenses and the acquisition of assets where deductions may be claimed for assets such as trading stock and allowance assets. On the other hand, paragraph 12A of the Eighth Schedule to the Act deals with capital gains tax implications for debt that was used to acquire capital or allowance assets.

The debt relief rules contain several exclusions. One of the exclusions is the dormant company exclusion, 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. The dormant company exclusion was intended to ease the winding up of dormant companies that had irrecoverable group debt in respect of which tax arising from a possible recoupment would not be collectable by SARS.

However, the dormant company exclusion does not apply if the debt was used to fund an asset that was subsequently disposed of in terms of a corporate reorganisation transaction provided in Part III of Chapter II of the Act or a debt that was incurred to refinance another debt owed between companies that form part of the same group of companies. These types of arrangements were viewed as not justifiably debt funded and raised tax avoidance concerns as, in the first instance, asset transfers within the corporate reorganisation rules do not require consideration other than shares, particularly unaffordable debt funding between companies belonging to the same group of companies and the assumption or settlement of a debt between companies that form part of the same group of companies is expected to have been well considered to not necessitate a subsequent waiver.

II. Reasons for change

Concerns have been raised on the wording of the provisions giving effect to the dormant company exclusion. 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.

III. Proposal

When the changes were made to the debt relief rules in 2018, the policy rationale was that the exclusion from applying the dormant company rules should not restrict the timing of the disposal under the corporate reorganisation rules. As such, it is proposed that clarification be made in the legislation to reflect the above-mentioned policy rationale.

Consequently, it is proposed that the following change should be made in the legislation:

- To provide for a denial of the dormant company exclusion when an intra-group debt that previously funded an asset that is subsequently disposed of in terms of the envisaged corporate reorganisation rules is forgiven prior to or after such disposal.

- In instances that a debt benefit is triggered prior to the disposal of an asset in terms of sections 42, 44, 45 or 47 of the Act, a deeming rule should be included to ensure that a debt benefit in a prior year of assessment is accounted for in a subsequent year of assessment should the dormant company later fall foul of the requirements of the exclusions and subsequently dispose of the asset in terms of sections 42, 44, 45 or 47 of the Act.

IV. Effective date

The proposed amendment will come into operation on 1 January 2024 and applies in respect of years of assessment commencing on or after that date.

2.6 CLARIFYING THE INTERACTION OF PROVISIONS ON THE ACQUISITION OF ASSETS IN EXCHANGE FOR SHARES

[Applicable provision: Section 40CA of the Act]

I. Background

A. *Deemed base cost for assets acquired in exchange for shares issued*

Provisions that establish base cost in respect of asset-for-share and asset-for-debt transactions were first introduced in section 40CA of the Act in 2012, following the decision of the Supreme Court of Appeal in C: SARS v Labat Africa Ltd (669/10) [2011] ZASCA 157 (the Labat case). In the Labat case, the Court had to determine whether the issue of shares by a company as consideration for the acquisition of a trademark amounts to “expenditure actually incurred” by the issuing company. The Court held that since the issue of shares does not give rise to any diminution in the assets of the issuing company, the issue of shares as consideration for the acquisition of the asset in that case (a trademark) does not amount to “expenditure”. This decision meant that, in the absence of base cost rules for asset-for-share transactions, taxpayers would have a zero-base cost in respect of assets acquired in exchange for the issue of shares by the acquiring company. In 2020, changes were made to these rules to remove deemed base cost for assets acquired for debt issued as these transactions do not give rise to a zero-base cost as “expenditure” arises in the case of debt issued since a diminution of the assets of the issuing party arises.

B. *Roll over base cost rule under corporate reorganisation rules*

The corporate reorganisation rules in Part III of Chapter II of the Act allow for the tax neutral transfer of assets between companies by allowing tax consequences to be rolled over to a future transaction that falls outside of the corporate reorganisation rules.

C. 2021 changes to the tax legislation

In 2021, changes were made in the tax legislation for better interaction between the anti-value shifting rules in sections 24BA, 40CA and the corporate reorganisation rules Part III of Chapter II of the Act. The 2021 changes made provision for the corporate reorganisation rules to prescribe that qualifying asset-for-share transactions are subject to anti-value shifting rules contained under section 24BA of the Act and the deemed base cost rules for asset-for-share transactions under section 40CA of the Act. In particular, the 2021 changes were aimed at ensuring that any capital gain arising from the operation of the anti-value shifting rules contained in section 24BA of the Act is added to the base cost of an asset transferred under the corporate reorganisation rules. As a result, section 40CA of the Act prescribes a base cost for assets acquired by companies in exchange for the issue of their shares to the seller of those assets that is equal to the sum of the market value of the shares it issued and (if any) the amount of the capital gain triggered by the application of the provisions of section 24BA of the Act to ensure that there is no double taxation on the future disposal of the assets.

II. Reasons for change

When the above-mentioned changes were made in the tax legislation in 2021, the policy rationale set out in the accompanying explanatory memorandum was that a company will be deemed to have incurred expenditure equal to the triggered deemed capital gain immediately before a subsequent disposal of an asset previously acquired in terms of the sections 42, 43 and 44 of the Act in a subsequent transaction that falls outside of Part III of Chapter II of the Act. This policy rationale was based on the fact that in a transaction that falls outside of the corporate reorganisation rules ordinarily past allowances are recouped, whereas, where the operation of one of the corporate reorganisation rules is at play, no recoupment arises and therefore it is not justified that tax allowances may be claimed with reference to a higher base cost. However, the current provisions in the legislation do not expressly set out the intended timing of the base cost uplift but rather provides for an uplift on the day of the corporate reorganisation transaction. At issue is whether following a tax deferred transaction in terms of section 42, 43 and 44 of the Act, a company can claim allowances based of the increased base cost even prior to a transaction that falls outside of the corporate reorganisation rules under which a recoupment may arise.

III. Proposal

To clarify the above-mentioned policy rationale, it is proposed that changes be made in the tax legislation to provide that the additional base cost equal to any deemed capital gain resulting from the application of the anti-value shifting rules in section 24BA of the Act may only be added immediately before a subsequent disposal of an asset previously acquired in terms of the abovementioned reorganisation provisions in a transaction that falls outside of Part III of the Act (i.e. the corporate reorganisation rules set out in Part III of Chapter II, sections 41 to 47 of the Act).

IV. Effective date

The amendment will come into operation on 1 January 2024 and applies in respect of any disposal of an asset on or after that date.

2.7 REFINING THE PROVISIONS APPLICABLE TO UNBUNDLING TRANSACTIONS

[Applicable provision: Section 46 of the Act]

I. Background

The corporate reorganisation rules for unbundling transactions in sections 46 of the Act allow for a tax neutral transfer of shares where shares of a resident company (unbundled company) that are held by another resident company (unbundling company) are distributed to the shareholders of that unbundling company in accordance with the effective interest of those shareholders. Under these provisions, the distribution of shares is disregarded for purposes of determining the taxable income, assessed loss or net income of an unbundling company and no Dividends Tax or reduction of contributed tax capital is triggered.

Prior to the 2020 changes to tax legislation, tax deferral was denied if immediately after the distribution of shares in terms of an unbundling transaction, 20 per cent or more of the shares in the unbundled company are held by disqualified persons either alone or together with any connected persons (who is a disqualified person) in relation to that disqualified person. For purposes of this exclusion “disqualified persons” is defined to include a person that is regarded as a non-resident in terms of the South African tax legislation or exempt persons in terms of South African tax legislation (they are the government of the Republic in the national, provincial or local sphere contemplated in section 10(1)(*a*) of the Act, a public benefit organisation as defined in section 30 of the Act, a recreational club as defined in section 30A of the Act, a mining rehabilitation company or trust contemplated in section 37A of the Act, a pension fund, a provident fund, a retirement annuity fund, a benefit fund contemplated in section 10(1)(*d*)(i) or (ii) of the Act or a person contemplated in section 10(1)(*c*A) or (*t*) of the Act). In this form, the exclusion created a loophole in that the 20 per cent exclusionary rule did not apply as intended to deny roll-over relief where tax exempt or non-resident shareholders are not connected persons in relation to each other, thus effectively resulting in a tax exemption instead of a tax deferral as future disposals of shares by tax exempt or non-resident shareholders would not be subject to tax in South Africa. In 2020, changes were made to the tax legislation so that tax deferral does not to apply 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 an unbundling transaction. Furthermore, in 2021 changes were made to the tax legislation so that shareholders in an unbundling company that qualifies for tax deferral for an unbundling transaction should receive additional base cost that is reflective of the tax paid by the unbundling company in respect of their shares in the unbundled company, in accordance with their respective shareholding.

II. Reasons for change

The additional base cost is currently provided for by including any tax paid by the unbundling company in respect of a distribution to disqualified persons under the definition of "expenditure" which is applied to allocate expenditure attributable to equity shares in the unbundling company to both equity shares in the unbundling company and equity shares in an unbundled company. This mechanism of splitting the expenditure is appropriate for historic expenditure attributable to unbundling shares, as after an unbundling transaction a shareholder that previously only held unbundling shares now directly holds unbundling shares and unbundled shares. However, the tax paid by the unbundling company on account of the denial of tax deferral in respect of a distribution of unbundled shares to disqualified persons and the resultant negative effect on the shareholders that are not disqualified persons should only be applied to alleviate the tax effect in respect of the unbundled shares, without taking into account the impact on the market value of the unbundling company due to the tax payable.

Secondly, it is noted that to the extent that tax deferral applies in terms of section 46(3) of the Act, the unbundling company must disregard a qualifying distribution for purposes of determining its taxable income, assessed loss or its net income as contemplated in the controlled foreign company rules in section 9D of the Act. In the instance that an unbundling company is not in a loss position, an uplift with reference to the amount of tax paid may be reasonable. However, if an unbundling company is in an assessed loss position, the net effect of any denial of tax deferral would be a reduction of its assessed loss. Practically, the tax is determined in the unbundling company even through taxpayers have put the case forward that the shareholders holding the unbundling shares and the unbundling shares proportionately have all borne the tax effect of such a denial for tax deferral. At issue is whether any additional base cost for shareholders that are not disqualified persons should be an amount reflecting the proportionate tax effect of a denial in tax deferral (i.e., proportionate increase taxable income, assessed loss or net income as result of the denial of tax deferral of the distribution to disqualified persons).

III. Proposal

It is proposed that changes be made to the tax legislation so that the current additional base cost rule should be withdrawn and a new mechanism should be introduced in its place. In this regard, it is still proposed that there should be additional base cost only where tax is payable. This is because, only where tax is payable, is a shareholder that is not a disqualified person is most adversely affected by the outlay of tax payable by the unbundling company where tax deferred is meant to apply. Furthermore, the new uplift will not be allocated between unbundling shares and unbundled shares but will be treated as additional expenditure in respect of only the unbundled shares.

IV. Effective date

The amendments will come into operation on 1 January 2024 and apply in respect of the allocation of expenditure to unbundled shares acquired on or after that date.

2.8 CLARIFICATION OF THE INTEREST LIMITATION RULES

[Applicable provision: Section 23M of the Act]

I. Background

In 2021, changes were made to the Act as part of the corporate income 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.

II. Reasons for change

A. *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".

B. 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".

C. 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) of the Act 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.

D. Reviewing the outcome of the interaction between the "controlling relationship" definition in section 23M(1) of the Act 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) of the Act by adding a connected person test to ensure that fragmentation of ownership to circumvent the rules is dissuaded. In addition, further changes were made to section 23M(2)(*c*) of the Act by inserting a group companies test in instances where the creditor is not in a controlling relationship with the debtor. Government has considered how the definition of "controlling relationship" in section 23M(1) of the Act and the provisions of 23M(2) of the Act interact in light of the intended policy outcome.

E. Clarifying the application of the proviso to section 23M(2) of the Act

The proviso to section 23M(2) of the Act 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. However, it does not adequately specify that this adjustment should only apply in the case of interest flowing to non-residents.

F. *Extending the provisions of section 23M(6) of the Act to apply to South African banks*

Section 23M(6) of the Act 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.

III. Proposal

Based on the above, Government proposes the following:

A. *Clarifying the definition of "adjusted taxable income"*

Government proposes that the legislation be amended to align with the policy intent that only the balance of assessed losses from prior years be added to taxable income (before applying this section) to calculate adjusted taxable income. As such, it is proposed that paragraph (*b*)(iii) under the definition of "adjusted taxable income" be deleted. Instead, the starting point for *"*adjusted taxable income*"* should be taxable income calculated before applying this section and before setting off any balance of assessed loss.

B. Introducing a definition of the term "creditor"

Government proposes including a definition for the term "creditor" into section 23M of the Act. The definition aims to clarify that a person to whom a 'debtor' owes a 'debt' is deemed to be a creditor for the purposes of section 23M of the Act.

C. Clarifying the treatment of exchange gains and losses

Government proposes that exchange gains be classified as interest received or accrued for the purposes of section 23M of the Act.

D. 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

Government has reviewed the interaction between these provisions and proposes to retain the current stance. While the connected person test aims to cater for instances of ownership fragmentation, the group test in section 23M(2)(*c*) aims to cater for a scenario where there is no shareholding between a debtor and creditor who are connected persons, for example, when two sister companies enter into a lending arrangement with one being the debtor and the other the creditor.

Within the controlling relationship definition, it is proposed that paragraph *(b)* be deleted.

E. Clarifying the application of the proviso to section 23M(2) of the Act

Government proposes that the legislation be clarified to make it clear that the proviso is only applicable to interest where the recipient is a non-resident.

F. Extending the provisions of section 23M(6) of the Act to apply to South African banks

Government proposes that section 23M(6) of the Act be amended to extend this exemption to apply to South African banks providing funding to a creditor.

IV. Effective date

The amendments will come into effect on 1 January 2024 and apply in respect of years of assessment commencing on or after that date.

3. INCOME TAX: BUSINESS (FINANCIAL INSTITUTIONS AND PRODUCTS)

3.1 TAX TREATMENT OF DEPOSIT INSURANCE SCHEME

[Applicable provision: section 10 of the Act]

I. Background

Currently, there are no explicit arrangements in place to protect depositors in the event of a bank failure. In the past, government compensated depositors for their losses on a case-by-case basis, which meant that depositors had to bear the cost of the failure of individual commercial enterprises.

Broadly, the amendments made by the Financial Sector Laws Amendment Act, No. 23 of 2021 to the Financial Sector Regulation Act, No. 9 of 2017 (“the Financial Sector Regulation Act”) are aimed at providing for the establishment of a framework to protect less financially sophisticated depositors in the event of a bank failure, thereby contributing to the stability of the South African financial system. In addition, the South African Reserve Bank (SARB) was designated as the resolution authority; and the Corporation for Deposit Insurance and a Deposit Insurance Fund was established on 24 March 2023 to assist with the stability of the financial system in the event of a bank failure. This Corporation is a subsidiary of the SARB, making it a separate legal entity with its own legislative framework and governance requirements.

In essence, section 166BC of the Financial Sector Regulation Act provides for the Corporation for Deposit Insurance, established in terms of section 166AE of that Act, to charge members of the Corporation who are banks, a deposit insurance levy in accordance with legislation that empowers the administration of levies.

The SARB is responsible for the collection from the banks and administration, on behalf of the Corporation, of the deposit insurance levy referred to in sections 9 and 12 of the Financial Sector and Deposit Insurance Levies Act, No.11 of 2022 read with Schedule 6 to that Act and section 166BC of the Financial Sector Regulation Act, to provide for the funding of the operations of the Corporation and the administration of the Fund.

The SARB is also responsible for the collection from the banks and administration, on behalf of the Corporation, of the deposit insurance premium referred to in section 166BG of the Financial Sector Regulation Act read with Schedule 5 to that Act.

II. Reasons for change

As stated above that currently, there are no explicit arrangements in place to protect depositors in the event of a bank failure. In the past, government compensated depositors for their losses on a case-by-case basis, which meant that taxpayers had to bear the cost of the failure of individual commercial enterprises.

III. Proposal

To provide a rule for the tax treatment of the Corporation for Deposit Insurance, it is proposed that the receipts and accruals of the Corporation for Deposit Insurance be exempt from income tax and value added tax.

IV. Effective date

The amendment will come into effect on 1 April 2024 and applies in respect of years of assessment ending on or after that date.

3.2 REFINING THE PROVISIONS DEALING WITH THE IMPACT OF INTERNATIONAL FINANCIAL REPORTING STANDARD 17 INSURANCE CONTRACTS ON THE TAXATION OF INSURERS

[Applicable provisions: Sections 28 and 29A of the Act]

I. Background

In 2022 changes were made in the tax treatment of short-term and long-term insurers in sections 28 and 29A of the Act. The main aim of these changes was to accommodate the new accounting standard for insurers, International Financial Reporting Standard 17 Insurance Contracts (IFRS 17), update the terminology of the sections so they are in line with IFRS 17 and to mitigate the tax impact as a result of the difference between the methodologies applied in IFRS 4, which is the old accounting standard for insurers, and IFRS 17.

II. Reasons for change

It has come to Government's attention that there may be uncertainties regarding certain third-party cell captive arrangements that 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. On the other hand, for tax purposes, these third-party cell captive arrangements are not true commercial reinsurance arrangements 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 IFRS 17 or IFRS 9. Currently, insurance contract liabilities under IFRS17 and investment contract liabilities under IFRS 9 are both included in the "adjusted IFRS value" definition in section 29A of the Act.

Moreover, 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 because the current definition of "value of liabilities" in respect of a policyholder fund and a risk policy fund is the sum of "adjusted IFRS value" plus all other liabilities.

III. Proposal

To address the issues mentioned above, Government proposes that reinsurance contract assets and liabilities relating to a cell owner as contemplated in the definition of "cell structure" in section 1(1) of the Insurance Act, No.18 of 2017 be disregarded in symbol "L" of the "adjusted IFRS value" definition in section 29A of the Act.

It is further proposed that this change be mirrored in section 28(3A) of the Act to cater for foreign long-term insurers that conduct insurance business through a branch in South Africa and fall under the ambit of section 28 of the Act.
In addition, it is proposed that a change be made to the definition of "value of liabilities" in section 29A of the Act to exclude all other liabilities relating to a cell owner.

The intention of the calculation of the phasing-in amount was always to just deduct premium debtors and policy loans that are reclassified from an asset to a liability under IFRS 17. The IFRS 9 premium debtors and policy loans are not reclassified and remain as is. It should be clarified that the reduction to policy liabilities should only be applied to premium debtors and policy loans that were reclassified under IFRS 17.

IV. Effective date

The amendments are deemed to have come into operation on 1 January 2023 and apply in respect of years of assessment commencing on or after that date.

4. INCOME TAX: BUSINESS (INCENTIVES)

4.1 REFINEMENTS TO THE ROYALTY RATE FOR OIL AND GAS COMPANIES

[Applicable provisions: Sections 3 and 4 of the Mineral and Petroleum Resources Royalty Act, No. 28 of 2008 ("the MPRRA")]

I. Background

In terms of Government's current mineral and petroleum resource development policy, a royalty will be levied on extractors to compensate government for the extraction of non-renewable mineral and petroleum resources within the Republic. Existing legislation further distinguishes the determination of a royalty between refined (e.g., platinum group metals or oil and gas) and unrefined mineral resources (e.g. aggregates or coal).

For oil and gas companies, the applicable refined royalty rate has been based on a formula contained in section 4(1) of the MPRRA. The existing variable royalty rate adjusts based on the oil and gas company's profitability, which is measured by dividing earnings before interest and taxes (EBIT) by gross sales. The rate applied to the royalty base (gross sales) ranges from a minimum of 0.5 per cent to a maximum of 5 per cent in the case of oil and gas companies.
II. Reasons for change

On 15 December 2021, a tax policy discussion paper titled "*What is the most appropriate tax regime for the oil and gas industry"* was published for public comment by government. In the tax policy discussion paper, it was proposed that a flat-rate royalty replace the current variable royalty rate for oil and gas.

However, Government recognises that a flat-rate royalty is not flexible enough to adequately cater for high-cost projects, such as those in deep waters with tough sea conditions. In the discussion paper, consideration was given to having separate rates for oil and gas, for example, deep versus shallow water extraction. However, this was decided against given the challenges some countries have experienced in this regard, for example, allocating costs to different revenue streams when oil and gas are produced together.

III. Proposal

Following consultation, Government proposes to retain the flexibility of the royalty rate, which is determined by profitability, rather than opt for a flat rate for these companies. This decision recognises that companies face varying costs and profit levels depending on whether they are, for example, operating in deep or shallow waters.

However, to ensure that the country is adequately compensated for the loss of its finite oil and gas mineral resources, the minimum royalty rate for oil and gas will be increased from 0.5 per cent to 2 per cent, with the maximum remaining at 5 per cent.

It is also proposed that oil and gas mineral resources be recognised as a stand-alone refined mineral resource in the legislation for purposes of the determination of royalty to accommodate the now difference in the minimum rate applied to the royalty base (gross sales) in respect of oil and gas versus other refined mineral resources.

IV. Effective date

The amendment will come into operation on 1 January 2024 and applies in respect of years of assessment commencing on or after that date.

4.2 EXTENSION OF THE UDZ TAX INCENTIVE SUNSET DATE

[Applicable provisions: Section 13*quat* of the Act]

I. Background

The Act contains Urban Development Zone (UDZ) tax incentive in section 13*quat* of the Act, which came into effect in 2003. This incentive was introduced to increase investment in 16 designated inner cities thereby encouraging property investment in central business districts and to address the problem of urban decay in these central business districts through the promotion of investment in urban renewal. The incentive is in the form of an accelerated depreciation allowance applicable on the value of new buildings and improvements to existing buildings in the qualifying municipalities demarcated as UDZs.

When the UDZ tax incentive was introduced, it had no sunset date. In 2005 a sunset date of 31 March 2009 was introduced, which was extended to 31 March 2014 in 2008. This sunset date was extended from 31 March 2014 to 31 March 2020 in 2012. In view of the fact that the sunset date of 31 March 2020 fell during the COVID-19 pandemic period, in 2020 and 2021 changes were made to section 13*quat* of the Act to extend this sunset date by another three years from 31 March 2020 to 31 March 2023, in order to allow for a comprehensive review of the effectiveness of the incentive before it comes to an end.

II. Reasons for change

It has come to Government's attention that the public consultation as part of the policy review process of the UDZ tax incentive will not be concluded before the incentive's sunset date of 31 March 2023. Further engagement with key stakeholders, especially sourcing and evaluating important data from municipalities on the incentive's uptake, is necessary to assess the contribution of the incentive to achieving its intended objectives.

III. Proposal

Based on the above, it is proposed that the UDZ tax incentive be extended by another period of two years from 31 March 2023 to 31 March 2025 to allow additional time for the review to be completed.

IV. Effective date

The amendment will be deemed to have come into effect on 1 April 2021 and will be applicable in respect of any building, part thereof or improvement that is brought into use on or after that date.

4.3 REFINEMENTS TO THE RESEARCH AND DEVELOPMENT TAX INCENTIVE

[Applicable provisions: Section 11D of the Act]

I. Background

Research and technological development is a key factor for improved productivity, leading to new or improved products, processes or services. This enhanced productivity in turn leads to increased economic growth and international competitiveness. While South Africa offers a variety of direct subsidies aimed at the development phase of the innovation process, the Research and Development (R&D) tax incentive is aimed at the earlier phases of research that are not catered for by other existing measures. Providing a tax benefit for the earlier phases of research and development aims to ensure that local R&D is globally competitive.

The current R&D tax incentive came into operation on 2 November 2006 and has undergone various design changes to better tailor it to meet its objectives. The most significant of these changes was the introduction of a pre-approval process in 2012. The pre-approval process is administered by the Department of Science and Innovation (DSI), supported by an adjudication committee that evaluates applications and makes recommendations to the Minister of Higher Education, Science and Innovation. The R&D tax incentive allows for qualifying expenditure incurred directly and solely for the purpose of conducting R&D to be deductible at 150 per cent if the R&D is approved by the Minister of Higher Education, Science and Innovation.

II. Reasons for change

On 15 December 2021, Government published a discussion document titled *Reviewing the Design, Implementation and Impact of South Africa's Research and Development Tax Incentive.* This review sought to determine whether to extend the R&D tax incentive beyond its sunset date and, if so, in what form. Following the review, government has determined that the R&D tax incentive should continue, but sees it necessary to refine the definition of R&D.

Proposed refinements to the R&D tax incentive were published on 7 October 2022 for public comment. Taking public comments into account, the proposed amendments seek to simplify the definition of R&D to make it easier to understand and adjudicate, thus making the application process easier.

A. *Definition of R&D*

Section 11D(1) of the Act sets out a definition for "research and development" that determines whether activities will be eligible for the R&D tax incentive. Currently, the wording "scientific or technological" is only found in the title of the section and in one of the paragraphs of the definition, even though the intention has always been that the incentive should only apply to activities with an aim of solving a scientific or technological uncertainty.

The definition contains purpose tests that require not only an understanding of the concept of R&D, but also an understanding of various intellectual property statutes and the associated intellectual property characteristics, such as novelty and non-obviousness. In addition to this, the purposes focus on the end result of the R&D, which is difficult for taxpayers to explain or prove upfront and equally difficult for the adjudication committee to evaluate. This stands in contrast to the approach taken by many other countries in the design of their R&D tax incentives.

In addition, the “innovative” requirement linked to the creation of a functional design; the development of a computer program; or making significant improvements, has led to unintended consequences and complexity for taxpayers, as well as officials and technical experts assessing R&D tax incentive applications.

While the “innovative” requirement was intended to raise the bar in terms of the R&D activities that should qualify for the incentive, government recognises that innovation can happen without R&D, and that it does not necessarily encompass R&D.

To enhance the practical simplicity of applying for and adjudicating the incentive, it is considered that it would be more appropriate to move away from an “end-result” or IP statute approach. This is primarily because – while taxpayers may have a certain end-goal in mind, the reality of R&D is that it involves uncertainty and risk, and it is not practical to expect taxpayers to have detailed knowledge of how their envisaged R&D will unfold at the time of applying for the incentive.

Many other countries instead rely on the principles outlined in the OECD Frascati Manual (i.e., that activities should be novel, creative, uncertain, systematic and transferable and/or reproducible) to design their legislation to test whether an activity should be considered R&D or not. Based on adjudicating experience, it is considered that this approach is preferable.

In addition to the principles outlined above, the 2002 Frascati Manual explicitly refers to a person skilled in the art (someone familiar with the basic stock of common knowledge). This criterion is implied in the most recent Frascati Manual. To ensure this is explicit in the legislation and to ensure that R&D activities are non-obvious or inventive to qualify for the R&D tax incentive, the revised definition should include the test of whether a professional in the field with appropriate knowledge and skills, and having access to publicly available information, would resolve that scientific or technological uncertainty without undertaking any R&D activities (i.e. systematic investigative or systematic experimental activities).

It is envisaged that a revised definition will be simpler to understand and adjudicate, ensuring an easier application process. The proposed changes to simplify the legislation combined with the online system launched at the end of 2022 and an improvement in support for smaller businesses should enhance the uptake of the incentive.

In line with government’s stance from the outset, the revised definition is shifted more towards a scientific or technological uncertainty and the systematic investigative or systematic experimental activities that are to be performed (i.e., the particular standard of R&D), with a simplified emphasis on novelty of products, processes or services, instead of the intellectual property outcomes e.g., invention or design that may occur after the R&D.

B. Internal Business Process (IBP) exclusion

Certain activities are specifically excluded from the definition of R&D. The excluded activities extend to the development of internal business processes not mainly intended for sale or licensing that could be relevant to a range of sectors and activities, such as manufacturing and software development. Over the years the interpretation and implementation of this exclusion has led to unintended consequences.

Various interpretation notes have sought to provide clarity that routine learning associated with the management or enhancement of internal business processes will not be eligible for the incentive. However, based on the adjudication of multiple applications and on feedback received, it is apparent that activities that fall under this exclusion have features and benefits that should allow the activities to be eligible.

A number of examples were included in the discussion document to highlight how the current interpretation of the internal business process exclusion potentially disqualifies what would otherwise be deemed eligible activities that encompass the benefits intended by the incentive. If an activity is systematic investigative or systematic experimental with an aim of resolving a scientific or technological uncertainty and it meets the proposed (revised) definition of R&D for the purposes of this incentive, it should be considered R&D – regardless of whether it is intended for sale, or the use thereof is granted to connected parties.

One of the primary objectives of the incentive is to encourage spending on R&D to recognise that it has the potential to generate positive spillover effects in the economy – including by, for example, transferring knowledge, diffusing ideas and enhancing growth and employment prospects. These effects are possible even if the R&D is for internal use.

An exclusion for business processes that are for management and administrative purposes is no longer considered necessary given the changes to the definition of R&D. The revised definition aims to bring clarity to what is considered eligible R&D and what is not. It is based on a particular standard of R&D – rather than the nature of the activities.

C. *Software and computer programmes*

In the context of software development, only those software development activities that are systematic investigative or systematic experimental of which the result is uncertain may be eligible. These types of systematic investigative/experimental development activities that exist under the R&D umbrella can at times be confused with high-level product development and pre-production development. This is due to both types of development having stages that may overlap, but with product development and pre-production development still missing a scientific or technological uncertainty. Thus, product development *per se* is not by definition R&D.

When evaluating whether software development activities are eligible, the question to be considered is often whether a professional in the field (i.e., a software developer) with appropriate knowledge and skills, and having access to publicly available information, would conclude that software development can successfully be done. If the answer is yes and no systematic investigative or systematic experimental activities with scientific or technological uncertain results are required, it is unlikely that developing this computer program would be deemed R&D. Use of existing software for a new application or purpose does not, by itself, relate to a scientific or technological uncertainty, and is therefore generally excluded. Also excluded is the creation of a computer program using known methods of existing software tools.

D. Additional administrative issues

Introduction of a six-month grace period for receipt of pre-approval applications

In terms of section 11D of the Act, only expenditure incurred on or after the date of receipt of the application by the Department of Science and Innovation qualifies for the 150 per cent deduction. This has led to some taxpayers unfamiliar with the incentive (as well as smaller taxpayers) missing out on an opportunity to benefit from the incentive or rushing to submit applications with insufficient information for the committee to adjudicate those applications.

Allowing applicants a grace period to gather more information regarding the intended R&D activities will allow smaller applicants, new applicants or applicants undertaking R&D in a new field to be in a better position to provide detailed information on the R&D project that has been undertaken.

Disclosure of information by the Commissioner of SARS

Currently, section 11D(12)(*b*)(iv) of the Act allows the committee to monitor all R&D approved to determine whether the objectives of the incentive are being met, and to advise the Minister of Finance and the Minister of Higher Education, Science and Innovation. Section 11D(14) of the Act states that the Commissioner may disclose information to the Minister of Science and Technology as is required for parliamentary reporting or if that information is material in respect of granting approval for the incentive. This does not appear wide enough to enable the committee and DSI employees to obtain information (data) from SARS to carry out a monitoring and evaluation function.

Sanctions for breach of secrecy

Every person involved in the administration of the R&D tax incentive is bound by confidentiality to preserve secrecy of the information that they may come across while performing their duties (section 11D(18) of the Act). *However*, section 11D of the Act does not include a sanction for contravening these sections of the Act.

III. Proposal

Based on the above, Government proposes the following:

A. *Adjustments to the R&D definition*

It is proposed that changes be made to the current definition of R&D as follows:

- The definition of R&D should be amended to clarify that the intention has always been that the incentive should only apply to activities with an aim of solving a scientific or technological uncertainty. By referring to activities that are aimed at solving a scientific or technological uncertainty in the words of subsection (1) preceding paragraph (a), this intent is made clear. Amongst other things, this requirement will clarify the type of computer software activities that will be deemed to form part of R&D. Further, the words "scientific or technological" should be included before the words "research and development" throughout the section.

- The definition should also be amended to clarify that activities will not qualify for the incentive if knowledge to resolve a scientific or technological uncertainty is deducible by a competent professional in the relevant scientific or technological field, having regard to information that is publicly available to such professional. In other words, a test for obviousness (or lack of inventiveness) should be brought into the definition.

- The term "non-obvious" as it relates to scientific or technological knowledge in section 11D(1)(a) of the Act should be replaced with "new". This replacement is necessary as the requirement for non-obviousness is already incorporated by the amendment mentioned above, i.e., that research and development does not include an activity if knowledge to resolve the scientific or technological uncertainty is deducible by a person skilled in the relevant scientific or technological field, having regard to information that is publicly available to such professional.

- The intellectual property purpose tests in the first part of the definition should be deleted to move away from a focus on the end-result at the time of applying to recognise the uncertainty inherent in R&D. The approach will shift to testing for R&D by considering some of the principles in the Frascati Manual 2015 - Guidelines for Collecting and Reporting Data on Research and Experimental Development published by the Organisation for Economic Co-operation and Development (the OECD Frascati Manual. In line with this, it is proposed that section 11D(1)(b) and (c) of the Act be replaced with a purpose test aligned with the OECD Frascati principles that an R&D activity must be carried on for the purpose of creating or developing new knowledge, or new or significantly improved products, processes or services. The OECD Frascati manual provides an internationally accepted definition on R&D activities based on five core criteria being met, i.e., the activity must be novel, creative, uncertain, systematic and transferable and/or reproducible. In summary, R&D eligibility should be assessed in the context of the type of activities proposed to be performed; the uncertainty addressed, and the new knowledge being sought; or new or significantly improved products, processes or services being created.

B. *Internal Business Process (IBP) exclusion*

It is proposed that the exclusion for internal business processes be deleted, so that the activities are measured against the requirements set out in the definition of R&D, rather than the nature of the activities and whether they are intended for sale / licensing or not.

C. *Additional administrative issues*

Introduction of a six-month grace period for receipt of pre-approval applications

It is proposed that applicants be allowed a six-month grace period to submit pre-approval applications.

For example, if a company has started spending on R&D activities on 16 February 2024, they will have up until 16 August 2024 to submit their application if they would like to be eligible to claim the expenditure already incurred on qualifying R&D activities from the date of 16 February 2024. Should a business apply within the first 6 months of 2024, the grace period will be limited to expenditure starting from 1 January 2024 onwards.

Disclosure of information by the Commissioner of SARS

It is proposed that the circumstances under which the Commissioner of SARS discloses information to the Minister of Higher Education, Science and Innovation be extended to include anonymized information (data) from tax returns that may require fulfilling of duties insofar as they relate to monitoring R&D approved under the incentive and the consideration of proposed amendments and adjustments to the R&D tax incentive, beyond reporting to Parliament. This can be catered for by expanding section 11D(14) of the Act.

Sanctions for breach of secrecy

With respect to any breaches of secrecy, it is proposed that a sanction in line with those provided under section 12I(23) of the Act be included in section 11D of the Act. As such, it is proposed that any person who contravenes the secrecy provisions is guilty of an offence and be liable on conviction to a fine or imprisonment for a period not exceeding two years.

D. Sunset clause and transition clarity

It is proposed that the revised R&D tax incentive apply in respect of applications received and expenditure incurred on or after 1 January 2024 and up to and including 31 December 2033.
The transition will be treated as follows (some examples also indicating the 6-month grace period applicability):

Apply	Approval	Spend	Applicable regime
1 Nov 2023	5 Dec 2023	All expenditure from 1 Nov 2023	Existing regime
1 Nov 2023	22 Jan 2024	All expenditure from 1 Nov 2023	Existing regime
15 Jan 2024	2 Mar 2024	All expenditure from 1 Jan 2024	New regime (2023 Tax Laws Amendment Act (TLAA)
15 Mar 2024	1 July 2024	All expenditure from 1 Jan 2024	New regime (2023 TLAA)
15 Aug 2024	1 Nov 2024	All expenditure from 15 Feb 2024	New regime (2023 TLAA)

E. Other technical amendments

Additional technical amendments include:

- Updating the names of the Department and the Minister in line with the new names throughout the section.

- Updating the applicable regulations throughout.

IV. Effective date

The amendments will come into effect on 1 January 2024 and will apply in respect of applications received and expenditure incurred on or after that date.

4.4 ENHANCED DEDUCTION IN RESPECT OF CERTAIN MACHINERY, PLANT, IMPLEMENTS, UTENSILS AND ARTICLES USED IN THE PRODUCTION OF RENEWABLE ENERGY

[Applicable provisions: New section 12BA, sections 8, 11, 12E, 12N, 12P, 15, 23A, 23G of the Act and paragraph 66 of the Eighth Schedule to the Act]

I. Background

In 2004 Government introduced an accelerated depreciation allowance for investments in biodiesel and biofuels in section 12B of the Act. To encourage investments in renewable energy and complement carbon mitigation measures like the carbon tax, Government proposed to extend this accelerated depreciation allowance to other forms of environmentally friendly energy sources in 2005. These environmentally friendly energy sources included the generation of electricity from wind, sunlight (later referred to as solar power), gravitational water force to produce electricity of not more than 30 megawatts (later referred to as hydropower) and biomass comprising organic waste, landfill gas or plants. The assets used in the production of electricity using the above-mentioned power sources were eligible to benefit from a tax depreciation write-off of 50:30:20 per cent over three years.

In 2012 further amendments were made to the Act to allow necessary and integrated supporting structures, with respect to assets that are used in renewable energy generation, to benefit from a tax write-off of 50:30:20 per cent over three years.

In 2015 Government sought to further encourage the independent generation of electricity through renewable energy sources to alleviate the then-projected electricity shortages in the country. In particular, changes were made to increase the uptake of small-scale embedded solar PV energy production to ease the pressure on the national electricity grid. In this regard, assets used for embedded solar PV renewable energy with a generation capacity not exceeding 1 000 kW or 1 MW were made eligible for an accelerated depreciation of 100 per cent in one year.

II. Reasons for change

Given the country's continued struggle to produce reliable electricity through the national grid, Government is proposing to enhance the attractiveness of the tax incentive to encourage greater private investment in renewable energy. To encourage rapid private investment to alleviate this energy crisis – in the 2023 Budget Review, Government proposed to temporarily enhance the current renewable energy tax incentive available in section 12B of the Act.

III. Proposal

Taxpayers should please note that the content of this document is supplemented by an **FAQ Document** published on the National Treasury website on 20 November 2023.

To encourage private business investment in renewable energy for electricity production, Government proposes to temporarily enhance the current renewable energy tax incentive as follows:

A. Assets eligible for the enhanced renewable energy tax incentive

The enhanced renewable energy tax incentive will apply to the currently eligible renewable energy sources under section 12B of the Act listed below, but there will be no electricity generation limits for the duration of this temporary incentive. Assets will qualify if they are used in the generation of electricity. While eligibility will be based on facts and circumstances, it is the policy intention that assets will qualify if used to generate electricity from:

- Wind power
- PV solar energy
- Concentrated solar energy
- Hydropower
- Biomass compromising organic wastes, landfill gas or plant material

The enhanced renewable energy tax incentive will also apply to supporting structures as per section 12B of the Act in which the above-mentioned assets are mounted on or are affixed to, provided that:

- the foundation or supporting structure is designed for the above-mentioned asset and constructed in such a manner that it is or should be regarded as being integrated with that asset; and
- the useful life of the foundation or supporting structure is or will be limited to the useful of the asset mounted thereon or affixed thereto.

B. *Time period for the enhanced renewable energy tax incentive*

The enhanced accelerated allowance is intended to encourage businesses to invest in assets used in renewable energy production sooner rather than later, to assist with alleviating pressure on the national electricity grid. Temporary investment allowances have been shown to induce larger responses sooner. Government recognises that significant projects may require a longer lead time, but also seeks to support smaller businesses in adding generation capacity to the grid. Furthermore, the incentive aims to encourage those that would not have invested in renewable energy if it were not for the incentive. Many large projects were already being planned before the incentive was announced. Remaining prudent with the budget constraint it is important to generate as much value for taxpayer's contributions as possible. As such, it is proposed that the enhanced renewable energy tax incentive should be available for a period of 2 years and apply to qualifying new and unused assets brought into use for the first time on or after 1 March 2023 and before 1 March 2025.

C. *Rate of depreciation for the enhanced renewable energy tax incentive*

Unlike the current renewable energy tax incentive available in section 12B of the Act, which can be claimed over a period of three years at a rate of 50:30:20 per cent (small-scale solar PV projects can obtain a 100 per cent write-off in year one), it is proposed that businesses can deduct an upfront deduction of 125 per cent of the cost incurred with reference to eligible assets.

D. *Eligibility for the temporary incentive*

The initial design required that the general overriding requirements for businesses to deduct a capital allowance would be applicable regarding this temporary incentive. These are that (1) the business must own the asset, and (2) it must be used in the production of income. For this reason, lessors in an operating lease scenario will generally qualify for the incentive (assuming other requirements met) because the lessor retains ownership of the assets and is generating an income from conducting a rental trade. Finance leases were initially excluded, but from further discussion, government will allow finance leases eligibility for the duration of the temporary incentive.

E. Limitation of enhanced renewable energy tax incentive in respect of assets granted an allowance in terms of section 12BA of the Act

To ensure that there is no duplication of tax incentives in respect of the enhanced renewable energy tax incentive, the draft legislation aims to clarify that taxpayers benefiting from a deduction under section 12BA will not be allowed a deduction under section 12B. Interaction between enhanced renewable energy tax incentive in section 12BA of the Act and deduction for small business cooperations in section 12E of the Act.

If a business is a small business corporation and qualifies for a deduction under section 12BA of the Act for an asset, the draft legislation seeks to clarify that section 12E shall not apply in respect of that asset.

F. Interaction between enhanced renewable energy tax incentive in section 12BA of the Act and government grants

If a business purchases qualifying assets with a combination of their own funds and funding in respect of a government grant, the 12BA allowance will only be available in respect of the portion of expenditure incurred using the taxpayer's own funds. For example, if qualifying assets cost R1 000 and R500 was paid for using the business' own funds, the 12BA allowance will equal R500 multiplied by 1.25, which is R625. The provisions of section 12P(4) of the Act will be amended to ensure that the taxpayer can deduct 125 per cent of own expenses incurred.

G. Recoupment of enhanced renewable energy tax incentive

Where a taxpayer disposes of an asset on or before 1 March 2026 in respect of which an enhanced renewable energy tax incentive is granted, the amounts (a maximum of 125 per cent of the cost of the asset) deducted under section 12BA of the Act will be fully recouped in terms of section 8(4)(a) read together with new provision section 8(4)(nA) of the Act.

Consequential amendments

Consequential amendments are proposed in sections 8, 11, 12E, 12N, 12P, 15, 23A, 23G of the Act and paragraph 66 of the Eighth Schedule to the Act.

IV. Effective date

The amendments will be deemed to have come into operation on 1 March 2023 and apply in respect of assets brought into use on or after that date.

5. INCOME TAX: INTERNATIONAL

5.1 EXTENDING THE ANTI-AVOIDANCE PROVISION TO COVER FOREIGN DIVIDENDS FROM SHARES LISTED IN SOUTH AFRICA

[Applicable provision: Section 10B of the Act]

I. Background

Currently, section 10B of the Act exempts foreign dividends received or accrued from shares listed on a South African stock exchange from normal tax. The rationale for this exemption is that these foreign dividends are subject to dividends tax and the collection of dividends tax on the basis of withholding taxes is more effective than taxing shareholders receiving those foreign dividends under the income tax system.

In turn, under section 10B of the Act, the exemption is denied for the participation exemption in section 10B(2)(*a*) of the Act in respect of a foreign dividend determined with reference to a deductible amount paid or payable by any person. Likewise, for the country-to-country exemption in section 10B(2)(*b*) of the Act if those foreign dividends are directly or indirectly sourced from tax-deductible payments.

II. Reasons for change

It has come to Government's attention that schemes have been devised to exploit the exemption of foreign dividends received or accrued from shares listed on a South African stock exchange from normal tax. These schemes involve 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.
These schemes largely have the effect that the entities that issued interest-bearing financial instruments will get an interest deduction while the interest is not taxed in a non-resident company listed on a South African stock exchange as there is an income tax exemption for non-residents and a withholding tax on interest exemption for interest paid by certain entities that issue these interest-bearing financial instruments.

III. Proposal

It is proposed that the round-tripping anti-avoidance provision for foreign dividends be extended to 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. In order to limit the impact of the round tripping anti-avoidance measures on legitimate transactions, it is proposed that the round tripping anti-avoidance rule in section 10B(4) of the Act only applies in respect of foreign dividends that are declared from profits provided that at least 20 per cent of the profits were generated from transactions with persons that deducted the amounts paid or payable from income.

IV. Effective date

The amendments will come into operation on 1 January 2024 and apply in respect of foreign dividends received or accrued on or after that date.

5.2 INTERACTION BETWEEN THE ANTI-AVOIDANCE RULE AND EXEMPTION APPLYING TO FOREIGN DIVIDENDS

[Applicable provision: Section 9D of the Act]

I. Background

Currently, under section 10B(4) of the Act, the participation exemption in section 10B(2)(a) of the Act is denied for a foreign dividend determined with reference to a deductible amount paid or payable by any person. Likewise, for the foreign company exemption in section 10B(2)(b) of the Act if foreign dividends are directly or indirectly sourced from tax-deductible amounts. 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 has the effect of limiting 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 an effective rate of only 20 per cent where the anti-avoidance provision applies.

II. Reasons for change

The above rules regarding the denial of the exemptions in section 10B(2)(*a*) and (*b*) of the Act if those foreign dividends are directly or indirectly sourced from tax deductible amounts and the anti-avoidance provision are not properly coordinated with the exemption that applies to foreign dividends to limit the effective tax rate for foreign dividends accruing to residents to a rate of 20 per cent. This lack of coordination potentially leads to a gap in the legislation such that those foreign dividends that have been denied the participation exemption because they are directly or indirectly sourced from tax-deductible payments are taxed at a rate of only 20 per cent where the anti-avoidance provision mentioned above applies.

III. Proposal

To clarify that the current denial of exemption for foreign dividends that are directly or indirectly sourced from tax-deductible payments will also be denied the partial exemption that currently results in an effective tax rate of 20 per cent, thereby ensuring that those dividends will be taxed at the full normal tax rates. Therefore, it is proposed that the exemption to tax foreign dividends at 20 per cent should not apply where the anti-avoidance rule is applicable.

IV. Effective date

The amendment will come into operation on 1 January 2024 and applies in respect of foreign dividends received or accrued on or after that date.

5.3 TAXATION OF NON-RESIDENT BENEFICIARIES OF TRUSTS

[Applicable provision: Section 25B of the Act]

I. Background

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.

Section 25B of the Act provides that the income of a trust is taxed either in the trust or in the hands of beneficiaries. However, section 25B is subject to section 7 of the Act such that if section 7 of the Act applies, some other person instead of the trust or beneficiaries may be taxed.

Paragraph 80 of the Eighth Schedule to the Act refers to a trust determining a capital gain, which must then be disregarded by such trust and taken into account by the resident beneficiary in whom the asset vests in terms of subparagraph (1) or any amount derived from the capital gain is vested (but without a right to the asset disposed of) in terms of subparagraph (2).

II. Reasons for change

Section 25B of the Act does not have a limitation on who the beneficiaries of a South African trust may be; they could be residents or non-residents. The flow through of amounts by South African trusts to non-residents places SARS in a difficult position to collect income tax from those beneficiaries as they may not be taxed on foreign sourced amounts, tax recovery actions may be difficult and in the case of non-resident trusts that are beneficiaries, SARS may not have information on the persons in whom the foreign trusts vest the income.

III. Proposal

It is accordingly proposed that changes be made to section 25B of the Act to align it with the provisions of paragraph 80 of the Eighth Schedule to the Act by limiting the flow through principle only to resident beneficiaries.

IV. Effective date

The amendments is deemed to have come into operation on 1 March 2024 and applies in respect of years of assessment commencing on or after that date.

5.4 REFINING THE PARTICIPATION EXEMPTION FOR THE SALE OF SHARES IN FOREIGN COMPANIES

[Applicable provision: Paragraph 64B of the Eighth Schedule to the Act]

I. Background

In 2003, changes were made to the tax legislation to introduce a participation exemption relating to foreign dividends from foreign companies in section 10B of the Act as well as participation exemption relating to the sale of shares in foreign companies in paragraph 64B of the Eighth

Schedule to the Act. 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.

II. Reasons for change

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. It has also been identified that the participation exemption is being used in ways that was never intended. 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.

III. Proposal

In order to close the loophole and address the unintended use of participation exemption relating to the sale of shares in foreign companies in paragraph 64B of the Eighth Schedule to the Act, it is proposed that the exclusions to participation exemption contained in paragraph 64B(1) of Eighth Schedule to the Act be extended to include the following:

Interest disposed of to a non-resident company that formed part of the same group of companies as the company disposing of the shares at any time during a period of 18 months before that disposal; or Interest disposed of to a non-resident company, the shareholders of which, immediately after the disposal, are substantially the same as the shareholders of any company in the group of companies disposing of the shares.

IV. Effective date

The amendment is deemed is deemed to come into operation on 1 November 2023 and applies in respect of disposals on or after that date.

5.5 REFINING THE PARTICIPATION EXEMPTION FOR THE FOREIGN RETURN OF CAPITAL FROM A CFC

[Applicable provision: Paragraph 64B of the Eighth Schedule to the Act]

I. Background

Paragraph 64B of the Eighth Schedule to the Act contains a participation exemption relating to the sale of shares in a foreign company. This participation exemption is subject to certain qualifying requirements. One of those requirements is that the South Africa resident selling the shares in a foreign company should have held those shares for a period of at least 18 months prior to the sale.

II. Reasons for change

In 2012 changes were made in the Act to extend the participation exemption to apply in respect of the foreign return of capital from a foreign company. At issue is the fact that unlike the participation exemption relating to the sale of shares in foreign company, the participation exemption for the foreign return of capital in a foreign company does not have a similar 18 month holding requirement. This creates an anomaly in the application of the provisions relating to participation exemption.

III. Proposal

In order to address this anomaly, it is proposed that a similar 18-month holding requirement that currently applies to the participation exemption relating to the sale of shares in a foreign company should be introduced for the participation exemption in respect of the foreign return of capital in a foreign company.

IV. Effective date

The amendment will come into operation on 1 January 2024 and apply in respect of any foreign return of capital received or accrued on or after that date.

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6. VALUE ADDED TAX

6.1 REVIEWING THE VALUE-ADDED TAX (VAT) TREATMENT OF SPECIFIC SUPPLIES IN THE SHORT-TERM INSURANCE INDUSTRY

[Applicable provisions: Further proviso to section 8(8) and a new section 8(8A) of the Value-Added Tax Act No. 89 of 1991 ("the VAT Act")]

I. Background

In 2019 changes were made to section 72 of the VAT Act, which provides the Commissioner with the discretionary powers to make arrangements or decisions as to the manner in which the provisions of the VAT Act, or the calculation or payment of tax, or the application of any rate of zero per cent, or any exemption from tax, provided for in terms of the VAT Act, shall be applied, provided that the Commissioner is satisfied that as a consequence of the manner in which any vendor or class of vendors conducts his, her or their business, trade or occupation, difficulties, anomalies or incongruities have arisen or may arise in regard to the application of the VAT Act. These changes have an impact on the arrangements or decision made in terms of this section before 21 July 2019. One of the arrangements and decisions made in terms of section 72 of the VAT Act before 21 July 2019, which is impacted by these changes refers to the VAT treatment of specific supplies in the short-term insurance industry.

II. Reasons for change

In 2013 SARS first issued Binding General Ruling 14 ("BGR 14"), which deals with the VAT treatment of specific supplies in the short-term insurance industry, including the VAT treatment of excess payments. This BGR 14 was updated in 2018 and 2020. BGR 14 stipulates that where an insured pays an excess amount directly to the third-party supplier, the supplier must issue two tax invoices, that is, one to the insured to the extent of the excess payment and one to the insurer to the extent of the trade payment.

Where the insurer pays the full amount, including the excess payment, to the third-party supplier and then recovers only the excess amount from the insured, the receipt of such excess payment from the insured does not constitute "consideration" as defined in section 1(1) of the VAT Act, since the payment received is not in respect of any taxable supply made by the insurer to the insured. The same question as to what supplies are being made arises where the insurer pays the excess directly to the service provider. One of the fundamental principles of VAT is that it is a tax on the end consumer. As such, as far as possible, businesses must be entitled to input tax credits. Insured VAT vendors in these instances would be required to declare output tax on any amount received from the insurer, but would not be entitled to any input tax credit on the excess amount paid to the insurer.

As such, BGR 14 provided for such an input tax claim and required the insurer to issue a document to the insured which reflects the particulars as stipulated in that paragraph, to enable the insured to deduct the VAT on the excess amount where the insured is a registered VAT vendor. In 2019, changes were made to section 72 of the VAT Act, which related to the SARS Commissioner's discretionary powers over VAT decisions. These changes affected decisions made before 21 July 2019, including BGR 14. In view of the fact that the 2019 changes to section 72 of the VAT Act imply that all rulings issued by the Commissioner before 21 July 2019 are no longer valid after 31 December 2021, at issue is whether changes could be made in the VAT Act to accommodate the ruling dealing with the VAT treatment of specific supplies in the short-term insurance industry.

III. Proposal

In order to address these concerns, it is proposed that changes be made to section 8 of the VAT Act, dealing with deemed supplies rules by introducing new provisions that make provision for a deemed supply to the insured when goods or services are paid for in part by the insured. Since the proposed amendments will deem two supplies to occur, one to the insurer, and one to the insured, the third party will be required to issue two tax invoices (one to the insurer and one to the insured). As such, it is proposed that further changes be made in the VAT Act to limit the insurer's input tax deduction calculated in terms of section 16(3)(*a*) to the tax fraction of the amount actually paid to the third-party supplier.

IV. Effective date

The amendments will come into operation on 1 January 2024.

6.2 CLARIFYING THE VAT TREATMENT OF PREPAID VOUCHERS IN THE TELECOMMUNICATIONS INDUSTRY

[Applicable provision: Section 21 of the VAT Act]

I. Background

In the early years of the mobile telecommunications industry in South Africa, prepaid subscribers to mobile telecommunication services could use prepaid vouchers only to purchase the services offered by that mobile telecommunications company such as calls and short message services ("SMS"). The evolution and technological advances in the telecommunications industry have made it possible for subscribers to utilise the prescribed services purchased from the telecommunications company to acquire other services from third-party service providers. Examples include, the supply of financial services (long-term and short-term insurance), downloads of music or movies, and mobile money services.

Prepaid vouchers falling within the scope of section 10(19) of the VAT Act are subject to VAT at the time the prepaid voucher is supplied. This is due to the fact that the goods or services to be supplied in the future were specified on the prepaid voucher or the holder is entitled by usage or arrangement to specified goods or services. The supplying vendor is therefore able to establish the nature of the goods or services to be supplied and therefore the tax treatment of the goods or services to be supplied is known at the time the voucher is sold. The value of the supply of the goods or services supplied upon the surrender of the prepaid voucher is then regarded as nil.

II. Reasons for change

At issue is the fact that where a subscriber acquires other services, the telecommunications company cannot issue a credit note, as the telecommunications company cannot meet the requirements of section 21(1)(*i*) of the VAT Act as it was not the supplier that provided the tax invoice to the subscriber.

When the prepaid subscriber acquires services from a third-party supplier, the third-party supplier is required to account for output tax on that supply, provided it is a taxable supply.

The implication, therefore, is that both the telecommunications company and the third-party supplier account for output tax to SARS; the telecommunications company at the point that the prepaid voucher is sold, and the third-party to the extent that services are supplied by the third-party. In such instances, the telecommunications supplier transfers the money collected in respect of the supply by the third-party supplier to such supplier, with no remedy for the telecommunications supplier to issue a credit note under section 21 of the VAT Act or write off irrecoverable debts under section 22 of the VAT Act.

III. Proposal

In order to address these concerns, it is proposed that changes be made in the VAT Act by introducing a provision allowing the telecommunications companies to deduct input tax to the extent that a subscriber acquires services from a third-party supplier, whether taxable or exempt, in instances where the telecommunications company acts as an agent for such supplies.

IV. Effective date

The amendment will come into operation on 1 April 2024.

6.3 CLARIFYING VAT RULES DEALING WITH DOCUMENTARY REQUIREMENTS FOR GOLD EXPORTS

[Applicable provisions: New section 54(2C) of the VAT Act]

I. Background

The main purpose of gold refineries is to refine and smelt gold or ore received from various customers, namely depositors / principals. In most instances, the refineries also act as agents and sell or export gold on behalf of these depositors / principals. Gold from more than one depositor / principal is typically required to make up the volume ordered for sale or export. When the depositor / principal delivers their gold to the refinery, the refinery issues a “Precious Metal Receipt” and later a “Sale of Gold Certificate” to the depositor / principal and the value of the gold deposited is determined using that day’s morning, afternoon or spot London Bullion Market Association gold price. These processes also apply to the refining and sale of silver insofar as it relates to exports.

The refinery and smelter require large quantities of gold or ore to operate effectively and efficiently, and no single depositor / principal provides sufficient quantities of gold or ore. It is accordingly not possible for each depositor / principal to have its gold or ore treated separately from the gold or ore of other depositors / principals. It follows that once a specific depositor / principal's gold or ore enters the refining or smelting process, it is co-mingled with the gold or ore of other depositors / principals and effectively loses its identity as belonging to a specific depositor / principal.

II. Reasons for change

At issue is the fact that after the refining or smelting, it is difficult to determine which depositor / principal's gold is sold or exported because the gold loses its original identity during refinery and smelting. As a result, depositors / principals 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 paragraphs (*a*) and (*d*) of the definition of "exported" in section 1(1) of the VAT Act.

Given that gold is a highly regulated commodity and that the refinery or smelter continuously sells gold as an agent on behalf of the depositors / principals to potential buyers who are limited to the members of the London Bullion Market Association based in London (the Bullion Bank) in the form of export sales (direct or indirect) as envisaged in section 11(1)(*a*) of the VAT Act, sales to the South African Reserve Bank, the South African Mint Company (Pty) Ltd and Banks registered under the Banks Act, No. 94 of 1990 as envisaged in section 11(1)(*f*) of the VAT Act, it is important that vendors are able to properly and accurately account for VAT.

III. Proposal

In order to address these challenges, it is proposed that changes be made in section 54 of the VAT Act, dealing with agents and auctioneers by introducing a provision allowing an agent under the above-mentioned circumstances to retain the necessary documentation and to assume the liability relating to the zero-rating in the event of non-compliance.

IV. Effective date

The amendment will come into operation on 1 April 2024.

7. CARBON TAX

7.1 EXTENSION OF THE UTILISATION PERIOD IN THE REGULATIONS ON CARBON OFFSETS

[Applicable provision: Regulation 2 of the Regulations on Carbon Offsets under section 19 of the Carbon Tax Act, No.15 of 2019 ("Regulations on Carbon Offsets")]

I. Background

The Regulations on Carbon Offsets were gazetted on 29 November 2019 in terms of Section 19(c) of the Carbon Tax Act. These Regulations outline the eligibility criteria for offset projects and set out the procedure for claiming the carbon offset allowance. Companies may use the carbon offsets allowance of 5 or 10 per cent to reduce their tax liability. The objective is to help provide a cost-effective transition to a low carbon and a climate resilient economy. The Regulations on Carbon Offsets make provision for carbon offsets which are from projects that are under taxable activities to have a utilisation period up to 31 December 2022. When the utilisation period was included in the Regulations on Carbon Offsets, it was aligned with the initial first phase of the carbon tax.

II. Reasons for change

As a result of the unprecedented impact of the Covid-19 global pandemic the South African economy was adversely impacted by the disruptions in economic activity. Government to put in place measures to curtail the severity of the impact of the pandemic.

In Budget 2022, the first phase of the carbon tax was extended by a further three years, from 31 December 2022 to 31 December 2025. However, the utilisation period contained in the Regulations on Carbon Offsets for offsets that are under taxable activities does not reflect the extension, as the date in the Regulations include the date of 31 December 2022. This creates a misalignment between the Carbon Tax Act provisions and the Regulations on Carbon Offsets.

III. Proposal

To align the extension of the first phase of the carbon tax with the date as stipulated in the regulations, a consequential amendment is sought in regulation 2 of the Regulations on Carbon Offsets. This amendment will be in the form of extending the utilisation for offsets under taxable activities from 31 December 2022 to 31 December 2025.

IV. Effective date

The amendment is deemed to have come into operation on 1 January 2023.

7.2 ALIGNING THE FUEL EMISSIONS FACTORS WITH METHODOLOGICAL GUIDELINES AND REGULATIONS

[Applicable provision: Schedule 1 of the Carbon Tax Act]

I. Background

The Carbon Tax Act was introduced in June 2019 as part of South Africa's climate change mitigation policies.

The tax base of the Carbon Tax Act is greenhouse gas emissions reported to the Department of Forestry, Fisheries and the Environment (DFFE). The emissions are reported according to the 2016 National Greenhouse Gas Emission Reporting Regulations, which were gazetted in terms of the National Environmental Management: Air Quality Act, No.39 of 2004. The DFFE published the methodological guidelines for quantifying greenhouse gas emissions to provide the approach for companies to report greenhouse gas emissions. Section 4 of the of the Carbon Tax Act defines the tax base according to activities with emissions factors in Schedule 1 of the Carbon Tax Act.

II. Reasons for change

In October 2022, the DFFE 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 also added fuel types. The guidelines further include default emission factors for fugitive emissions based on the 2019 Intergovernmental Panel on Climate Change (IPCC) refinements study on emission factors.
The updated emission factors will take effect for the department's 2023 reporting period, therefore covering emissions of the year 2022. To align the Carbon Tax Act with these guidelines, it is proposed that tables are added to Table 1 and Table 2 of Schedule 1 of the Carbon Tax Act to provide the tier 2 emission factors and default emission factors for fugitive emissions.

III. Proposal

To align the Carbon Tax Act with the DFFE regulations, the following amendments are required to Schedule 1 to the Carbon Tax Act.

A. The addition of the following table to Table 1 of Schedule 1

Country specific CO_2 emission factors for stationary and mobile combustion

Fuel Type	CO_2 EF ($kgCO_2/TJ$)	Default Net Calorific Value (TJ/Tonne)
Aviation Gasoline	65 752	
Diesel	74 638	0.0355
Heavy Fuel Oil	73 090	
Jet Kerosene	73 463	0.0344
LPG	64 852	0.04629
Paraffin	64 640	
Petrol	72 430	0.0325

Refuse Derived Fuel	83 000	0.0238
Sawdust	110 000	0.0146
Waste Tyres	85 000	0.0337

B. *The addition of the following table in Table 2 of Schedule 1*

Default emission factors for fugitive emissions from coal mining, oil and gas operations (IPCC 2019 Refinements)

IPCC Code	SOURCE CATEGORY ACTIVITY	CO2	CH4	N2O
1B1	**SOLID FUELS (M3 /TONNE)**			
1B1cii	Charcoal production (per Charcoal produced) (Tonne GHG/Tonne Charcoal)	1.57	0.0403	8×10^{-5}
1B1ciii	Biochar production (per biochar produced) (Tonne GHG/Tonne biochar)	4.3	0.03	ND
1B1ci	Coke production (per coke produced) (Tonnes GHG/ Tonne coke)	ND	4.9×10^{-5}	ND
1B1civ	**COAL TO LIQUIDS (TONNE GHG/TJ TOTAL OUTPUT)**			
1B1civ	Coal to Liquids - Syngas	55	0.0061	0
1B1civ	Coal to Liquids – Syngas/H_2	55	0.0061	0
1B1civ	Coal to Liquids – SNG (synthetic natural gas)	78	0.0061	0
1B1civ	**GAS TO LIQUIDS (TONNE GHG/TJ NATURAL GAS INPUT)**			
1B1civ	Gas to liquids	12.73	ND	ND
	OIL TRANSPORT (TONNE/ 103M3 OIL LOADED ONTO TANKER SHIPS)			
1.B.2.a.i	LOADING OFF-SHORE PRODUCTION ON TANKER SHIPS – WITHOUT VRU - ALL	ND	0.065	ND
1.B.2.a.i	LOADING OFF-SHORE PRODUCTION ON TANKER SHIPS – WITH VRU - ALL	ND	0.040	ND
1B2a	**OIL REFINING (tonnes/ 103M3 OIL REFINED)**			
1.B.2.a.iii.4	ALL[55]	5.85	See Table B.2[56]	8.77×10^{-5}

IV. Effective date

The amendments are deemed to have come into operation on 1 January 2023.

7.3 ADJUSTING THE FORMULA FOR FUGITIVE EMISSION FACTORS

[Applicable provision: Section 4 of the Carbon Tax Act]

I. Background

The Carbon Tax Act was introduced in June 2019 to be levied on stationary greenhouse gas emissions. Section 4(2) of the Carbon Tax Act provides for the formulae to be used to calculate the greenhouse gas emissions for fuel combustion, fugitive and industrial process emissions, using emission factors in Schedule 1 to the Carbon Tax Act. 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 through multiplying by a density factor, followed by multiplying by 1 000 to convert to tonnes.

II. Reasons for change

The changes that were made to the formula for fugitive emissions in 2019 were 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. Where the multiplication of the emission factors is inaccurate it results in overestimated liability for the carbon tax. Changes are proposed to amend Table 2 of Schedule 1 to the Carbon Tax Act because amending the formulae would result in administrative challenges for SARS as the tax filing systems would have to be amended.

III. Proposal

In order to correct for the overestimation of the tax liability for certain activities, it is proposed that the decimal places for the affected activities be removed by three places in order to align with the current tax filing system. The emission factors for activities with the following units of measurement are to move the decimal places by three:

- M^3 / Tonne
- Gg-CO_2 / year / km
- Gg-CO_2 / year / M^3
- Gg / 10^3M^3

It is proposed that Table 2 be substituted with the following table:

IPCC Code	SOURCE CATEGORY ACTIVITY	CO2	CH4	N2O
1B1	**SOLID FUELS (M3 /TONNE)**			
1B1a	**COAL MINING AND HANDLING**			
1B1ai	UNDERGROUND COAL MINING	0.000077	0.00077	

	UNDERGROUND POST-MINING (HANDLING & TRANSPORT)	0.000018	0.00018	
1B1aii	SURFACE COAL MINING	N/A	0	
	SURFACE POST-MINING (STORAGE AND TRANSPORT)	N/A	0	
1B1c2	Charcoal production (Fuel wood input) ($kgCH_4/TJ$)	N/A	0.300	
	Charcoal production (Charcoal produced) ($kgCH_4/TJ$)	N/A	1.000	
1B2	**OILAND NATURAL GAS (Gg/ 103M3 TOTAL OIL PRODUCTION)**			
1B2b	**NATURAL GAS**			
1B2b	***FLARING AND VENTING***			
1.B.2.b.ii	WELL DRILLING	0.0000001	0.000000033	ND
1.B.2.b.ii	WELL TESTING	0.000009	0.000000051	0.000000000068
1.B.2.b.ii	WELL SERVICING	0.0000000019	0.00000011	ND
1B2b	***GAS PRODUCTION (Gg/ 106M3 TOTAL OIL PRODUCTION)***			
1.B.2.b.iii.2	FUGITIVES	$1.40E^{-05}$ to $8.20E^{-05}$	$3.80E^{-04}$ to $2.30E^{-03}$	N/A
1.B.2.b.ii	FLARING	0.0012	0.00000076	0.000000021
	GAS PROCESSING (Gg/ 106M3 RAW GAS FEED)			
1.B.2.b.iii.3	SWEET GAS PLANTS—FUGITIVES	$1.50E^{-04}$ to $3.20E^{-04}$	$4.80E^{-04}$ to $1.03E^{-03}$	N/A
1.B.2.b.ii	SWEET GAS PLANTS—FLARING	0.0018	0.0000012	0.000000025

1.B.2.b.iii.3	SOUR GAS PLANTS—FUGITIVES	0.0000079	0.000097	N/A
1.B.2.b.ii	SOUR GAS PLANTS—FLARING	0.0036	0.0000024	0.000000054
1.B.2.b.i	SOUR GAS PLANTS —RAW CO_2 VENTING	0.063	N/A	N/A
1.B.2.b.iii.3	DEEP CUT EXTRACTION—FUGITIVES	0.0000016	0.000011	N/A
1.B.2.b.ii	DEEP CUT EXTRACTION—FLARING	0.00011	0.000000072	0.000000012
1.B.2.b.iii.3	DEFAULT—FUGITIVES	$1.20E^{-05}$ to $3.20E^{-04}$	$1.50E^{-04}$ to $1.03E^{-03}$	N/A
1.B.2.b.ii	DEFAULT—FLARING	0.003	0.000002	0.000000033
1.B.2.b.i	DEFAULT—RAW CO_2 VENTING	0.04	N/A	N/A
1B2b	***GAS TRANSMISSION & STORAGE (Gg-CO2/year/km***			
1.B.2.b.iii.4	TRANSMISSION—FUGITIVES	0.000000016	0.0000025	N/A
1.B.2.b.i	TRANSMISSION—VENTING	0.0000000085	0.0000010	N/A
1.B.2.b.iii.4	*STORAGE* ***(Gg-CO2/year/M3)***		$2.32E^{-12}$	ND
1B2b	***GAS DISTRIBUTION (Gg/ 106M3 OF UTILITY SALES)***			
1.B.2.b.iii.5	ALL	0.000051	0.0011	ND
1B2b	*NATURAL GAS LIQUIDS TRANSPORT* (Gg/ 10^3M^3 CONDENSATE AND PENTANES PLUS)			
1.B.2.a.iii.3	CONDENSATE	0.0000000072	0.00000011	
1.B.2.a.iii.3	LIQUEFIED PETROLEUM GAS **(Gg/ 10^3M^3 LPG)**	0.00000043	N/A	$2.2\ 0E^{-12}$

1.B.2.a.iii.3	LIQUEFIED NATURAL GAS (Gg/ $10^6 M^3$ MARKETABLE GAS)	ND	ND	ND
1B2a	**OIL**			
1B2a	***OIL PRODUCTION* (Gg/ $10^3 M^3$ CONVENTIONAL OIL PRODUCTION)**			
1.B.2.a.iii.2	CONVENTIONAL OIL—FUGITIVES (ONSHORE)	$1.10E^{-10}$ to $2.60E^{-07}$	$1.50E^{-09}$ to $3.60E^{-06}$	N/A
1.B.2.a.iii.2	CONVENTIONAL OIL—FUGITIVES (OFFSHORE)	0.000000000043	0.00000000059	N/A
1.B.2.a.i	CONVENTIONAL OIL—VENTING	0.000000095	0.00000072	N/A
1.B.2.a.ii	CONVENTIONAL OIL—FLARING	0.000041	0.000000025	0.00000000064
1B2a	***OIL PRODUCTION (Gg/ $10^3 M^3$ HEAVY OIL PRODUCTION)***			
1.B.2.a.iii.2	HEAVY OIL/COLD BITUMEN—FUGITIVES	0.00000054	0.0000079	N/A
1.B.2.a.i	HEAVY OIL/COLD BITUMEN—VENTING	0.0000053	0.000017	N/A
1.B.2.a.ii	HEAVY OIL/COLD BITUMEN—FLARING	0.000022	0.00000014	0.00000000046
1B2a	***OIL PRODUCTION (Gg/ $10^3 M^3$ THERMAL BITUMEN PRODUCTION)***			
1.B.2.a.iii.2	THERMAL OIL PRODUCTION—FUGITIVES	0.000000029	0.00000018	N/A

1.B.2.a.i	THERMAL OIL PRODUCTION—VENTING	0.00000022	0.0000035	N/A
1.B.2.a.ii	THERMAL OIL PRODUCTION—FLARING	0.000027	0.000000016	0.00000000024
1B2a	***OIL PRODUCTION (Gg/ 10^3M^3 SYNTHETIC CRUDE PRODUCTION FROM OILSANDS)***			
1.B.2.a.iii.2	SYNTHETIC CRUDE (FROM OILSANDS)	ND	0.0000023	ND
1.B.2.a.iii.2	SYNTHETIC CRUDE (OIL SHALE)	ND	ND	ND
1B2a	***OIL PRODUCTION (Gg/ 10^3M^3 TOTAL OIL PRODUCTION)***			
1.B.2.a.iii.2	DEFAULT TOTAL—FUGITIVES	0.00000028	0.0000022	N/A
1.B.2.a.i	DEFAULT TOTAL—VENTING	0.0000018	0.0000087	N/A
1.B.2.a.ii	DEFAULT TOTAL—FLARING	0.000034	0.000000021	0.00000000054
1B2a	***OIL UPGRADING (Gg/ 10^3M^3 OIL UPGRADED)***			
1.B.2.a.iii.2	ALL	ND	ND	ND
1B2a	***OIL TRANSPORT (Gg/ 10^3M^3 OIL TRANSPORTED BY PIPELINE)***			
1.B.2.a.iii.3	PIPELINES	0.00000000049	0.0000000054	N/A
1B2a	***OIL TRANSPORT (Gg/ 10^3M^3 OIL TRANSPORTED BY TANKER TRUCK)***			

1.B.2.a.i	TANKER TRUCKS AND RAIL CARS—VENTING	0.0000000023	0.000000025	N/A
	OIL TRANSPORT (Gg/ 10^3M^3 OIL TRANSPORTED BY TANKER SHIPS)			
1.B.2.a.i	LOADING OFF-SHORE PRODUCTION ON TANKER SHIPS—VENTING	ND	ND	ND
1B2a	***OIL REFINING (Gg/ 10^3M^3 OIL REFINED)***			
1.B.2.a.iii.4	ALL		$2.60E^{-09}$ to $4.10E^{-08}$	ND

IV. Effective date

The amendments are deemed to have come into operation on 1 June 2019.

7.4 CLARIFYING THE CARBON BUDGET ALLOWANCE

[Applicable provision: Section 12 of the Carbon Tax Act]

I. Background

In October 2020, the DFFE gazetted an extension of the voluntary carbon budget system and the piloting of new methodologies for determining company-level carbon budgets. Changes were subsequently made to Section 12(1) of the Carbon Tax Act to align with the dates of the voluntary carbon budget system. The mandatory carbon budget system was planned to be implemented on 1 January 2023, once the Climate Change Bill would have been enacted.

II. Reasons for change

In Budget 2022, it was announced that a higher carbon tax rate would apply to greenhouse gas emissions exceeding the carbon budget once the mandatory carbon budgets are implemented by the DFFE. These amendments to the Carbon Tax Act will be legislated once the Climate Change Bill is enacted, at which time the carbon budget allowance of five per cent will fall away. The DFFE has not yet enacted the Climate Change Bill, therefore mandatory carbon budgets are not in place. An amendment to the Carbon Tax Act is required to provide clarity to taxpayers that a carbon budget allowance may be claimed until the mandatory carbon budgets are implemented.

III. Proposal

It is proposed that the period specified for carbon budget allowance in section 12 of the Carbon Tax Act is extended to 31 December 2024 to provide taxpayers clarity to continue claiming the carbon budget allowance.

IV. Effective date

The amendments are deemed to have come into operation on 1 January 2023.

8. CLAUSE BY CLAUSE

CLAUSE 1

Income Tax: Amendment to section 1
Subclause (1)*(a)*: See notes on **ADDRESSING EXCESSIVE AMOUNTS OF CONTRIBUTED TAX CAPITAL**

Subclause (1)*(b)*: The amendment allows for transfers of retirement interests to also be made to pension funds, provident funds and provident preservation funds.

Subclauses (1)*(c)* and *(d)*: The amendments to the definition of 'pension fund' are technical corrections that ensure correct referencing.

Subclauses (1)*(e)* and *(f)*: See notes on **TRANSFERS BETWEEN RETIREMENT FUNDS BY MEMBERS WHO ARE 55 YEARS OR OLDER**

Subclause (1)*(g)*: This amendment to the definition of 'pension preservation fund' is a technical correction that ensures correct referencing as subparagraph (iii) was replaced by subparagraph (vi) with effect from 1 March 2021.

Subclause (1)*(h)* and *(i)*: The amendments to the definition of 'provident fund' are technical corrections that ensure correct referencing.

Subclause (1)*(j)*: See notes on **TRANSFERS BETWEEN RETIREMENT FUNDS BY MEMBERS WHO ARE 55 YEARS OR OLDER**

Subclause (1)*(k)*: The amendment to the definition of 'provident preservation fund' is a technical correction that ensures correct referencing as subparagraph (iii) was replaced by subparagraph (vi) with effect from 1 March 2021.

Subclause (1)*(l)*: The amendment to the definition of 'provident preservation fund' is a technical correction that ensures correct drafting convention.

Subclause (1)*(m)*: The amendment to the definition of 'retirement annuity fund' is a technical correction as the policy intent that transfers are to an equally or more restrictive retirement fund remains.

Subclause (1)*(n)*: The amendment to the definition of 'retirement interest' ensures that it also applies to transfers to a pension fund or a provident fund.

CLAUSE 2

Income Tax: Insertion of section 6C

See notes on **SOLAR ENERGY TAX CREDIT**

CLAUSE 3

Income Tax: Amendment to section 7C

See notes on **CLARIFYING ANTI-AVOIDANCE RULES FOR LOW-INTEREST OR INTEREST-FREE LOANS TO TRUSTS**

CLAUSE 4

Income Tax: Amendment to section 8

See notes on **ENHANCED DEDUCTION IN RESPECT OF CERTAIN MACHINERY, PLANT, IMPLEMENTS, UTENSILS AND ARTICLES USED IN THE PRODUCTION OF RENEWABLE ENERGY**

CLAUSE 5

Income Tax: Amendment to section 8EA

See notes on **REFINEMENT OF THE APPLICATION OF THE QUALIFYING PURPOSE EXCLUSION FOR HYBRID INSTRUMENTS**

CLAUSE 6

Income Tax: Amendment to section 9

Subclauses *(a)* and *(b)*: These amendments change the words “effectively connected with” to “effectively connected to” and changes the word “attributable” to “effectively connected to”, to clarify the nexus of assets to a permanent establishment.

CLAUSE 7

Income Tax: Amendment to section 9D

This amendment is consequential upon the reduction in the tax rate for companies to 27 per cent for years of assessments ending on or after 31 March 2023.
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CLAUSE 8

Income Tax: Amendment to section 9H
This amendment changes the word “attributable” to “effectively connected”, to clarify the nexus of an asset to a permanent establishment.

CLAUSE 9

Income Tax: Amendment to section 10
Subclause (1)*(a)*: This amendment is a technical correction that ensures correct referencing as the Social Assistance Act of 1992 was replaced by the Social Assistance Act of 2004.

Subclauses (1)*(b)* and *(c)*: See notes on **TAX TREATMENT OF DEPOSIT INSURANCE SCHEME**

CLAUSE 10

Income Tax: Amendment to section 10B
Subclause (1)*(a)*: This amendment seeks to change the exemption ratio to 7/27 subsequent to the reduction of the company tax rate to 27 per cent for years of assessments ending on or after 31 March 2023.

Subclauses (1)*(b)* and *(c)*: See notes on **EXTENDING THE ANTI-AVOIDANCE PROVISION TO COVER FOREIGN DIVIDENDS FROM SHARES LISTED IN SOUTH AFRICA AND INTERACTION BETWEEN THE ANTI-AVOIDANCE RULE AND EXEMPTION APPLYING TO FOREIGN DIVIDENDS**

CLAUSE 11

Income Tax: Amendment to section 11
See notes on **ENHANCED DEDUCTION IN RESPECT OF CERTAIN MACHINERY, PLANT, IMPLEMENTS, UTENSILS AND ARTICLES USED IN THE PRODUCTION OF RENEWABLE ENERGY**

CLAUSE 12

Income Tax: Amendment to section 11D
See notes on **REFINEMENTS TO THE RESEARCH AND DEVELOPMENT TAX INCENTIVE**

CLAUSE 13

Income Tax: Amendment to section 11F
Subclauses (1)*(a)*: See notes on **APPORTIONING THE TAX-FREE INVESTMENT CONTRIBUTION LIMITATION AND LIMITING THE RETIREMENT FUNDS CONTRIBUTION DEDUCTION WHEN AN INDIVIDUAL CEASES TO BE A TAX RESIDENT**

Subclauses (1)*(b)* and *(c)*: See notes on **CLARIFYING THE AMOUNT OF EMPLOYER CONTRIBUTION TO A RETIREMENT FUND TO BE DEDUCTIBLE**

CLAUSE 14

Income Tax: Insertion of section 11G
See notes on **REVIEWING THE PRINCIPLES OF PRACTICE NOTE 31 OF 1994**

CLAUSE 15

Income Tax: Amendment of section 12B
See notes on **ENHANCED DEDUCTION IN RESPECT OF CERTAIN MACHINERY, PLANT, IMPLEMENTS, UTENSILS AND ARTICLES USED IN THE PRODUCTION OF RENEWABLE ENERGY**

CLAUSE 16

Income Tax: Insertion of section 12BA
See notes on **ENHANCED DEDUCTION IN RESPECT OF CERTAIN MACHINERY, PLANT, IMPLEMENTS, UTENSILS AND ARTICLES USED IN THE PRODUCTION OF RENEWABLE ENERGY**

CLAUSE 17

Income Tax: Insertion of section 12E
See notes on **ENHANCED DEDUCTION IN RESPECT OF CERTAIN MACHINERY, PLANT, IMPLEMENTS, UTENSILS AND ARTICLES USED IN THE PRODUCTION OF RENEWABLE ENERGY**

CLAUSE 18

Income Tax: Amendment to section 12N
See notes on **ENHANCED DEDUCTION IN RESPECT OF CERTAIN MACHINERY, PLANT, IMPLEMENTS, UTENSILS AND ARTICLES USED IN THE PRODUCTION OF RENEWABLE ENERGY**

CLAUSE 19

Income Tax: Amendment to section 12P
See notes on **ENHANCED DEDUCTION IN RESPECT OF CERTAIN MACHINERY, PLANT, IMPLEMENTS, UTENSILS AND ARTICLES USED IN THE PRODUCTION OF RENEWABLE ENERGY**

CLAUSE 20

Income Tax: Amendment to section 12T
See notes on **APORTIONING THE TAX-FREE INVESTMENT CONTRIBUTION LIMITATION AND LIMITING THE RETIREMENT FUNDS CONTRIBUTION DEDUCTION WHEN AN INDIVIDUAL CEASES TO BE A TAX RESIDENT**

CLAUSE 21

Income Tax: Amendment to section 13*quat*

See notes on **EXTENSION OF THE UDZ TAX INCENTIVE SUNSET DATE**

CLAUSE 22

Income Tax: Amendment to section 15
This amendment allows expenditure on renewable energy assets to be included in the capital expenditure of a mine.

CLAUSE 23

Income Tax: Amendment to section 19

See notes on **CLARIFYING THE INTERACTION BETWEEN THE DEBT FORGIVENESS RULES AND THE DISPOSAL OF ASSETS EXCLUSION RULE FOR DORMANT GROUP COMPANIES**

CLAUSE 24

Income Tax: Amendment to section 23A

Subclauses (1)*(a)*, *(c)* and *(d)* contains technical amendments which change "him" to "taxpayer" and seeks to be more gender neutral by improving the language used.

Subclause (1)*(b)*: See notes on **ENHANCED DEDUCTION IN RESPECT OF CERTAIN MACHINERY, PLANT, IMPLEMENTS, UTENSILS AND ARTICLES USED IN THE PRODUCTION OF RENEWABLE ENERGY**

CLAUSE 25

Income Tax: Amendment to section 23G

See notes on **ENHANCED DEDUCTION IN RESPECT OF CERTAIN MACHINERY, PLANT, IMPLEMENTS, UTENSILS AND ARTICLES USED IN THE PRODUCTION OF RENEWABLE ENERGY**

CLAUSE 26

Income Tax: Amendment to section 23M

See notes on **CLARIFICATION OF THE INTEREST LIMITATION RULES**

CLAUSE 27

Income Tax: Amendment to section 24I

This amendment changes the word "attributable" to "effectively connected", to clarify the nexus of an asset to a permanent establishment.

CLAUSE 28

Income Tax: Amendment to section 25

Subclause (1)*(a)*: See notes on **SOLAR ENERGY TAX CREDIT**

Subclause (1)*(b)*: This amendment is a technical correction that serves to clarify the tax treatment of the estate of a non-resident person.

CLAUSE 29

Income Tax: Amendment to section 25B

See notes on **TAXATION OF NON-RESIDENT BENEFICIARIES OF TRUSTS**

CLAUSE 30

Income Tax: Amendment to section 25E
See notes on **TRANSLATING CONTRIBUTED TAX CAPITAL FROM FOREIGN CURRENCY TO RANDS**

CLAUSE 31

Income Tax: Amendment to section 28

See notes on **REFINING THE PROVISIONS DEALING WITH THE IMPACT OF INTERNATIONAL FINANCIAL REPORTING STANDARD 17 INSURANCE CONTRACTS ON THE TAXATION OF INSURERS**

CLAUSE 32

Income Tax: Amendment to section 29

See notes on **REFINING THE PROVISIONS DEALING WITH THE IMPACT OF INTERNATIONAL FINANCIAL REPORTING STANDARD 17 INSURANCE CONTRACTS ON THE TAXATION OF INSURERS**

CLAUSE 33

Income Tax: Amendment to section 35A

Subclauses (1)*(a)* to *(g)*: These amendments replace the term ‘estate agent’ as contemplated in the Estate Agency Affairs Act, 1976 (Act No.112 of 1976) with the term “property practitioner” as contemplated in the Property Practitioners Act, 2019 (Act No.22 of 2019), as the Estate Agency Affairs Act was repealed and replaced by the Property Practitioners Act

CLAUSE 34

Income Tax: Amendment to section 36(11)

This amendment allows expenditure on renewable energy assets to be included in the capital expenditure of a mine

CLAUSE 35

Income Tax: Amendment to section 40CA

See notes on **CLARIFYING THE INTERACTION OF PROVISIONS ON THE ACQUISITION OF ASSETS IN EXCHANGE FOR SHARES**

CLAUSE 36

Income Tax: Amendment to section 42

The amendment seeks to remove the “or” at the end of paragraph *(c)* and inserts and “or” at the end of paragraph *(d)* of the definition of “qualifying interest” which is necessitated by the addition of paragraph *(e)* to that definition.

CLAUSE 37

Income Tax: Amendment to section 46

Subclauses (1)(*a*): The amendment seeks to add an “and” at the end of paragraph *(b)*(i) of the definition of “unbundling transactions” in order to clarify the original intention that an unbundling transaction where the unbundled company is a foreign company must meet all the requirements set out under paragraph *(b)* of that definition.

Subclause (1)*(b)* to *(d)*: See notes on **REFINING THE PROVISIONS APPLICABLE TO UNBUNDLING TRANSACTIONS**

CLAUSE 38

Income Tax: Amendment to section 49D
This amendment is consequential to the discontinuance of the flow-through principle for non-resident beneficiaries in section 25B and to avoid double taxation under the withholding tax on royalties.

CLAUSE 39

Income Tax: Amendment to section 50D
This amendment is consequential to the discontinuance of the flow-through principle for non-resident beneficiaries in section 25B and to avoid double taxation under the withholding tax on interest.

CLAUSE 40

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

See notes on **TRANSFERS BETWEEN RETIREMENT FUNDS BY MEMBERS WHO ARE 55 YEARS OR OLDER**

CLAUSE 41

Income Tax: Amendment to paragraph 12A of the Eighth Schedule to the Act

See notes on **CLARIFYING THE INTERACTION BETWEEN THE DEBT FORGIVENESS RULES AND THE DISPOSAL OF ASSETS EXCLUSION RULE FOR DORMANT GROUP COMPANIES**

CLAUSE 42

Income Tax: Amendments to paragraph 64B of the Eighth Schedule to the Act

Subclause (1)*(a)*: See notes on **REFINING THE PARTICIPATION EXEMPTION FOR THE SALE OF SHARES IN FOREIGN COMPANIES**

Subclause (1)*(b)*: See notes on **REFINING THE PARTICIPATION EXEMPTION FOR THE FOREIGN RETURN OF CAPITAL FROM A FOREIGN COMPANY**

CLAUSE 43

Income Tax: Amendments to paragraph 66 of the Eighth Schedule to the Act

See notes on **ENHANCED DEDUCTION IN RESPECT OF CERTAIN MACHINERY, PLANT, IMPLEMENTS, UTENSILS AND ARTICLES USED IN THE PRODUCTION OF RENEWABLE ENERGY**

CLAUSE 44

Customs and Excise Act & Value-Added Tax Act: Continuation of certain amendments of Schedules

The proposed clause makes provision for the continuation of certain amendments to the Schedules to the Customs and Excise Act and the Vat Act, effected by notice in the government Gazette during the period of 1 October 2022 up to and including 31 October 2023.

CLAUSE 45

Customs and Excise Act: Amendments to Schedule No. 6

In light of the current electricity crisis, a refund similar to the diesel refund for farming, forestry, fishing and mining sectors will be extended to the manufacturers of foodstuffs on the Road Accident Fund (RAF) levy for diesel used in the manufacturing process. The new RAF levy refund for foodstuffs manufacture will be in respect of the new refund item 670.05 subject to the new Note

14. The refund will apply to the purchase and use of distillate fuel for the manufacture of foodstuffs during the period 1 April 2023 to 31 March 2025. Persons that may apply for the new refund are those persons that both purchase and use distillate fuel for the manufacture of foodstuffs, that have successfully applied for refund user and manufacturing premises registration for purposes of refund item 670.05, and that are also registered for value-added tax purposes. The listed manufacturing activities must be performed by the registered refund user at the registered manufacturing premises in the realisation of foodstuffs for commercial gain.

CLAUSE 46

Value-Added Tax: Amendment of the definition of "enterprise" in section 1(1)

The amendment deems the activities relating to the supplies of deposit insurance by the Corporation for Deposit Insurance established in terms of section 166AE of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) not to be the carrying on of an enterprise.

See notes on **TAX TREATMENT OF DEPOSIT INSURANCE SCHEME**

CLAUSE 47

Value-Added Tax: Amendment to section 2

The amendment seeks to update the reference from IAS 39 in the definition of "derivative" to the relevant International Financial Reporting Standards ("IFRS"), which is, IFRS 9 Financial Instruments.

CLAUSE 48

Value-Added Tax: Amendment to section 8

See notes on **REVIEWING THE VALUE-ADDED TAX TREATMENT OF SPECIFIC SUPPLIES IN THE SHORT-TERM INSURANCE INDUSTRY**

CLAUSE 49

Value-Added Tax: Amendment to section 10

The amendment seeks to remove the words "of the construction, extension or improvement" from the wording of section 10(29) in order to clarify that the term "adjusted cost" also includes the cost of the purchase of the land in this regard.

CLAUSE 50

Value-Added Tax: Amendment to section 18D

Subclauses (1)(*a*) and (*b*): The amendment seeks to insert the "or" at the end of paragraph (*a*) and remove the "or" at the end of paragraph (*b*) as a result of the deletion of paragraph (*c*).

Subclause (1)(*c*): The amendment seeks to delete section 18D(5)(c) which was an anomaly.

Subclause (1)(d): The insertion seeks to include formal exit rules in section 18D where the temporarily applied period has expired and addresses a situation where the property is sold whilst the dwelling is being temporarily let and the transfer only occurs after 12 months.

CLAUSE 51

Value-Added Tax: Amendment to section 21

See notes on **CLARIFYING THE VAT TREATMENT OF PREPAID VOUCHERS IN THE TELECOMMUNICATIONS INDUSTRY**

CLAUSE 52

Value-Added Tax: Amendment to section 54

See notes on **CLARIFYING VAT RULES DEALING WITH DOCUMENTARY REQUIREMENTS FOR GOLD EXPORTS**

CLAUSE 53

Value-Added Tax: Amendment to Schedule 1

The amendment seeks to delete item 413.00 from Schedule 1 of the VAT Act, as this item is now obsolete.

CLAUSE 54

Mineral and Petroleum Resources Royalty Act: Amendment to section 3

See notes on **REFINEMENTS TO ROYALTY RATE FOR OIL AND GAS**

CLAUSE 55

Mineral and Petroleum Resources Royalty Act: Amendment to section 4

See notes on **REFINEMENTS TO ROYALTY RATE FOR OIL AND GAS**

CLAUSE 56

Mineral and Petroleum Resources Royalty Act: Amendment to section 5

See notes on **REFINEMENTS TO ROYALTY RATE FOR OIL AND GAS**

CLAUSE 57

Taxation Laws Amendment Act of 2011: Amendment to section 32

This amendment is consequential upon moving the sunset date for the R&D tax incentive to section 11D.

CLAUSE 58

Taxation Laws Second Amendment Act of 2011: Amendment to section 1

This amendment is consequential upon moving the sunset date for the R&D tax incentive to section 11D.

CLAUSE 59

Taxation Administration Laws Amendment Act of 2012: Amendment to section 5

This amendment is consequential upon moving the sunset date for the R&D tax incentive to section 11D.

CLAUSE 60

Taxation Laws Amendment Act of 2013: Amendment to section 13

The amendment postpones the effective date of amendments to sections 8F(3)(*b*)(ii), 8F(3)(*c*)(ii) and 8F(3)(*d*) from 1 January 2024 to 1 January 2025.

CLAUSE 61

Taxation Laws Amendment Act 31 of 2013: Amendment to section 15

The amendment postpones the effective date of amendments to sections 8FA(3)(*b*)(ii), 8FA(3)(*c*)(ii) and 8FA(3)(*d*) from 1 January 2024 to 1 January 2025.

CLAUSE 62

Taxation Laws Amendment Act 31 of 2013: Amendment to section 29

This amendment is consequential upon moving the sunset date for the R&D tax incentive to section 11D.

CLAUSE 63

Taxation Laws Amendment Act 31 of 2013: Amendment to section 62

The amendment postpones the effective date of certain amendments to section 23M from 1 January 2024 to 1 January 2025.

CLAUSE 64

Taxation Laws Amendment Act 43 of 2014: Amendment to section 18

This amendment is consequential upon moving the sunset date for the R&D tax incentive to section 11D.

CLAUSE 65

Taxation Laws Amendment Act 15 of 2016: Amendment to section 27

This amendment is consequential upon moving the sunset date for the R&D tax incentive to section 11D.

CLAUSE 66

Carbon Tax Act: Amendments to section 12 of the Carbon Tax Act of 2019

See notes on **CLARIFYING THE CARBON BUDGET ALLOWANCE**

CLAUSE 67

Carbon Tax Act: Amendments to Tabel 2 of Schedule 1 of the Carbon Tax Act of 2019

See notes on **ALIGNING THE FUEL EMISSIONS FACTORS WITH METHODOLOGICAL GUIDELINES AND REGULATIONS and ADJUSTING THE FORMULA FOR FUGITIVE EMISSION FACTORS and EXTENSION OF THE UTILISATION PERIOD IN THE CARBON OFFSET REGULATIONS**

CLAUSE 68

Taxation Laws Amendment Act 20 of 2022: Amendment to section 13

This amendment corrects the amendment of section 24(2) of the Act made in 2022 by taking into account the amendments made in 2015 to that section.

CLAUSE 69

Short title and commencement