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RELEASE

The first batch of the draft Taxation Laws Amendment Bill, 2014, is hereby published for comment. The draft legislation gives effect to matters presented by the Minister of Finance in the Budget Review 2014, as tabled in Parliament earlier this year, in respect of tax treatment of the risk businesses of long term insurers and retirement reforms in particular with regards to defined benefits.

The National Treasury invites members of the public to submit comments on the draft legislation by no later than **23 June 2014** to Nombasa Nkumanda at nombasa.nkumanda@treasury.gov.za and Adele Collins at acollins@sars.gov.za.

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REPUBLIC OF SOUTH AFRICA

**DRAFT TAXATION LAWS
AMENDMENT BILL**

(First Batch Release)

*(As introduced in the National Assembly (proposed section 77))
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

Release for comment: 10 June 2014 – First Batch

Amendment of section 29A of Act 58 of 1962, as inserted by section 30 of Act 53 of 1999 and amended by section 36 of Act 59 of 2000, section 15 of Act 5 of 2001, section 15 of Act 19 of 2001, section 39 of Act 60 of 2001, section 30 of Act 74 of 2002, section 16 of Act 16 of 2004, section 23 of Act 20 of 2006, section 21 of Act 3 of 2008, section 52 of Act 7 of 2010, section 62 of Act 22 of 2012 and section 77 of Act 31 of 2013

x. Section 29A of the Income Tax Act, 1962 is hereby amended—

(a) by the insertion after the definition of “policyholder fund” of the following definitions:

“‘risk policy’ means—

(a) any policy issued by the insurer during any year of assessment of that insurer commencing on or after 1 January 2016 in terms of which—

(i) any amount payable is dependent on any future event of which the occurrence is uncertain; or

(ii) any amount is only payable by reason of death; or

(b) any reinsurance policy in respect of a policy contemplated in paragraph (a);”;

(b) by the substitution in subsection (4)(a) for subparagraph (i) of the following subparagraph:

“(i) business carried on by the insurer with, and any policy, of which the owner is, any pension fund, pension preservation fund, provident fund, provident preservation fund, retirement annuity fund or benefit fund, other than a risk policy;”;

(c) by the substitution in subsection (4)(a)(ii) for the words preceding the proviso of the following words:

“any policy, other than a risk policy, of which the owner is a person where any amount constituting gross income of whatever nature would be exempt from tax in terms of section 10 were it to be received by or accrue to that person”;

(d) by the substitution in subsection (4) for paragraphs (b) and (c) of the following paragraphs:

“(b) a fund, to be known as the individual policyholder fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to any policy, (other than a policy contemplated in paragraph (a) or a risk policy) of which the owner is any person other than a company;

(c) a fund, to be known as the company policyholder fund, in which shall be placed assets having a market value equal to the value of liabilities determined in

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relation to any policy (other than a policy contemplated in paragraph (a) or a risk policy) of which the owner is a company; and

(d) a fund, to be known as a corporate fund in which shall be placed all the assets [(if any)] held by [the insurer] and all liabilities owned by [it] the insurer, including all assets and liabilities in respect of risk policies, other than [those] assets and liabilities contemplated in paragraph (a), (b) and (c).”;

(e) by the substitution of subsection (7) of the following subsection:

(7) “Every insurer shall [**within a period of four months after the end of every year of assessment**] redetermine the value of liabilities in relation to each of its policyholder funds as at the last day of [**such year**] every year of assessment, and—

(a) where the market value of the assets actually held by it in any such fund exceeds the value of liabilities in relation to such fund on such last day, it shall [**within the said period**] transfer from such fund to its corporate fund assets having a market value equal to such excess; or

(b) where the market value of the assets actually held by it in any such fund is less than the value of liabilities in relation to such fund on such last day, it shall [**within the said period**] transfer from its corporate fund to such fund assets having a market value equal to the shortfall, and such transfer shall be made with effect from that day and for the purposes of this section [**and section 29B**] be deemed to have been made on such last day.”;

(f) by the insertion in subsection (11) after paragraph (a) of the following paragraph:

“(b) (i) sections 10(1)(k)(i) and 10B must not apply to an amount that bears to amounts allocated to the corporate fund the same ratio as premiums received or accrued in respect of risk policies during the year of assessment bears to the total value of assets in the corporate fund at the end of the year of assessment;

(ii) notwithstanding paragraph 10(c) of the Eighth Schedule, the capital gain in respect of the amount contemplated in subparagraph (i) is 100 per cent of the net capital gain for that year of assessment;”;

(g) by the substitution in subsection (11) for paragraph (g) of the following paragraph:

“(g) premiums and reinsurance claims received and claims and reinsurance premiums paid in respect of policies, other than risk policies, shall be disregarded; and”;

(h) by the addition after subsection (12) of the following subsection:

“(13) (a) Notwithstanding section 23(e), in the determination taxable income derived by an insurer in respect of its corporate fund in respect of any year of assessment, there shall be allowed as a deduction from the income of the corporate fund an amount equal to the insurance liabilities of the insurer in respect of the risk policies in the corporate fund, reduced by reinsurance assets in respect of risk policies, determined in accordance with IFRS as applied for purposes of annual financial reporting by the insurer to shareholders;

(b) Any amount deducted in terms of paragraph (a) during any year of assessment shall be included in the income of the corporate fund in the following year of assessment.”.

(2) Subsection (1) comes into operation on 1 January 2016 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 14 of Fourth Schedule to Act 58 of 1962, as amended by section 40 of Act 88 of 1971, section 50 of Act 101 of 1990, section 57 of Act 74 of 2002, section 22 of Act 4 of 2008, section 16 of Act 61 of 2008, section 21 of Act 18 of 2009, section 22 of Act 8 of 2010, paragraph 85 of Schedule 1 to Act 28 of 2011 and section 20 of Act 21 of 2012

x. (1) Paragraph 14 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after subparagraph (1) of the following subparagraph:

“(1A) In addition to the records required in accordance with Part A of Chapter 4 of the Tax Administration Act and subparagraph (1), every employer shall retain the contribution certificates as contemplated in paragraph 12D(4) of the Seventh Schedule and those contribution certificates shall be available for scrutiny by the Commissioner.”.

(2) Subsection (1) comes into operation on 1 March 2015.

Amendment of paragraph 1 of Seventh Schedule to Act 58 of 1962, as amended by section 26 of Act 96 of 1985, section 33 of Act 65 of 1986, section 28 of Act 85 of 1987, section 24 of Act 70 of 1989, section 55 of Act 101 of 1990, section 49 of Act 129 of 1991, section 35 of Act 141 of 1992, section 52 of Act 113 of 1993, section 30 of Act 21 of 1994, section 40 of Act 36 of 1996, section 54 of Act 30 of 2000, section 59 of Act 59 of 2000, section 62 of Act 74 of 2002, section 47 of Act 3 of 2008, section 90 of Act 7 of 2010, section 101 of Act 24 of 2011 and section 117 of Act 31 of 2013

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x. (1) Paragraph 1 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of the definitions of “defined benefit component”, “defined contribution component” and “retirement funding income”.

(2) Subsection (1) comes into operation on 1 March 2015.

Substitution of paragraph 12D of Seventh Schedule to Act 58 of 1962, as inserted by section 125 of Act 31 of 2013

x. (1) The Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 12D of the following paragraph:

“12D. (1) For the purposes of this paragraph—

‘benefit’ in relation to an employee that is a member of a pension fund, provident fund or retirement annuity fund, means any amount payable to that member or a dependant or nominee of that member by that fund in terms of the rules of the fund;

‘contribution certificate’ means the certificate contemplated in subparagraph (4);

‘defined benefit component’ means a benefit or part of a benefit receivable from a pension fund, provident fund or retirement annuity fund by a member of that fund or a dependant or nominee of that member other than a defined contribution component or underpin component of a fund;

‘defined contribution component’ means a benefit or part of a benefit receivable from a pension fund, provident fund or retirement annuity fund—

(a) where the interest of each member in the fund in respect of that benefit has a value equal to the value of—

(i) the contributions paid by the member and by the employer in terms of the rules of the fund that determine the rates of both their contributions at a fixed rate;

(ii) less such expenses as the board of that fund determines should be deducted from the contributions paid;

(iii) plus any amount credited to the member’s individual account upon—

(A) the commencement of the member’s membership of the fund;

(B) the conversion of the component of the fund to which the member belongs from a defined benefit component to a defined contribution component; or

(C) the amalgamation of that fund with any other fund, if any,

other than amounts taken into account in terms of subparagraph (iv);

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(iv) plus any other amounts lawfully permitted , credited to or debited from the member's individual account, if any, as increased or decreased by fund return;

or

(b) which consists of a risk benefit provided by the fund directly or indirectly for the benefit of a member of the fund;

'fund member category' in relation to members of a pension fund, provident fund or retirement annuity fund, means any group of members in respect of whom, in terms of the rules of the fund—

(a) the employers of those members and those members must respectively make a contribution to that fund in an amount in respect of retirement funding employment income in the same specified proportion;

(b) the determination of the value of the benefits of the members referred to in paragraph (a) and the determination of the entitlement of those members to those benefits are made according to the same method;

'fund member category factor' means the fund member category factor contemplated in subparagraph (4);

'member' means in relation to a pension, provident or retirement annuity fund, any member or former member of that fund but does not include any member or former member or person who has received all the benefits which may be due to them from the fund and whose membership has thereafter been terminated in accordance with rules of the fund;

'retirement-funding income' means—

(a) in relation to any employee or the holder of an office (including a member of a body of persons whether or not established by or in terms of any law) who in respect of his or her employment derives any income constituting remuneration as defined in paragraph 1 of the Fourth Schedule and who is a member of or, as an employee, contributes to a pension fund or provident fund established for the benefit of employees of the employer from whom such income is derived, that part of the employee's said income as is taken into account in the determination of the contributions made by the employer for the benefit of the employee to such pension fund or provident fund in terms of the rules of the fund; or

(b) in relation to a partner in a partnership (other than a partner contemplated in paragraph (a)) that part of the partner's income from the partnership in the form of the partner's share of profits as is taken into account in the determination of the

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contributions made by the partnership for the benefit of the partner to a pension fund or provident fund in terms of the rules of the fund: Provided that for the purposes of this definition a partner in a partnership must be deemed to be an employee of the partnership and a partnership must be deemed to be the employer of the partners in that partnership;

‘underpin component’ means a benefit receivable from a pension fund, provident fund or retirement annuity fund the value of which benefit, in terms of the rules of the fund, is the greater of the amount of a defined contribution component or a defined benefit component other than a risk benefit;

‘valuator’ means valuator as defined in section 1 of the Pension Funds Act;

(2) The cash equivalent of the value of the benefit contemplated in paragraph 2(l), where a pension, provident or retirement annuity fund consists solely of defined contribution components, is the value of the amount contributed by the employer for the benefit of an employee that is a member of that fund.

(3) Where a pension, provident or retirement annuity fund consists of components other than only defined contribution components, the cash equivalent of the value of the benefit contemplated in paragraph 2(l) is an amount that must be determined in accordance with the formula

$$\underline{X = (A \times B) - C}$$

in which formula—

(a) ‘X’ represents the amount to be determined;

(b) ‘A’ represents the fund member category factor in respect of the employee;

(c) ‘B’ represents the amount of the retirement funding employment income of the employee;

(d) ‘C’ represents the sum of the amounts contributed by the employee to the fund in terms of the rules of the fund,

in respect of that year of assessment.

(4) The board of a fund, as defined in section 1 of the Pension Funds Act, must provide to the employer of the employees which are members of a fund a contribution certificate—

(i) no later than one month before the commencement of the year of assessment in respect of which the contribution certificate is issued;

(ii) where the rules of the fund are amended and those amendments affect the value of or entitlement to any benefit payable to a member of that fund or a dependant

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or nominee of that member, the contribution certificate must be supplied to the employer no later than one month prior to the day on which those amendments become effective; and

(iii) where the rules of the fund are amended retrospectively and those retrospective amendments affect the value of or entitlement to any benefit payable to a member of that fund or a dependant or nominee of that member, a contribution certificate reflecting the value of or entitlement to any benefit payable must be supplied to the employer no later than one month after the day on which those amendments become effective.

(5) The Minister must make regulations prescribing—

(a) the manner in which a fund must determine the fund member category factor; and

(b) the information that the contribution certificate contemplated in subparagraph (4) must contain.

(6) No value must be placed in terms of this paragraph on the taxable benefit derived from any contribution made by an employer to a fund—

(a) for the benefit of a member of that fund who has retired from that fund; or

(b) in respect of the dependants or nominees of a deceased member of that fund.”.

(2) Subsection (1) comes into operation on 1 March 2015.