

REPUBLIC OF SOUTH AFRICA

**TAXATION LAWS
AMENDMENT BILL, 2015**

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

(MINISTER OF FINANCE)

5 June 2015

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Income Tax Act, 1962, so as to amend and delete provisions; to make new provisions; to amend the Taxation Laws Amendment Act, 2014, so as to amend provisions; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice R780 of 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, Government Notice 46 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, Government Notice 1503 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, section 2 of Act 3 of 2008, section 4 of Act 60 of 2008, section 7 of

Act 17 of 2009, section 6 of Act 7 of 2010, section 7 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 23 of Schedule 1 to that Act, section 2 of Act 22 of 2012, section 4 of Act 31 of 2013 and section 1 of Act 43 of 2014

1. (1) Section 1 of the Income Tax Act, 1962 is hereby amended—

(a) by the insertion after the definition of “close corporation” of the following definition:

“‘collateral arrangement’ means a “collateral arrangement” as defined in section 1 of the Securities Transfer Tax Act, 2007 (Act No. 25 of 2007);”; and

(b) by the insertion after the definition of “hotel keeper” of the following definition:

“‘identical asset’ means a group of similar assets which—

(a) if any one of them were disposed of, would realise the same amount regardless of which of them was so disposed of; and

(b) are not able to be individually distinguished apart from any identifying numbers which they may bear;”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2016 and applies in respect of any collateral arrangement entered into on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2016.

Amendment of section 9C of Act 58 of 1962, as inserted by section 14 of Act 35 of 2007 and amended by section 7 of Act 3 of 2008, section 12 of Act 60 of 2008, section 15 of Act 7 of 2010, section 24 of Act 24 of 2011, section 13 of Act 22 of 2012, section 18 of Act 31 of 2013 and section 11 of Act 43 of 2014

2. (1) Section 9C of the Income Tax Act, 1962 is hereby amended by the addition after subsection (4) of the following subsection:

“(4A) For purposes of this section, where—

(a) any share has been transferred by a transferor to a transferee in terms of a collateral arrangement, such share shall for the purposes of the transferor be deemed not to have been disposed of by the transferor; and

(b) a share that is an identical asset to the security has been returned by the transferee to the transferor, such share and such other share shall be deemed to be one and the same share in the hands of the transferor.”.

(2) Subsection (1) comes into operation on 1 January 2016 and applies in respect of any collateral arrangement entered into on or after that date.

Amendment of section 9H of Act 58 of 1962, as substituted by section 17 of Act 22 of 2012 and amended by section 21 of Act 31 of 2013 and section 13 of Act 43 of 2014

3. (1) Section 9H of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (2)(a) for item (i) of the following item:

“(i) disposed of each of that person’s assets to a person that is a resident on the date immediately before the day on which that person so ceases to be a resident for an amount received or accrued equal to the market value of the asset on that date; and”;

(b) by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs:

“(3) (a) Where a company that is a resident ceases during any year of assessment of that company to be a resident or becomes a headquarter company, that company must be treated as having —

(i) disposed of each of that company’s assets to a person that is a resident on the date immediately before the day on which that company so ceased to be a resident or became a headquarter company; and

(ii) reacquired each of those assets on the day on which that company so ceased to be a resident or became a headquarter company,

for an amount equal to the market value of each of those assets.

(b) Where a controlled foreign company ceases, otherwise than by way of becoming a resident, to be a controlled foreign company during any foreign tax year of that controlled foreign company, that controlled foreign company must be treated as having—

(i) disposed of each of the assets of that controlled foreign company, to a person that is a resident, on the date immediately before the day on which that controlled foreign company so ceased to be a controlled foreign company; and

(ii) reacquired each of the assets disposed of as contemplated in subparagraph (i) on the day on which that controlled foreign company so ceased to be a controlled foreign company,

for an amount equal to the market value of each of those assets.”;

(c) by the addition in subsection (3) after paragraph (d) of the following paragraph:

“(e) A company that ceases to be a resident or becomes a headquarter company as contemplated in paragraph (a) must take into account in determining its taxable

income in respect of its year of assessment ending as contemplated in paragraph (c) the amount of any—

- (i) capital gain disregarded in terms of paragraph 64B of the Eighth Schedule that was determined in respect of the disposal, by that company, of any equity share; and
- (ii) foreign dividend that was exempt from normal tax in terms of section 10B(2)(a) that was received by or accrued to that company,

within a period of three years immediately prior to the date on which it ceased to be a resident or became a headquarter company.”; and

(d) by the deletion of subsection (6).

(2) Subsection (1) is deemed to have come into operation on 5 June 2015.

Amendment of section 22 of Act 58 of 1962, as amended by section 8 of Act 6 of 1963, section 14 of Act 90 of 1964, section 21 of Act 89 of 1969, section 23 of Act 85 of 1974, section 20 of Act 69 of 1975, section 15 of Act 103 of 1976, section 20 of Act 94 of 1983, section 19 of Act 121 of 1984, section 14 of Act 65 of 1986, section 5 of Act 108 of 1986, section 21 of Act 101 of 1990, section 22 of Act 129 of 1991, section 17 of Act 113 of 1993, section 1 of Act 168 of 1993, section 19 of Act 21 of 1995, section 12 of Act 36 of 1996, section 25 of Act 53 of 1999, section 27 of Act 30 of 2000, section 12 of Act 5 of 2001, section 24 of Act 74 of 2002, section 37 of Act 45 of 2003, section 16 of Act 3 of 2008, section 36 of Act 60 of 2008, section 39 of Act 7 of 2010, section 45 of Act 24 of 2011, section 40 of Act 22 of 2012, section 55 of Act 31 of 2013 and section 32 of Act 43 of 2014

4. Section 22 of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion after subsection (4A) of the following subsection:

“(4B) For the purposes of subsection (4), where—

- (a) any security has been transferred by a transferor to a transferee in terms of a collateral arrangement, that security shall be deemed not to have been acquired by that transferee; or
- (b) a security that is an identical asset to the security contemplated in paragraph (a) has been returned by that transferee to that transferor in terms of that collateral arrangement, that other security shall be deemed not to have been acquired by that transferor.”;

(b) by the substitution in subsection (9) at the end of paragraph (b) for the full stop of a semi-colon; and

(c) by the addition in subsection (9) after paragraph (b) of the following paragraph:

“(c) (i) the trading stock of any person during any year of assessment includes any security;
(ii) that person has, during that year of assessment, transferred that security to a transferee in terms of a collateral arrangement; and
(iii) a security that is an identical asset to the security contemplated in subparagraph (ii) has not been returned by the transferee to that person at the end of that year of assessment,
that security shall, for the purposes of this section, be deemed to be trading stock held and not disposed of by that person at the end of that year of assessment.”.

(2) Subsection (1) comes into operation on 1 January 2016 and applies in respect of any collateral arrangement entered into on or after that date.

Amendment of section 25BA of Act 58 of 1962, as inserted by section 39 of Act 17 of 2009 and amended by section 49 of Act 7 of 2010, section 55 of Act 24 of 2011, section 58 of Act 22 of 2012 and section 73 of Act 31 of 2013

5. (1) Section 25BA of the Income Tax Act, 1962, is hereby amended by the addition after subsection (2) of the following subsection:

“(3) Where a person is required by the provisions of the Collective Investment Schemes Control Act to dispose of any asset to another person that will acquire that asset for the purposes of approval as a portfolio of a hedge fund collective investment scheme and the person who disposes of the assets will receive no consideration other than a right to acquire directly or indirectly a participatory interest in the portfolio of a hedge fund collective investment scheme —

(a) where an asset as defined in paragraph 1 of the Eighth Schedule, other than an asset that is trading stock, is disposed of and that asset is acquired as an asset as defined in that paragraph—

(i) the person who disposes of that asset must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of that disposal; and

(ii) the person that disposes of that asset and that the person that acquires that asset must, for purposes of determining any capital gain or capital loss by the person that acquires that asset in respect of a disposal of that asset, be deemed to be one and the same person with respect to—

- (aa) the date of acquisition of that asset by the person that disposes of that asset and the amount and date of incurral of any expenditure by the person that disposes of that asset in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and
- (bb) any valuation of that asset effected by the person that disposes of that asset as contemplated in paragraph 29(4) of the Eighth Schedule; and
- (b) an asset that is held as trading stock is disposed of by a person to another person and that other person acquires that asset as trading stock—
- (i) that asset must be deemed to have been disposed of in an amount equal to the amount taken into account in terms of section 11(a) or 22(1) or (2) in respect of that asset by the person that disposes of that asset; and
- (ii) the person that disposes of that asset and the person that acquires that asset must, for purposes of determining any taxable income derived by the person that acquires that asset, be deemed to be one and the same person with respect to the date of acquisition of that asset and the amount and date of incurral of any cost or expenditure incurred in respect of that asset as contemplated in section 11(a) or 22 (1) or (2);”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2015 and applies in respect of disposals on or after that date.

Amendment of paragraph 11 of Eighth Schedule to Act 58 of 1962, as amended by section 71 of Act 60 of 2001, section 67 of Act 74 of 2002, section 92 of Act 45 of 2003, section 55 of Act 32 of 2004, section 66 of Act 31 of 2005, section 44 of Act 20 of 2006, section 74 of Act 60 of 2008, section 106 of Act 22 of 2012, section 126 of Act 31 of 2013 and section 80 of Act 43 of 2014

6. (1) Paragraph 11 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (2) for item (b) of the following item:

“(b) by a company in respect of—

(i) the issue, cancellation or extinction of a share in the company; or

(ii) the granting of an option to acquire a share in or certificate acknowledging or creating a debt owed by that company;”;

(b) by the substitution in subparagraph (2) at the end of item (m) for the full stop of a semi-colon; and

(c) by the addition in subparagraph (2) after item (m) of the following item:

“(n) by a transferor to a transferee or by a transferee to a transferor in terms of a collateral arrangement.”

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 April 2014 and applies in respect of shares issued, cancelled or options granted on or after that date.

(3) Paragraphs (b) and (c) of subsection (1) come into operation on 1 January 2016 and apply in respect of any collateral arrangement entered into on or after that date.

Amendment of paragraph 64B of Eighth Schedule to Act 58 of 1962, as substituted by section 123 of Act 22 of 2012 and amended by section 144 of Act 31 of 2013

7. (1) Paragraph 64B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) that interest is disposed of to any person that is not a resident (other than a controlled foreign company or any person that is a connected person in relation to the person disposing of that interest) for an amount that is equal to or exceeds the market value of the interest.”

(2) Subsection (1) is deemed to have come into operation on 5 June 2015.

Amendment of section 1 of Act 25 of 2007, as amended by section 145 of Act 24 of 2011, section 153 of Act 22 of 2012 and section 110 of Act 43 of 2014

8. (1) Section 1 of the Securities Transfer Tax Act, 2007, is hereby amended by the insertion after the definition of “closing price” of the following definition:

“‘collateral arrangement’ means any arrangement in terms of which—

(a) a person (hereafter the transferor) transfers a listed security to another person (hereafter the transferee) and the transferor can demonstrate that the arrangement was not entered into for the purposes of the avoidance of tax and was not entered into for the purposes of keeping any position open for more than 12 months;

(b) that transferee in return contractually agrees in writing to deliver a security that is an identical asset, as defined in section 1 of the Income Tax Act, to that transferor within a period of 12 months from the date of transfer of that security from the transferor to the transferee in terms of that arrangement;

(c) that transferee is contractually required to compensate that transferor for any distributions in respect of the listed security which that transferor would have been

entitled to receive during that period had that arrangement not been entered into;
and
(d) that arrangement does not affect the transferor's benefits or risks arising from
fluctuations in the market value of the listed security,
but does not include an arrangement where the transferee has not transferred the listed
security contemplated in paragraph (b) to the transferor within the period referred to in
that paragraph;”.

(2) Subsection (1) comes into operation on 1 January 2016 and applies in respect of any collateral arrangement entered into on or after that date.

Amendment of section 8 of Act 25 of 2007, as amended by section 127 of Act 60 of 2008, section 97 of Act 17 of 2009, section 127 of Act 7 of 2010, section 248 of Act 24 of 2011 and section 183 of Act 31 of 2013

9. (1) Section 8 of the Securities Transfer Tax Act, 2007 (Act No. 25 of 2007), is hereby amended—

(a) by the substitution in subsection (1) at the end of paragraph (t) for the full stop of a semi-colon; and

(b) by the addition in subsection (1) after paragraph (t) of the following paragraph:

“(u) if the transfer is from a transferor to a transferee, or vice versa, in terms of a collateral arrangement and the person to whom that security has been transferred has certified to the participant that the change is in terms of that collateral arrangement.”.

(2) Subsection (1) comes into operation on 1 January 2016 and applies in respect of any collateral arrangement entered into on or after that date.

Short title

10. This Act is called the Taxation Laws Amendment Act, 2015.