

# **CLAUSE BY CLAUSE**



**NATIONAL  
TREASURY**

**REPUBLIC OF SOUTH AFRICA**

**CLAUSE BY CLAUSE EXPLANATION**

**TO THE**

**DRAFT EXPLANATORY MEMORANDUM  
(TLAB) 2012**

**[29 JUNE 2012]**



## CLAUSE 1

Transfer duty: Amendment to section 9

See notes on **CONVERSION OF SHARE BLOCK INTERESTS TO FULL TITLE**

## CLAUSE 2

Income Tax: Amendment to section 1

Subclause (a)-(d): See notes on the **CREATION OF A UNIFIED SYSTEM OF TAXING REAL ESTATE INVESTMENT TRUSTS FOR PROPERTY INVESTMENT SCHEMES**

Subclause (e): See notes on the **INTRODUCTION OF THE “DEBT” DEFINITION**

Subclause (f): See notes on **EQUITY SHARE AND HYBRID EQUITY INSTRUMENT DEFINITIONS**

Subclause (g): Regardless of the tax treatment of foreign law, foreign scrip distributions should not be treated as foreign dividends (i.e. potentially subject to taxation under section 10B). This exclusion for foreign dividends matches the exclusion for domestic dividends.

Subclause (h): Regardless of the tax treatment of foreign law, foreign scrip distributions should not be treated as foreign dividends (i.e. potentially subject to taxation under section 10B). This exclusion for foreign dividends matches the exclusion for domestic dividends.

Subclause (i): The definition of ‘foreign investment entity’ is inserted.

Subclause (j): The definition of foreign tax year is being moved from section 9D to section 1 because this definition is now being used in more than one section.

Subclause (k) and (l): See notes on **TAXABILITY OF GOVERNMENT TRANSFERS AND SUBSIDIES**

Subclause (m): The concept of “deemed source” is no longer relevant in light of the changes made to the source rules of section 9 contained within the Taxation Laws Amendment Act, 2011.

Subclause (n): The amendment eliminates overlapping gross income in respect of certain annuities. Insurance annuities for the benefit of employees and their dependents are to be dealt with solely in respect of the employer-employee payout gross income provisions of paragraph (d). Besides eliminating potential double inclusions, treatment of this gross income under paragraph (d) means that certain forms of insurance annuity income may be exempt (see section 10(1)(gG)). The amendment also deals with the overlap between gross income in respect of certain annuities for the benefit of employers.

Subclause (o): Insurance payouts to employers will be dealt with solely under the insurance employer payout provisions of paragraph (m) to similarly eliminate the potential for double gross income. The reference to preventing overlap involving annuity payouts under (d) is being deleted as superfluous. Gross income paragraph (m) is clearly aimed at employer receipts and accruals while gross income paragraph (d) is aimed at employee receipts and accruals.

Subclause (p): The proposed amendment inserts the definition of International Financial Reporting Standards (IFRS) of the International Accounting Standards Board. See notes on **ANNUAL FAIR VALUE TAXATION OF FINANCIAL INSTRUMENTS IN RESPECT OF FINANCIAL INSTITUTIONS** and See notes on **TAXATION OF UNHEDGED EQUITY DERIVATIVES**

Subclauses (q) and (s): Preservation funds are allowed a one-time pre-retirement lump sum withdrawal. However, transfers to more restrictive funds (i.e. those that do not allow for any preretirement lump sum withdrawal other than withdrawals due to resignation). Hence, transfers to pension and provident funds do not count against this one-time withdrawal by a preservation fund. It is now proposed that transfers to retirement annuity funds similarly not count against these onetime withdrawals (because withdrawals from retirement annuity funds are simply not permitted before age 55). It is also proposed that transfers from provident preservation funds to pension or pension preservation funds should similarly not count against one-time withdrawals from provident preservation funds because pension funds and pension preservation funds are more restrictive than provident funds.

Subclause (r) and (t): See notes on the **CREATION OF A UNIFIED SYSTEM OF TAXING REAL ESTATE INVESTMENT TRUSTS FOR PROPERTY INVESTMENT SCHEMES.**

Subclauses (u) and (v): Amendments to the “resident” definition. See notes on **RELIEF FROM EFFECTIVE MANAGEMENT TEST IN THE CASE OF HIGH-TAXED CONTROLLED FOREIGN COMPANIES (CFCs)**.

Subclause (w): See notes on the **SOUTH AFRICAN FUND MANAGERS OF FOREIGN INVESTMENT FUNDSACTIVITIES**.

Subclause (x): See notes on **REVISED “SHARE” DEFINITION**.

Subclause (y): The proposed amendment aligns special trusts with section 18 and aligns the qualifying age with the new age (i.e. age 18) contained within the Age of Majority Act.

Subclause (z): The proposed amendment corrects improper technical language associated with property owned during marriage.

### **CLAUSE 3**

Income Tax: Amendment to section 6quat

Subclause (a): The amendment clarifies the interaction of section 6*quat* rebates with the recent legislative changes resulting in the re-alignment of the tax on foreign dividends. Although foreign dividends are only partially includible (so as to have the same effective rate as domestic dividends) section 6*quat* rebates will be taken into account without regard to the new partial exclusion. For instance, if a foreign dividend of R500 is distributed subject to a 15 per cent foreign withholding tax rate, the full 15 per cent rate is potentially eligible for tax rebates, even though a portion of the foreign dividend is excluded from income.

Subclause (b): The proposed amendment clarifies that the deduction for foreign taxes under section 6*quat* is elective (as opposed to electing the section 6*quin* rebate).

### **CLAUSE 4**

Income Tax: Amendment to section 6quin

The proposed amendment clarifies the impact of foreign tax rebates claimed under section 6*quin* that re subsequently refunded, reduced or otherwise discharged in a later year of assessment. In these circumstances, the section 6*quin* rebates must be paid over to SARS in the form of additional tax. This required mechanism ensures that taxpayers do not receive an unintended benefit. The provision effectively operates like a tax credit form of recoupment (therefore, prior years of assessment need not be re-opened for this charge to apply).

### **CLAUSE 5**

Income Tax: Amendment to section 6sex

This section is being dropped in line with concurrent changes to the Dividends Tax. Under Clause 90 (amendment to section 64F), dividends subject to normal tax are no longer subject to the Dividends Tax. As a result of this change, the credits under 6sex for Dividends Tax are no longer necessary (because this form of overlap is no longer possible).

**CLAUSE 6**

Income Tax: Amendment to section 6A

See notes on **ADDITIONAL MEDICAL EXPENSES CONVERTED TO MEDICAL TAX CREDITS.**

**CLAUSE 7**

Income Tax: Amendment to section 6B

See notes on **ADDITIONAL MEDICAL EXPENSES CONVERTED TO MEDICAL TAX CREDITS.**

**CLAUSE 8**

Income Tax: Amendment to section 7B

See notes on **STREAMLINED TIMING FOR CERTAIN FORMS OF VARIABLE CASH REMUNERATION.**

**CLAUSE 9**

Income Tax: Amendment to section 8

Subclause (a): The proposed amendment updates certain rules relating to remuneration with the 2011 changes to the source rules.

Clauses (b) and (c): See notes on **DEBT REDUCTIONS FOR LESS THAN FULL CONSIDERATION.**

Subclause (d): See notes on **TAXABILITY OF GOVERNMENT TRANSFERS AND SUBSIDIES.**

**CLAUSE 10**

Income Tax: Amendment to section 8E

See notes on **EQUITY SHARE AND HYBRID EQUITY INSTRUMENT DEFINITION.**

**CLAUSE 11**

Income Tax: Substitution of section 8E

See notes on **REVISED VERSION OF THE HYBRID EQUITY AND THIRD-PARTY BACKED SHARE PROPOSAL.**

**CLAUSE 12**

Income Tax: Amendment to section 8E

See notes on **EQUITY SHARE AND HYBRID EQUITY INSTRUMENT DEFINITION.**

**CLAUSE 13**

Income Tax: Insertion of section 8EA

See notes on **REVISED VERSION OF THE HYBRID EQUITY AND THIRD-PARTY BACKED SHARE PROPOSAL.**

**CLAUSE 14**

Income Tax: Substitution of section 8F

See notes on **ANTI-HYBRID DEBT INSTRUMENT RECHARACTERISATION RULES.**

**CLAUSE 15**

**Income Tax: Insertion of 8FA**

See notes on **ANTI-HYBRID DEBT INSTRUMENT RECHARACTERISATION RULES.**

**CLAUSE 16**

Income Tax: Amendment to section 9C

See notes on **EQUITY SHARE AND HYBRID EQUITY INSTRUMENT DEFINITION.**

**CLAUSE 17**

Income Tax: Amendment to section 9D

Subclause (a): moving definition of “foreign tax year” to section 1 for general application to the rest of the Act.

Subclause (b): The main purpose of this amendment is to clarify how the “high foreign tax exemption” works in the case of a foreign structure involving multi-tier controlled foreign companies. More specifically, the high tax calculation for a CFC is determined without regard to the attribution of any section 9D income from lower-tier controlled foreign companies.

Subclause (c): See notes on **REMOVAL OF THE CONTROLLED FOREIGN COMPANY (CFC) EXEMPTION FROM INTEREST AND ROYALTY WITHHOLDING.**

Subclause (d): The proposed amendment corrects incorrect wording associated with the working capital *de minimis* exemption. As originally envisaged, diversionary CFC income relating to financial instruments is taken into account to the extent that it exceeds 5 per cent of the total receipts and accruals of that CFC attributable to a foreign business establishment. A *de minimis* exemption is therefore allowed for up to 5 per cent of the financial instrument income as percentage of the total gross income.

Subclause (e): The amendment clarifies that rental derived by a CFC from the lease of movable property is taxable unless the lease constitutes an operating lease “or” a financial instrument. If the rental is paid pursuant to a financial instrument, it is taken into account in terms of the financial instrument diversionary rules. Operating leases as defined remain outside the diversionary rules paradigm and can qualify for the foreign business establishment exemption.

Subclause (f): in line with the original conceptual framework, the amendment ensures that tainted intellectual property remain within the income tax framework of diversionary CFC income even if the CFC actively develops that tainted intellectual property. The result is that the deduction of royalties in respect of tainted IP will be limited or excluded in terms of the normal rules (see section 23I) whilst a corresponding receipt by a CFC is includable as net income (subject to the previously taxed income exemption in respect of withholding tax on royalties).

## **CLAUSE 18**

Income Tax: Repeal of section 9E

See notes on **PASSIVE HOLDING COMPANIES.**

## **CLAUSE 19**

Income Tax: Amendment to section 9H

The amendment clarifies that the exit charge of section 9H applies only to residents that are ceasing to be a resident. It should be noted that controlled foreign companies losing controlled foreign company status are subject to tax under paragraph 12 of the Eighth Schedule.

#### **CLAUSE 20**

Income Tax: Substitution of section 9H

See notes on **EXIT CHARGE UPON CEASING TO BE A RESIDENT IN SOUTH AFRICA.**

#### **CLAUSE 21**

Income Tax: Amendment to section 9I

See notes on the **FURTHER REFINEMENTS TO HEADQUATER (HQ) COMPANY REGIME.** Also see notes on **INTRODUCTION OF THE “DEBT” DEFINITION.**

#### **CLAUSE 22**

Income Tax: Amendment to section 10

Subclause (a): The concept of “deemed source” is no longer relevant in light of the changes made to the source rules of section 9 contained within the Taxation Laws Amendment Act, 2011.

Subclause (b): See notes on **CO-ORDINATION OF DEDUCTION AND EXEMPTION RULES IN RESPECT OF EMPLOYER-OWNED EMPLOYEE-RELATED INSURANCE POLICIES**

Subclause (c): See notes on the **RATIONALISATION OF WITHHOLDING TAXES ON PAYMENTS TO FOREIGN PERSONS.**

Subclauses (d) and (e): Also see notes on **INTRODUCTION OF THE “DEBT” DEFINITION.**

Subclause (f): See notes on the **CREATION OF A UNIFIED SYSTEM OF TAXING REAL ESTATE INVESTMENT TRUSTS FOR PROPERTY INVESTMENT SCHEMES.**

Subclause (g): The proposed amendment clarifies that the hybrid equity share contemplated is one acquired as described under section 8C.

Subclause (h): See notes on **EQUITY SHARE AND HYBRID EQUITY INSTRUMENT DEFINITION.**

Subclause (i): *Substitution in the proviso to subsection (1)(k)(i) for paragraph (ee)*: The Taxation Laws Amendment Act (2011) introduced an anti-avoidance rule intended to deny the exemption for dividends where the recipient of the dividend does not hold the underlying share. In addition to denying the exemption, the dividends would be included in the ordinary income of the recipient. The application of the rule was based on dividends received or accrued in consequences of a cession.

However, the sale or disposal of shares is generally achieved through a cession. The language used in the legislation makes the rule applicable even where the dividend is linked to a cession transferring the underlying share. This is an unintended consequence. The legislation is being revised accordingly. Under the revision, the exemption will not apply only where the taxpayer receives or accrues dividends in consequence of a cession without acquiring the underlying share.

*Substitution in the proviso to subsection (1)(k)(i) for paragraph (ff)*: The formula in the pre-existing provision fails to take into account the fact that the taxpayer may receive or accrue manufactured dividends.

#### EXAMPLE

1. SBL and Trading Desk are subsidiaries of Bank Z
2. SBL (a securities lending division of Bank) borrows listed shares of Company X from Pension Fund
3. SBL lends listed shares of Company X to Borrower Co
4. Borrower Co pays a manufactured dividend of R150 to SBL
5. SBL pays a manufactured dividend of R150 to Pension Fund
6. In a series of unrelated transactions, Trading Desk pays a dividend of R200 to Bank in respect of Company X listed shares held by it

#### Impact:

Manufactured dividends received by SBL from Borrower Co are taxable at normal rates in the hands of SBL. On the other hand, the manufactured dividends paid by SBL to the Pension Fund are deductible.

#### Concern:

The dividends paid by Trading Desk to Bank are not subject to the section 10(1)(k)(i) exemption by virtue of the exclusion in (ff), albeit the fact that the SBL is in a tax neutral position (i.e. no mismatches: deduction and exemption on the other hand) and the dividends received by Bank from Trading Desk should generally be exempt.

In this instance, the Bank is in a tax neutral position before taking the dividends from Trading Desk into account. The amendment seeks to clarify that the denial of the exemption does not apply where the taxpayer is in a tax neutral position as in the example above.

Subclause (j): The amendment deletes a superfluous provision.

Subclause (k): See notes on the **RATIONALISATION OF WITHHOLDING TAXES ON PAYMENTS TO FOREIGN PERSONS.**

Subclause (l): The proposed amendment updates certain rules relating to remuneration with the 2011 changes to the source rules.

Subclause (m) – (o): See notes on **TAXIBILITY OF GOVERNMENT TRANSFERS AND SUBSIDIES**

### **CLAUSE 23**

Income Tax: Amendment to section 10B

Subclause (a): The proposed amendment contains more accurate and consistent wording.

Subclause (b): The proposed amendment provides that the previously taxed Controlled Foreign Company dividend exemption (PTI exemption) applies as if the net income of the CFC (consisting of foreign dividends) was included in the resident's income in full, i.e. without regard to the partial dividend exemption in subsection (3). The partial exemption (64 per cent of the dividend) reduces the amount of net income included in the resident's taxable income and therefore causes the PTI exemption to be calculated on a reduced amount when the resident ultimately receives that net income as a dividend. The amendment removes this anomaly.

Subclause (c): The proposed amendment specifies that the foreign participation exemption, same country exemption and listed share's exemption are not applicable to interest like foreign dividends. More specifically, foreign dividends that are deductible for the purposes of foreign law of the company declaring the dividend will no longer qualify for these exemptions, because these dividends in essence represent interest.

Subclause (d): The partial inclusion rules improperly refer to "special trusts" when the partial inclusion of 25/40 should apply to trusts in general.

Subclauses (e) and (f): The current dividend round-tripping rules are designed to prevent funds from moving offshore via a local deductible payment with the funds return as tax-free dividends. However, the current wording inadvertently captures the purchase of trading stock from a controlled foreign company because the purchase of trading stock is deductible. Trading stock should not fall within this regime because any deduction upon purchase is offset by an inclusion for holding the trading stock on hand at the end of the year (i.e. under section 22) or upon sale (i.e. under the section 1 “gross income” definition).

#### **CLAUSE 24**

Income Tax: Insertion of section 10C

See notes on **EXEMPTION FOR COMPULSORY ANNUITY INCOME STEMMING FROM NON-DEDUCTIBLE RETIREMENT CONTRIBUTIONS**

#### **CLAUSE 25**

Income Tax: Amendment to section 11

Subclause (a): The requirement for approval of foundation and supporting structures of allowable assets is removed.

Subclause (b): See notes on the **INTRODUCTION OF THE “DEBT” DEFINITION.**

Subclause (c): See notes on **EXEMPTION FOR COMPULSORY ANNUITY INCOME STEMMING FROM NON-DEDUCTIBLE RETIREMENT CONTRIBUTIONS.**

Subclause (d): See notes on **CREATION OF A UNIFIED SYSTEM OF TAXING REAL ESTATE INVESTMENT TRUSTS FOR PROPERTY INVESTMENT SCHEMES.**

Subclause (e)-(g): See notes on **CO-ORDINATION OF DEDUCTION AND EXEMPTION RULES IN RESPECT OF EMPLOYER-OWNED EMPLOYEE-RELATED INSURANCE POLICIES.**

#### **CLAUSE 26**

Income Tax: Amendment to section 11D

Like the additional discretionary allowance of section 12I, SARS may raise an additional assessment in respect of additional deductions for research and development if the approval for those deductions has since been withdrawn (see section 12I(14)).

#### **CLAUSE 27**

Income Tax: Amendment to section 12B

See notes on **DEPRECIATION OF SUPPORTING STRUCTURES FOR ENERGY PROJECTS.**

#### **CLAUSE 28**

Income Tax: Amendment to section 12C

Subclause (a): The proposed amendment deletes a reference to an obsolete subsection.

Subclause (b): The requirement for approval of foundation and supporting structures of allowable assets is removed.

#### **CLAUSE 29**

Income Tax: Amendment to section 12E

The proposed amendment places small business co-operatives on par with small business companies as a matter of consistency with prior year amendments.

#### **CLAUSE 30**

Income Tax: Amendment to section 12G

Given the continued support for the provision, the incentive for urban development zones is being extended from 2014 to 2020.

#### **CLAUSE 31**

Income Tax: Amendment to section 12H

See notes on **REVISION OF THE LEARNERSHIP ALLOWANCE INCENTIVE**

#### **CLAUSE 32**

Income Tax: Amendment to section 12I

See notes on **REVISION OF THE INDUSTRIAL POLICY PROJECT INCENTIVE**

### **CLAUSE 33**

Income Tax: Amendment to section 12J

The basic philosophy is to promote investment into high-risk vehicles (i.e. venture capital companies). Taxpayers should be permitted to therefore deduct expenses for venture capital company investments without regard to the nature of the shares issued in exchange. The proposed amendment broadens the definition of “qualifying share”. It is accordingly proposed that deductions be similarly allowed in respect of expenses incurred to acquire hybrid or third-party backed shares.

### **CLAUSE 34**

Income Tax: Amendment to section 12L

The proposed amendment substitutes the formula for calculating the amount of the allowance under section 12 L with an amount per kilowatt hour or kilowatt hour equivalent of energy efficiency savings.

### **CLAUSE 35**

Income Tax: Amendment to section 12M

See notes on **ADDITIONAL MEDICAL EXPENSES CONVERTED TO MEDICAL TAX CREDITS**

### **CLAUSE 36**

Income Tax: Amendment to section 12O

The proposed amendment clarifies the reporting stream required for claiming the section 12O film exemption. Special purpose corporate vehicles and collection account managers can undertake this responsibility. The amendment clarifies that the conditions of managing exploitation rights and the Ministerial notice of Gazette relate solely to collection account manager.

### **CLAUSE 37**

Income Tax: Insertion of section 12P

See notes on **TAXABILITY OF GOVERNMENT TRANSFERS AND SUBSIDIES**

### **CLAUSE 38**

Income Tax: Amendment to section 13*quat*

The proposed amendment rectifies incorrect effective dates relating to the prohibition of the deduction in respect of a building or part of a building in urban development zones.

#### **CLAUSE 39**

Income Tax: Amendment to section 18

The 7.5 per cent minimum for out-of-pocket expenses for persons under age 65 is based on taxable income. For this purpose, taxable income excludes pre- and post-retirement lump sum withdrawals. The proposed amendment adds the additional exclusion for severance benefits because severance benefits are taxed on par with pre- and post-retirement lump sum withdrawals.

#### **CLAUSE 40**

Income Tax: Repeal of section 18

See notes on **ADDITIONAL MEDICAL EXPENSES CONVERTED TO MEDICAL TAX CREDITS**

#### **CLAUSE 41**

Income Tax: Repeal of section 19

See notes on **DEBT REDUCTIONS FOR LESS THAN FULL CONSIDERATION**

#### **CLAUSE 42**

Income Tax: Amendment of section 20

See notes on **DEBT REDUCTIONS FOR LESS THAN FULL CONSIDERATION**

#### **CLAUSE 43**

Income Tax: Amendment of section 20C

The proposed amendment reduces the percentage by a headquarter company from 20 per cent down to 10 per cent in line with other changes to the threshold for headquarter companies made in 2011.

#### **CLAUSE 44**

Income Tax: Substitution of section 20C

See notes on **FURTHER REFINEMENTS TO THE HEADQUARTER (HQ) COMPANY REGIME**

#### **CLAUSE 45**

Income Tax: Amendment of section 22

The proposed amendment corrects an incorrect cross reference and to align the required shareholding with the reorganization rules.

#### **CLAUSE 46**

Income Tax: Amendment of section 22B

Subclause (a): The proposed substitution has the effect of fully removing the 45-day minimum holding period for obtaining exempt dividends. The purpose of the 45-day holding period was impractical. Taxpayers often have a meaningful holding in an underlying share even though the holding is only for a short duration before disposal. The sellers of the dividend may also have realised ordinary revenue or capital gain when disposing of the dividend (meaning that tax applies at a shareholder level when viewed as an aggregate). See also the clause-by-clause notes in reference to paragraph 43A.

Subclause (b) and (c): See notes on the **INTRODUCTION OF THE “DEBT” DEFINITION.**

#### **CLAUSE 47**

Income Tax: Amendment of section 23

Subclause (a): See notes on **ENHANCED REGULATORY AND TAX CO-ORDINATION OF SHORT-TERM INSURANCE RESERVES.**

Subclause (b): Paragraph (b): See notes on **TAXABILITY OF GOVERNMENT TRANSFERS AND SUBSIDIES.**

#### **CLAUSE 48**

Income Tax: Amendment of section 23B

See notes on **CO-ORDINATION OF DEDUCTION AND EXEMPTION RULES IN RESPECT OF EMPLOYER-OWNED EMPLOYEE-RELATED INSURANCE POLICIES**

#### **CLAUSE 49**

Income Tax: Amendment of section 23D

The amendment corrects an incorrect reference to the sublessor.

#### **CLAUSE 50**

Income Tax: Amendment of section 23E

See notes on **STREAMLINED TIMING FOR CERTAIN FORMS OF VARIABLE CASH REMUNERATION**

#### **CLAUSE 51**

Income Tax: Amendment of section 23H

See notes on **ENHANCED REGULATORY AND TAX CO-ORDINATION OF SHORT-TERM INSURANCE RESERVES.**

#### **CLAUSE 52**

Income Tax: Amendment of section 23I

Subclauses (a) and (b): The proposed amendment corrects incorrect cross-references.

Subclause (c): The proposed amendment increases the level of permissible deductions for intellectual property royalties paid offshore when subject to royalty withholding because the potential level of royalty withholding have increases from 12 per cent to 15 per cent.

#### **CLAUSE 53**

Income Tax: Repeal of section 23J

See notes on **REPEAL OF ANTI-AVOIDANCE FOR THE TRANSFER OF DEPRECIABLE ASSETS BETWEEN CONNECTED PERSONS**

#### **CLAUSE 54**

Income Tax: Amendment of section 23K

Subclause (a): See notes on **DEBT-FINANCED ACQUISITIONS OF CONTROLLING SHARE INTERESTS**.

Subclause (b): The proposed amendment corrects a grammatical error.

Subclause (c): The proposed amendment corrects a grammatical error.

Subclauses (d)-(i) and (k): See notes on the **INTRODUCTION OF THE “DEBT” DEFINITION**

Subclause (m): One factor relating to the controls under section 23K involves a debt-equity calculation. The proposed amendment clarifies that the debt-equity calculation compares total debt to total equity.

Subclause (j): Consistent with other parts of the rules that potentially limit interest deductions for section 45 indirect asset acquisitions (and now controlled share acquisitions), the effective date rules should apply to the issue of new debt or the assumption of pre-existing debt.

Subclause (l): In considering an application for a directive, the Commissioner will, inter alia, consider all the debt of a company in relation to all its equity.

#### **CLAUSE 55**

Income Tax: Insertion of 23L

See notes on **SUSPENDED DEDUCTIONS FOR INTEREST/ROYALTIES PAID TO EXEMPT PERSONS**.

#### **CLAUSE 56**

Income Tax: Amendment of section 24B

See notes on **VALUE MISMATCHES INVOLVING SHARE AND DEBT ISSUES**

## CLAUSE 57

Income Tax: Insertion of section 24BA

See notes on **VALUE MISMATCHES INVOLVING SHARE AND DEBT ISSUES**

## CLAUSE 58

Income Tax: Insertion of section 24BB

See notes on **VALUE MISMATCHES INVOLVING SHARE AND DEBT ISSUES**

## CLAUSE 59

Income Tax: Amendment of section 24I

Subclause (a), (b), (c), (d), (e), (h), (i) and (k): See notes on the **INTRODUCTION OF THE “DEBT” DEFINITION**

Subclause (f): See notes on **INTRODUCTION OF THE “DEBT” DEFINITION.**

Subclause (g): See notes on **REVISED CURRENCY RULES FOR INTRA-GROUP EXCHANGE ITEMS.**

Subclause (j) and (l): See notes on **REMOVAL OF FOREIGN CURRENCY DEFERRAL FOR PRE-PRODUCTION ACTIVITIES.**

Subclause (m) – (p): See notes on **REVISED CURRENCY RULES FOR INTRA-GROUP EXCHANGE ITEMS**

Subclause (n): See notes on **REVISED CURRENCY RULES FOR INTRA-GROUP EXCHANGE ITEMS**

Subclause (o): See notes on **REVISED CURRENCY RULES FOR INTRA-GROUP EXCHANGE ITEMS**

Subclause (p): See notes on **REVISED CURRENCY RULES FOR INTRA-GROUP EXCHANGE ITEMS**

## CLAUSE 60

Income Tax: Amendment of section 24J

Subclauses (a), (b), (e) and (f): In 2001, an amendment was added to section 24J in respect of demand instruments. The purpose of the amendment was to clarify how section 24J applied to these demand instruments. It has since been determined that this amendment is necessary. Demand instruments are unaffected by the *Cactus* decision, meaning that interest in respect of these instruments are simply received, accrued or incurred under basic gross income and deduction principles. The amendments relating to section 24J in respect of demand instruments are hereby deleted with retrospective effect.

Subclauses (c) and (d): See notes on the **INTRODUCTION OF THE “DEBT” DEFINITION.**

Subclause (g): See notes on **ANNUAL FAIR VALUE TAXATION OF FINANCIAL INSTRUMENTS IN RESPECT OF FINANCIAL INSTITUTIONS.**

## CLAUSE 61

Income Tax: Insertion of section 24JA

Subclauses (a) – (b): The amendment corrects a cross-reference.

## CLAUSE 62

Income Tax: Insertion of section 24JB

See notes on **ANNUAL FAIR VALUE TAXATION OF FINANCIAL INSTRUMENTS IN RESPECT OF FINANCIAL INSTITUTIONS.**

## CLAUSE 63

Insertion of section 24O

See notes on **DEBT-FINANCED ACQUISITIONS OF CONTROLLING SHARE INTERESTS.**

#### **CLAUSE 64**

Income Tax: Amendment of section 25BA

The main focus for calculating collective investment scheme income is “accruals” as opposed to “receipts.” This focus is consistent with other parts of section 25BA. The amendment also makes a stylistic change in respect of the 12-month holding period.

#### **CLAUSE 65**

Income Tax: Insertion of section 25BB

See notes on **CREATION OF A UNIFIED SYSTEM OF TAXING REAL ESTATE INVESTMENT TRUSTS FOR PROPERTY INVESTMENT SCHEMES.**

#### **CLAUSE 66**

Income Tax: Amendment of section 26B

See notes on **OIL AND GAS INCENTIVE AND STABILITY REVISIONS.**

#### **CLAUSE 67**

Income Tax: Amendment of section 28

See notes on **ENHANCED REGULATORY AND TAX CO-ORDINATION OF SHORT-TERM INSURANCE RESERVES.**

#### **CLAUSE 68**

Income Tax: Insertion of section 28A

See notes on **INVESTMENT CONTRACTS DISGUISED AS SHORT-TERM INSURANCE**

#### **CLAUSE 69**

Income Tax: Amendment of section 29A

See notes on **MARK-TO-MARKET TAXATION OF LONG-TERM POLICYHOLDERS FUND.**

#### **CLAUSE 70**

Income Tax: Insertion of section 29B

See notes on **MARK-TO-MARKET TAXATION OF LONG-TERM POLICYHOLDERS FUND.**

#### **CLAUSE 71**

Income Tax: Amendment of section 31

Subclause (a): See notes on the **INTRODUCTION OF THE “DEBT” DEFINITION.**

Subclauses (b) - (d): See notes on **FURTHER REFINEMENTS TO THE HEADQUARTER (HQ) COMPANY REGIME.**

Subclause (e): See notes on **RELIEF FROM TRANSFER PRICING IN THE CASE OF HIGH-TAXED CONTROLLED FOREIGN COMPANIES.**

#### **CLAUSE 72**

Income Tax: Repeal of section 35

See notes on **RATIONALISATION OF WITHHOLDING TAXES ON PAYMENTS TO FOREIGN PERSONS.**

#### **CLAUSE 73**

Income Tax: Amendment to section 37B

The depreciation rules for certain long-term environmental assets are being aligned with other depreciation provisions. The assets must either be owned or acquired as part of a finance “installment credit agreement.”

#### **CLAUSE 74**

Income Tax: Amendment to section 37H

The whole tax holiday is being repealed as obsolete.

#### **CLAUSE 75**

Income Tax: Amendment to section 37K

See notes on **RATIONALISATION OF WITHHOLDING TAXES ON PAYMENTS TO FOREIGN PERSONS.**

#### **CLAUSE 76**

Income Tax: Substitution of Part IA of Chapter II

See notes on **REMOVAL OF THE CONTROLLED FOREIGN COMPANY (CFC) EXEMPTION FROM INTEREST AND ROYALTY WITHHOLDING.**

#### **CLAUSE 77**

Income Tax: Insertion of section 40CA

See notes on **VALUE MISMATCHES INVOLVING SHARE AND DEBT ISSUES.**

#### **CLAUSE 78**

Income Tax: Amendment to heading to Part III

See notes on **SHARE-FOR-SHARE RECAPITALISATIONS.**

#### **CLAUSE 79**

Income Tax: Amendment to section 41

See notes on **SHARE-FOR-SHARE RECAPITALISATIONS.**

#### **CLAUSE 80**

Income Tax: Amendment to section 42

Subclause (a): The proposed amendment clarifies that an asset transferred under an asset-for-share transaction can only be in exchange of shares “issued” to the transferor by the transferee company.

Subclause (b) and (e): See notes on **REVISED ROLLOVER REGIME FOR CROSS-BORDER REORGANISATIONS**

Subclause (c) and (d): See notes on **QUALIFYING INTEREST IN ASSET-FOR-SHARE REORGANISATIONS**

Subclause (f): The amendment restores the deemed proceeds rule in respect of section 42 debt assumptions back to its original intent. If a company assumes debt as part of a section 42 transaction, the shareholder transferring assets subject to debt effectively increases the gain upon disposal of the company shares (any focus on acquisitions as a trigger is irrelevant).

#### **CLAUSE 81**

Income Tax: Insertion of section 43

See notes on **SHARE-FOR-SHARE RECAPITALISATIONS**

#### **CLAUSE 82**

Income Tax: Amendment to section 44

Subclause (a) – (c): See notes on **REVISED ROLLOVER REGIME FOR CROSS BORDER REORGANISATIONS**

Subclause (d): The current legislation is written in reverse to the stated intention. Longer-term debt (i.e. debt more than 18 months) or shorter-term debt (if acting as a refinancing of longer-term debt or arising in the ordinary course of business) should generally not trigger taxation (unless that debt was incurred or otherwise assumed to procure certain assets in a section 44 merger). The language relating to business undertakings is also adjusted in line with pre-existing tax principles.

Subclause (e): The amendment limits the words to the singular because the interpretation act allows for the use of singular to be interpreted as also applying in the plural.

Subclause (f): The proposed amendment corrects a grammatical error.

Subclause (h): In any merger, the amalgamated (i.e. target) company distributes shares of the (i.e. acquiring) resultant company after receiving those shares in exchange for the surrender of the amalgamated company's assets. The proposed amendment clarifies that this distribution should not give rise to any Dividends Tax liability, even though this distribution will typically qualify as a dividend.

### CLAUSE 83

Income Tax: Amendment to section 45

Subclauses (a) - (e) and (h): See notes on **ROLLOVER RELIEF FOR CONTROLLED FOREIGN COMPANY (CFC) INTRA-GROUP TRANSACTIONS.**

Subclause (b): The proposed amendment excludes the transfer of loss assets as part of intra-group transactions with CFCs.

Subclause (f), (g) and (k): See notes on the **INTRODUCTION OF THE “DEBT” DEFINITION.**

Subclause (i) and (j): The proposed amendment clarifies that the exemption in respect of debt issued within the context of a section 45 transaction is limited solely to the repayment of principal (i.e. the underlying liability).

### CLAUSE 84

Income Tax: Amendment to section 46

Subclause (a): See notes on **REVISED ROLLOVER REGIME FOR CROSS BORDER REORGANISATIONS.**

Subclause (b): Unbundlings essentially involve the distribution of share interests in strategic subsidiaries. Without relief, these distributions will typically qualify as a dividend. The proposed amendment clarifies that qualifying unbundlings are exempt from the Dividends Tax.

Subclause (c): See notes on **QUALIFYING INTEREST IN ASSET-FOR-SHARE REORGANISATIONS.**

Subclause (d): See notes on **REVISED ROLLOVER REGIME FOR CROSS BORDER REORGANISATIONS.**

### CLAUSE 85

Income Tax: Amendment to section 47

Subclause (a) and (b): The amendments merely effect stylistic changes.

Subclause (b): See notes on **REVISED ROLLOVER REGIME FOR CROSS BORDER REORGANISATIONS.**

Subclause (c): Roll-over relief will not be provided where the holding company is an exempt entity.

#### **CLAUSE 86**

Income Tax: Insertion of Part IVA of Chapter II

See notes on **RATIONALISATION OF WITHHOLDING TAXES ON PAYMENTS TO FOREIGN PERSONS.**

#### **CLAUSE 87**

Income Tax: Amendment to section 49D

See notes on **REMOVAL OF THE CONTROLLED FOREIGN COMPANY (CFC) EXEMPTION FROM INTEREST AND ROYALTY WITHHOLDING.**

#### **CLAUSE 88**

Income Tax: Amendment to section 64B

The proposed amendment clarifies concerns that certain dividends subject to the Secondary Tax on Companies will fail to give rise to transitional STC credits due to the timing of the declaration. In essence, if a dividend is subject to the Secondary Tax on Companies, the tax on those dividends should give rise to transitional STC credits. No reason exists to exclude particular portions.

#### **CLAUSE 89**

Income Tax: Amendment to section 64C

Deemed dividends under section 64C (set to terminate with the Secondary Tax on Companies) should not include amounts treated as actual dividends (determined without regard to exclusions in respect of those distributed amounts). For instance, amounts subject to the Secondary Tax on Companies as a dividend or exempt capitalisation share distributions were never intended to fall within the deemed dividend rules.

#### **CLAUSE 90**

Income Tax: Amendment to section 64E

Subclause (a): See noted on **OIL AND GAS INCENTIVE AND STABILITY REVISIONS.**

Subclause (b): The amendment clarifies the timing of the dividends tax. In the case of listed shares, the charge falls on the date of actual payment. In the case of unlisted shares, the charge falls on the date the amount becomes payable. This dual set of payment dates greatly simplifies compliance in line with commercial realities.

Subclause (c), (d), (f), (g) and (i): See notes on the **INTRODUCTION OF THE “DEBT” DEFINITION**

Subclause (e): The amendment treats discounted company loans to shareholders (and connected persons) as a dividend *in specie*. This treatment means that the tax falls on the company payor, thereby greatly simplifying enforcement and compliance.

Subclause (h): Under the Secondary Tax on Companies, the corpus of company loans to shareholders (and connected persons) was subject to the tax in specified circumstances. In order to prevent indirect double taxation, previously taxed loans of this nature will not give rise to on-going charges in respect of the new Dividends Tax even if the loans do not require a market-related yield.

#### **CLAUSE 91**

Income Tax: Amendment to section 64F

The proposed amendments are designed largely to prevent potential double taxation. Hence, dividends concurrently subject to normal tax (without the benefit of an exemption) or previously subject to the Secondary Tax on Companies will be relieved from the Dividends Tax. Collective investment schemes in securities are also relieved from the Dividends Tax regardless of whether the dividends are distributed within or without a period of 12-months. Dividends held by a collective investment scheme beyond the 12-month period are subject to normal tax so no reason exists for the Dividends Tax to apply. Dividends pushed through to unit holders are taxed at the unit holder level so these dividends should not be subject to additional tax by the collective investment scheme.

#### **CLAUSE 92**

Income Tax: Amendment to section 64FA

See notes on **CONVERSION OF SHARE BLOCK INTERESTS TO FULL TITLE**

### **CLAUSE 93**

Income Tax: Amendment to section 64G

Subclause (a): The rates and threshold bill increases the Dividends Tax rate from 10 per cent to 15 per cent. The corresponding withholding rate must also be increased to 15 per cent.

Subclause (b): The amendment seeks to clarify that the dividend tax withheld by a company, is still a dividend paid to the shareholder on behalf of whom the dividends tax is withheld.

### **CLAUSE 94**

Income Tax: Amendment to section 64H

Subclause (a): The rates and threshold bill increases the Dividends Tax rate from 10 per cent to 15 per cent. The corresponding withholding rate must also be increased to 15 per cent.

Subclause (c): Under the legislation as currently drafted, dividends to collective investment schemes in securities are exempt from withholding per se (as a regulated intermediary). However, it has been suggested that certain collective investment schemes hold many of their financial instruments through wholly controlled trusts in which those schemes are the sole beneficiary. The proposed amendment exempts these similar circumstances because both the scheme and the trust are operating as a single economic entity.

Clause (b): A dividend will be exempt from the dividends tax if it is to a vesting trust of which the sole beneficiary is another regulated intermediary.

### **CLAUSE 95**

Income Tax: Amendment to section 64J

Subclause (a): The notification period is extended by 21 business days after the dividend date because the dividend is unrealistic, especially in the case of *in specie* dividends.

Subclause (b): The calculation of transitional credits is being more closely aligned with pre-existing law. The goal is to limit the credits to amounts that were previously taxed under the Secondary Tax on Companies. Hence, dividends accrued that were exempt from the Secondary Tax on Companies should not give rise to transitional credits under the new Dividends Tax.

Subclause (c): The requirement of “written” aspect of the notice is dropped. Any form of notice permissible by SARS is acceptable (e.g. electronic).

Subclause (d) and (e): The proposed amendment deletes superfluous language.  
Subclause (f): The proposed amendment limits STC credits to domestic dividends. Foreign dividends never previously gave rise to STC credits even if the foreign shares were listed on the JSE.

#### **CLAUSE 96**

Income Tax: Amendment to section 64L

Consistent with other aspects of Dividends Tax withholding, both a declaration and a written undertaking is required by the payee to obtain withholding relief.

#### **CLAUSE 97**

Income Tax: Amendment to section 64M

Consistent with other aspects of Dividends Tax withholding, both a declaration and a written undertaking is required by the payee to obtain withholding relief.

#### **CLAUSE 98**

Income Tax: Amendment to section 72A

The amendment is consistent with the movement of the “foreign tax year” definition from section 9D to section 1.

#### **CLAUSE 99**

Income Tax: Amendment to section 80N

See notes on the **INTRODUCTION OF THE “DEBT” DEFINITION**

#### **CLAUSE 100**

Income Tax: Amendment to paragraph 1 of Second Schedule

See notes on **COMPLETION OF THE “CLEAN BREAK PRINCIPLE” WHEN DIVIDING RETIREMENT INTEREST IN DIVORCE**

#### **CLAUSE 101**

Income Tax: Amendment to paragraph 2 of Second Schedule

See notes on **COMPLETION OF THE “CLEAN BREAK PRINCIPLE” WHEN DIVIDING RETIREMENT INTEREST IN DIVORCE**

#### **CLAUSE 102**

Income Tax: Substitution of paragraph 2A of Second Schedule

See notes on **COMPLETION OF THE “CLEAN BREAK PRINCIPLE” WHEN DIVIDING RETIREMENT INTEREST IN DIVORCE**

#### **CLAUSE 103**

Income Tax: Repeal of paragraph 2B of Second Schedule

See notes on **COMPLETION OF THE “CLEAN BREAK PRINCIPLE” WHEN DIVIDING RETIREMENT INTEREST IN DIVORCE**

#### **CLAUSE 104**

Income Tax: Amendment to paragraph 3 of Second Schedule

The language is changed for the sake of consistency with the other parts of the Second Schedule.

#### **CLAUSE 105**

Income Tax: Amendment to paragraph 3A of Second Schedule

The language is changed for the sake of consistency with the other parts of the Second Schedule.

#### **CLAUSE 106**

Income Tax: Amendment to paragraph 4 of Second Schedule

The language is changed for the sake of consistency with the other parts of the Second Schedule.

## CLAUSE 107

Income Tax: Amendment to paragraph 5 of Second Schedule

Sub clauses (a) and (b): See notes on **COMPLETION OF THE “CLEAN BREAK PRINCIPLE” WHEN DIVIDING RETIREMENT INTEREST IN DIVORCE.**

Sub clause (c): See notes on **EXEMPTION FOR COMPULSORY ANNUITY INCOME STEMMING FROM NON-DEDUCTIBLE RETIREMENT CONTRIBUTIONS.**

Sub clause (d): The language is changed for the sake of consistency with the other parts of the Second Schedule.

## CLAUSE 108

Income Tax: Amendment to paragraph 6 of Second Schedule

Sub clauses (a), (b) and (e): The language is changed for the sake of consistency with the other parts of the Second Schedule.

Subclause (c): See notes on **COMPLETION OF THE “CLEAN BREAK PRINCIPLE” WHEN DIVIDING RETIREMENT INTEREST IN DIVORCE.**

Sub clause (d): See notes on **EXEMPTION FOR COMPULSORY ANNUITY INCOME STEMMING FROM NON-DEDUCTIBLE RETIREMENT CONTRIBUTIONS.**

## CLAUSE 109

Income Tax: Amendment to paragraph 2 of Seventh Schedule

Subclause (a): The amendment corrects an outdated reference.

Subclause (b): It is proposed that all the various concepts which seek to define debt and related concepts be unified within a single definition. See notes on the **INTRODUCTION OF THE “DEBT” DEFINITION**

Subclause (c): It is proposed that all the various concepts which seek to define debt and related concepts be unified within a single definition. See notes on the **INTRODUCTION OF THE “DEBT” DEFINITION**

#### **CLAUSE 110**

Income Tax: Amendment to paragraph 7 of Seventh Schedule

See notes on **FRINGE BENEFIT VALUATION IN RESPECT OF RENTED EMPLOYER-PROVIDED VEHICLES**

#### **CLAUSE 111**

Income Tax: Amendment to paragraph 12C of Seventh Schedule

The amendment provides SARS with the power to allocate insurance contributions if the allocation does not reasonably represent a fair allocation. This power matches the allocation rules for medical aid contributions under paragraph 12A of the Seventh Schedule.

#### **CLAUSE 112**

Income Tax: Amendment to paragraph 1 of the Eighth Schedule

See notes on **VALUE MISMATCHES INVOLVING SHARE AND DEBT ISSUES**

#### **CLAUSE 113**

Income Tax: Amendment to paragraph 3 of the Eighth Schedule

See notes on **DEBT REDUCTIONS FOR LESS THAN FULL CONSIDERATION**

#### **CLAUSE 114**

Income Tax: Amendment to paragraph 8 of Eighth Schedule

The proposed amendment adds a consequential cross-reference in light of the new special rules added to the participation exemption in respect of headquarter companies.

#### **CLAUSE 115**

Income Tax: Amendment to paragraph 10 of Eighth Schedule

The amendment reflects the new rates for the individual and company policy funds

## CLAUSE 116

Income Tax: Amendment to paragraph 11 of Eighth Schedule

Subclause (a): See notes on **VALUE MISMATCHES INVOLVING SHARE AND DEBT ISSUES**

Subclauses (b) and (c): See notes on **INTRODUCTION OF THE “DEBT” DEFINITION**

## CLAUSE 117

Income Tax: Amendment to paragraph 12 of Eighth Schedule

Subclauses (a) and (b): The amendment clarifies that the exit charge of paragraph 12 of the Eighth Schedule applies to controlled foreign companies that lose their controlled status. It should be noted that residents losing residency status are addressed under section 9H. It should also be noted that controlled foreign companies entering the headquarter regime are also subject to this provision because entrance into the headquarter company regime triggers automatic loss of controlled foreign company status.

Subclause (c): See notes on **DEBT REDUCTIONS FOR LESS THAN FULL CONSIDERATION**

## CLAUSE 118

Income Tax: Insertion of paragraph 12A of Eighth Schedule

See notes on **DEBT REDUCTIONS FOR LESS THAN FULL CONSIDERATION**

## CLAUSE 119

Income Tax: Amendment to paragraph 13 of Eighth Schedule

Subclause (a): See notes on **VALUE MISMATCHES INVOLVING SHARE AND DEBT ISSUES**

Subclause (b): See notes on **DEBT REDUCTIONS FOR LESS THAN FULL CONSIDERATION**

## CLAUSE 120

Income Tax: Amendment to paragraph 20 of Eighth Schedule

See notes on **TAXABILITY OF GOVERNMENT TRANSFERS AND SUBSIDIES**

**CLAUSE 121**

Income Tax: Amendment to paragraph 23 of Eighth Schedule

See notes on **VALUE MISMATCHES INVOLVING SHARE AND DEBT ISSUES**

**CLAUSE 122**

Income Tax: Amendment to paragraph 32 of Eighth Schedule

Subclause (a): The amendment clarifies the implicit notion that the general rule of subsection (3) is subject to the additional conditions of subsections (3A) and (3B).

Subclause (b) to (c): See notes on **MARK-TO-MARKET TAXATION OF LONG-TERM POLICYHOLDERS FUND.**

**CLAUSE 123**

Income Tax: Amendment to paragraph 38 of Eighth Schedule

See notes on **DEBT REDUCTIONS FOR LESS THAN FULL CONSIDERATION.**

**CLAUSE 124**

Income Tax: Amendment to paragraph 40 of Eighth Schedule

See notes on **DEBT REDUCTIONS FOR LESS THAN FULL CONSIDERATION.**

**CLAUSE 125**

Income Tax: Amendment to paragraph 42 of Eighth Schedule

See notes on **MARK-TO-MARKET TAXATION OF LONG-TERM POLICYHOLDER FUNDS.**

**CLAUSE 126**

Income Tax: Amendment to paragraph 42A of Eighth Schedule

The amendment updates a cross-reference in light of implementation of the new Companies Act.

## **CLAUSE 127**

Income Tax: Amendment to paragraph 43 of Eighth Schedule

See notes on **REMOVAL OF MISPLACED NON-MONETARY AND MONETARY FOREIGN CURRENCY CALCULATIONS**

## **CLAUSE 128**

Income Tax: Amendment to paragraph 43A of Eighth Schedule

Subclause (a): Under current law, certain dividends could be treated as additional capital gain proceeds if sold within 45-days before disposal. The purpose of the 45-day holding period was impractical. Taxpayers often have a meaningful holding in an underlying share even though the holding is only for a short duration before disposal. The sellers of the dividend may also have realised ordinary revenue or capital gain when disposing of the dividend (so tax may not be lost at a shareholder level when all shareholders are taken into account. See also the clause-by-clause notes relating to section 22B.

Subclauses (b) and (c): See notes on **INTRODUCTION OF THE “DEBT” DEFINITION.**

## **CLAUSE 129**

Income Tax: Amendment to paragraph 56 of Eighth Schedule

See notes on **DEBT REDUCTIONS FOR LESS THAN FULL CONSIDERATION.**

## **CLAUSE 130**

Income Tax: Amendment to paragraph 61 of Eighth Schedule

A collective investment scheme technically operates as a vesting trust with all disposals by the scheme giving rise to gain or loss for the unit holders. While all gains and losses are technically deferred until disposal of a unit by a unit holder, gains or losses of the collective investment scheme arguably need to be included upon disposal of a unit. The proposed amendment accordingly eliminates any gain or loss arising from disposals by a collective investment scheme.

## **CLAUSE 131**

Income Tax: Amendment to paragraph 64A of Eighth Schedule

See notes on **TAXABILITY OF GOVERNMENT TRANSFERS AND SUBSIDIES.**

#### **CLAUSE 132**

Income Tax: Substitution of paragraph 64B of Eighth Schedule

Subclause (a): See notes on **TAXABILITY OF GOVERNMENT TRANSFERS AND SUBSIDIES.**

Subclause (b): The amendment corrects an incorrect reference.

#### **CLAUSE 133**

Income Tax: Substitution of paragraph 64B of Eighth Schedule

See notes on **NARROWING OF THE PARTICIPATION EXEPTION IN RESPECT OF FOREIGN EQUITY SHARE DISPOSALS.**

#### **CLAUSE 134**

Income Tax: Amendment to paragraph 65 of Eighth Schedule

Subclause (a) and (b): The proposed amendment updates certain rules relating to remuneration with the 2011 changes to the source rules.

#### **CLAUSE 135**

Income Tax: Amendment to paragraph 66 of Eighth Schedule

The proposed amendment updates certain rules relating to remuneration with the 2011 changes to the source rules.

#### **CLAUSE 136**

Income Tax: Amendment to paragraph 67A of Eighth Schedule

Subclause (a): **CREATION OF A UNIFIED SYSTEM OF TAXING REAL ESTATE INVESTMENT TRUSTS FOR PROPERTY INVESTMENT SCHEMES.**

Subclause (b): The proposed amendment eliminates the references to the part-disposal capital distribution rules, which are no longer in effect.

#### **CLAUSE 137**

Income Tax: Amendment to paragraph 67AB of Eighth Schedule

See notes on **CREATION OF A UNIFIED SYSTEM OF TAXING REAL ESTATE INVESTMENT TRUSTS FOR PROPERTY INVESTMENT SCHEMES**

**CLAUSE 138**

See notes on **CONVERSION OF SHARE BLOCK INTERESTS TO FULL TITLE**

**CLAUSE 139**

Income Tax: Amendment to paragraph 74 of Eighth Schedule

The date of distribution for the capital gains tax is being aligned with the Dividends Tax.

**CLAUSE 140**

Income Tax: Amendment to paragraph 75 of Eighth Schedule

The proposed amendment clarifies that assets received by shareholders via company distribution begin with a fair market value base cost.

**CLAUSE 141**

Income Tax: Amendment to paragraph 76 of Eighth Schedule

Subclauses (a) and (b): The proposed amendments take into account the new definition for foreign return of capital distributions previously added with effect from 1 January 2011.

Subclause (c): The proposed amendment updates the change-over from the current capital distributions rules to coincide with the new Dividends Tax (with the old regime ending on 31 March 2011 and the new regime beginning on 1 April).

Subclause (d): The proposed amendments take into account the new definition for foreign return of capital distributions previously added with effect from 1 January 2011.

Subclause (e): The provision is deleted as it superfluous.

Subsection (f): The provision merely corrects a grammatical error.

#### **CLAUSE 142**

Income Tax: Amendment to paragraph 76A of Eighth Schedule

The proposed amendments take into account the new definition for foreign return of capital distributions previously added with effect from 1 January 2011.

#### **CLAUSE 143**

Income Tax: Amendment to paragraph 76B of Eighth Schedule

The amendment is a result of the deletion of the definition of “shareholder” from the Income Tax Act, 1962.

#### **CLAUSE 144**

Income Tax: Amendment to paragraph 78 of Eighth Schedule

Subclauses (a) and (c): The proposed amendments take into account the new definition for foreign return of capital distributions previously added with effect from 1 January 2011.

Subclause (b): The proposed amendment reinserts the accidental deletion of paragraph 78(2) of the Eighth Schedule that occurred within the Taxation Laws Amendment Bill, 2011.

#### **CLAUSE 145**

Income Tax: Amendment to paragraph 78 of Eighth Schedule

See notes on **SHARE-FOR-SHARE RECAPITALISATIONS**.

#### **CLAUSE 146**

Income Tax: Amendment to paragraph 2 of Tenth Schedule

See notes on **OIL AND GAS INCENTIVE AND STABILITY REVISIONS**

#### **CLAUSE 147**

Income Tax: Amendment to paragraph 3 of Tenth Schedule

See notes on **OIL AND GAS INCENTIVE AND STABILITY REVISIONS**

#### **CLAUSE 148**

Income Tax: Substitution of paragraph 6 of Tenth Schedule

See notes on **OIL AND GAS INCENTIVE AND STABILITY REVISIONS**

#### **CLAUSE 149**

Income Tax: Insertion of Eleventh Schedule

See notes on **TAXABILITY OF GOVERNMENT TRANSFERS AND SUBSIDIES**

#### **CLAUSE 150**

Custom and Excise: Amendment to section 47B

The amendment seeks to align the legislative processes in respect of amendments to the air passenger departure tax rates by enabling the Minister to amend the rates in both instances by notice in the Gazette from a date to be specified in the notice. The Minister is also allowed to lower the rate by notice in the *Gazette* in respect of any flight of which the final destination is any country in Africa.

#### **CLAUSE 151**

Custom and Excise: Amendment to section 116

The Commissioner may (subject to certain conditions), in respect of excisable goods manufactured by natural persons, exempt such excisable goods from the whole or any portion of the duty thereon. A need exists to exempt on a similar basis training facilities and educational institutions and the amendment proposes to include, in addition to the existing "natural persons", "institutions" in the provisions of the section.

#### **CLAUSE 152**

Custom and Excise: Continuation of certain amendments to the Schedules

This clause provides for the continuation, withdrawal or insertion of amendments in the Schedules to the Customs and Excise Act made during the period from 1 August 2011 up to and including 31 July 2012.

### **CLAUSE 153**

Income Tax: Amendment of section 10

The proposed amendment deletes a 1990 amendment to section 10 of the Income Tax Act because this amendment has been deleted many years ago.

### **CLAUSE 154**

Value Added Tax: Amendment to section 1

Subclause 1(a) & (b): See notes on **INSTALMENT CREDIT AGREEMENT.**

### **CLAUSE 155**

Value Added Tax: Amendment to section 8

Subclause (a): See notes on **CONVERSION OF SHARE BLOCK INTERESTS TO FULL TITLE.**

Subclause (b): See notes on **VAT DOUBLE CHARGE FOR GOODS REMOVED FROM CUSTOMS CONTROLLED AREAS.**

### **CLAUSE 156**

Value Added Tax: Amendment to section 12

Subclause (a): See notes on **IMPORTED GOODS SOLD BY FOREIGN PERSONS PRIOR TO ENTRY FOR HOME CONSUMPTION.**

Subclause (b): See notes on **RELIEF FOR BARGAINING COUNCILS** and notes on **RELIEF FOR POLITICAL PARTIES.**

Subclause (c): See notes on **RELIEF FOR POLITICAL PARTIES.**

### **CLAUSE 157**

Value Added Tax: Amendment to section 16

Subclause (a) & (b): These amendments are as a consequence of the delink of VAT and transfer duty that was done in TLAB 2011

## **CLAUSE 158**

Value Added Tax: Amendment to section 18

Subclause (a) & (b): These amendments are as a consequence of the delink of VAT and transfer duty that was done in TLAB 2011

Subclause (c): The amendment effectively seeks to clarify that the deemed charge for goods does not solely relate to entertainment goods but applies to all goods not used or consume in the course of making taxable supplies of the vendor that is a customs controlled area enterprise.

## **CLAUSE 159**

Value Added Tax: Amendment to section 21

Subclause (a) & (b): See notes on **CREDIT AND DEBIT NOTES**

## **CLAUSE 160**

Unemployment Insurance Contributions: Amendment of section 4

Subclause (a): The amendment corrects a grammatical error.

Subclause (b): The amendment includes paragraph (e) and (f) per subclause (c) below.

Subclause (c): The proposed legislation excludes certain public officers (as intended in 2011) from being subject to unemployment insurance contributions because these persons do not receive any unemployment insurance benefits.

## **CLAUSE 161**

Securities Transfer Act: Amendment of section 1

See notes on **CLARIFICATION OF THE BROKER/DEALER-MEMBER EXEMPTION**

## **CLAUSE 162**

Securities Transfer Act: Amendment of section 2

See notes on **CLARIFICATION OF THE BROKER/DEALER-MEMBER EXEMPTION**

### **CLAUSE 163**

Securities Transfer Act: Amendment of section 8

Subclause (a): The 2011 legislation specifically provided relief for brokers holding shares that act as a hedge for derivatives issued to other parties. The purpose this exemption is to provide for a two year interim period (i.e. to protect listed market liquidity) in respect of these shares, thereby providing time for an active discussion period. The proposed amendment simply rephrases this interim exemption to provide more enhanced coverage, thereby avoiding unintended taxation.

Subclauses (b) and (c): The proposed amendment exempts disposals of headquarter company shares from the Securities Transfer Tax Act. This relief roughly coincides with the income tax relief for shareholders disposing of headquarter company shares.

### **CLAUSE 164**

Revenue Laws Amendment Act, 2008: Amendment to section 13

This 2008 amendment regarding participation rights has been superseded by subsequent amendments.

### **CLAUSE 165**

Taxation Laws Amendment Act, 2009: Amendment to section 13

The proposed amendment deletes certain 2009 amendments to section 10(1)(k)(ii) which have been superseded by amendments contained within the Taxation Laws Amendment Act, 2011.

### **CLAUSE 166**

Taxation Laws Amendment Act, 2010: Amendment of section 2

The proposed amendment amends the Taxation Laws Amendment Act, 2010 to fix the date of coming into operation of the Islamic finance regime on 1 January 2013.

### **CLAUSE 167**

Taxation Laws Amendment Act, 2010: Amendment of section 48

The proposed amendment amends the Taxation Laws Amendment Act, 2010 to fix the date of coming into operation of the Islamic finance regime on 1 January 2013.

#### **CLAUSE 168**

Taxation Laws Amendment Act, 2010: Repeal of section 111

Paragraphs (a) and (b): See notes on **TAXABILITY OF GOVERNMENT TRANSFERS AND SUBSIDIES**

#### **CLAUSE 169**

Taxation Laws Amendment Act, 2010: Amendment of section 121

The proposed amendment amends the Taxation Laws Amendment Act, 2010 to fix the date of coming into operation of the Islamic finance regime on 1 January 2013.

#### **CLAUSE 170**

Taxation Laws Amendment Act, 2010: Amendment of section 128

The proposed amendment amends the Taxation Laws Amendment Act, 2010 to fix the date of coming into operation of the Islamic finance regime on 1 January 2013.

#### **CLAUSE 171**

Taxation Laws Amendment Act, 2011: Amendment of section 3

The proposed amendment amends the Taxation Laws Amendment Act, 2011 to fix the date of coming into operation of the Islamic finance regime on 1 January 2013.

#### **CLAUSE 172**

Taxation Laws Amendment Act, 2011: Amendment of section 7

The proposed amendment effectively aligns the effective date for the inclusion of foreign dividend definition (as defined with effect from 1 January 2011) in gross income.

#### **CLAUSE 173**

Taxation Laws Amendment Act, 2011: Amendment of section 21

The repeal is proposed in light of the revised version of the hybrid equity and third-party backed share proposals

#### **CLAUSE 174**

Taxation Laws Amendment Act, 2011: Amendment of section 28

The proposed amendment effectively aligns the effective date for the repeal of the rules contained in section 10(1)(k)(ii) that exempt (or partially exempt) foreign dividends with the effective date of new exemption (or partial exemption) rules contained in section 10B.

#### **CLAUSE 175**

Taxation Laws Amendment Act, 2011: Amendment of section 29

The proposed amendment deletes an incorrect limitation (the rule should apply to all trusts, not just special trusts).

#### **CLAUSE 176**

Taxation Laws Amendment Act, 2011: Amendment of section 32

The proposed amendment defers the effective date for the new research and development provisions from 1 April 2012 to 1 October 2012.

#### **CLAUSE 177**

Taxation Laws Amendment Act, 2011: Amendment of section 43

The amendment corrects the effective dates in respect of medical credits.

#### **CLAUSE 178**

Taxation Laws Amendment Act, 2011: Amendment of section 49

The proposed amendment adds a sunset clause to clarify that section 23K is intended only for an interim period (i.e. until enhanced debt/equity rules and anti-excessive debt rules are enacted).

#### **CLAUSE 179**

Taxation Laws Amendment Act, 2011: Amendment of section 50

The proposed amendment adds a sunset clause to clarify that section 23K is intended only for an interim period (i.e. until enhance debt/equity rules and anti-excessive debt rules are enacted).

#### **CLAUSE 180**

Taxation Laws Amendment Act, 2011: Amendment of section 54

The proposed amendment amends the Taxation Laws Amendment Act, 2011 to fix the date of coming into operation of the Islamic finance regime on 1 January 2013.

#### **CLAUSE 181**

Taxation Laws Amendment Act, 2011: Amendment of section 70

The proposed amendment corrects the effective date for the new tax cost rules associated with debt/preference shares issued as section 45 consideration.

#### **CLAUSE 182**

Taxation Laws Amendment Act, 2011: Amendment of section 72

The proposed amendment corrects references on how the changes to section 47 (liquidation rollovers) will be inserted.

#### **CLAUSE 183**

Taxation Laws Amendment Act, 2011: Amendment of section 116

Subclause (a): The proposed amendment corrects a cross-reference.

Subclauses (b) and (c): See the amendments to paragraph 64B of the Eighth Schedule.

#### **CLAUSE 184**

Taxation Laws Amendment Act, 2011: Amendment of section 119

The proposed amendment moves the effective date for capital distributions back to 1 January 2011 to take into account the new definition of foreign return of capital (added from 1 January 2011).

#### **CLAUSE 185**

Taxation Laws Amendment Act, 2011: Amendment of section 121

The proposed amendment moves the effective date for capital distributions back to 1 January 2011 to take into account the new definition of foreign return of capital (added from 1 January 2011).

#### **CLAUSE 186**

Taxation Laws Amendment Act, 2011: Amendment of section 129

The proposed amendment amends the Taxation Laws Amendment Act, 2011 to fix the date of coming into operation of the Islamic finance regime on 1 January 2013.

#### **CLAUSE 187**

Taxation Laws Amendment Act, 2011: Amendment of section 132

The proposed amendment amends the Taxation Laws Amendment Act, 2011 to fix the date of coming into operation of the Islamic finance regime on 1 January 2013.

#### **CLAUSE 188**

Taxation Laws Amendment Act, 2011: Amendment of section 145

The proposed amendment repeals section 145 of the Taxation Laws Amendment Act, 2011 because the cession will give rise to ordinary revenue for income tax purposes.

#### **CLAUSE 189**

Taxation Laws Amendment Act, 2011: Amendment of section 149

The proposed amendment amends the Taxation Laws Amendment Act, 2011 to fix the date of coming into operation of the Islamic finance regime on 1 January 2013.

#### **CLAUSE 190**

Short title and commencement