

INDIVIDUALS AND EMPLOYEES:

*This **draft legislation** is released for public information. The amendments contained in this draft are merely proposals which are **subject to change and final approval by the Minister of Finance**. Early comments on this draft will be considered for possible inclusion in a revised draft Bill.*

It is the intention to release the revised draft Bill in the first seven days of October, prior to the commencement of the informal Parliamentary process.

There will be an opportunity to comment on the revised draft Bill, either directly to the National Treasury and SARS or during the public hearings in the Parliamentary Committees in mid-October 2003.

Due to time constraints, it will not be possible to respond individually to comments received. However, receipt of comments will be acknowledged and fully considered by the National Treasury and SARS.

Comments may be submitted to either:

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Amendment of section 1 of Act 58 of 1962

. Section 1 of the Income Tax Act, 1962, is hereby amended by the insertion after the definition of “date of assessment” of the following definition:

“date of sequestration’ means—

- (a) the date of voluntary surrender of an estate, if accepted by the Court; or
- (b) the date of provisional sequestration of an estate, if a final order of sequestration is granted by the Court.”.

Amendment of section 23 of Act 58 of 1962

. Section 23 of the Income Tax Act, 1962, is hereby amended by the substitution in paragraph (m) for item (aa) of subparagraph (iii) of the following item:

“(aa) **[which]** to the extent that it covers that person **[solely]** against the loss of income as a result of illness, injury, disability or unemployment; and”.

Substitution of section 25C of Act 58 of 1962

. The following section hereby substitutes section 25C of the Income Tax Act, 1962:

“Income of insolvent estates

25C. For the purposes of this Act, and subject to any such adjustments as may be necessary[—

(a)] the estate of a person prior to sequestration and that person's insolvent estate[; **and**

(b) **where the order of sequestration has been set aside, that person's insolvent estate and that person's estate after that order has been set aside,]**

shall be deemed to be one and the same person for purposes of determining—

(a) the amount of any allowance, deduction or set off to which that insolvent estate may be entitled;

(b) any amount which is recovered or recouped by or otherwise required to be included in the income of that insolvent estate;
and

(c) any taxable capital gain or assessed capital loss of that insolvent estate.”.

Amendment of section 66 of Act 58 of 1962

. Section 66 of the Income Tax Act, 1962, is hereby amended by the addition in subsection (13) to paragraph (a) of the following proviso:

“Provided that where—

(a) a person dies, a return shall be made for the period commencing on the first day of that year of assessment and ending on the date of death;

(b) the estate of a person is sequestered, separate returns must be made for the periods—

(i) commencing on the first day of that year of assessment and ending on the date preceding the date of sequestration; and

(ii) commencing on the date of sequestration and ending on the last day of that year of assessment.”.

Amendment of section 79B of Act 58 of 1962

. Section 79B of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) The Commissioner must withdraw any assessment issued in respect of—

(a) the estate of a person for the period prior to the date of sequestration; and

(b) the insolvent estate of that person, where the sequestration order is set aside.”.

Substitution of paragraph 11 of Fourth Schedule to Act 58 of 1962

. The following paragraph hereby substitutes paragraph 11 of the Fourth Schedule to the Income Tax Act, 1962:

“11. The Commissioner may, having regard to the circumstances of the case, issue a directive—

- (a) to an employer authorising that employer—
 - (i) to refrain from deducting or withholding any amount under paragraph 2 by way of employees' tax from any remuneration due to any employee of that employer; or
 - (ii) to deduct or withhold by way of employees' tax in terms of paragraph 2, a specified amount or an amount to be determined in accordance with a specified rate or scale, in order to alleviate hardship to that employee due to circumstances outside the control of the employee or where the remuneration constitutes commission or to correct any error in regard to the calculation of employees' tax and the employer must comply with that directive; or
- (b) to an employer which is a private company, authorising that employer—
 - (i) to refrain from paying any amount under paragraph 11C(2); or
 - (ii) to pay under that paragraph a specified amount or an amount to be determined in accordance with a specified rate or scale, in order to alleviate hardship to an employer which is a private company and the employer must comply with that directive.”.

Amendment of paragraph 11C of Fourth Schedule to Act 58 of 1962

. Paragraph 11C of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for subitem (A) of item (aa) of paragraph (ii) of the proviso of the following subitem:
- “(A) ‘T’ shall be determined based on the balance of remuneration paid or payable by that company to that director in respect of the year of assessment preceding that last year of assessment, increased by an amount equal to 20 per cent (or such other percentage as the Minister may from time to time determine by notice in the *Gazette*) of that remuneration; and”;
- (b) by the substitution in subparagraph (1) for item (bb) of paragraph (ii) of the proviso of the following item:
- “(bb) the preceding year of assessment, contemplated in sub-item (aa), has not yet been determined or that director was not employed by that company in that preceding year, the company must request the Commissioner to determine the amount of remuneration which is deemed to have been received for the purpose of this subparagraph.”;
- (c) by the substitution for subparagraph (2) of the following subparagraph:
- “(2) Subject to subparagraph (6), every private company shall on a monthly basis, in respect of every director of that company, pay to the Commissioner an amount determined in accordance with subparagraph (3), which shall for the purposes of sections 79, 89bis, 89ter, 89quat, 90, 102 and 102A of the Act and paragraphs 1, 4, 6, 11, 12, 13 and 14 and Parts III and IV of this Schedule, be deemed to be an amount of employees' tax which was required to be deducted or withheld by the company as an employer in terms of paragraph 2 of this Schedule.”;
- (d) by the substitution for subparagraph (4) of the following subparagraph:
- “(4) A company shall have a right of recovery against a director in respect of any amount paid by that company in terms of subparagraph ~~[(1)]~~ (2), in respect of that director and that amount may, in addition to any other right of recovery, be deducted from **[future remuneration]** any amount which is or may become payable by that company to that director.”;
- (e) by the addition of the following subparagraph:

“(6) Subparagraph (2) does not apply to a private company in respect of a director where more than 80 per cent of the amount contemplated in ‘T’ in subparagraph (1)(b) in respect of the last year of assessment of that director as contemplated in ‘T’, represents fixed monthly payments of remuneration paid by that company to that director during that year of assessment.”.

Amendment of section 1 of Act 4 of 2002

. (1) Section 1 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the deletion of paragraph (d).

(2) Subsection (1) shall come into operation on ??

Amendment of section 4 of Act 4 of 2002

. (1) Section 4 of the Unemployment Insurance Contributions Act, 2002, is hereby amended

(a) by the substitution in subsection (1) for paragraphs (c) and (d) of the following paragraphs:

“(b) **[an employee and his or her employer, where that employee receives remuneration under a learnership agreement registered in terms]** employees under a contract of employment contemplated in section 18(2) of the Skills Development Act, 1998 (Act 97 of 1998), and their employers;

(c) **[employers and]** employees in the national and provincial spheres of government who are officers or employees as defined in section 1(1) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and their employers; and”;

(b) by the deletion of subsection (2).

(2) Subsection (1) shall come into operation on ??