C

Additional tax policy and administrative adjustments

This annexure should be read with Chapter 4 of the *Budget Review*. It elaborates on some of the proposals contained in the chapter, clarifies certain matters and presents additional technical proposals.

Personal income tax

The proposed tax schedule in Table 4.4 in Chapter 4 partially compensates individuals for the effect of inflation. The effects of these proposals are set out in tables C.1, C.2 and C.3.

Table C.1 Annual income tax payable and average tax rates, 2017/18 (taxpayers below 65)

Taxable income (R)	2016/17 rates (R)	Proposed 2017/18 rates (R)	Tax change (R)	% change	Average tax rates	
					Old rates	New rates
85 000	1 800	1 665	-135	-7.5%	2.1%	2.0%
90 000	2 700	2 565	-135	-5.0%	3.0%	2.9%
100 000	4 500	4 365	-135	-3.0%	4.5%	4.4%
120 000	8 100	7 965	-135	-1.7%	6.8%	6.6%
150 000	13 500	13 365	-135	-1.0%	9.0%	8.9%
200 000	23 460	23 174	-285	-1.2%	11.7%	11.6%
250 000	36 460	36 174	-285	-0.8%	14.6%	14.5%
300 000	49 780	49 347	-432	-0.9%	16.6%	16.4%
400 000	80 780	80 347	-432	-0.5%	20.2%	20.1%
500 000	116 460	115 824	-635	-0.5%	23.3%	23.2%
750 000	213 431	212 490	-941	-0.4%	28.5%	28.3%
1 000 000	315 931	314 990	-941	-0.3%	31.6%	31.5%
1 500 000	520 931	519 990	-941	-0.2%	34.7%	34.7%
2 000 000	725 931	744 990	19 059	2.6%	36.3%	37.2%

Source: National Treasury

Table C.2 Annual income tax payable and average tax rates, 2017/18 (taxpayers aged 65 to 74)

Taxable income (R)	2016/17 rates (R)	Proposed 2017/18 rates (R)	Tax change (R)	% change	Average tax rates	
					Old rates	New rates
120 000	693	484	-209	-30.2%	0.6%	0.4%
150 000	6 093	5 884	-209	-3.4%	4.1%	3.9%
200 000	16 053	15 693	-359	-2.2%	8.0%	7.8%
250 000	29 053	28 693	-359	-1.2%	11.6%	11.5%
300 000	42 373	41 866	-506	-1.2%	14.1%	14.0%
400 000	73 373	72 866	-506	-0.7%	18.3%	18.2%
500 000	109 053	108 343	-709	-0.7%	21.8%	21.7%
750 000	206 024	205 009	-1 015	-0.5%	27.5%	27.3%
1 000 000	308 524	307 509	-1 015	-0.3%	30.9%	30.8%
1 500 000	513 524	512 509	-1 015	-0.2%	34.2%	34.2%
2 000 000	718 524	737 509	18 985	2.6%	35.9%	36.9%

Source: National Treasury

Table C.3 Annual income tax payable and average tax rates, 2017/18 (taxpayers aged 75 and over)

Taxable income (R)	2016/17 rates (R)	Proposed 2017/18 rates (R)	Tax change (R)	% change	Average tax rates	
					Old rates	New rates
150 000	3 627	3 393	-234	-6.4%	2.4%	2.3%
200 000	13 587	13 203	-384	-2.8%	6.8%	6.6%
250 000	26 587	26 203	-384	-1.4%	10.6%	10.5%
300 000	39 907	39 376	-531	-1.3%	13.3%	13.1%
400 000	70 907	70 376	-531	-0.7%	17.7%	17.6%
500 000	106 587	105 853	-734	-0.7%	21.3%	21.2%
750 000	203 558	202 518	-1 039	-0.5%	27.1%	27.0%
1 000 000	306 058	305 018	-1 039	-0.3%	30.6%	30.5%
1 500 000	511 058	510 018	-1 039	-0.2%	34.1%	34.0%
2 000 000	716 058	735 018	18 961	2.6%	35.8%	36.8%

Source: National Treasury

Customs and excise duty

Government proposes that the customs and excise duties in the Customs and Excise Act (1964, Part 1 and section A of Part 2 of Schedule 1) be amended with effect from 22 February 2017 to the extent shown in Table C.4.

Table C.4 Specific excise duties, 2016/17 – 2017/18[1]

Tariff item	Tariff subheading	Article description	2016/17 Rate of excise duty	2017/18 Rate of excise duty
104.00		**PREPARED FOODSTUFFS; BEVERAGES, SPIRITS AND VINEGAR; TOBACCO**		
104.01	**19.01**	**Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 per cent by mass of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5 per cent by mass of cocoa calculated on a totally defatted basis not elsewhere specified or included:**		
104.01.10	1901.90.20	Traditional African beer powder as defined in Additional Note 1 to Chapter 19	34,7c/kg	34,7c/kg
104.10	**22.03**	**Beer made from malt:**		
104.10.10	2203.00.05	Traditional African beer as defined in Additional Note 1 to Chapter 22	7,82c/li	7,82c/li
104.10.20	2203.00.90	Other	R79.26/li aa	R86.39/li aa
104.15	**22.04**	**Wine of fresh grapes, including fortified wines; grape must (excluding that of heading 20.09):**		
104.15.01	2204.10	Sparkling wine	R10.53/li	R11.46/li
104.15	**2204.21**	**In containers holding 2 li or less:**		
104.15	**2204.21.4**	**Unfortified wine:**		
104.15.03	2204.21.41	With an alcoholic strength of at least 4.5 per cent by volume but not exceeding 16.5 per cent by vol.	R3.31/li	R3.61/li
104.15.04	2204.21.42	Other	R161.47/li aa	R175.19/li aa
104.15	**2204.21.5**	**Fortified wine:**		
104.15.05	2204.21.51	With an alcoholic strength of at least 15 per cent by volume but not exceeding 22 per cent by vol.	R5.82/li	R6.17/li
104.15.06	2204.21.52	Other	R161.47/li aa	R175.19/li aa
104.15	**2204.22**	**In containers holding more than 2 li but not more than 10 li:**		
104.15	**2204.22.4**	**Unfortified wine:**		
104.15.13	2204.22.41	With an alcoholic strength of at least 4.5 per cent by volume but not exceeding 16.5 per cent by vol.	R3.31/li	R3.61/li
104.15.15	2204.22.42	Other	R161.47/li aa	R175.19/li aa
104.15	**2204.22.5**	**Fortified wine:**		
104.15.17	2204.22.51	With an alcoholic strength of at least 15 per cent by volume but not exceeding 22 per cent by vol.	R5.82/li	R6.17/li
104.15.19	2204.22.52	Other	R161.47/li aa	R175.19/li aa
104.15	**2204.29**	**Other:**		
104.15	**2204.29.4**	**Unfortified wine:**		
104.15.21	2204.29.41	With an alcoholic strength of at least 4.5 per cent by volume but not exceeding 16.5 per cent by vol.	R3.31/li	R3.61/li
104.15.23	2204.29.42	Other	R161.47/li aa	R175.19/li aa
104.15	**2204.29.5**	**Fortified wine:**		
104.15.25	2204.29.51	With an alcoholic strength of at least 15 per cent by volume but not exceeding 22 per cent by vol.	R5.82/li	R6.17/li
104.15.27	2204.29.52	Other	R161.47/li aa	R175.19/li aa

Table C.4 Specific excise duties, 2016/17 – 2017/18 (continued)

Tariff item	Tariff subheading	Article description	2016/17 Rate of excise duty	2017/18 Rate of excise duty
104.16	**22.05**	**Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances:**		
104.16	**2205.10**	**In containers holding 2 li or less:**		
104.16.01	2205.10.10	Sparkling	R10.53/li	R11.46/li
104.16	**2205.10.2**	**Unfortified:**		
104.16.03	2205.10.21	With an alcoholic strength of at least 4.5 per cent by volume but not exceeding 15 per cent by vol.	R3.31/li	R3.61/li
104.16.04	2205.10.22	Other	R161.47/li aa	R175.19/li aa
104.16	**2205.10.3**	**Fortified:**		
104.16.05	2205.10.31	With an alcoholic strength of at least 15 per cent by volume but not exceeding 22 per cent by vol.	R5.82/li	R6.17/li
104.16.06	2205.10.32	Other	R161.47/li aa	R175.19/li aa
104.16	**2205.90**	**Other:**		
104.16	**2205.90.2**	**Unfortified:**		
104.16.09	2205.90.21	With an alcoholic strength of at least 4.5 per cent by volume but not exceeding 15 per cent by vol.	R3.31/li	R3.61/li
104.16.10	2205.90.22	Other	R161.47/li aa	R175.19/li aa
104.16	**2205.90.3**	**Fortified:**		
104.16.11	2205.90.31	With an alcoholic strength of at least 15 per cent by volume but not exceeding 22 per cent by vol.	R5.82/li	R6.17/li
104.16.12	2205.90.32	Other	R161.47/li aa	R175.19/li aa
104.17	**22.06**	**Other fermented beverages (for example, cider, perry and mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included:**		
104.17.03	2206.00.05	Sparkling fermented fruit or mead beverages; mixtures of sparkling fermented beverages derived from the fermentation of fruit or honey; mixtures of sparkling fermented fruit or mead beverages and non-alcoholic beverages	R10.53/li	R11.46/li
104.17.05	2206.00.15	Traditional African beer as defined in Additional Note 1 to Chapter 22	7,82c/li	7,82c/li
104.17.07	2206.00.17	Other fermented beverages, unfortified, with an alcoholic strength of less than 2.5 per cent by volume	R79.26/li aa	R86.39/li aa
104.17.09	2206.00.19	Other fermented beverages of non-malted cereal grains, unfortified, with an alcoholic strength of at least 2.5 per cent by volume but not exceeding 9 per cent by vol.	R79.26/li aa	R86.39/li aa
104.17.11	2206.00.21	Other mixtures of fermented beverages of non-malted cereal grains and non-alcoholic beverages, unfortified, with an alcoholic strength of at least 2.5 per cent by volume but not exceeding 9 per cent by vol.	R79.26/li aa	R86.39/li aa
104.17.15	2206.00.81	Other fermented apple or pear beverages, unfortified, with an alcoholic strength of at least 2.5 per cent by volume but not exceeding 15 per cent by vol.	R79.26/li aa	R86.39/li aa
104.17.16	2206.00.82	Other fermented fruit beverages and mead beverages, including mixtures of fermented beverages derived from the fermentation of fruit or honey, unfortified, with an alcoholic strength of at least 2.5 per cent by volume but not exceeding 15 per cent by vol.	R79.26/li aa	R86.39/li aa
104.17.17	2206.00.83	Other fermented apple or pear beverages, fortified, with an alcoholic strength of at least 15 per cent by volume but not exceeding 23 per cent by vol.	R65.97/li aa	R71.82/li aa
104.17.21	2206.00.84	Other fermented fruit beverages and mead beverages including mixtures of fermented beverages derived from the fermentation of fruit or honey, fortified, with an alcoholic strength of at least 15 per cent by volume but not exceeding 23 per cent by vol.	R65.97/li aa	R71.82/li aa
104.17.22	2206.00.85	Other mixtures of fermented fruit or mead beverages and non-alcoholic beverages, unfortified, with an alcoholic strength of at least 2.5 per cent by volume but not exceeding 15 per cent by vol.	R79.26/li aa	R86.39/li aa

Table C.4 Specific excise duties, 2016/17 – 2017/18 (continued)

Tariff item	Tariff subheading	Article description	2016/17 Rate of excise duty	2017/18 Rate of excise duty
104.17.25	2206.00.87	Other mixtures of fermented fruit or mead beverages and non-alcoholic beverages, fortified, with an alcoholic strength of at least 15 per cent by volume but not exceeding 23 per cent by vol.	R65.97/li aa	R71.82/li aa
104.17.90	2206.00.90	Other	R161.47/li aa	R175.19/li aa
104.21	**22.07**	**Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent vol. or higher; ethyl alcohol and other spirits, denatured, of any strength:**		
104.21.01	2207.10	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent vol. or higher	R161.47/li aa	R175.19/li aa
104.21.03	2207.20	Ethyl alcohol and other spirits, denatured, of any strength	R161.47/li aa	R175.19/li aa
104.23	**22.08**	**Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent vol.; spirits, liqueurs and other spirituous beverages:**		
104.23	**2208.20**	**Spirits obtained by distilling grape wine or grape marc:**		
104.23	**2208.20.1**	**In containers holding 2 li or less:**		
104.23.01	2208.20.11	Brandy as defined in Additional Note 7 to Chapter 22	R149.23/li aa	R149.23/li aa
104.23.02	2208.20.19	Other	R161.47/li aa	R175.19/li aa
104.23	**2208.20.9**	**Other:**		
104.23.03	2208.20.91	Brandy as defined in Additional Note 7 to Chapter 22	R149.23/li aa	R149.23/li aa
104.23.04	2208.20.99	Other	R161.47/li aa	R175.19/li aa
104.23	**2208.30**	**Whiskies:**		
104.23.05	2208.30.10	In containers holding 2 li or less	R161.47/li aa	R175.19/li aa
104.23.07	2208.30.90	Other	R161.47/li aa	R175.19/li aa
104.23	**2208.40**	**Rum and other spirits obtained by distilling fermented sugarcane products:**		
104.23.09	2208.40.10	In containers holding 2 li or less	R161.47/li aa	R175.19/li aa
104.23.11	2208.40.90	Other	R161.47/li aa	R175.19/li aa
104.23	**2208.50**	**Gin and Geneva:**		
104.23.13	2208.50.10	In containers holding 2 li or less	R161.47/li aa	R175.19/li aa
104.23.15	2208.50.90	Other	R161.47/li aa	R175.19/li aa
104.23	**2208.60**	**Vodka:**		
104.23.17	2208.60.10	In containers holding 2 li or less	R161.47/li aa	R175.19/li aa
104.23.19	2208.60.90	Other	R161.47/li aa	R175.19/li aa
104.23	**2208.70**	**Liqueurs and cordials:**		
104.23	**2208.70.2**	**In containers holding 2 li or less:**		
104.23.21	2208.70.21	With an alcoholic strength by volume exceeding 15 per cent by vol. but not exceeding 23 per cent by vol.	R65.97/li aa	R71.82/li aa
104.23.22	2208.70.22	Other	R161.47/li aa	R175.19/li aa
104.23	**2208.70.9**	**Other:**		
104.23.23	2208.70.91	With an alcoholic strength by volume exceeding 15 per cent by vol. but not exceeding 23 per cent by vol.	R65.97/li aa	R71.82/li aa
104.23.24	2208.70.92	Other	R161.47/li aa	R175.19/li aa
104.23	**2208.90**	**Other:**		
104.23	**2208.90.2**	**In containers holding 2 li or less:**		
104.23.25	2208.90.21	With an alcoholic strength by volume exceeding 15 per cent by vol. but not exceeding 23 per cent by vol.	R65.97/li aa	R71.82/li aa
104.23.26	2208.90.22	Other	R161.47/li aa	R175.19/li aa

Table C.4 Specific excise duties, 2016/17 – 2017/18 (continued)

Tariff item	Tariff subheading	Article description	2016/17 Rate of excise duty	2017/18 Rate of excise duty
104.23	**2208.90.9**	**Other:**		
104.23.27	2208.90.91	With an alcoholic strength by volume exceeding 15 per cent by vol. but not exceeding 23 per cent by vol.	R65.97/li aa	R71.82/li aa
104.23.28	2208.90.92	Other	R161.47/li aa	R175.19/li aa
104.30	**24.02**	**Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes:**		
104.30	**2402.10**	**Cigars, cheroots and cigarillos containing tobacco:**		
104.30.01	2402.10.10	Imported from Switzerland	R3012.17/kg net	R3298.56/kg net
104.30.03	2402.10.90	Other	R3012.17/kg net	R3298.56/kg net
104.30	**2402.20**	**Cigarettes containing tobacco:**		
104.30.05	2402.20.10	Imported from Switzerland	R6.62/10 cigarettes	R7.15/10 cigarettes
104.30.07	2402.20.90	Other	R6.62/10 cigarettes	R7.15/10 cigarettes
104.30	**2402.90.1**	**Cigars, cheroots and cigarillos of tobacco substitutes:**		
104.30.09	2402.90.12	Imported from Switzerland	R3012.17/kg net	R3298.56/kg net
104.30.11	2402.90.14	Other	R3012.17/kg net	R3298.56/kg net
104.30	**2402.90.2**	**Cigarettes of tobacco substitutes:**		
104.30.13	2402.90.22	Imported from Switzerland	R6.62/10 cigarettes	R7.15/10 cigarettes
104.30.15	2402.90.24	Other	R6.62/10 cigarettes	R7.15/10 cigarettes
104.35	**24.03**	**Other manufactured tobacco and manufactured tobacco substitutes; “homogenised” or “reconstituted” tobacco; tobacco extracts and essences:**		
104.35	**2403.1**	**Smoking tobacco, whether or not containing tobacco substitutes in any proportion:**		
104.35.01	2403.11	Water pipe tobacco specified in Subheading Note 1 to Chapter 24	R166.40/kg net	R182.24/kg net
104.35	**2403.19**	**Other:**		
104.35.02	2403.19.10	Pipe tobacco in immediate packings of a content of less than 5 kg	R166.40/kg net	R182.24/kg net
104.35.03	2403.19.20	Other pipe tobacco	R166.40/kg net	R182.24/kg net
104.35.05	2403.19.30	Cigarette tobacco	R297.60/kg	R321.45/kg
104.35	**2403.99**	**Other:**		
104.35.07	2403.99.30	Other cigarette tobacco substitutes	R297.60/kg	R321.45/kg
104.35.09	2403.99.40	Other pipe tobacco substitutes	R166.40/kg net	R182.24/kg net

1. The chapter references in this table refer to chapters of the schedule to the Customs and Excise Act (1964)
Source: National Treasury

Base erosion and profit shifting

The Group of 20 (G20)/Organisation for Economic Cooperation and Development (OECD) base erosion and profit shifting project produced a set of minimum standards, recommendations and best practices agreed to by all members, including South Africa. Table C.5 provides a summary of South Africa’s position on the project’s 15 action items.

Table C.5 South Africa's position on the Group of 20/OECD action plan on base erosion and profit shifting

Action item	South Africa's position
Digital economy	Foreign businesses supplying digital services in South Africa are already required to register as VAT vendors. The regulations are under review. South Africa is a member of the new Task Force for the Digital Economy, which is looking at direct taxes.
Hybrid mismatches	Recommendations on transparent entities are being incorporated into the multilateral instrument. South African law has measures to limit double deductions, income exclusions where there is no corresponding deduction, and deductions with no inclusions. Further refinements may be considered in future.
Controlled foreign company rules	South Africa's controlled foreign company rules have been internationally acknowledged as being well designed and were recommended as one of three options for countries to implement.
Interest deductions	Government is strengthening its efforts to curb excessive debt financing, which erodes the tax base, and will review the current limitation in light of OECD recommendations.
Harmful tax practices	South Africa participated in the Forum on Harmful Tax Practices and recently completed its self-review of preferential regimes, bringing it in line with OECD member countries.
Treaty abuse	New treaties will be aligned with the minimum standards, while the multilateral instrument will take care of existing treaties. On treaty shopping (where a person who benefits from a tax treaty between two countries, but is not a resident of either, by establishing a shell entity or conduit in one of the countries), South Africa has chosen the principal purpose test because it is to a large extent aligned with its domestic general anti-avoidance rules. Under this test, the benefits of a tax treaty are denied if it is reasonable to conclude that obtaining that benefit was one of the principal purposes of entering into any arrangement or transaction.
Permanent establishment status	South Africa's future tax treaty negotiations will take the recommendations dealing with fragmentation of activities and avoidance of permanent establishment status through specific activity exemptions into account. The aim is to prevent entities artificially avoiding their status as a permanent establishment (a fixed place of business) by breaking up their cohesive business into smaller operations.
Transfer pricing (alignment of outcomes with value creation)	SARS is updating the Transfer Pricing Practice Note in line with OECD Transfer Pricing Guidelines to include new guidance on the arms-length principle and an agreed approach to ensure appropriate pricing on intangibles that are difficult to value.
Data analysis (measuring and monitoring)	South Africa shares the view that effective measuring and monitoring through improved statistics and evaluation is important for curbing base erosion and profit shifting, and it will continue to work with other countries.
Mandatory disclosure	The Tax Administration Act (2011) contains rules dealing with reportable arrangements. These rules require taxpayers who have entered into reportable arrangements to report the details of these arrangements to SARS. They set out information to be submitted and who must disclose or submit the information. The South African reportable arrangement rules have been used as a benchmark in the final BEPS Action 12 recommendations.
Transfer pricing documentation	The Tax Administration Act provides the legal basis for country-by-country reporting, where the term "international tax standard" has been included, covering country-by-country reporting. Regulations were gazetted in December 2016. For multinational enterprises with fiscal years starting on or after 1 January 2016, the first country-by-country reports will be required to be filed with SARS from 31 December 2017.
Dispute resolution	The South African treaty model will be updated to incorporate the minimum standards. However, like other developing countries participating in the G20/OECD project, South Africa has not committed to mandatory binding mutual agreement procedure arbitration.
Multilateral instrument	South Africa is among more than 100 countries and jurisdictions that have reached consensus on the multilateral instrument capable of incorporating tax treaty-related base erosion and profit shifting measures into the existing network of bilateral treaties. The multilateral instrument was adopted in November 2016.

Additional tax amendments

Miscellaneous tax amendments proposed for the upcoming tax legislative cycle are set out below.

Individuals, employment and savings

Remedial action for bargaining councils

Some bargaining councils have not deducted pay-as-you-earn (PAYE) from a large number of members for holiday and end-of-year payments. The tax treatment of sick-leave payments and income generated within the councils may also have been incorrect. As a result, these funds have been non-compliant with tax legislation for an extended period of time. Because some of the funds are at risk of closure or are likely to suffer severe financial distress from high penalties for non-compliance, and given the unique circumstances of this case, a certain level of relief will be considered. The bargaining councils that have defaulted are expected to be fully compliant and will not be afforded relief in future.

Amending foreign employment income-tax exemption in respect of South African residents

Currently, if a South African resident works in a foreign country for more than 183 days a year, foreign employment income earned is exempt from tax, subject to certain conditions. This exemption is for employees of private-sector companies. In terms of the residence-based system of taxation, South African residents are taxed on their worldwide income. However, this exemption on foreign employment income appears excessively generous. If a resident works in a foreign country for more than 183 days with no tax payable in the foreign country, that foreign employment income will benefit from double non-taxation. It is proposed that this exemption be adjusted so that foreign employment income will only be exempt from tax if it is subject to tax in the foreign country.

Refining measures to prevent tax avoidance through the use of trusts

In 2016, an anti-avoidance measure aimed at curbing the tax-free transfer of wealth to trusts through the use of low-interest or interest-free loans was introduced in the Income Tax Act (1962). This anti-avoidance measure deems any interest foregone in respect of low-interest or interest-free loans to a trust to be donations that are subject to donations tax at a rate of 20 per cent. However, some taxpayers have already attempted to circumvent the anti-avoidance measure by making low-interest or interest-free loans to companies owned by a trust. To counter abuse, it is proposed that the scope of this anti-avoidance measure be extended to cover these avoidance schemes. In addition, it is proposed that the anti-avoidance rule should not apply to trusts that are not used for estate planning, for example, employee share scheme trusts and certain trading trusts.

Clarifying the rules relating to the taxation of employee share-based schemes

In 2016, amendments were made to the Income Tax Act to introduce anti-avoidance measures dealing with schemes where restricted shares are allocated to employees through employee share-based incentive schemes. The shares are then liquidated in return for an amount qualifying as a dividend. However, the 2016 changes did not fully address the interaction between section 8C and the provisions of the Eighth Schedule that exclude gains arising from the vesting or disposal of a restricted equity instrument from capital gains tax. It is proposed that the interaction be clarified.

Retirement reforms

Preservation of benefits after reaching normal retirement dates: In 2014, amendments were made to the Income Tax Act to allow individuals to elect to retire, and the date on which the lump sum benefit accrued to the individual depended on the date on which the individual elected to retire and not on the normal retirement age. Currently, once the individual elects to retire, the Income Tax Act does not cater for the transfer of lump sum benefits from one retirement fund to another. It is proposed that transfers of retirement interests be allowed from a retirement fund to a retirement annuity fund, subject to fund rules.

Tax-exempt status of pre-March 1998 build-up in public-sector funds: Currently, the Income Tax Act makes provision for the tax-free transfer of pre-March 1998 lump sum benefits from a public-sector fund to a pension fund. It is proposed that subsequent transfers of these lump sum benefits to another pension fund be tax free.

Removing time limit to join an employer umbrella fund: Existing employees who do not join a newly established employer umbrella fund have 12 months within which to join the fund, after which they are unable to join. To encourage employees to contribute towards their retirement and remove practical difficulties, it is proposed that the 12-month limit be removed and that employees be allowed to join without time restriction, subject to the rules of the fund.

Increasing the fringe-benefit exemption for employer-provided bursaries

Government proposes to increase the income eligibility threshold for employees from R400 000 to R600 000, and the monetary limits for bursaries from R15 000 to R20 000 for education below NQF level 7, and from R40 000 to R60 000 for qualifications at NQF level 7 and above.

Business (general)

Tax implications of debt forgone

Alignment of the tax treatment of debt forgone for mining companies: Mining companies have a special tax regime in section 36 of the Income Tax Act that requires them to account for their capital expenditure differently from other companies. The current relief provided in paragraph 12A of the Eighth Schedule to the Income Tax Act, allowing a debtor to reduce the base cost of the allowance asset with the amount of a debt that is cancelled, waived, forgiven or discharged, does not apply to mining companies. As a result, mining companies are required to recoup debt that is cancelled, waived, forgiven or discharged without reducing their tax-deductible capital expenditure. To address this disparity, it is proposed that the tax treatment of debt forgone for mining companies be aligned with the tax treatment applied to companies in other sectors.

Alignment of the tax treatment of debt forgone for dormant group companies or companies under business rescue: Paragraph 12A of the Eighth Schedule to the Income Tax Act provides relief in respect of debt that is cancelled, waived, forgiven or discharged in respect of loans between companies within the same group. However, the intra-group relief does not extend to section 19 of the Income Tax Act dealing with debt used to finance tax-deductible operating expenditure. As a result, companies that used intra-group debt to finance tax-deductible operating expenses are required to recoup the debt. In the case of dormant group companies or companies under business rescue, not having this relief is cumbersome as such companies would not have the resources to pay tax on the debt recouped. It is proposed that the current relief for group companies available in paragraph 12A of the Eighth Schedule be extended to section 19.

Debt settled for consideration other than cash: In the current economic climate, debtors may make compromises with their creditors. This could include the issuing of shares where the issue price of the shares reflects the face value of the debt. It is proposed that the conversion of debt into equity be allowed. However, provision will be made to recoup capitalised interest on the debt in respect of which an interest deduction was previously claimed.

Addressing the circumvention of anti-avoidance rules

Addressing the abuse of disguised sale of shares using share buybacks: In the 2016 *Budget Review*, tax avoidance schemes involving share buybacks were highlighted for review. Such schemes involve a company buying back shares from its current shareholders to avoid the tax consequences of share disposals. The seller receives payment in the form of a dividend that may be exempt from normal tax and dividends tax, instead of paying tax on the sale of shares. Following the announcement in 2016, no specific countermeasures were introduced. It is therefore proposed that specific countermeasures be introduced to curb the use of share buyback schemes.

Addressing the abuse of artificial repayment of debt: Since the introduction of the current tax rules for debt forgiveness, it has come to government's attention that creditors and debtors are entering into short-term shareholding structures that attempt to circumvent income tax resulting from a recoupment triggered by the debt forgiveness rules. To achieve this, a creditor will subscribe for shares in its debtor and pay the debtor for those shares. The debtor will in turn use the subscription amount paid to settle its debt with the creditor. Soon after the payment is effected, the original shareholder of the debtor will buy the shares that the creditor subscribed for at a slight premium. This slight premium will cover the capital gains tax that the creditor will be liable for in respect of the shares in the debtor sold to the shareholder. This means the fiscus loses normal tax revenue on the recoupment and only receives the lower capital gains tax. It is proposed that measures be introduced to prevent these structures.

Interaction between the "in duplum" rule and the statutory tax legislation: The *in duplum* rule aims to protect debtors by limiting the amount of the total interest a creditor can charge. The effect of the rule is that interest on a debt ceases to accrue where the total amount of the interest equals the outstanding principal debt. Various anti-avoidance provisions in the Income Tax Act may be undermined should the *in duplum* rule apply. Some taxpayers may be relying on this rule to distort the quantification of the tax benefit derived from low-interest or interest-free loans. These taxpayers aim to avoid income tax determined on the difference between the amount of interest actually incurred and the amount of interest that would have been incurred at the official rate. It is proposed that the tax rules dealing with low-interest or interest-free loans be amended to explicitly exclude the application of the *in duplum* rule to ensure their efficacy.

Addressing circumvention of dividend-stripping rules: The Income Tax Act has rules that target dividend-stripping avoidance schemes. If a company borrows money from a party it is selling shares to and the company declares a dividend that is tax-free before the sale of the shares, such dividends are subject to income tax or capital gains tax in the hands of the seller. For these anti-avoidance rules to apply, the debt funding for the shares must be provided by the purchaser or be guaranteed by any connected person in relation to the purchaser. Government has identified schemes whereby loans for the purchase of the shares are raised from another party, such as a loan from a bank. It is proposed that additional measures be introduced to curb circumvention of dividend-stripping rules.

Changes to the definition of contributed tax capital: The definition of "contributed tax capital" was introduced in the Income Tax Act in 2008, when the Companies Act came into effect. It is a notional amount derived from contributions made to a company by shareholders in respect of a certain class of shares. It is reduced by any capital that is subsequently transferred by the company to one or more of the shareholders and is commonly known as a capital distribution. Government has identified a mechanism whereby companies with foreign parents increase their contributed tax capital, thus arguably avoiding the payment of dividends tax through capital distributions. These capital distributions are not subject to capital gains tax in the hands of the foreign parent if the underlying investment is not in immovable property in South Africa. It is proposed that amendments be made in the tax legislation to prevent the abuse of the definition of contributed tax capital.

Corporate reorganisation rules

Tax implication on the assumption of contingent debt: The Income Tax Act provides for the tax-free transfer of assets for corporate restructuring purposes, subject to certain limitations on how the transfer is funded. The only acceptable means of funding the transfer of assets is by obtaining shares in the buyer of assets or the buyer assuming the debts of the seller. Cash or other assets are not acceptable. With respect to debt, only unconditional obligations are currently catered for. However, a seller and buyer may negotiate a selling price after considering and taking into account some of the future contingent liabilities of the seller. Where the parties agree that the buyer will assume some of the future contingent liabilities of the seller, there is a real economic effect on the sale as the seller will be freed from future costs relating to those contingent liabilities. It is proposed that the assumption of future contingent liabilities be considered as an acceptable consideration under the corporate reorganisation rules.

Interplay between real estate investment trusts (REITs) and corporate reorganisation rules: Section 25BB of the Income Tax Act stipulates that REITs are not entitled to claim certain capital allowances. This is because REITs are subject to a special tax dispensation that allows them to deduct their shareholder distributions against rental income as the shareholders bear the tax liability. The REIT is precluded from claiming allowances on its assets, which means that an anomaly arises when a REIT is party to a reorganisation transaction, because its assets would not qualify as allowance assets. This anomaly means the rules on reorganisation do not apply to transactions involving REITs. It is proposed that the legislation be amended to make provision for corporate reorganisation rules to apply to transactions involving REITs.

Extension of collateral and securities lending arrangement provisions

Government has been gradually introducing measures to address concerns about the limited scope of tax relief provisions dealing with collateral and securities lending arrangements. In 2016, legislative changes were made to include listed government bonds as allowable instruments for securities lending and collateral arrangements. In light of the ongoing review, it is proposed that changes be made to extend the current provisions of collateral and securities lending arrangements to include listed foreign government bonds.

Amendments to third-party backed shares provisions

Currently, all dividends arising directly or indirectly from transactions and arrangements involving preference shares guaranteed by third parties are deemed ordinary revenue, subject to “qualifying purpose” exemptions, to which the anti-avoidance rules do not apply. The qualifying purpose exemptions are too narrow, and may impede legitimate transactions. It is proposed that the current exemption on third-party backed shares with regard to asset-backed securities be further refined to cover all qualifying purposes.

Business (financial sector)

Changes in the tax treatment of banks and financial institutions

Consideration of the tax treatment of banks and other financial institutions due to International Financial Reporting Standard (IFRS) 9: In 2018, the financial reporting of financial assets and liabilities will no longer be governed by International Accounting Standard (IAS) 39, but will be replaced by IFRS 9. Currently, section 24JB of the Income Tax Act, which deals with the taxation of financial assets and liabilities of banks and other financial institutions, follows the accounting treatment contemplated in IAS 39. It is proposed that the tax treatment of the financial assets and liabilities of banks and other financial institutions under section 24JB of the Income Tax Act be aligned with IFRS 9, except for the treatment of impairments.

Exclusion of impairment adjustments from the determination of taxable income in section 24JB: In 2012, SARS issued a directive for the tax treatment of doubtful debts for banks. The SARS directive was based on and limited to the accounting treatment as contemplated in IAS 39. As the accounting standard for banks and other financial institutions is changing from IAS 39 to IFRS 9, it is proposed that the principles of the SARS directive be reviewed and incorporated in the Income Tax Act. It is also proposed that section 24JB exclude impairment adjustments provided for under IFRS 9 as these impairment adjustments aim to provide for future risks instead of focusing solely on the current losses in the determination of taxable income as contemplated in section 24JB.

Application of hybrid debt instrument rules in section 8F in respect of banks and other financial institutions that are taxed under section 24JB: Section 8F of the Income Tax Act ensures that where debt exhibits certain equity-like features, interest on the debt is not allowed as a deduction for the borrower and the interest is treated as a dividend *in specie* for both the borrower and the lender and may be subject to dividends tax. If the borrower is a bank or financial institution, as contemplated in section 24JB, it is argued that the deduction of interest may still be allowed due to the application of section 24JB, despite the current anti-avoidance provisions available in section 8F. It is proposed that it be clarified that section 8F overrides the provisions of section 24JB.

Addressing the mismatch in the application of the provisions of paragraph 12A of the Eighth Schedule and section 24JB: Under the debt reduction rules, a debtor must reduce the base cost of an asset that was funded with debt by any amount of that debt that is subsequently cancelled, waived, forgiven or discharged. In the case of debt that is cancelled, waived, forgiven or discharged within a group of companies, the Income Tax Act makes provision that the debtor will not be required to reduce the base cost of the asset. However, in instances where the debt is provided by a financial institution to its fellow group company and the loan is cancelled, waived, forgiven or discharged, an anomaly arises because the debtor will not be required to reduce the base cost of the asset while the financial institution may, in terms of section 24JB, still benefit from a deduction in respect of the amount of the loan forgiven. Government proposes measures that prohibit mismatches on the tax treatment of reduced or waived loans between a financial institution and another company that is part of the same group of companies as the financial institution.

Tax amendments due to the Solvency Assessment and Management framework for long-term insurers

In 2016, amendments were made in the Income Tax Act as a result of the Solvency Assessment and Management reforms. Government has noted concerns regarding the application and interpretation of the tax amendments. It is proposed that amendments be made in the legislation to address these concerns.

Business (incentives)

Mining environmental funds

In 2006, section 37A of the Income Tax Act was introduced to cater for mining environment rehabilitation by mining companies as envisaged in the Mineral and Petroleum Resources Development Act (2002), making contributions to mining rehabilitation trusts tax deductible, subject to certain conditions. In November 2015, the Department of Environmental Affairs published regulations in terms of the National Environmental Management Act (1998) for financial provisioning for the rehabilitation, management and effects of mine closures for mining companies. To take into account some of the financial provisioning requirements, amendments will be made to the Income Tax Act. In addition, it is proposed that the current provisions aimed at curbing abuse of the benefit of tax-deductible contributions (by using such funds for purposes other than rehabilitation) be strengthened.

Partial ownership of land donated under land-reform initiatives

In 2016, amendments were made to the Income Tax Act to provide for an exemption from donations tax and capital gains tax on land-reform initiatives, as outlined in Chapter 6 of the National Development Plan. These changes provide for an exemption where full ownership of the land is transferred. As full ownership of the transferred land is not always envisaged in the National Development Plan, it is proposed that the current exemption be extended to allow partial ownership of land under appropriate circumstances.

Refinement of the venture capital company regime

Government has been gradually making changes to the venture capital company regime to encourage investment in small and medium-sized enterprises. It is proposed that further changes be made to the regime to remove impediments to investment, such as rules relating to investment returns and the qualifying company test.

Clarifying the scope of relief for international donor funding organisations

South Africa is a recipient of official development assistance from international donor funding organisations. Currently, the Income Tax Act provides special tax relief for these organisations. However, the tax treatment of these donor organisations is not aligned. It is therefore proposed that changes be made in the Income Tax Act to align the tax treatment of international donor funding organisations.

Assisting micro businesses growing into small and medium-sized enterprises

Qualifying micro businesses (with turnover up to R1 million a year) and small business corporations (with turnover less than R20 million a year) are eligible for preferential corporate income tax rates. The former are taxed on turnover, while the latter are taxed on taxable income. There are no transitional measures for micro businesses that grow sufficiently to migrate into the small business corporation tax regime. This can result in unforeseen tax liabilities and administrative penalties. Government proposes to reduce associated administrative penalties so that businesses can transition smoothly.

International

Tax treatment of foreign member funds

The South African government will be establishing foreign member funds to enable local and foreign fund managers to establish and manage funds targeted for investments into the rest of Africa and the world. To make foreign member funds attractive, they will benefit from a special tax dispensation. Foreign investors investing in the funds for onward investment into the rest of Africa or elsewhere will be exempt from withholding tax on interest. However, fees earned by local asset managers and collective investment scheme managers for investment management services will be subject to tax in South Africa.

Changes to the tax treatment of domestic treasury management companies

In 2013, amendments were made in the Income Tax Act to make provision for qualifying domestic treasury management companies to be eligible for tax relief in respect of foreign currency gains and losses. The qualifying criteria for domestic treasury management companies in relation to tax residence will be reviewed as they are overly restrictive.

Tax implications of acquisition of foreign intellectual property by South African multinationals

The Income Tax Act does not allow deductions for payments made to a foreign person in respect of the use or right to use tainted intellectual property. This is to prevent erosion of the tax base resulting from assigning South African intellectual property to foreign entities subject to lower effective tax rates in the foreign country, followed by the licensing of that intellectual property back to South African taxpayers. As these anti-avoidance measures may affect legitimate commercial transactions and discourage the use of South African-based group infrastructure to further develop offshore intellectual property, relaxation of the policy will be considered without losing sight of the initial policy intent, which is to prevent tax base erosion.

Tax implications of controlled foreign companies and offshore foreign trusts

In 2015, the *Budget Review* announced that measures would be introduced on the treatment of foreign companies held by interposed trusts. However, no specific countermeasures were introduced in this regard. It is therefore proposed that specific countermeasures be introduced to curb abuses.

Value-added tax

Clarifying the VAT treatment on leasehold improvements

The VAT Act (1991) does not currently provide guidelines in respect of the VAT treatment of leasehold improvements effected by the lessee to the leasehold property during the period of a lease agreement. It is proposed that amendments be made to the act to clarify the VAT treatment in respect of the time and value of supply of leasehold improvements on leasehold property.

VAT vendor status of municipalities

The local government elections of 3 August 2016 have led to the disestablishment or merger of certain municipalities. As a result, the affected municipalities had to either cancel their VAT registrations or apply for new VAT registrations. It is proposed that transitional measures be provided to address this.

Amending the definition of "resident of the republic" for VAT purposes

The VAT Act contains a definition of "resident of the republic" for VAT on cross-border supplies based on the definition of "resident" in the Income Tax Act. However, if a foreign company is effectively managed from South Africa, it will be regarded as a resident of South Africa. This implies that goods or services supplied by a South African company to the foreign company will be subject to VAT and no zero-rating provisions are applicable. If the foreign company is not required to register for VAT but bears South African VAT because it is a resident, the VAT that is borne will become a business cost, as that company cannot deduct that VAT as input tax. The definition of "resident in the republic" in the VAT Act will be amended to provide for such situations.

Repealing the 2011 amendment dealing with the value to be placed on inter-warehouse sales

If goods are imported into South Africa and entered for home consumption, the goods are subject to VAT. The VAT is calculated by taking into account the value for customs duty purposes, plus any customs duty levied thereon, plus 10 per cent of the value of the goods. However, when goods are imported into the country and entered for storage in a licenced warehouse, but have not been entered for home consumption, and such goods are then sold from one warehouse to another, the value to be placed on such goods is the *higher* of the above calculation, or the actual amount in money paid, or the open market value of the goods. This was determined in terms of a 2011 amendment to the VAT Act. Prior to 2011, the value was deemed to be the *lower* of these amounts. The 2011 amendment was never implemented due to administrative and compliance complexities and it is proposed that it should be repealed with retrospective effect.

Postponing the 2015 amendment dealing with the VAT treatment of the national housing programme

In 2015, amendments were made to the VAT Act to abolish the zero rating of the supply of goods and services for government's national housing programme, with effect from 1 April 2017. However, both the National Treasury and municipalities are not ready to make the VAT amendments. It is proposed that the effective date for this amendment be postponed for two years.

Clarifying the zero rating of international travel insurance

It is proposed that the zero-rating provision pertaining to international travel be clarified, including, for example, while the traveller is still in the country of departure, while the traveller is still being transported to or from the original point of departure in South Africa, and while the traveller is not actually travelling, but is in a hotel room.

Clarifying the VAT treatment of services supplied in connection with particular movable property situated in an export country

The term "movable property" is not defined in the VAT Act. In terms of the Companies Act, movable property includes securities or shares. Securities or shares in a foreign incorporated company that is listed on the JSE could be interpreted to mean movable property that is situated in an export country. The VAT Act makes provision for the zero rating of services (fees charged) that are supplied directly in connection with movable property that is situated in an export country at the time the services are rendered. This implies that services supplied relating to securities or shares in a foreign incorporated company listed on the JSE should be subject to zero-rated VAT. It is proposed that changes be made to the VAT Act to clarify the tax treatment of these services.

Customs control and duties

Amendments to certain provisions of the Customs Control Act (2014) and the Customs Duty Act (2014) are being considered following comments received from external stakeholders during public consultations. The amendments are also expected to facilitate systems development.

Customs and excise

Disclosure of trade statistics

It is proposed that the current legal authorisation for the sharing of trade statistics with organs of state be reviewed for its appropriateness and possibly amended.

Marking, tracking and tracing of tobacco products

Amendments will be considered for the provisions in the Tax Administration Laws Amendment Act (2016) for the marking, tracking and tracing of locally manufactured and imported tobacco products to account for further implementation requirements.

Review of the diesel refund administration system

The 2015 Budget announced a comprehensive review of the administration of the diesel refund, which requires the delinking of the diesel refund from the VAT system and the creation of a standalone diesel refund administration. A discussion paper outlining the options for a simplified administration system was published for public comment on 15 February 2017. The legislative amendments to give effect to the separation of the diesel refund system will be developed following public consultations.

Tax administration

Approval of organisations receiving tax-deductible donations

It is proposed that the Income Tax Act be amended to confirm the current approval process of public benefit organisations receiving tax-deductible donations. This is in addition to the approval of their tax-exempt status.

Transitioning interest calculation rules under Tax Administration Act

It is proposed that amendments be made to further clarify the transitional rules for the calculation of interest on tax debts under the Tax Administration Act to ensure that they do not result in inconsistencies, or the under- or over-accrual of interest.

Employees' tax and reimbursement of travel expenses

To facilitate and simplify the calculation and administration of employees' tax, it is proposed that only the portion of the travel expenses reimbursed by an employer that exceeds the rate or distance fixed by the Minister of Finance by notice in the Gazette in terms of the current law should be regarded as remuneration for purposes of determining employees' tax.

Application of the cap on deductible retirement fund contributions

It is currently not clear how the overall annual cap of R350 000 on contributions to pension, provident and retirement annuity funds should be applied when determining monthly employees' tax. It is proposed that the amount of R350 000 be spread over the tax year, which is a more prudent approach.

Tax Board

It is proposed that clarification be made that the chairperson of the Tax Board has the final decision as to whether or not an accountant or commercial member must form part of the constitution of the Tax Board.

Decisions by SARS

It is proposed that all decisions of SARS that are not subject to objection and appeal should be subject to the remedies under section 9 of the Tax Administration Act.

Accrual of interest payable by SARS

Interest that is payable by SARS could accrue over a number of tax years. To avoid complications in taxing that interest or interest that is adjusted for previous tax years, it is proposed that interest payable by SARS should be deemed to accrue to the recipient on the date of payment thereof by SARS.

Technical corrections

In addition to the amendments described above, the 2017 tax legislation will effect various technical corrections, which mainly cover inconsequential items – typing errors, grammar, punctuation, numbering, misplaced cross-references, updating and removing obsolete provisions, removing superfluous text, and incorporating regulations and commonly accepted interpretations into formal law. Technical corrections also include changes to effective dates and the proper coordination of transitional tax changes.

A final set of technical corrections relate to modifications that account for practical implementation of the tax law. Although tax amendments go through an intensive comment and review process, new issues arise once the law is applied (including obvious omissions and ambiguities). These issues typically arise when tax returns are prepared for the first time after the tax legislation is applied. Technical corrections of this nature are almost exclusively limited to recent legislative changes.