



**NATIONAL  
TREASURY**

**REPUBLIC OF SOUTH AFRICA**

---

---

**EXPLANATORY MEMORANDUM**

**ON THE**

**TAXATION LAWS AMENDMENT BILL, 2014 [B 13—2014]**

[W.P. — '14]

## TABLE OF CONTENTS

### EXPLANATION OF MAIN AMENDMENTS

<b>1.</b>	<b>INCOME TAX: INDIVIDUALS, SAVINGS AND EMPLOYMENT</b> .....	<b>4</b>
1.1.	VALUATION OF FRINGE BENEFIT FOR DEFINED BENEFIT CONTRIBUTION...	4
1.2.	EXEMPTION OF AMOUNTS RECEIVED OR ACCRUED IN RESPECT OF TAX FREE INVESTMENTS .....	10
1.3.	VALUATION OF FRINGE BENEFIT FOR EMPLOYER PROVIDED RENTAL ACCOMODATION .....	12
1.4.	VALUATION OF COMPANY CAR FRINGE BENEFITS.....	13
1.5.	CLARIFICATION OF THE LOSS REQUIREMENT IN RESPECT OF KEY PERSON INSURANCE POLICIES .....	14
1.6.	THE RETIREMENT FUND ACCRUAL DATE .....	15
1.7.	RESTRAINT OF TRADE RECEIPTS.....	16
<b>2.</b>	<b>INCOME TAX: BUSINESS (GENERAL)</b> .....	<b>17</b>
2.1.	THIRD PARTY BACKED SHARES: PREFERENCE SHARE REFINEMENTS ON GUARANTEES .....	17
2.2.	THIRD PARTY BACKED SHARES: REVISION OF THE DEFINITION OF OPERATING COMPANY.....	19
2.3.	DEDUCTIBLE INTEREST LIMITATION IN RESPECT OF DEBTS OWED TO PERSONS NOT SUBJECT TO TAX.....	20
2.4.	DEDUCTIBLE INTEREST LIMITATION IN RESPECT OF REORGANISATION AND ACQUISITION TRANSACTIONS .....	24
2.5.	DIVIDENDS TAX: CONTRIBUTED TAX CAPITAL REFINEMENTS .....	27
2.6.	REVISION OF SHARIA COMPLIANT FINANCING ARRANGEMENTS.....	28
<b>3.</b>	<b>INCOME TAX: BUSINESS (FINANCIAL INSTITUTIONS AND PRODUCTS)</b> .....	<b>29</b>
3.1.	LONG-TERM INSURER'S RISK INSURANCE BUSINESS TO BE TAXED IN CORPORATE FUND .....	29
3.2.	LONG TERM INSURERS: AVOIDANCE OF UNWARRANTED RELIEF FROM ONGOING TAXATION IN RESPECT OF FOREIGN REINSURANCE .....	31
3.3.	AMENDMENT OF DEFINITION OF INSTRUMENT.....	32
3.4.	REFINEMENTS OF REAL ESTATE INVESTMENT TRUSTS (REITS).....	33
3.5.	REVISION OF FAIR VALUE TAXATION IN RESPECT OF FINANCIAL ASSETS AND LIABILITIES.....	34
<b>4.</b>	<b>INCOME TAX: BUSINESS (INCENTIVES)</b> .....	<b>35</b>
4.1.	REFINEMENT OF ALLOWANCES IN RESPECT OF TELEPHONE LINES OR CABLES USED FOR THE TRANSMISSION OF ELECTRONIC COMMUNICATIONS .....	35
4.2.	REVISION OF RESEARCH AND DEVELOPMENT INCENTIVES .....	37
4.2.1.	REFINEMENT OF R&D ACTIVITIES.....	37
4.2.2.	ADJUSTMENT OF DEDUCTION OF R&D FUNDING .....	40
4.3.	TAX TREATMENT OF ALLOWANCES IN RESPECT OF PUBLIC PRIVATE PARTNERSHIP .....	41
4.4.	REFINEMENT OF OIL AND GAS INCENTIVE .....	44
4.5.	REFINEMENT OF ALLOWANCES IN RESPECT OF INDUSTRIAL POLICY PROJECT INCENTIVE .....	44
4.6.	REVISION OF ALLOWANCE FOR ENVIRONMENTAL CONSERVATION IN RESPECT OF NATURE RESERVES OR NATIONAL PARKS .....	45

4.7.	TAX INCENTIVES FOR PROVISION OF FUNDING TO SMALL MEDIUM AND MICRO ENTERPRISES.....	47
4.8.	EXEMPTION OF GRATUITOUS FUNDING IN THE HANDS OF SMALL MEDIUM AND MICRO ENTERPRISES .....	49
4.9.	BROADENING THE SCOPE OF THE VENTURE CAPITAL REGIME .....	49
4.10.	CLARIFICATIONS ON THE VENTURE CAPITAL REGIME .....	51
4.11.	PUBLIC BENEFIT ORGANISATIONS: LOWERING OF THE DISTRIBUTION REQUIREMENT .....	54
4.12.	REFINEMENTS TO THE EMPLOYMENT TAX INCENTIVE .....	55
4.13.	REFINEMENTS OF SPECIAL ECONOMIC ZONE TAX INCENTIVE PROVISIONS .....	57
<b>5.</b>	<b>INCOME TAX: INTERNATIONAL .....</b>	<b>60</b>
5.1.	SIMPLIFIED FOREIGN BUSINESS ESTABLISHMENT EXEMPTION FOR CONTROLLED FOREIGN COMPANIES .....	60
5.2.	TRANSFER PRICING: SECONDARY ADJUSTMENTS .....	61
5.3.	CURRENCY OF REACQUISITION OF ASSETS OF PERSONS CEASING TO BE RESIDENT .....	63
<b>6.</b>	<b>VALUE ADDED TAX.....</b>	<b>64</b>
6.1.	SECOND HAND GOODS – PRECIOUS METALS.....	64
6.2.	DOCUMENTATION .....	65
6.3.	TAX INVOICES, DEBIT AND CREDIT NOTES.....	65
6.4.	AGENTS.....	66
6.5.	CONTRACT PRICES.....	67
6.6.	BARGAINING COUNCILS.....	67
6.7.	ZERO RATING OF GOODS FOR AGRICULTURAL, PASTORAL OR OTHER FARMING PURPOSES .....	68
<b>7.</b>	<b>CLAUSE BY CLAUSE .....</b>	<b>70</b>

# **1. INCOME TAX: INDIVIDUALS, SAVINGS AND EMPLOYMENT**

## **1.1. VALUATION OF FRINGE BENEFIT FOR DEFINED BENEFIT CONTRIBUTION**

[Applicable provisions: Paragraph 1 and 12D of the Seventh Schedule; Draft Regulations made in terms of Paragraph 12D(5)(a) of the Seventh Schedule on the Determination of the Fund Member Category Factor and Draft Regulations made in terms of Paragraph 12D(5)(b) of the Seventh Schedule on the Information to be Contained in Contribution Certificates]

### **I. Background**

In 2013 changes were made in the Taxation Laws Amendment Act of 2013 regarding the valuation of defined benefit contributions by an employer as a fringe benefit in the hands of the employee.

Defined benefit funds have retirement benefits that are calculated according to the rules of the pension fund where the value of the contributions to the fund may not be an accurate reflection of the benefits that may be received by the retirement fund member. For example, if the pension fund is in financial difficulty and the employer needs to make additional contributions to meet the expected liabilities, it may be unfair to tax the individual on those contributions as if they were a fringe benefit if there is no associated increase in benefits.

In order to:

- avoid these discrepancies;
- align the tax treatment of contributions to defined contribution pension funds and defined benefit pension funds; and
- improve fairness in relation to the receipt of retirement benefits within defined benefit funds,

A formula was introduced to approximate the value of the fringe benefit that arises due to the increase in retirement benefits accruing over the tax year to a member of a defined benefit fund.

The formula calculates a notional employer contribution to the defined benefit fund based on the estimated increase in retirement benefits. The notional amount is deemed a fringe benefit to the employee.

### **II. Reasons for change**

The formula that was included in the Taxation Laws Amendment Act of 2013 requires the use of a factor to determine the value of the notional employer contribution. The methodology that should be used by the pension fund actuaries to calculate the factor that is sent by the fund to the employer as an input in the final formula was not included in the previous amendments. These amendments provide details on how the factor should be determined and also describe the processes required to ensure that the factor and additional relevant information is provided on a timely basis to employers and has been verified by the appropriate personnel.

With regard to hybrid pension funds which have an 'underpin' component, the amendments also provide additional details on the calculation of the notional employer contributions. These funds

have retirement benefits which consist of both a defined contribution element and a defined benefit element, but where the retirement benefit is based on whichever element is greater.

### III. Proposal

#### A. Fund member category

The amended proposal relies on the concept of a 'fund member category'. A 'fund member category' is a group of members of a fund whose entitlement to receive benefits and the value of those benefits when they are received are determined by the same rules, and in respect of whom the same contributions are paid or payable as a proportion of pensionable salary by them and by their employer. If either condition does not hold in a fund, there will be more than one fund member category. Funds that have different accrual rates based on length of service are to be treated as one 'fund member category' since all employees face the same rules. Funds which have different benefit rules for different employees will have separate 'fund member categories'. The notional employer contribution should be calculated separately for each fund member category of a fund. This refinement is introduced to ensure that the notional employer contributions are calculated across groups of members in the same way as the fund pools contributions and the costs of paying benefits across members. The calculation of the notional employer contribution, which is used to calculate the total pension contributions and is assessed as a percentage of total remuneration to determine deductibility, thus introduces no additional unfairness between different individual members beyond that which is already captured in the fund rules.

#### **Example 1: Determination of fund member category if the same rules apply**

A retirement fund has an accrual rate of 1/55 for all members in respect of service less than ten years, rising to 1/40 in respect of service greater than ten years. The employer pays a contribution rate of 16% of pensionable salary in respect of all members of the fund, and all members pay contributions at a rate of 7.5% of pensionable salary.

Although the fund has two accrual rates, all members are eligible to receive the additional accrual under the same circumstances, and the employer and employee contribution rates are the same for all members. The fund therefore pools costs across members with less than ten years' service and members with more than ten years' service. There is thus only one fund member category. The accrual rate to be used will be a simple average of the different accrual rates that are applicable to each member in the year for which the data is used to calculate the factors in the contribution certificate (there is no requirement to calculate an average accrual rate for each member until their expected retirement).

#### **Example 2: Determination of fund member category with separate accrual rates by type**

A retirement fund has an accrual rate of 1/55 for staff and 1/30 for executives. The employer pays contributions of 20% of pensionable salary for staff and 30% of pensionable salary for executives. Since a different contribution rate is paid by the employer, there are two fund member categories and separate notional employer contribution amounts should be calculated for each.

### *B. Contribution certificate*

It is proposed that a separate 'contribution certificate' be provided by the fund to the employer for each fund member category. The fund will initially be required to send a contribution certificate to the employer one month before the 2016/17 year of assessment and then each time that the fund submits their statutory actuarial valuations. An updated contribution certificate must also be completed at any time that fund rule changes will impact any aspect of the contribution certificate, including the fund member category factor or when the fund is required to provide the statutory actuarial valuation. If there are no changes the employer may continue to use the contribution certificate from the preceding year of assessment. The contribution certificate must contain various pieces of information, including:

- Details of the pension fund and the different components of the fund – whether they are defined benefit components, defined contribution components; risk benefit components or hybrid elements; and
- Details of the employer; and
- The fund member category factor for the applicable fund member category.

Requirements for the contribution certificate are laid out in the draft Regulations made in terms of Paragraph 12D(5)(b) of the Seventh Schedule on the Information to be Contained in Contribution Certificates.

### *C. Calculation of the value of the fringe benefit*

To calculate the notional employer contribution to a defined benefit fund, the employer would need to multiply the employee's pensionable salary by the 'fund member category factor' that is provided in the contribution certificate of the fund member category, of which the employee is a member, and subtract the value of any contributions made by the employee (but excluding any additional voluntary contributions or payments to purchase additional years of service).

The pension fund would be required to calculate the 'fund member category factor' by following the calculation method specified in the regulation. This requires the fund to separate benefits for which members of the fund are eligible into defined benefit, defined contribution, underpin and risk benefit components. A separate calculation method is specified for each type of component. If the fund offers more than one benefit component of a particular type (where that benefit type is provided from within the fund), a calculation would need to be performed for each benefit component separately, and the results aggregated.

### *D. Defined benefit component factor*

A formula is prescribed for the calculation of this factor. The formula assumes that the defined benefit on retirement can be represented as a combination of an annuity and a lump sum or gratuity. Funds that do not explicitly represent any portion of the annual increase in benefits in the form of a gratuity will only need to value the benefits in relation to the increase in the annuity value. The impact of commutation at retirement can be ignored.

The value of the annuity accrual is determined by multiplying the annuity accrual rate by a number intended to reflect the value of the benefits, which is determined by finding the midpoint between the age of 65 and the earliest age at which retirement with unreduced benefits is permitted in terms of the fund rules. The number is read off a column provided in the draft

Regulations made in terms of Paragraph 12D(5)(a) of the Seventh Schedule on the Determination of the Fund Member Category Factor.

This table (reflected in Schedule 1 of the draft Regulations made in terms of Paragraph 12D(5)(a) of the Seventh Schedule on the Determination of the Fund Member Category Factor) has been calculated taking the following factors into consideration:

- Average expected levels of post-retirement mortality
- Average expected salary-weighted levels of pre-retirement mortality
- Expected investment returns pre- and post-retirement on a portfolio of assets whose term, nature and security broadly matches the lump-sum and annuity liabilities promised by defined benefit pension funds
- The average level of spousal benefits provided by pension funds, and
- The prices of annuities available in the private market

Consistent with the overall methodology, the intention of the factors is to approximately reflect some estimate of the long-run cost of providing a benefit to a particular group of members, rather than the pace at which particular employers may choose to fund for those benefits.

The annuity accrual rate is defined as the average increase (over all members of the fund member category) in the annuity benefit expressed as a proportion of final salary occurring as a result of membership of the fund over the year of assessment, assuming that individual members remain in the fund until retirement. Valuers should first calculate the improvement in annuity benefits expressed as a proportion of final salary for each individual member over the year of assessment, and then take the average across all members of the fund member category. For funds without split accrual this should be a simple exercise.

If the fund rules specify an increase in a lump sum or gratuity amount, the lump sum accrual rate would be multiplied by 0.8 to estimate the increase in the lump sum retirement benefit. These amounts are added together to obtain the defined benefit component factor.

#### *E. Underpin component factor*

Retirement funds that have an 'underpin' would use a revised formula which takes the maximum of either the defined benefit sub-component factor calculated using the method specified above or the defined contribution sub-component factor and adds 10 per cent of whichever component factor is smaller. Adding the 10 per cent is intended to represent the additional benefit to the member of having the protection offered by the underpin.

#### *F. Risk benefit component factor*

The risk benefit component factor is calculated by multiplying the average risk benefit that members of the fund member category are entitled to should they die in the year of assessment, expressed as a proportion of pensionable salary, by 0.005. Disability benefits are not valued by the formula, but are expected to be broadly proportional to the value of the death benefits and are included in the pre-retirement mortality factor in the provided column. As before, the valuator should first calculate the risk benefits payable to each individual member or their dependents as a proportion of pensionable salary, and then take an average of members of the fund member category. Any defined contribution account values paid to the member's dependents on their deaths should be excluded from this calculation. Risk benefits that are fully

provided for outside of the fund are not required to be included within the risk benefit component factor. The actual value of these premiums will continue to be a non-deductible fringe benefit in the hands of the individual.

#### *G. Defined contribution component factor*

Pure defined contribution funds are excluded from the application of paragraph 12D and are not required to either compile contribution certificates or to use the formula in 12D(3) to calculate the deemed value of employer contributions for tax purposes. A contribution certificate is also not required for members in a fund who have only defined contribution components. However, since many members of defined benefit funds may have defined benefit components and defined contribution benefit components, allowance for the cost of these is made in the prescribed method for calculating the fund member category factor.

In these cases, the defined contribution component factor is simply the total contribution rate in respect of the defined contribution components.

The fund member category factor is the aggregate of all the factors calculated in respect of the benefit components of the fund.

The contribution certificate must be compiled by the board of the pension fund in consultation with the valuator of the fund. The first contribution certificate must be provided to the employer no later than the 31<sup>st</sup> January 2016 and thereafter at the time of the statutory actuarial valuation or when the fund rules are amended in a manner which alters any information contained in the contribution certificate, including the aggregate fund member category factor or any of its components.

#### **Example 3: Calculating the notional employer contribution**

An employer offers a defined benefit pension to their employees, which has an annuity accrual rate of 1/55 for those who have less than ten years' service and 1/40 for those who have more than ten years' service. The fund also has a defined gratuity benefit which pays a lump sum at retirement of 0.067 of final salary per year of service. Members of this fund are able to retire from age 60 with unreduced benefits in terms of the rules.

There are no differences in contribution rates or rules determining the eligibility for and value of the benefits paid to members of the fund so there is only one fund member category. The pension fund is required to complete a 'contribution certificate' for that fund member category that needs to be passed on to the employer before the 31<sup>st</sup> January 2016.

The pension fund would need to calculate the expected actual accrual rate for members. This value is calculated by averaging the increase in the annuity accrual across all members during the year of assessment. Since the fund has increased benefits for those who have served longer than ten years, the simple average annuity accrual rate is 1/50. The pension fund then needs to read off the value in the table of numbers provided in the annexure that is associated with the midpoint between the age of 65 and the earliest age at which unreduced benefits may be taken. In this case it is 62.5. The number to be used in the defined benefit component factor calculation is therefore 8.8.



The defined benefit component factor is calculated according to the formula in the regulations and equals  $(1/50 * 8.8) + (0.067 * 0.8)$  which is 0.2296.

The pension fund would also calculate the average risk benefit that members (or their dependents or nominees) would be entitled to upon death should they die during the year of assessment, expressed as a proportion of their pensionable salary. This amount should include an estimate of the capitalised value of any spouse's or dependents pensions paid as part of the death benefit. If this amount is five times pensionable salary the risk benefit component factor would equal  $(5 * 0.005)$  which is 0.025.

Since there are no other benefit components for which calculation methodologies are supplied, the defined benefit component factor and the risk benefit component factor are added together in the 'contribution certificate' to get a fund member category factor of 0.2546.

The employer, or the payroll company, would receive this number from the pension fund in the 'contribution certificate' and use it in the formula provided in the legislation to calculate the value of the notional employer contribution (which would be a fringe benefit). An employee who had a gross annual salary of R500 000 and a pensionable salary of R350 000, with employee contributions of 7.5% of pensionable salary, would have a notional employer contribution of  $(0.2546 * 350\ 000) - (0.075 * 350\ 000) = 89\ 110 - 26\ 250 = R62\ 860$  for the year of assessment.

To check whether the employee is within the allowable deductible limits of either 27.5% of total remuneration or the R350 000 deductibility cap, the employer would need to add the notional employer contribution onto gross salary to obtain total remuneration. In this example total remuneration would be  $(500\ 000 + 62\ 860) = R562\ 860$  and the total contributions to a retirement fund would be  $(62\ 860 + 26\ 250) = R89\ 110$ . The percentage contribution to the retirement fund is thus  $(89\ 110 / 562\ 860)$  which is 15.84%. The individual could make further retirement contributions (say to a retirement annuity) of up to  $(0.275 - 0.1584) * 562\ 860 = R65\ 629$  while still receiving a tax deduction.

**Example 4: Calculating the notional employer contribution with an underpin**

An employer offers a hybrid pension scheme to their employees. On retirement, the employees get a benefit which is the greater of 1/40 of their final salary per year of service and an annuity which can be purchased by a contribution rate of 15% of pensionable salary to a defined contribution account. The fund allows retirement from age 60 with unreduced benefits. Death benefits are 3 times pensionable salary plus the value of the defined contribution account on death.

The fund therefore has one fund member category, who are eligible for two benefit components – a risk benefit and an underpin benefit.

The value of the underpin benefit is the greater of the factor in respect of the defined benefit sub-component and the factor in respect of the defined contribution sub-component plus 10% of the lesser of the two.

Following the method described above, the value of the defined benefit sub-component factor is  $8.8 / 40 = 0.22$ . The defined contribution sub-component factor has a value of 0.15. The underpin component factor is therefore equal to  $0.22 + 0.1 \times 0.15 = 0.235$ .

The risk benefit component is valued at  $0.005 \times 3 = 0.015$  (the value of any defined contribution account paid out on death is excluded from the calculation of risk benefit factors).

The fund member category factor is therefore  $0.235 + 0.015 = 0.255$ .

#### **IV. Effective date**

The proposed amendments will come into operation on 1 March 2016.

---

### **1.2. EXEMPTION OF AMOUNTS RECEIVED OR ACCRUED IN RESPECT OF TAX FREE INVESTMENTS**

[Applicable provisions: Section 10(1)(i); new section 12T; section 29A, section 64F(1) and Draft Regulations in terms of section 12T(8) on the Requirements for Tax Free Investments]

#### **I. Background**

The South African tax system incentivises non-retirement savings through a limited exemption of interest income from taxable income. This feature has been in the tax system since before 1980, initially operating as a lever to ease the administrative burden of processing small amounts of interest income. Since 2000, tax free interest income thresholds have been actively used as a tax measure to incentivise non-retirement savings, frequently being adjusted upward on an inflation related basis.

#### **II. Reasons for change**

Household savings have been declining steadily in South Africa since the early 1980's and continue to be low by international standards. The interest exemption has not been a highly visible feature of the tax system, limiting its effectiveness as an incentive. Moreover, the tax free interest exemption is limited only to interest bearing instruments.

Given the expenditure incurred in offering incentives to the public, government must consistently assess the effectiveness of such policies in achieving the intended objectives and adjust these incentives if more effective options are available. Product design features may be more useful when trying to encourage households to save, however these features are absent in the current interest exemption environment and could only be created with the implementation of an alternative non-retirement savings tax incentive.

### III. Proposal

In the 2014 Budget Review, the Minister announced the implementation of tax free savings accounts as an incentive to encourage household savings. The proposal will be enacted by creating a definition of 'tax free investments' in section 12T of the Income Tax Act. It is envisaged that service providers will offer tax free savings accounts that would solely comprise of products that qualify as 'tax free investments'. A contribution into a tax free savings account is thus equivalent to an investment in a 'tax free investment'.

Individuals may open multiple tax free savings accounts that may each invest in different 'tax free investments', however they may only contribute up to a maximum of R30 000 into these investments within a tax year. The R30 000 annual contribution limit applies to the contributions across all their tax free investments. A lifetime contribution limit of R500 000 will also apply. The returns accruing to these investments will be exempt from income and dividends tax. Amounts within the tax free investments may be withdrawn at any time, however if these amounts are returned to the tax free investments, those amounts will be subject to the annual contribution limit. Transfers between tax free investments at different service providers will not count towards the annual contribution limit.

The design features of the tax free investments have been included to overcome behavioral limitations leading to poor financial decisions. The proposed incentive is also applicable to a wider range of asset classes than the current interest exemption. The envisaged eligible products will include exposure to money market instruments, equities and property investments.

The institutions that will be permitted to provide these investments to taxpayers are JSE authorised users, banks, long term insurers, collective investment scheme companies, linked investment services providers and national government. The permitted institutions will be designated by Notice in the Gazette. The products that institutions will be permitted to invest in will be determined in accordance with a set of characteristics that will be included in regulations (to be published) governing the conduct of these investments.

Where a taxpayer contributes in excess of the prevailing annual and lifetime contribution limit in any year, a penalty of 40 per cent on the amount of the excess contribution will be levied by SARS on the individual. The reporting requirements of service providers will be specified through the Business Requirement Specifications that will be issued by SARS.

The returns earned by the taxpayer from tax free savings accounts prior to death will form part of the "property" as defined in the Estate Duty Act, No. 45 of 1955. The returns earned by the estate after the date of death will not be included as "property" again in the estate. However, the amounts within the tax free investments cannot be transferred to their beneficiary's tax free investments. Any transfer of tax free investments from one individual (or his estate) to another will be deemed to be a contribution and subject to the annual and lifetime contribution limits of the recipient.

In determining the aggregate capital gain or capital loss of a person, any capital gain or capital loss in respect of the disposal of tax free investments must not be taken into account.

It is proposed that the existing tax free interest income thresholds available in section 10(1)(i) of the Income Tax Act will not be removed from the system. However, they will be retained at current nominal levels, to be eroded in value by inflation over time.

## **IV. Effective date**

The proposed amendments will come into operation on 1 March 2015 and applies in respect of amounts contributed in respect of tax free investments on or after that date.

---

### **1.3. VALUATION OF FRINGE BENEFIT FOR EMPLOYER PROVIDED RENTAL ACCOMODATION**

[Applicable provision: Paragraph 9 of the Seventh Schedule]

#### **I. Background**

In certain instances employers provide employees with residential accommodation. This practice is fairly common when employees are required to be away from their usual place of residence for an extended period due to work commitments.

The provision of residential accommodation by an employer to an employee will result in a taxable fringe benefit for the employee if the accommodation is provided free of charge, or for a consideration which is less than the “rental value”. The “rental value” of the accommodation represents the value of the use of the accommodation. The value of the fringe benefit for the employee is the “rental value” of the accommodation less any costs incurred by the employee that relates to the accommodation. Depending on the circumstances under which the employer provided the accommodation, the Income Tax Act dictates different methods to be applied to calculate the “rental value” of the accommodation, and thus the value of the taxable fringe benefit.

However, should the actual value of the use of the accommodation be less than the “rental value” as determined in accordance with the Income Tax Act, the employer may apply for a tax directive. SARS has the discretion to issue a tax directive allowing the “rental value” to be calculated at a lower amount as appears to be fair and reasonable in relation to the specific circumstances.

#### **II. Reasons for change**

In instances where the employer provides rental accommodation sourced from a third party to an employee, the “rental value” determined in accordance with the Income Tax Act is often higher than the actual value, giving rise to a higher fringe benefit than is economically fair.

As a result, employers often have to apply to SARS for a tax directive in order to ensure that the employee’s calculated fringe benefit is in line with the actual (market value) of the use of the accommodation.

#### **III. Proposal**

It is proposed that the tax treatment of the fringe benefit for employer provided rental accommodation sourced from a third party should be aligned for all employees.

It is proposed that if employer-provided accommodation is rented by the employer from an unconnected third party, the “rental value” be determined as the lower of the cost to the employer in providing the accommodation or the “rental value” as determined in the Income Tax

Act. The basis of the proposal is that the cost to the employer would be a fair reflection of the market related cost if the accommodation is provided in terms of an arm's length lease agreement.

#### **IV. Effective date**

The proposed amendments will come into operation on 1 March 2015 and applies in respect of years of assessment commencing on or after that date.

---

### **1.4. VALUATION OF COMPANY CAR FRINGE BENEFITS**

[Applicable provision: Paragraph 7(1)(a) of Seventh Schedule]

#### **I. Background**

A company car fringe benefit arises when an employer grants an employee the right of use of a motor vehicle and is described in paragraph 7 of the Seventh Schedule in the Income Tax Act. There are a variety of conditions and exemptions that are described in the Act, but in general the monthly fringe benefit is deemed to be 3.5% of the 'determined value' of the vehicle.

The determined value may vary between different types of employers or transactions since it is based on whether the vehicle was 'acquired', according to the definitions in the legislation. If the vehicle was 'acquired' under a bona fide agreement of sale or exchange concluded between parties at arm's length, the determined value will be the original cost to the employer of purchasing the vehicle. However, in other scenarios the determined value will be either the 'cash value' of the vehicle, the retail market value or the market value of the motor vehicle at the time when the employer first obtained the vehicle or the right of use of that vehicle.

For local vehicle manufacturers however, this cost can be considerably less. Car manufacturers are able to acquire company cars from within the group or even directly from the assembly factories at a considerably lower 'cost' than retail market value.

#### **II. Reasons for change**

The separate calculation of determined value based on the method of acquisition creates inequities in the value of the fringe benefit for employees who are granted the right of use of a motor vehicle. Two employees may incur a different fringe benefit even if the motor vehicle of which they have the right of use is identical.

Similar anomalies may arise for local vehicle manufacturers, where the type of acquisition, and the calculation of the determined value, may differ between locally manufactured vehicles and those acquired by other means.

#### **III. Proposal**

It is proposed that the tax treatment of the company car fringe benefit should be aligned for all employees. In determining the value of the company car fringe benefit, it is proposed that actual retail market value of the car is used in all cases. Regulations will be issued by the Minister of Finance in the Gazette to define retail market value. To avoid a significant impact on the fringe benefit value for employees who currently have the right of use of a motor vehicle it is proposed

that this amendment only be applicable for motor vehicles that are acquired after the implementation date.

#### **IV. Effective date**

The proposed amendments will come into operation on 1 March 2015 applies in respect of vehicles acquired on and after that date.

---

### **1.5. CLARIFICATION OF THE LOSS REQUIREMENT IN RESPECT OF KEY PERSON INSURANCE POLICIES**

[Applicable provision: Section 11(w)(ii)(c)]

#### **I. Background**

A 'key person', in the context of 'key person insurance policies', is an employee who is critical to the success of an organisation. Organisations often insure the life of such persons so that if they should die, the negative effects on business continuity are lessened through a benefit pay-out.

The default tax treatment for key person insurance policies is not to allow a deduction on premium contributions but to also not to tax the pay-outs.

In 2011, the dispensation was changed to accommodate policyholders who preferred deductible premiums and to receive a taxable pay-out. Individuals are now allowed to elect a tax treatment whereby premiums are deductible while pay-outs are taxable.

#### **II. Reasons for change**

As the legislation stands, it is possible for policyholders to take advantage of this election in respect of policies which protect the organisations, not against normal business losses in the generation of income, but also for policies that protect businesses against losses from these employees not having been able to pay loans with third parties.

It is not an intended outcome of tax policy that insurance policies insuring any costs other than 'normal business losses' resulting from the death of a 'key person' receive deductible tax treatment. Therefore, insurance policies insuring the costs of a company as a result of the 'key person' dying prior to being able to pay outstanding debts are not intended to form part of the election envisaged in the 2011 deduction election.

#### **III. Proposal**

It is proposed that the legislation should be amended to clarify that insurance policies ceded for outstanding loans of company employees/directors are not permitted to receive a deduction on policy premiums.

#### **IV. Effective date**

The proposed amendments will come into operation on 1 March 2015 and applies in respect of years of assessment commencing on or after that date.

## **1.6. THE RETIREMENT FUND ACCRUAL DATE**

[Applicable provisions: Section 1 and paragraph 4 of the Second Schedule]

### **I. Background**

During retirement individuals who are members of a retirement fund have the option to either annuitise the entire pension fund interest or take up to one third of it as a lump sum. Where the individual annuitises a portion of the benefit, the annuities are taxed as normal income according to the individual's marginal tax rate. Where an individual elects to take a portion of the benefit as a lump sum, the lump sum is taxed according to the retirement fund lump sum benefit table.

To this end, individuals are compelled to make an election as to the portion of their retirement interest that they would like to receive as a lump sum and annuity. As the lump sum is taxed according to the lump sum tax tables, and is dependent on the previous level of lump sums received from the retirement fund by the individual, the fund is required to apply to SARS for a tax directive to determine the amount of tax that must be withheld from the lump sum payment to the retiring individual.

The lump sum benefit is deemed to accrue to the individual on the earliest of the dates at which an election is made, a transfer is made, death, or on his or her retirement. Retirement is deemed to occur at the 'normal retirement age', which is usually a predetermined age as defined by the fund rules.

### **II. Reasons for change**

There are instances where, by the date of retirement, individuals have not made an election as to the amount of the retirement fund interest they wish to receive as a lump sum. In these cases, funds are unable to calculate or withhold the required amount of income tax, thus falling foul of the withholding obligations. Further complications arise since the amount of the lump sum that is provided to SARS in the tax directive is based on the amount in the fund on the date of accrual, which may be different to the date on which the individual made an election.

The current stipulation also provides little flexibility for the individual to determine when they would like to start receiving their pension benefits, as it is determined by the normal retirement age of the fund. It is thus difficult for individuals to preserve their retirement fund assets at retirement, which may be preferable if they would like to continue in employment beyond their normal retirement age (if the fund rules allow them to do so).

### **III. Proposal**

It is proposed that the date on which the lump sum benefit shall be deemed to accrue to the individual should no longer be dependent on the normal retirement age, but instead should be the date on which the election by the individual takes place.

Individuals may then extend their own date of retirement according to their own circumstances and when they would prefer to start receiving their pension benefits, enhancing preservation. However, the ability to extend the date of retirement is not a requirement and is wholly dependent on the rules of the fund.

Retirement funds would be required to apply to SARS for a tax directive on the date that the election is made and the amount of the lump sum benefit that would be provided to SARS would match the corresponding amount at the date of election.

#### **IV. Effective date**

The proposed amendments will come into operation on 1 March 2015.

---

### **1.7. RESTRAINT OF TRADE RECEIPTS**

[Applicable provisions: paragraph (cA) definition of gross income and section 11(cA)]

#### **I. Background**

A restraint of trade is a contract between two entities where a payment is made from one entity to the other to limit that party's ability to engage in business or seek alternate employment, as determined by the conditions of the contract. For companies and trusts the receipts from restraint of trade agreements are seen as being of a capital nature and are subject to capital gains tax, rather than being treated as normal income.

Restraint of trade payments to natural persons were historically also treated as being of a capital nature. However, to avoid arrangements where employees were being paid large amounts under the guise of a restraint of trade payment (in place of employment income and so avoiding normal income tax), the definition of "gross income" was amended to include restraint of receipts for natural persons. Restraint of trade receipts were also to be included in gross income for labour brokers (who did not have a specific exemption) and personal service providers to focus on the link with employment related income.

#### **II. Reasons for change**

The intent of the amendment was to include restraint of trade payments in gross income where the payments could likely be seen to replace remuneration through employment. However, the inclusion of the definition of natural person extended the amendment to situations where no relationship of employment existed.

The result of the amendment is that there exists an anomaly in the treatment between an incorporated business and a sole proprietor. A sole proprietor who receives a restraint of trade payment to not do business within a certain radius will be taxed on the amount in terms of paragraph (cA) and be subject to a deduction of PAYE irrespective of the employment relationship with the entity from whom the restraint of trade payment is made. If a company or trust was involved in an identical arrangement the restraint of trade receipt would be recognised as a capital payment, resulting in different tax implications for the same receipt.

#### **III. Proposal**

To align the tax treatment of restraint of trade receipts between natural persons, trusts and companies, and ensure that the avoidance provision is linked to an employment relationship, it is proposed that the provision of 'natural persons' in paragraph (cA) under the definition of 'gross income' be amended.



Instead of including restraint of trade receipts in gross income for all natural persons, it is proposed that only those individuals who have received the payment as a result of any past, present, or future employment or holding of office with the entity making the payment will have the receipt included in gross income. The effect will be that incorporated instances of restraints of trade payments and receipts will be treated the same as instances of unincorporated instances of restraints of trade payments and receipts.

#### **IV. Effective Date**

The proposed amendments will come into operation on 1 March 2015.

---

## **2. INCOME TAX: BUSINESS (GENERAL)**

### **2.1. THIRD PARTY BACKED SHARES: PREFERENCE SHARE REFINEMENTS ON GUARANTEES**

[Applicable provision: Section 8EA]

#### **I. Background**

The third-party backed shares anti-avoidance rule concerns preference shares with dividend yields backed by third parties. The dividend yield of third-party backed shares is treated as ordinary revenue per section 8EA unless the funds derived from the issue of the third-party backed shares were used for a qualifying purpose. This rule equally applies to domestic and foreign dividends.

Third-party backed shares are defined as preference shares in respect of which an enforcement right or obligation exists for the holder and issuer of the preference shares.

A qualifying purpose for the use of funds derived from the issue of a preference share can include—

- a) the direct or indirect acquisition of equity shares in an operating company;
- b) the acquisition or redemption of any preference shares previously used for any qualifying purpose;
- c) the settlement of debt used for the purposes set out above and any interest accruing on such debt; or
- d) the payment of any dividend, foreign dividend as it relates to (b) above.

At its core, the qualifying purpose exceptions to the anti-avoidance rule require that the consideration for the share issue to be used to fund the acquisition of equity shares (e.g. ordinary equity shares) in an active operating company.

Under the first exception, the consideration for the preference shares issued may be applied to acquire equity shares in an operating company. (Note: No relief from the anti-avoidance rule exists if the holder of the preference share acquires shares in an operating company from a company that is part of the same group of companies as the holder. This limitation is meant to avoid cash injections to a related member of the group posing as an artificial acquisition).

Under the second exception, the consideration may be used to refinance preference shares if the initial preference shares or bridging loans were used directly or indirectly to finance the acquisition of equity shares in an operating company. In the case of such a refinancing arrangement, the consideration for the newly issued preference shares cannot exceed the balance outstanding in respect of the original shares (as well as the accrued dividends, foreign dividends or interest thereon).

Under the third exception, the consideration may be used for retiring bridging loans initially used for qualifying purposes and any interest payable thereon.

Under the fourth exception, the consideration may be used for the payment of dividends in respect of a refinanced preference share which was previously issued for a qualifying purpose.

## **II. Reasons for change**

### *A. Qualifying purpose exemption*

Concerns have been raised that certain exception rules might erroneously fail to reach the technical relief originally envisaged for the issue of a preference share for a qualifying purpose. The combination of the qualifying purpose definition read with section 8EA(3) provide the ambit for the qualifying purpose exemption. However section 8EA(3)(b)(ii) currently only allows for the provision of security by the issuer on the issue of preference shares for the direct or indirect acquisition of equity shares but is erroneously silent on the provision of security by the issuer on the other intended qualifying purpose exemptions. There is no policy rationale for excluding the other qualifying purposes under the exceptions to the rule. It is, therefore, proposed that all other qualifying transactions be allowed as exemptions.

### *B. Asset-backed preference shares*

It has been submitted that the third party guarantees or obligations can be broadened to allow for asset-backed preference shares. Currently, if the exceptions against the anti-avoidance provisions as contemplated in section 8EA apply, the exceptions will allow for a variety of third party guarantees or obligations. These guarantees or obligations can come from:

- The target operating company;
- The issuer, where the consideration is applied for the purpose of the direct or indirect acquisition of the target operating company;
- Any person that directly or indirectly holds at least 20 per cent of the equity shares of the target operating company, the initial issuer of the preference share or an intermediary issuer as contemplated above; or
- A company that forms part of the same group of companies as the initial issuer of the preference share or an intermediary issuer as contemplated above.

## **III. Proposal**

### *A. Qualifying purpose exemptions*

It is proposed that where security is provided by an issuer, no limitation should be placed on the qualifying purpose. In this regard, the exception in respect of security provided by the issuer of a preference share will be disregarded from the recharacterisation rules if the funding raised on

such an issue where used for any qualifying purpose and will not be limited to use of the funds for the direct or indirect acquisition of the target operating company.

*B. Asset-backed preference shares*

It is proposed that the scope of the exemption guarantees in section 8EA(3)(b) be broadened to allow for the pledging of the equity shares and associated debt claims in the issuer of preference shares.

**IV. Effective Date**

The proposed amendments will be deemed to have come into operation on 1 January 2013 and applies in respect of any dividend or foreign dividend received or accrued during years of assessment commencing on or after that date.

---

**2.2. THIRD PARTY BACKED SHARES: REVISION OF THE DEFINITION OF OPERATING COMPANY**

[Applicable provision: Section 8EA]

**I. Background**

The third-party backed shares anti-avoidance rule concerns preference shares with dividend yields backed by third parties. The dividend yield of third-party backed shares is treated as ordinary revenue per section 8EA unless the funds derived from the issue of the third-party backed shares were used for a qualifying purpose. The qualifying purpose definition almost in all instances refers to the acquisition of equity shares in an operating company.

**II. Reasons for change**

The definition of operating company for purposes of this section is very limited. The term 'operating company' for the purposes of this section is defined to mean an operating company that conducts continuous business activities that results in the provision of goods and services for consideration.

This definition tends to exclude the activities of Exploration Companies. According to the Mineral and Petroleum Resources Development Act an exploration operation is the processing of new and old seismic data or the process to define a trap to be tested by drilling, logging and extended well testing with the intention of locating a discovery of mineral resources. As per the nature of Exploration Companies the main business activities (exploration) will result in the business activity being carried on continuously but will not result in the provision of goods and services for consideration as contemplated in the 'operating company' definition. Third-party backed preference shares issued to acquire equity shares in an Exploration Company (usually by BEE parties) are excluded from the exemption contemplated in this section because of the current definition of 'operating company'.

### III. Proposal

It is proposed that the definition of “operating company” be extended to acknowledge the continuous business activities of an Exploration Company (albeit that no goods or services may be provided during the exploration phase).

### IV. Effective date

The proposed amendment will be deemed to have come into operation on 1 January 2013 and applies in respect of any dividend or foreign dividend received or accrued during years of assessment commencing on or after that date.

---

## 2.3. DEDUCTIBLE INTEREST LIMITATION IN RESPECT OF DEBTS OWED TO PERSONS NOT SUBJECT TO TAX

[Applicable provision: Section 23M]

### I. Background

While debt capital is an important tool for investment, it can also create opportunities for base erosion. Taxation follows a matching principle – every deduction should have a matching inclusion. Transactions are often entered into whereby deductible interest paid to foreign and other exempt persons is not taxed in the hands of the recipient. For example, a company resident in South Africa claims a deduction for an interest payment and the corresponding income is not taxed in the hands of the company in the foreign jurisdiction.

The impact on the fiscus (domestically) should not raise concern given that it is one deduction against the domestic tax base. However, the combination of two factors: (i) the tax induced bias to use debt over equity financing, and (ii) hybrid entity mismatches resulting from the ‘interaction’ of domestic tax laws and tax treaties has resulted in multinational companies increasingly using such provisions to their advantage. Section 23M (effective 1 January 2015) was introduced to cater for these concerns.

### II. Reasons for change

Certain unintended anomalies in the application and impact of these rules have been identified. The anomalies include the following:

#### A. *Adjusted taxable income (Inclusion of Assessed Losses)*

The interest limitation rule determines a percentage (currently 40 per cent) of adjusted taxable income to limit the deduction of interest incurred on debt owed to persons not subject to tax.

Adjusted taxable income is determined as follows:

Starting point:	Taxable income
Less:	Interest received / accrued
	CFC income
	Recoupments
Plus:	Interest incurred
	Depreciation and amortisation

Taxable income as determined at the end of any year of assessment may have been reduced by the set off of an assessed loss carried forward from the previous year. Taking previous years' assessed losses into account further limits the base on which the overall limitation of interest deduction is calculated.

#### *B. Formula*

As a further relief measure, the Act provides for an adjustment of the 40 per cent limit through a formula. The 40 per cent factor is only adjusted in circumstances where a significant increase in the repo rate occurs, i.e. when it exceeds 10 per cent. This does not fully take into account changing market conditions and the resulting costs of servicing commercial debt.

#### *C. Guarantees*

Many infrastructure funding projects require debt funding that is often only provided subject to a guarantee from the parent company. Oftentimes, state owned entities rely on such guarantees from Government and such arrangements should not be restricted by these rules.

#### *D. Controlling relationship*

The "connected person" test is considered too low a benchmark for the creditor and debtor to be viewed as a single economic unit. Using the current test can trigger a connection when no majority shareholding exists.

### **III. Proposal**

Based on the above, the following proposals are made:

#### *A. Adjusted taxable income*

It is proposed that the adjusted taxable income be amended to exclude the previous years' assessed losses from the current year's adjusted taxable income.

#### *B. Formula*

It is proposed that the interest deduction limitation be more closely aligned to the cost of debt financing in the market. The limitation (expressed as a percentage of the tax equivalent of "earnings before interest, taxation, depreciation and amortisation" (EBITDA)) will adjust up and downwards based on the prevailing repo rate. As such, the formula will be amended to link deductible interest expenditure to the average repo rate for the year instead of the current adjustment if the repo rate exceeds 10 per cent. The interest deduction limitation will now be based exclusively on an adjustable formula whereby any change to the average repo rate for the year of assessment (together with a 400 basis point addition to the average repo rate) is reflected to allow for a balanced reflection of market conditions on the interest deduction limitation. A 400 basis point addition to the average repo rate will mimic the current costs of obtaining debt.

As a mechanism to protect the fiscus and tax base in periods of high interest rates, a cap on the interest deduction limitation of 60 per cent is proposed. The proposed limitation implies almost a doubling of the current repo rate (5.75 per cent) before the cap applies. Excessive debt can also

have macroeconomic implications for the economy if companies are unsustainably leveraged and the tax system should not play a role in ‘encouraging’ companies towards a debt financing bias.

There have been requests for implementing a floor (minimum value) for the percentage resulting from the formula. Available data shows that 40 per cent may even be too high, as illustrated by the three graphs below. The percentage will be reviewed and if a revised percentage (or percentages) is considered necessary, it could be deemed to be the ‘floor’ / minimum (or there could be more than one minimum for some subsectors).

Figure 1 shows the average percentages for interest to EBIT and interest to EBITDA (based on gross interest) for five different company size categories for OECD countries. The global average in relation to EBITDA is below 20 per cent for all size categories.

**Figure 1: Ratio of interest to EBIT and interest to EBITDA - by company size**

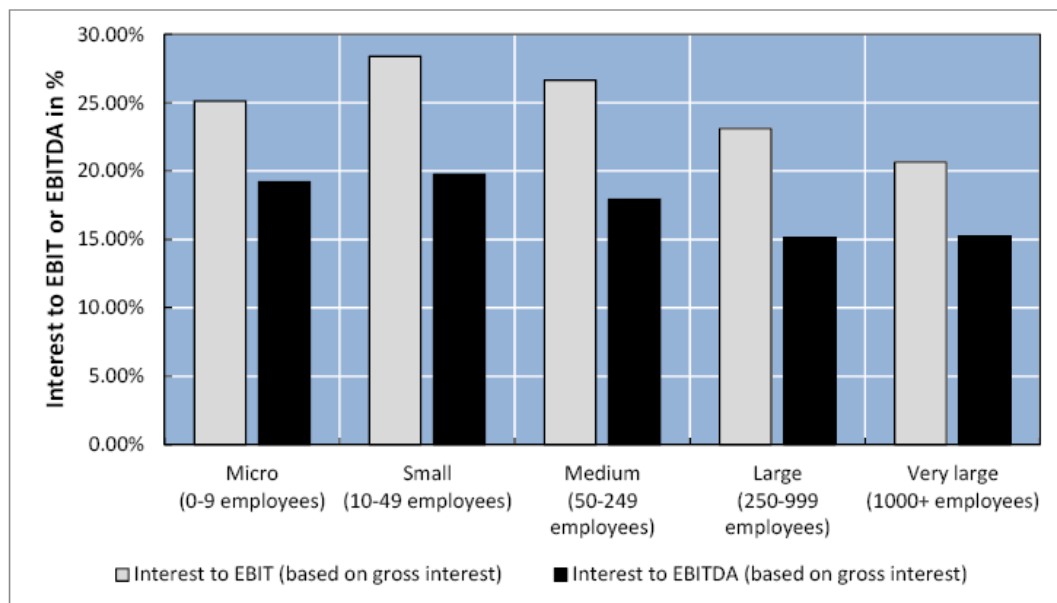
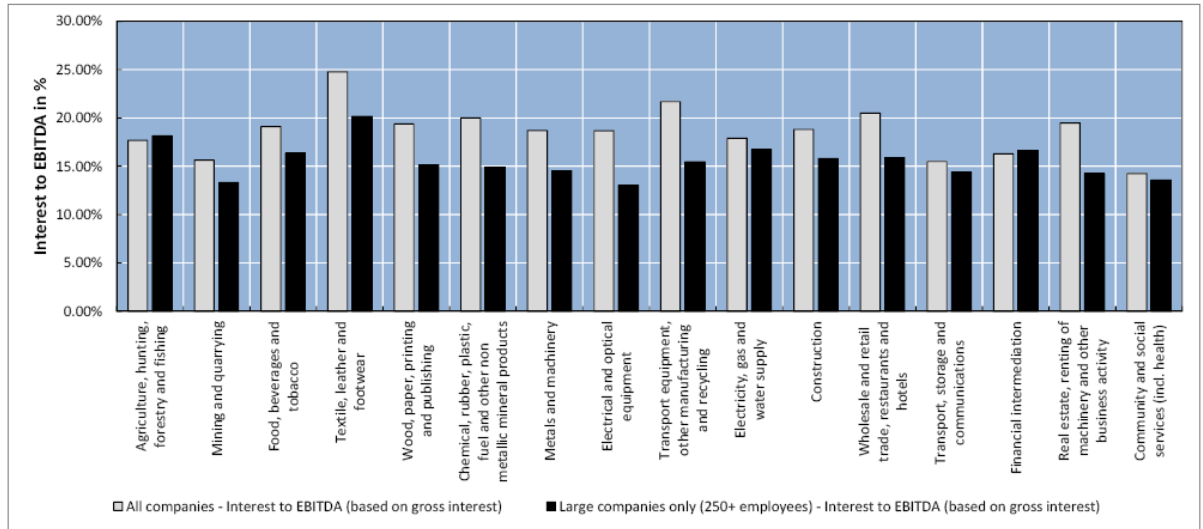


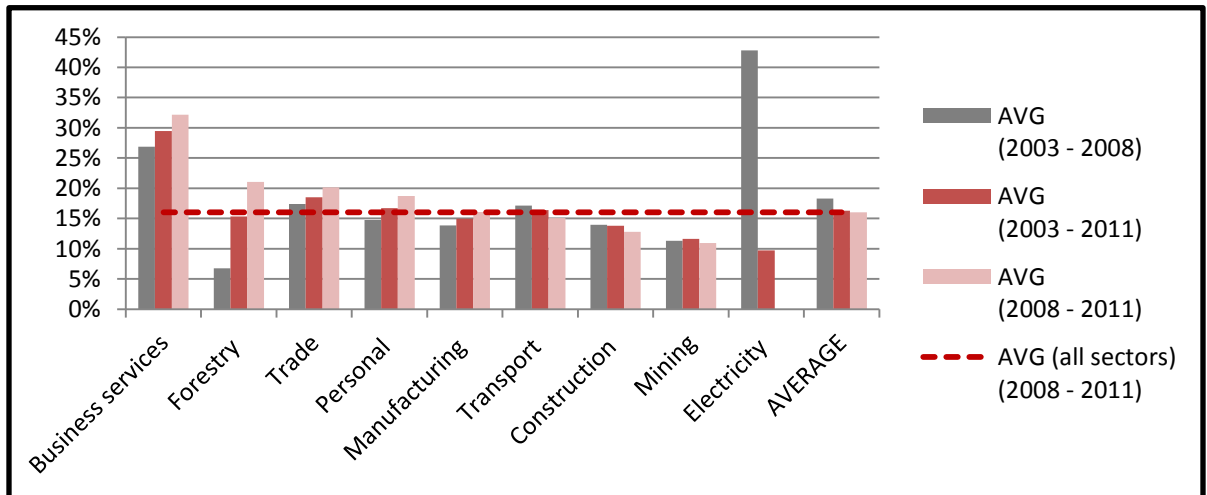
Figure 2 shows the interest expense / EBITDA ratios across sectors. Not much variation is evident and the average is below 20 per cent.

Figure 2: Interest to EBITDA ratio for all companies compared with large companies only - by sector



South African data from Statistics South Africa (Figure 3) shows a very similar picture, with the exception of the electricity and business services sectors. Financial intermediation, i.e. the banks and insurance companies, are excluded from this dataset.

Figure 3: Interest expense to EBITDA ratio for South African companies - by sector



One drawback in setting a standard level or ratio for all sectors is that the resulting cap may be set too high, rendering the rule ineffective in countering BEPS. Taxpayers stated that many smaller players would be unduly affected as gearing ratios tend towards 60 per cent; however no evidence has been provided of this at this stage.

### C. Guarantees

Guarantees will be removed from the ambit of this section. It is proposed that section 23M(2)(b)(ii) which makes provision for guarantees be deleted.

#### *D. Controlling relationship*

The controlling relationship definition will be amended to a concept of control through a requirement of 50 per cent of equity shares or voting rights.

#### *E. Definition of debtor*

The definition of debtor will be clarified to include a person who is not a resident but having a permanent establishment in South Africa.

#### *F. Interaction with section 23N*

Section 23M will now be subject to section 23N. It is envisaged that in instances where there is an overlap between the two interest limitation rules, amounts firstly subjected to 23N and disallowed thereunder, will not be covered under section 23M to create a future tax deduction (through the carry-forward allowance under section 23M).

In its operation, section 23M will now operate to limit interest on debt arising in a controlling relationship (in respect of which section 23N is not applicable) and interest on debt arising in a controlling relationship (in respect of which section 23N was applicable to the extent that such interest was allowed for deduction). The rationale of dual application of the sections in respect of allowable interest under section 23N is as a result of the use of multiple adjusted taxable incomes under section 23N while the limitation under section 23M is only determined with reference to the adjusted taxable income in the year the interest deduction is sought.

### **IV. Effective date**

The proposed amendments will come into operation on 1 January 2015 and applies in respect of interest incurred on or after that date.

---

## **2.4. DEDUCTIBLE INTEREST LIMITATION IN RESPECT OF REORGANISATION AND ACQUISITION TRANSACTIONS**

[Applicable provision: Section 23N]

### **I. Background**

During 2013 specific rules relating to the limitation of interest deductions for reorganisation and acquisition transactions were introduced to reduce the risk to the economy and fiscus emanating from the use of excessive debt to fund company acquisitions.

Interest incurred in respect of debt used to finance the acquisition of business assets is generally deductible, as business assets are intended to produce income. Interest incurred on debt used to acquire shares is generally not deductible because shares produce only exempt dividend income.



Despite the above, interest deductions associated with share acquisitions can be achieved indirectly through the use of the section 45 rollover provisions (or to a lesser extent, the section 47 rollover provisions). This objective is generally achieved when, for example, an acquiring company purchases all of the shares of a target company using temporary debt-financing. The acquiring company cannot deduct the interest incurred as the debt was used to acquire shares.

This is followed by a tax-deferred sale of assets by the target company to a newly formed subsidiary of the acquiring company that is funded via long-term debt. In these circumstances, the interest on the long-term debt is deductible (after applying the limitations introduced by section 23N) by the newly formed subsidiary on the assumption that the debt is directly linked to income producing assets of the former target company. In addition, the target company is sitting on cash received for the sale of assets that it declares as dividends to the acquiring company. The dividend income will be exempt in the hands of the acquirer.

## II. Reasons for change

Certain unintended anomalies in the application and impact of these rules have been identified. The anomalies include the following:

### A. Adjusted taxable income (Inclusion of Assessed Losses)

The interest limitation rule determines a percentage (currently 40 per cent) of adjusted taxable income to limit the deduction of interest incurred on debt used to finance reorganisation and acquisition transactions by the acquiring company.

Adjusted taxable income is determined as follows:

Starting point:	Taxable income
Less:	Interest received / accrued
	CFC income
	Recoupments
Plus:	Interest incurred
	Depreciation and amortisation
	75 per cent of rental income

Taxable income as determined at the end of any year of assessment may have been reduced by the set off of an assessed loss carried forward from the previous year. Taking previous years' assessed losses into account further limits the base on which the overall limitation of interest deduction is calculated.

### *Year in which the limitation calculation is determined*

In determining the interest limitation, the taxpayer is allowed to select the higher of adjusted taxable income for two years, that is: (a) the year in which the acquisition or reorganisation transaction is entered into; or (b) the year of assessment in which the interest expenditure is incurred. The adjusted taxable income for the year preceding the transaction is not taken into account.

The purpose of giving taxpayers the benefit of the higher of the adjusted taxable income for two years was to provide parties undertaking a company reorganisation or acquisition with the certainty that they can at least rely on the adjusted taxable income amount for the year in which the transaction is entered into. However, the taxable income in the year of acquisition could be influenced by the reorganisation or acquisition transaction which could be seen as an

extraordinary event and hence is not an accurate reflection of the profitability of the company compared to the previous year of assessment.

#### *B. Formula*

As a further relief measure, the Act provides for an adjustment of the 40 per cent limit through a formula. The 40 per cent factor is only adjusted in circumstances where a significant increase in the repo rate occurs, i.e. when it exceeds 10 per cent. This does not take into account the costs of servicing commercial debt.

### **III. Proposal**

Based on the above, the following proposals are made:

#### *A. Adjusted taxable income*

The proposed changes to adjusted taxable income are twofold:

- The previous years' assessed losses will be excluded from the current year's adjusted taxable income.
- The year of assessment on which adjusted taxable income is based can also include the year of assessment immediately preceding the year during which the reorganisation or acquisition transaction takes place (depending on which is the highest of the three possibilities).

#### *B. Formula*

It is proposed that the interest deduction limitation be more closely aligned to the cost of debt financing in the market. The limitation (expressed as a percentage of the tax equivalent of "earnings before interest, taxation, depreciation and amortisation" (EBITDA)) will adjust up and downwards based on the prevailing repo rate. As such, the formula will be amended to link deductible interest expenditure to the average repo rate for the year instead of the current adjustment if the repo rate exceeds 10 per cent. The interest deduction limitation will now be based exclusively on an adjustable formula whereby any change to the average repo rate for the year of assessment (together with a 400 basis point addition to the average repo rate) is reflected to allow for a balanced reflection of market conditions on the interest deduction limitation. A 400 basis point addition to the average repo rate will mimic the current costs of obtaining debt.

As a mechanism to protect the fiscus and tax base in periods of high interest rates, a cap on the interest deduction limitation of 60 per cent is proposed. The proposed limitation implies a doubling of the current repo rate (5.5 per cent) before the cap applies. Excessive debt can also have macroeconomic implications for the economy if companies are unsustainably leveraged and the tax system should not play a role in 'encouraging' companies towards a debt financing bias.

Please see additional information provided in respect of section 23M (pages 22 to 23 of this EM).

#### **IV. Effective date**

The proposed amendments will come into operation on 1 January 2015 and applies in respect of years of assessment commencing on or after that date.

---

### **2.5. DIVIDENDS TAX: CONTRIBUTED TAX CAPITAL REFINEMENTS**

[Applicable provision: Section 1 “contributed tax capital definition”]

#### **I. Background**

Contributed tax capital is a notional tax amount derived from contributions made to a company by holders of a class of shares as consideration for the issue of that class of shares by that company. It is reduced by any capital amount that is subsequently transferred back by the company to one or more shareholders of that class of shares (commonly known as a capital distribution) utilising that notional tax amount so received.

Contributed tax capital roll-overs are permitted where shares are transferred in certain reorganisation transactions.

#### **II. Reasons for change**

Shares that are issued at a specific amount per share (convertible shares) may be converted to another class of shares (or the same class but with all the rights attached to that share now vesting to that shareholder) on the occurrence of any specified contingency or after a specified period of time. Currently, roll-over treatment does not apply to convertible shares. As a result, the contributed tax capital on the convertible shares will be lost because the class of shares to which it relates differs from the class of shares after conversion. This type of conversion was not considered when the concept of contributed tax capital was introduced.

#### **III. Proposal**

It is proposed that the portion of the contributed tax capital in relation to the convertible shares immediately prior to conversion that relates to the shares that are converted to the other class of shares be added to the contributed tax capital of that other class of shares and deducted from the contributed tax capital reflected in respect of the remaining convertible shares. It is also proposed that any consideration received by the company in respect of the conversion of the shares be reflected as part of the contributed tax capital in relation to that other class of shares.

#### **IV. Effective date**

The proposed amendments will come into operation on or after 1 January 2015.

---

## **2.6. REVISION OF SHARIA COMPLIANT FINANCING ARRANGEMENTS**

[Applicable provision: Section 24JA]

### **I. Background**

Legislation was enacted in 2010 that recognises certain forms of Islamic finance as equivalent to traditional finance entailing interest. During 2011 more forms of Islamic finance were included in the Income Tax Act, as Islamic financing, like conventional financing, required government bonds as a “risk-free” standard so as to set the pricing for all other privately issued Islamic bonds.

A Sukuk is defined in the Income Tax Act as a sharia financing agreement, whereby the government disposes of an interest in an asset to a trust (which the investors fund) and leases the asset back from the trust. Any consideration received for the use of that asset by the trust is distributed to the investors and per the Income Tax Act is deemed to be interest in the hands of the investors. At the end of the lease term, government repurchases the asset which serves as the repayment of the principal investment.

### **II. Reasons for change**

The current definition excludes other entities from also entering into Sukuk arrangements. Sharia compliant financing is a potential source of affordable funding which will benefit the economy, and particularly state owned enterprises.

### **III. Proposal**

It is proposed that public entities should be included in the Islamic Finance arrangement. It is proposed that the definition and deeming provisions of a Sukuk should be amended to also include other entities.

### **IV. Effective Date**

The proposed amendments will come into operation on 1 April 2015.

---

### 3. INCOME TAX: BUSINESS (FINANCIAL INSTITUTIONS AND PRODUCTS)

#### 3.1. LONG-TERM INSURER'S RISK INSURANCE BUSINESS TO BE TAXED IN CORPORATE FUND

[Applicable provision: section 29A]

##### I. Background

Currently, South Africa taxes long term insurance business in accordance with the four funds approach. In terms of the four funds approach, all long-term insurance business written by a long-term insurer must be separated into three policyholder funds and a corporate fund. These are as follows:

- The Individual Policyholder Fund (IPF) for policies owned by individuals.
- The Company Policyholder Fund (CPF) for policies owned by corporate entities.
- The Untaxed Policyholder Fund (UPF) for policies owned by untaxed entities and annuity contracts. It consists of policies owned by retirement funds and other tax exempt entities and annuity contracts currently paying annuities.
- Corporate Fund. It consists of all the assets held by the insurer and all the liabilities owed by the insurer not falling in the above-mentioned policyholder funds.

With regard to the three policyholders funds ((i.e. IPF, CPF and UPF), the insurer is required to allocate assets, income, expenditure and liabilities relating to each fund and the taxable income of each fund is determined separately in accordance with the applicable taxation principles. With regard to the policyholder funds, the insurer acts as a “trustee” to collect tax from the pool of policyholders and to pay it to SARS “on behalf” of the policyholders.

With regard to the corporate fund, the intention of the legislature is to tax the insurer (corporate fund) in respect of “profits earned” from running the insurance business. The liabilities of each policyholder fund are required to be actuarially valued at the end of each year of assessment and to the extent that assets in a policyholder fund exceed the liabilities the surplus must be transferred to the corporate fund where it is taxed at the corporate income tax rate. The surpluses transferred represent part of the profit earned by the “shareholder” fund of the long-term insurer.

##### II. Reasons for change

There are concerns that the current taxation of long term insurers does not distinguish between investment and risk business. In practice, a risk policy will pay out a specified cash amount on the happening of an event regardless of the amount of investment income earned during the term of the policy. As such, this could result in a loss in respect of a specific policy.

##### **Example:**

##### **Facts**

A disability policy is issued for R500 000 in year 1.  
The policyholder becomes disabled in year 4.

During the duration of the policy, the policyholder paid premiums of R36 000.

The policyholder received a cash payment of R500 000 when he became disabled.

### **Results**

Ignoring other expenses such as sales commission and the cost of administering the policy, the disability policy will result in a loss of R464 000 for the insurer.

Profit or loss arising in respect of risk business should therefore not form part of the tax calculation of a policyholder fund since it is not part of the investment business that should be taxed on the trustee basis. It should be taxed in a separate fund.

## **III. Proposal**

### *A. Overview*

It is proposed that business in respect of risk policies be taxed in a fifth fund, namely the risk policy fund. The taxable income of the risk policy fund will be taxed at a rate of 28%.

### *B. Risk policy*

A risk policy is defined as a policy issued by an insurer during the insurer's year of assessment commencing on or after 1 January 2016 under which the benefits payable cannot exceed the amount of premiums receivable, except where the policy benefits are solely payable due to death, disablement, illness or unemployment and excludes a contract of insurance in terms of which annuities are being paid.

Assets to cover liabilities of risk policies are to be allocated to the risk policy fund. The liabilities of a risk policy fund shall be:

- an amount equal to the liabilities of the insurer in respect of risk policies determined in accordance with adjusted IFRS; and
- any expenses allocated to the risk policy fund that has not been paid at the end of the year of assessment.

Adjusted IFRS is defined to mean valuation of liabilities as per IFRS but without taking into account negative liabilities on a policy per policy basis. A negative liability shall be accounted for at nil.

### *C. Transfers between risk policy fund and corporate fund*

Where the assets of the risk policy fund exceeds the liabilities of that fund, as set out in the previous paragraph, the amount of the excess must be transferred to the corporate fund within three month after the end of the year of assessment.

Where the liabilities of the risk policy fund exceed the assets of that fund, the amount of the shortfall must be transferred by the corporate fund to the risk policy fund within three month after the end of the year of assessment.

An amount transferred from the risk policy fund to the corporate fund shall be tax deductible to the extent that the amount does not exceed the taxable income of the risk policy fund.

No amount transferred from the corporate fund to the risk policy fund shall be deducted from the income of the corporate fund.

*D. Tax deduction for risk policy fund*

The risk policy fund shall be allowed to annually claim a deduction equal to the liabilities of the insurer in respect of risk policies in accordance with adjusted IFRS. . The amount claimed by the risk policy fund in the preceding year of assessment must be added back to the income of the risk policy fund.

*E. Reinsurance premiums and reinsurance claims*

The risk policy fund will have to include reinsurance claims received in and deduct reinsurance premiums paid from its income. Therefore, subsection 11(g) of section 29A will not apply to risk policies.

**IV. Effective date**

The proposed amendments will come into operation on 1 January 2016 and apply in respect of years of assessment commencing on and after that date.

---

**3.2. LONG TERM INSURERS: AVOIDANCE OF UNWARRANTED RELIEF FROM ONGOING TAXATION IN RESPECT OF FOREIGN REINSURANCE**

[Applicable provision: section 29A(11)(g)]

**I. Background**

Long-term insurers must disregard premiums paid and claims received in respect of reinsurance policies when they calculate taxable income in the policyholder funds. However, a problem exists in the case of foreign reinsurance because this form of reinsurance held by long-term insurers have unwarranted relief from ongoing taxation.

**II. Reasons for change**

Where a policyholder invests in a linked policy issued by a long-term insurer the policy is for example linked to the growth of a share in a foreign company. The Long-term insurer reinsures the linked policy with a foreign reinsurer in a low tax jurisdiction or in a tax haven. The foreign reinsurer utilises the premium it received to purchase shares in the relevant foreign company. On the maturity date of the policy, the long-term insurer claims the full payout value of the linked policy from the reinsurer. Since the long-term insurer must disregard premiums paid and claims received on reinsurance policies when it calculate taxable income under the four fund approach, no tax is payable on the growth in the linked policy.

**Example:**

The policyholder invests R100 in a linked policy. The growth in the policy is linked to the performance of shares in foreign company X. The long-term insurer reinsures the linked policy and pays a R100 premium to the foreign reinsurer, which is often a subsidiary of the long-term insurer. The foreign reinsurer invests the R100 in shares in company X. On the maturity date of the linked policy, the long-term insurer pays R150 to the policyholder and claims R150 from the reinsurer.

Since the long-term insurer must disregard the premiums paid and the claims received on reinsurance policies when determining taxable income in the individual policyholder fund, corporate policyholder fund and untaxed policyholder fund, the R50 growth in the linked policy is not subject to tax.

### **III. Proposal**

In order to rectify this, it is proposed that amendments should be made in section 29A (11)(g) of the Income Tax Act so that the net returns from foreign reinsurance be included in the calculation of the taxable income of the individual policyholder fund and the corporate policyholder fund. The amendments to subsection 11(g) will not apply to a policy that would have constituted a risk policy had it been concluded on 1 January 2016.

### **IV. Effective date**

The proposed amendment will come into operation on 1 December 2014 and will apply in respect of reinsurance claims received on or after that date.

---

## **3.3. AMENDMENT OF DEFINITION OF INSTRUMENT**

[Applicable provision: section 24J]

### **I. Background**

In terms of this section total interest, as widely defined in this section, is spread over the period or term of a financial arrangement by compounding the interest over fixed accrual periods using a predetermined rate referred to as 'yield to maturity'. This section provides for the deduction of interest in the hands of the holder of an income instrument as well as the amounts that must be included in gross income of the issuer of an instrument, as defined.

"Instrument" is defined to include:

- any form of interest-bearing arrangement or debt;
- any acquisition or disposal of any right to receive interest or the obligation to pay any interest, as the case may be, in terms of any other interest-bearing arrangement; but excluding any lease agreement (other than a sale and leaseback arrangement as contemplated in section 23G).



## **II. Reasons for change**

Long-term insurance companies issue policies such as endowment policies and smoothed or stable bonus products that have a guaranteed value for the policyholder. These types of products may inadvertently be treated as instruments for purposes of section 24J which could result in the long-term insurer, acting as a trustee of the policyholders, being taxed in terms of section 24J on the interest that accrued to the long-term insurer. That was never the intention when the legislation was enacted.

## **III. Proposal**

It is proposed that the wording of the definition of “instrument” is amended by excluding any policy issued by an insurer as defined in section 29A from the definition.

## **IV. Effective date**

The proposed amendment will be deemed to have come into operation on 1 January 1996 and applies in respect of years of assessment commencing on and after that date.

---

### **3.4. REFINEMENTS OF REAL ESTATE INVESTMENT TRUSTS (REITS)**

[Applicable provision: section 25BB]

#### **I. Background**

In terms of REITs tax legislation, a REIT or controlled company, which is a resident, must deduct from its income for a year of assessment the amount of any qualifying distribution made to its shareholders. (Where the REIT is a trust and a collective investment scheme in property under the Collective Investment Schemes Control Act it is deemed to be a company).

Broadly speaking, a qualifying distribution means dividends paid or payable by the REIT or controlled company and interest incurred in respect of debentures that form part of a linked unit in a company that is a REIT or property company where 75 per cent of the gross income of that company in the preceding year of assessment consisted of rental income.

A dividend or foreign dividend from a company that is a property company at the time of the distribution of that dividend forms part of the rental income of the REIT or controlled company, as the case may be. A REIT or controlled company is also exempt from capital gains tax on the disposal of shares or linked units in a property company.

Currently a property company is defined as a company “in which 20 per cent or more of the equity shares or linked units are held by a REIT or a controlled company, and of which at the end of the previous year of assessment 80 per cent or more of the value of the assets in the annual financial statements prepared in accordance with the Companies Act for the previous year of assessment, is directly or indirectly attributable to immovable property”.

#### **II. Reason for change**

In many instances a REIT or controlled company holds more than 20% (often 100%) of the shares in a foreign company of which 80 per cent or more of the value of assets consists of immovable property. Foreign companies will not prepare annual financial statements in

accordance with the South African Companies Act since this act does not apply to a foreign company. By inserting the requirement that annual financial statements must be prepared in accordance with the Companies Act, all companies incorporated in foreign jurisdictions were therefore inadvertently excluded from the definition of 'foreign company'.

### **III. Proposal**

It is proposed to amend paragraph (b) of the definition of 'property company' to the effect that financial statements prepared in accordance with the Companies Act or IFRS will be acceptable.

### **IV. Effective date**

The proposed amendments are deemed to have come into operation on 1 April 2013 and apply in respect of years of assessment commencing on and after that date.

---

## **3.5. REVISION OF FAIR VALUE TAXATION IN RESPECT OF FINANCIAL ASSETS AND LIABILITIES**

[Applicable provision: Section 24JB]

### **I. Background**

Section 24JB introduced the fair value taxation of gains and losses of financial assets and financial liabilities that are held by the "covered person" defined in this section. These fair value gains and losses should be recognised in the profit or loss in the statement of comprehensive income. However there are two exclusions, firstly with regard to financial asset that were in terms of International Accounting Standard ("IAS") 39 of International Financial Reporting Standards ("IFRS") or any other standard replacing IAS 39 upon initial recognition designated by the "covered person" at fair value through profit or loss because they are managed and their performance is evaluated on a fair value basis:

- i. a share;
- ii. an endowment policy;
- iii. an interest held in a portfolio of a collective investment scheme and
- iv. an interest in a trust.

The second exclusion is with regard to dividends and foreign dividends received by or accrued to "covered persons".

In some instances a "covered person" may enter into a partnership arrangement for purposes of investing in these envisaged assets and incurring corresponding financial liabilities. In light of new accounting standards, an interest in a partnership may be classified as a financial asset.

### **II. Reasons for change**

The normal tax principles applicable to partnerships in the Income Tax Act ("the Act") should rather apply in determining the tax liability of a covered person carrying on business in partnership with another party. The intention of the legislature was not to tax the "covered person" annually on the growth of its interest in a partnership.

### **III. Proposal**

In order to address the anomaly with regard to an interest in a partnership, the following is proposed:

- Exclude 'interest in a partnership' from financial assets to which fair value taxation in terms of subsection (2) apply.

### **IV. Effective date**

The proposed amendments are deemed to have come into operation on 1 January 2014 and apply in respect of years of assessment commencing on and after that date.

---

## **4. INCOME TAX: BUSINESS (INCENTIVES)**

### **4.1. REFINEMENT OF ALLOWANCES IN RESPECT OF TELEPHONE LINES OR CABLES USED FOR THE TRANSMISSION OF ELECTRONIC COMMUNICATIONS**

[Applicable provision: Section 12D]

#### **I. Background**

Assets that are considered to be permanent in nature have a long lifespan or period of use and are generally viewed differently to plant and machinery that is subject to wear and tear that has a much shorter lifespan. However, over a number of years there has been a need to allow certain assets to be depreciated over a specified period for income tax purposes.

In line with international practice, section 12D was introduced (in 2000) to cater for the depreciation of pipelines, transmission lines and railway lines.

The following write-off periods were granted under this section:

- 10 years for pipelines used for transporting natural oil;
- 20 years for electricity and telephone transmission lines; and
- 20 years for railway lines.

The allowances are available for new and unused structures used directly by the owner thereof in carrying on the business of transmitting or transporting the relevant products.

#### **II. Reasons for change**

##### *A. Revision of useful life*

It appears that it is necessary to review the period over which telephone lines or cables used for the transmission of any signal for the purposes of telecommunication are depreciated for two main reasons. Firstly, improvements in technology, and secondly, the move from copper wiring

to fibre optics to maintain a suitable standard of telecommunication services has an impact on the expected useful life of these lines and cables. Failure to maintain lines or cables that are damaged from wear and tear (resulting from the elements, civil construction activities, motor vehicle and other accidents, copper theft, sabotage, lightning damage or normal ageing) results in slower DSL speeds and noise problems. Maintenance and the addition of new lines or cables to the network often results in multiple joins of copper wiring, sometimes of differing thickness that reduces speeds and impinges on the useful economic life.

Moving to fibre optics makes sense in such an environment; however fibre optic cabling is also not immune to wear and tear either. Cable route damage is often inflicted by third parties in construction activities or road alterations. Such damage has a medium to long-term effect, increasing the fibre stress levels and or bending radius and normally results in the introduction of additional fibre joints that further degrade the cable's transmission capabilities.

Industry practice is to write off both copper and fibre optic lines or cables over 15 years for accounting purposes. International comparisons show that other countries allow a favourable tax depreciation allowance for these assets.

#### *B. Second-hand purchases*

Purchases of used assets (lines or cables used for the transmission of any signal for the purposes of telecommunication) are becoming more common in the telecommunications industry. Doing a fibre swap in existing infrastructure is cheaper than outlaying capital to build new infrastructure required to support the fibre. Such purchases are not eligible for the section 12D allowance, which requires assets to be new and unused.

### **III. Proposal**

It is proposed that the write-off period for telephone lines or cables used for the transmission of any signal for the purposes of telecommunication should be refined on the following grounds:

- To align the tax treatment, for depreciation purposes, of such assets with international practice;
- To move towards the most suitable expected economic life of such assets, given technological improvements and the environment that affect the useful life of the asset; and
- To allow for used assets in respect of the telecommunications industry to qualify for the depreciation allowance.

In view of the above, it is proposed that:

- Telephone lines or cables used for the transmission of any signal for the purposes of telecommunication be eligible for a 15 year depreciation allowance (this translates into an annual write off of 6.67 per cent); and
- Used assets for the transmission of any signal for the purposes of telecommunication be eligible be eligible for a depreciation allowance in terms of section 12D.

## **IV. Effective date**

The proposed amendments will only apply to new or used cables acquired on or after 1 April 2015.

---

## **4.2. REVISION OF RESEARCH AND DEVELOPMENT INCENTIVES**

### **4.2.1. REFINEMENT OF R&D ACTIVITIES**

[Applicable provisions: Section 11D; Draft Regulations in terms of Section 11D(1)(d) on the Additional Criteria for Multisource Pharmaceutical Products in respect of the Deductions for Research and Development; Draft Regulations in terms of Section 11D(1)( e) on the Criteria for Clinical Trials in Respect of the Deductions for Research and Development]

#### **I. Background**

The income tax system contains an incentive for research and development aimed at realising the following objectives:

- To increase the after-tax return of the investment to the company so that it becomes more profitable to increase R&D investment and conduct more R&D in South Africa.
- To increase the positive spill-over to the rest of society through knowledge transfer and skills upliftment.
- To encourage spending on R&D activities and the conducting of R&D that would not have occurred in the absence of the incentive (additionality).

The tax incentive is in the form of a 150 per cent deduction for non-capital R&D expenditure.

Under the current incentive, various classes of R&D activities are catered for, including:

#### *A. Clinical trials*

Offshoring and outsourcing the pharmaceutical value chain has become standard practice for companies to split the drug development process into two: (i) early stage research is undertaken in one country and (ii) clinical trials are outsourced to different countries. This presents an opportunity for South Africa to develop the capability to undertake clinical trial activities, which will lead to increased opportunities to participate in early stages of the drug development process.

The value of carefully constructed clinical trials for the testing and evaluation of new treatments and medicines is well recognized internationally as constituting R&D activities. The policy intent during the 2013 Taxation Laws Amendment Bill process was to recognise this and allow taxpayers conducting certain clinical trials to claim the R&D tax incentive.

Clinical trials and their protocols are highly regulated and strictly controlled (both internationally and in South Africa) with little scope for the alteration or amendment thereof, or for any deviation therefrom – particularly once finalized, approved and registered. For this reason, clinical trials were (prior to the 2013 amendments) not considered to be research and development for the

purposes of the tax incentive if the person conducting the research and development did not have the authority to determine or alter the methodology of research.

In terms of section 11D(6)(a), a person carries on research and development if that person may determine or alter the methodology of the research.

#### *B. Multisource pharmaceutical products*

In terms of existing legislation, benefitting from section 11D requires the multisource pharmaceutical product manufacturer to be the inventor or developer, or be making a significant and innovative improvement to the original brand name drug. Generally, local multisource pharmaceutical product manufacturers will be denied a deduction under section 11D as their activities constitute conducting R&D to achieve results or using technology which is already common place.

#### *C. Functional designs*

Currently, the creation or development of a functional design as defined in section 1 of the Designs Act capable for qualifying for registration under section 14 of that Act is regarded as an eligible R&D activity.

In order to qualify for registration as envisaged above, a functional design must (i) be new; and (ii) not be commonplace in the art in question.”

For a functional design to be “new” it must simply be different from a previous design and for it not to be “commonplace” it must not be common-or-garden or of a type which would excite no particular attention to those in the relevant art.

## **II. Reasons for change**

#### *A. Clinical trials*

The 2013 Taxation Laws Amendment Bill introduced amendments to section 11D whereby section 11D(6)(b) was introduced. Section 11D(6)(b) provides that the Minister of Science and Technology may allow as research and development (for the purposes of the tax incentive) certain categories that would not have constituted research and development because the taxpayer did not have the authority to determine or alter the methodology of research.

This amendment sought to allow the Minister of Science and Technology to categorise clinical trials as research and development eligible for the tax incentive even though the person conducting the research does not have the authority to determine or alter the methodology of research. However, a further barrier prevents clinical trials from being eligible for this incentive - the definition of research and development for the purposes of section 11D(1) does not cater for clinical trials.

#### *B. Multisource pharmaceutical products*

The process of bringing a multisource pharmaceutical product of an established brand name drug to market requires extensive investment in research, development and human resources for each stage of the development of the multisource pharmaceutical product. The company producing such products must also conduct certain studies and pass strict standards before the product can be made available.

Diseases place a heavy burden on South Africa's health system. Government support is essential for encouraging and strengthening local research and development, R&D and innovation capabilities to produce and make available multisource pharmaceutical products at a lower cost to consumers.

### *C. Functional designs*

It is possible for a new design of an existing article to qualify as a functional design even though there has been no scientific or technological advance. This contrary to the policy intention that a function design should only be regarded as R&D where it results through some scientific or technological advancement.

The Oslo Manual states in paragraph 162 that -

“[d]esign is an integral part of the development and implementation of product innovations. However, design changes that do not involve a significant change in a product's functional characteristics or intended uses are not product innovations.”

## **III. Proposals**

### *A. Clinical Trials*

The proposed amendments seek to amend this oversight and deem clinical trials to be R&D in terms of section 11D, subject to certain criteria. To provide clarity and certainty to taxpayers, it is proposed that the definition of R&D (for the purposes of section 11D eligibility) be revised to make clinical trials eligible for the 150 per cent deduction.

The criteria for eligible R&D activities will be provided by way of Regulations in terms of Section 11D(1)( e) on the Criteria for Clinical Trials in Respect of the Deductions for Research and Development.

### *B. Multisource pharmaceutical products*

It is proposed that section 11D be amended to make multisource pharmaceutical products eligible for the R&D tax incentive.

The criteria for eligible R&D activities will be provided by way of Regulations in terms of Section 11D(1)(d) on the Additional Criteria for Multisource Pharmaceutical Products in respect of the Deductions for Research and Development.

### *C. Functional designs*

It is proposed that the definition of “research and development” be revised to re-instate the innovation requirement in respect of functional design and to align the requirement with that identified in the Oslo Manual.

## **IV. Effective dates**

### *A. Clinical trials*

The proposed amendments in respect of clinical trials will be deemed to have come into operation on 1 October 2012 and applies in respect of expenditure incurred on research and development on and after that date, but before 1 October 2022.

### *B. Multisource pharmaceutical products*

The proposed amendments for clinical trials and multisource pharmaceutical products will be deemed to have come into operation on 1 October 2012 and applies in respect of expenditure incurred on research and development on and after that date, but before 1 October 2022.

### *C. Functional designs*

The proposed amendment to functional designs will come into operation on 1 January 2015 and applies in respect of expenditure incurred on research and development on and after that date, but before 1 October 2022.

---

## **4.2.2. ADJUSTMENT OF DEDUCTION OF R&D FUNDING**

[Applicable provision: Section 11D]

### **I. Background**

Companies often enter into arrangements whereby one company conducts R&D activities that are funded by another company. This arrangement often occurs between connected parties. Prior to the 2013 Taxation Laws Amendment Bill, either the domestic company undertaking an R&D activity or the funding group member could seek approval for the additional 50 per cent deduction (depending which party was able to alter or determine the methodology of the said R&D). If the funding party obtained approval for this additional 50 per cent, the deduction was available only to the extent of the expenditure undertaken by the domestic company for the purposes of the R&D activity (no 50 per cent deduction is allowed in respect of mark-up or administrative costs, for example).

The 2013 Taxation Laws Amendment Bill introduced amendments to section 11D whereby section 11D(3) was deleted and replaced by an amended section 11D(2). The amended section 11D(2) now allows for a 150 per cent deduction, subject to approval, and not just an additional 50 per cent on qualifying expenditure. Section 11D(4)(c)(ii), which allows funding of qualifying research and development between group companies, was then amended to refer to section 11D(2) of the Act, however, section 11D(5) was left unchanged.

### **II. Reasons for change**

The deduction mentioned in section 11D(5) of the Act relates to the additional 50 per cent deduction that is claimable on qualifying research and development activities in terms of the previous section 11D(3) of the Act. The section 11D(5) was not amended to relate to the 150 per cent deduction claimable on qualifying research and development activities in terms of the amended section 11D(2) of the Act. This has led to an unintended consequence whereby the company funding the research and development within a group of companies can only claim 50 per cent of the actual expenditure incurred by the party conducting the R&D, instead of 150 per cent of actual expenditure incurred. Refinement of the inclusion of certain categories as research and development



### **III. Proposal**

It is proposed that section 11D(5) be amended to make the deduction by the company that funds the expenditure limited to an amount of 150 per cent of actual expenditure incurred by the funded company directly and solely in respect of that research and development.

### **IV. Effective date**

The proposed amendments for R&D funding will be deemed to have come into operation on 1 January 2014 and applies in respect of expenditure incurred on research and development on and after that date, but before 1 October 2022.

---

## **4.3. TAX TREATMENT OF ALLOWANCES IN RESPECT OF PUBLIC PRIVATE PARTNERSHIP**

[Applicable Provisions: Section 10(1)(zl) and the insertion of section 12NA]

### **I. Background**

The general denial of the improvement allowance in respect of leased land or buildings of an exempt lessor was enacted in the early 1980's to prevent tax avoidance. At that time, a number of lease financing schemes existed so that financiers could obtain artificial write-offs for improvements on leased property as if these financiers had directly owned and operated the underlying property. These schemes were particularly prevalent in the case of exempt parties seeking finance because these entities lacked a tax base from which a depreciation allowance could be utilised.

There are many instances where Government enters into arrangements with the private sector to provide underlying land for constructing buildings or improvements thereon without parting with ownership of the land. Such an arrangement is known as a Public Private Partnership (PPP). PPPs are necessary as Government sometimes lacks the upfront cash funds to directly undertake the desired construction. In recognition of this practice, a straight-line write-off was allowed for improvements in the case of PPPs and in the case of Government-owned land (as long as the lease period lasted 20 years or more). However, because this write-off was sometimes less favourable than those in the case of improvements made to directly-owned land (e.g. the accelerated write-offs in a UDZ), section 12N was introduced.

Section 12N, which is currently applicable in respect of a right of use or occupation granted to a private party in terms of a PPP on or after 2 November 2010, treats a qualifying taxpayer (private party) that effects an improvement on land or buildings in terms of a PPP as if it owns the land and buildings in respect of which the improvements were made. Provided the requirements of section 12N and the various capital allowance sections are met, the private party to the PPP may claim the capital allowances in respect of the improvements.

In order to qualify for an allowance under section 12N, the taxpayer must:

- a) hold a right of use or occupation of land or a building;
- b) effect an improvement on the land or to the building in terms of a PPP;
- c) incur expenditure to effect the improvement noted above; and

- d) use or occupy the land or building for the production of income, or derive income from the land or building.

## II. Reasons for change

Public private partnerships are an important element of South Africa's strategy to develop its public infrastructure. Certain types of PPP agreements do not meet the criteria set out in section 12N and these limitations have an impact on the affordability for Government in respect of PPPs. The private party incurring expenditure of a capital nature is unable to claim depreciation on the cost of the improvement (e.g. building) and cannot claim a section 11(a) deduction as it is not revenue in nature. This is priced into the contract by the private party, rendering the project more expensive for Government. The main stumbling block is that the '*right of use or occupation*' is not granted to the private party in all PPPs.

An example of an agreement that does not meet the section 12N criteria is a serviced office accommodation project. In such models, Government normally enters into a contract with a private party where the private party will be responsible for financing; designing and constructing; and operating and maintaining a Government owned building. Government is essentially buying a serviced working environment and the asset is only constructed to provide the service. Here, the private party fails to meet the requirements of section 12N as they typically have *service access* to the building, not a *right of use or occupation* of the land or a building.

## III. Proposal

### A. Overview

Taxpayers that are the private party to a PPP contract with Government where government will use or occupy the land or building will be allowed to claim a capital allowance for expenditure incurred (of a capital nature) to effect improvements on Government-owned land. To be eligible for a capital allowance in terms of section 12NA, the private party must be party to a PPP agreement with Government and must incur expenditure of a capital nature. All maintenance and operating expenses will be allowed as per normal under section 11(a).

While the artificial shifting of depreciation allowances from exempt persons to taxable persons remains of concern, the general prohibition of depreciation allowances in respect of improvements undertaken by private parties of government-owned property where government will use or occupy the land or building potentially constrains overall Government policy as it relates to infrastructure development for institutional functionality.

As with section 12N, section 12NA will not apply to facilitate a deduction on improvements effected by banks and insurers to counter arrangements which may in substance constitute financing arrangements with a sphere of government.

### B. Anti-double-dipping

Reduction of tax attributes:

In the case of exempt receipts and accruals received from Government for the performance of an obligation pursuant to a PPP (catered for in section 10(1)(z1)), an anti-double-dipping rule will apply. Stated differently, the use of a tax exempt 'capital contribution' in respect of that PPP should not be allowed as a means of achieving a further tax deduction that can be used against

other earnings. In instances where a tax exempt capital contribution is awarded to the taxpayer, this rule will apply as follows:

To the extent that the contribution is actually expended to an amount at least equal to that in respect of the actual cost of acquisition, creation or improvement of the land or building, the amount of the allowance against income generated from the PPP agreement over the lesser of the duration of the PPP contract or 25 years must be reduced by the amount of the capital contribution (catered for in section 10(1)(zl)). This ensures alignment with the tax treatment of Government grants as per section on 12P of the Act.

### **Example**

#### ***Facts:***

Government enters into an agreement with a private party whereby the private party is responsible for the financing, design, constructing, operating and maintaining a new building that will house a national department:

#### ***Financing***

The private party is responsible for sourcing debt and equity financing.

#### ***Capital contribution***

Government pays a capital contribution to reduce future monthly unitary payments and overall cost. In this instance, the contribution is R2 billion.

#### ***Monthly unitary payments***

Government pays monthly unitary payments over 25 years to cover the bond and maintenance costs. The sum of such payments is R18 billion, making the total value of the contract worth R20 billion. The unitary payments are used to cover debt servicing costs, operational, maintenance and lifecycle refurbishment costs, and a return on equity.

#### ***Result:***

The capital contribution from Government of R2 billion will be exempt in the hands of the private party to the extent that the amount is utilized in full for improvements on land or buildings owned by any sphere of government. The proposed capital allowance against any land or building improved with such a capital contribution will be reduced to the extent of the capital contribution so utilized for the actual expenditure incurred for the acquisition, creation or improvement of the land or building.

The unitary [balance of the] payments from Government will be taxable in the hands of the taxpayer. All other expenses would be of a revenue nature and must be claimed under s11(a).

## **IV. Effective date**

The proposed amendments will come into operation on 1 January 2013 and applies in respect of expenditure incurred to effect improvements during any year of assessment commencing on or after that date.

#### **4.4. REFINEMENT OF OIL AND GAS INCENTIVE**

[Applicable provisions: Insertion of paragraph 8(1)(c) of the Tenth Schedule to the Income Tax Act]

##### **I. Background**

The Tenth Schedule to the Income Tax Act outlines the tax dispensation applicable to oil and gas companies. Companies that hold an exploration or production right (defined in section 1 of the Mineral and Petroleum Resources Development Act) are entitled to submit a request for a fiscal stability agreement (in respect of the right(s) held) to the Minister of Finance.

The legislation permits an oil and gas company holding an exploration or production right to assign all of its fiscal stability rights to another oil and gas company.

##### **II. Reasons for change**

Oil and gas companies may wish to enter into a joint venture and partially assign the fiscal stability rights to the other party so that both parties are covered by the original fiscal stability agreement and equally enjoy the rights contained therein. There is uncertainty with respect to how to interpret the current wording in the legislation. Taxpayers interpret the phrase 'assign all of its fiscal stability rights to another oil and gas company' to mean that the original party transfers all the rights to the new party, without retaining any of those rights for itself. There is no reason why this should be the case – both parties should be entitled to the fiscal stability rights contained in the fiscal stability agreement.

##### **III. Proposal**

It is proposed that where an oil and gas company has an existing FSA with Government and subsequently enters into a joint venture with another oil and gas company, both oil and gas companies that are party to a joint venture will be entitled to all the rights under the fiscal stability agreement entered into by the original oil and gas company.

##### **IV. Effective date**

The proposed amendment will come into operation on 1 April 2015.

---

#### **4.5. REFINEMENT OF ALLOWANCES IN RESPECT OF INDUSTRIAL POLICY PROJECT INCENTIVE**

[Applicable provision: Section 12I(2)]

##### **I. Background**

Section 12I of the Income Tax Act allows taxpayers an additional investment and training allowance in respect of Industrial Policy Projects (IPP) if they meet certain criteria prescribed by way of regulation. The investment allowance ranges from 35 per cent of the cost of any new and unused manufacturing asset to 100 per cent – depending on whether the project has qualifying or preferred status, and whether it is located in an industrial development zone (or special

economic zone approved by the Minister of Finance in consultation with the Minister of Trade and Industry).

To be eligible for this incentive, the Act requires a taxpayer to be owner of the asset. Property law dictates that any immovable property attached to a piece of land automatically becomes the property of the owner of the land. Taxpayers investing in IPPs undertaken on leased land are currently precluded from claiming this incentive in respect of new and unused (immovable) manufacturing assets.

## **II. Reasons for change**

Because this incentive is an additional investment allowance and not a deduction for the purposes of wear and tear over the useful life of an asset, it seems reasonable to remove the ownership requirement for the section 12I incentive. In addition, with some taxpayers conducting their manufacturing activities on leased land (99 year leases in some instances), the ownership requirement constrains investment activities government would like to promote.

## **III. Proposal**

It is proposed that taxpayers undertaking an IPP (in terms of section 12I) in respect of immovable property be accommodated for purposes of this incentive. As a result, it is proposed that the taxpayer be deemed to be the owner of qualifying manufacturing assets that are immovable in nature for the purposes of section 12I of the Income Tax Act. They will thus be entitled to the investment allowance, but not to depreciation allowances in other sections of the Act.

## **IV. Effective date**

The proposed amendment will be deemed to have come into operation on 1 January 2015.

---

## **4.6. REVISION OF ALLOWANCE FOR ENVIRONMENTAL CONSERVATION IN RESPECT OF NATURE RESERVES OR NATIONAL PARKS**

[Applicable provisions: section 37C (5); (6) and (7) and new section 37D]

### **I. Background**

Government embarked on the biodiversity stewardship programme (BSP) in partnership with private land owners to preserve biodiversity through conserving threatened or depleted ecosystems to support critical species habitats. The BSP is mainly implemented through creating and expanding protected areas through bilateral agreements where private landowners voluntarily restrict and maintain the land on the government's behalf. Declared land should be managed according to the agreed management plan (endorsed by the Minister) which is regularly audited by the conservation authorities. As a result, landowners participating in the BSP incur costs in managing these areas as well as forgo income by contracting their land.

The BSP bilateral agreements can be in the form of:

- biodiversity management agreements (at least 5-years contract);
- protected environments (at least 30-years contract); and

- nature reserves/ national parks (at least 99-years contract).

#### *A. Biodiversity management agreements*

Expenses incurred by landowners to conserve or maintain declared land under biodiversity management agreements or its immediate proximity can be deducted against trading income and if expenditure exceeds income in the year of assessment, excess deductions are rolled over to the following year of assessment (section 37C(1)).

#### *B. Protected environments*

For protected environments, operating expenditure (not capital) to conserve or maintain the declared land is deemed to be a donation by the landowner actually paid or transferred to the government during the year of assessment and qualifies as a tax deductible section 18A donation (section 37C(3)). Unused deductions can now be rolled over as provided for in the reformulated current incentive.

#### *C. Nature reserve / national park*

Nature reserve/ national park (section 37C (5)) contracts have the declaration endorsed on the title deed of the land. Cost of land plus capital expenditure incurred by the landowner in respect of the land being declared qualifies for a tax deductible section 18A donation. An amount equal to 10% of the lesser of the municipal or market value of the land (disregarding any right of use retained by the landowner) is deemed to be a donation of immovable property for purposes of section 18A and paragraph 62 of the Eighth Schedule to the government in the year of declaration for which a receipt has been issued in terms of section 18A (2). A rollover of unused deductions in excess of 10% of taxable income is allowed.

Two main issues have been noted as hampering the uptake of these contracts by some landowners:

- uncertainty as to what a deemed receipt implies in terms of allowances for deemed donations for income tax deductions and
- how basing tax deductions on taxable income instead of land values does not benefit low income landowners equitably.

With regards to the interpretation issue about deemed donations, the uncertainty has been cleared by SARS issuing a Binding General Ruling (BGR) No. 24 published on 2 September 2014 to provide certainty and clarity on the application of the deeming provisions in section 37C (3) and (5) as far as it relates to the deductions claimed under section 18A.

With regards to using taxable income as the basis of allowable deductions, government proposes to delink the current incentive for nature reserves/ national parks from the provisions of section 18A of the Income Tax Act and allow for a straight line deduction of the adjusted land value as currently calculated in terms of section 18A (3A).

## **II. Reasons for change**

Concerns have been raised that the current incentive is mostly likely to benefit individuals or corporations with the highest taxable incomes and not the ones with the most important land to conserve. This is because the allowance for the tax deduction is based on taxable income and

not on land value. Hence, landowners with taxable incomes much lower than their land values do not see the benefit in committing their land as they face loss of income due to the expenses incurred in maintaining the land whilst being restricted in how much deduction they can claim especially the 10% limitation imposed by the section 18A cap. Thus to leverage landowners' ongoing investment in maintenance, a straight line deduction is deemed more attractive and predictable to landowners.

### **III. Proposal**

Land declared as a nature reserve or national park for at least 99 years should no longer be treated as a section 18A donation. Instead, it should be allowed a straight line deduction based on the actual cost of acquisition of land and improvements thereon or the lower of market value or municipal value if they exceed the cost of the land over a period of 25 years (4% allowance). This ensures equal treatment of landowners with similar land values despite different income levels so they are able to recover maintenance expenses from participating in the incentive scheme.

### **IV. Effective date**

The proposed amendments will come into operation on 1 March 2015 and applies in respect of years of assessment commencing on or after that date.

---

## **4.7. TAX INCENTIVES FOR PROVISION OF FUNDING TO SMALL MEDIUM AND MICRO ENTERPRISES**

[Applicable provisions: New section 10(1)(cQ), 30C; sections 56(1)(h); 64EB; 64F; and the insertion of paragraph 63B of the Eighth Schedule]

### **I. Background**

Most Small Medium and Micro Enterprises ("SMME's") find it difficult to access funding due to their inherent risk and lack of collateral together with the fact that they often lack the necessary training and commercial skills to manage and develop the businesses.

Several funding entities are engaged in activities that support SMME's. They provide developmental funding to SMME's, including business support and training. These activities contribute towards overall SMME development, which makes a positive contribution to society in several ways including:

- a) employment creation,
- b) capacity building,
- c) fostering entrepreneurial activity and skills development,
- d) poverty alleviation and
- e) economic and social upliftment

Currently, the Income Tax Act affords relief to funders of SMME's only if monies are invested through the Venture Capital Company Regime. In addition, relief is provided in the Income Tax Act through the Public Benefit Organisation (PBO) regime. The provision of support and financial assistance to micro enterprises (classified as poor and needy) qualifies for relief if such activity

qualifies as a public benefit activity in the Ninth Schedule of the Income Tax Act. Therefore, any activity provided to SMME's that does not fall under the VCC regime or the PBO regime, will not qualify for relief in terms of the Income Tax Act.

## **II. Reasons for change**

The 2014 Budget has emphasised the importance of the development of SMME's. The Income Tax Act can assist in the development of SMME's through the proposed tax relief on both the originators of the funding as well as the funding itself received by the SMME's for their development.

## **III. Proposal**

### *A. Exemption of receipts and accruals*

In order to assist in the development of SMME's, similar to the relief provided to PBO's, it is proposed that receipts and accruals of entities providing funding to SMME's should be exempt from income tax section 10 of the Income Tax Act. In order to qualify for this exemption, the entity providing funding to SMME's will have to be approved by SARS and amendments will be made in the Income Tax Act by introducing new section 30C, which sets out the criteria for the approval process.

### *B. Exemption from dividends tax and countering dividends cessions*

Dividends in respect of which a small business funding entity is the beneficial owner will be exempt from dividends tax. To counter the potential use of these dividends tax exempt small business funding entities in schemes which essentially seek to convert the taxable payment of dividends into exempt compensation through, *inter alia*, dividends cessions, these entities will also be listed as a cessionary for purpose of section 64EB in respect of which the anti-diversionary rules thereunder will apply.

### *C. Exemption from capital gains tax*

It is, furthermore, proposed that assets used by a small business funding entity will be exempt from capital gains tax upon its disposal by the small business funding entity to the extent that such assets were used in lending business of the small business funding entity for the benefit of small, medium and micro-sized enterprises.

### *D. Exemption from donation's tax*

Donations to and by a small business funding entity will be exempt from donations tax.

## **IV. Effective Date**

The proposed amendments will come into operation on 1 March 2015.

---



## **4.8. EXEMPTION OF GRATUITOUS FUNDING IN THE HANDS OF SMALL MEDIUM AND MICRO ENTERPRISES**

[Applicable provisions: Sections 10(1)(zK) and 23O]

### **I. Background**

Currently, gratuitous funding or payments received by small, medium and micro enterprises ('SMME's') for their development are taxable unless received from Government in the form of a 'government grant' as defined in section 12P of the Income Tax Act. Making gratuitous funding to SMME's for their development tax free is part of a range of policy measures proposed in order to support SMME's. It is believed that SMME's growth and development is key to job creation and poverty reduction.

### **II. Reasons for change**

Lack of funding remains one of the key challenges for SMME's. In the 2014 Budget, it was announced that gratuitous funding and / or payments received by SMME's will be exempt from tax.

It is envisaged that the tax free gratuitous funding to SMME's will assist SMMEs' cash flow and enable them to expand.

### **III. Proposal**

In order to assist SMME's to better utilise their gratuitous funding, it is proposed amounts received by SMME's from the approved funding entities in terms of the proposed section 30C of the Income Tax Act should be exempt from normal tax.. In order for SMME's to qualify for the exemption, the SMME's will have to meet requirements of a micro enterprise as contemplated in the Sixth Schedule or small business corporation as contemplated in section 12E of the Income Tax Act.

Any expenditure incurred in respect of trading stock allowed as a deduction in terms of section 11(a) or any amount taken into account in respect of the value of trading stock or the base cost of an allowance asset must be reduced to the extent that the amount received or accrued from the small business funding entity is applied for that purpose.

### **IV. Effective Date**

The proposed amendments will come into operation on 1 March 2015 and applies in respect of amounts received or accrued on or after that date.

---

## **4.9. BROADENING THE SCOPE OF THE VENTURE CAPITAL REGIME**

[Applicable provision: Section 12J]

### **I. Background**

The Venture Capital Company (VCC) regime was introduced in order to encourage potential funders to invest equity into small businesses. A VCC acts as an investment vehicle through

which investors can fund a portfolio of small businesses and/or junior miners. Currently the VCC regime allows for investors to deduct the value of their investments from taxable income. Upon disposal of their investments, those deductions are recouped. In order to qualify for inclusion in a VCC portfolio, investee companies are limited in a variety of ways, most notably asset size. Currently investee companies' assets cannot exceed R 20 million, while junior miners have an asset limit of R 300 million.

## **II. Reasons for change**

Since its introduction in 2008, the VCC regime has seen very limited uptake, despite amendments in 2011. Only five VCC's have been registered so far, with only three still being active. All three were registered in 2013.

Following consultation with all three current VCC's, as well as other stakeholders, further amendments to the current VCC regime are proposed.

## **III. Proposal**

In order to get the VCC regime to gain more traction, the following proposals are made:

Making the tax deductions permanent (no recoupment at disposal); and  
Increasing the asset limits for qualifying investee companies.

### *A. Making the tax deductions permanent*

It is proposed that the tax deduction should not be recouped for investments held in a VCC for a period of at least 5 years. Bringing in a timeframe condition ensures that investors are investing for the right reason, not purely to obtain a permanent tax deduction. The example below illustrates the principle.

#### **Example**

##### **Year 1**

Investment into section 12J VCC: R100 000

Allowable deduction: R100 000

Deduction claimed: R100 000

##### **Outcome 1**

Disposal before the end of Year 5: Disposed of for R250 000

Capital gain: R150 000 (R50 000 included in taxable income)

Recoupment of s 12J allowance: R100 000 (included in taxable income)

##### **Outcome 2**

Disposal after the end of Year 5: Disposed of for R250 000

Capital gain: R250 000 (R83 333.33 included in taxable income)

Recoupment of s 12J allowance: R0.00

### *B. Increasing the asset limits*

It is proposed that the asset limits be increased as follows:

- For qualifying investee companies from R 20 million to R 50 million.
- For junior mining companies from R 300 million to R 500 million.

## **IV. Effective Date**

The proposed amendments will come into operation on 1 January 2015.

---

## **4.10. CLARIFICATIONS ON THE VENTURE CAPITAL REGIME**

[Applicable provision: Section 12J(6A)]

### **I. Background**

In 2008, an investment incentive was added to the Income Tax Act (“Act”) that seeks to encourage retail investment in VCCs that are mainly directed toward investments in smaller businesses and junior mining companies. In order to qualify as a VCC, the company must meet requirements as to form, structure and allocation of expenditures, amongst others.

The Act provides for a 36-month deferral period to allow newly-created VCC’s time to find suitable investment expenditures relating to smaller businesses and junior mining companies.

One of the most integral requirements to the VCC tax regime is the investment expenditure allocation requirements.

After a period of 36 months VCC’s have to utilise 80 per cent of investment expenditure incurred to acquire assets consisting of qualifying shares issued by qualifying companies before 36 months. If a VCC fails to adhere to that requirement, its VCC approval may be revoked.

In addition VCC’s are also prevented from holding more than 20 per cent equity share in any one qualifying company. This is to ensure that a larger number of qualifying companies benefit from Venture Capital Company funding.

### **II. Reasons for change**

#### *A. 36 Month Rule*

Prior to 2009 the VCC tax regime required upfront SARS approval for VCCs which was impractical when read in conjunction with the 36-month deferral period. SARS couldn’t be expected to provide upfront verification as to whether a particular company would satisfy various investment expenditure allocation requirements after a 36-month period. During 2009 the VCC tax regime was amended to a post-36 month satisfaction of verification requirements on the VCC method.

Concerns have been raised regarding the fact that the legislation still remains unclear regarding the 36 month period. Section 12J(6A)(b) currently reads *“at least 80 per cent of the expenditure*

*incurred by the company in that period to acquire assets held by the company was incurred to acquire qualifying shares issued to the company by qualifying companies” [our emphasis].*

This could be interpreted that the 80 per cent rule to expenditure incurred will only be applied within that 36 month period, and not after the 36 months. It could be understood to imply that subscriptions monies can be invested in any asset after 36 months, which was never the intention of the legislation.

#### *B. Methodology of verification requirements*

The methodology of the verification requirements has also been identified as a possible restriction for uptake of the VCC tax regime. The VCC verification requirements as an example currently could require that no more than 20% of that investment expenditure incurred after a period of 36 months relate to qualifying shares in any one qualifying company.

By using expenditure incurred as a basis for calculating the 20 per cent test, VCC's are more likely to breach the 20 per cent test. For instance, if VCC A has incurred expenditure of R 1000, it will not be permitted to invest more than R 200 (20%) in any one qualifying company. If VCC A disposes of one of the qualifying companies, only four qualifying companies will remain in its portfolio. If calculated as a percentage holding of expenditure incurred, each of the remaining four qualifying companies will constitute a 25% holding, which will be in breach of the 20 per cent test. The same problem will occur if the VCC declares dividends, leaving the VCC's with limited flexibility regarding their portfolio management.

### **III. Proposals**

As stated previously the VCC verification requirements as an example currently could require that no more than 20% of that investment expenditure incurred after a period of 36 months relate to qualifying shares in any one qualifying company.

It is proposed that the legislation be amended to rather allow the 20% rule to be applied to the total subscription monies received together with any capital gains on any disposal of a qualifying share held at assessment every year after the 36 month period.

This will avoid a breach on the sale of an investment in a qualifying company. The VCC could then use the proceeds to increase its investment in any qualifying company to the 20% limit, if it was below that limit at assessment every year after the 36 month period. The VCC could declare dividends without breaching the rule.

#### **Example 1: Using expenditure incurred as the basis for calculation of the 20% rule – original concept**

##### **Facts:**

VCC A incurs expenditure of R1 000 through investing in qualifying companies  
It invests R200 (20%) in each of 5 qualifying companies  
It disposes of one investment.

##### **Outcome:**

As Table 1 below indicates, it finds itself in breach of the 20 per cent rule.

Table 1: VCC holdings as percentage of expenditure incurred:

	Before disposal		After disposal	
	Investment	%	Investment	%
Company 1	200	20	0	0
Company 2	200	20	200	25
Company 3	200	20	200	25
Company 4	200	20	200	25
Company 5	200	20	200	25
Total expenditure incurred	1 000	100	800	100

The VCC's approval is liable to be withdrawn and the only corrective steps that can be taken are that the monies received from the disposal of the one investment have to be re-invested in a new qualifying company.

**Example 2: Using subscription monies received as the basis for calculation of the 20% rule – proposed concept**

**Facts:**

VCC B receives R 1000 in subscription monies  
 It incurs expenditure of R1000 to invest in qualifying companies  
 It invests R200 (20%) in each of 5 qualifying companies  
 It disposes of one investment.

**Outcome:**

As Table 2 indicates, VCC B will still be within the 20 per cent limit.

Table 2: VCC holding as percentage of subscription monies received:

	Before disposal		After disposal	
	Investment	%	Investment	%
Company 1	200	20	0	0
Company 2	200	20	200	20
Company 3	200	20	200	20
Company 4	200	20	200	20
Company 5	200	20	200	20
Total subscription monies received	1 000	100	1000	80

**IV. Effective date**

The proposed amendments will come into operation on 1 January 2015.

---

## **4.11.PUBLIC BENEFIT ORGANISATIONS: LOWERING OF THE DISTRIBUTION REQUIREMENT**

[Applicable provision: Section 18A(2A)(b)(i) and the insertion of subsection 18A(5C)]

### **I. Background**

Government provides incentives to encourage donations to organisations involved in public benefit activities. A conduit PBO as contemplated in section 18A(1)(b) is obliged to distribute or incur the obligation to distribute at least 75% of the donations received for purposes of providing funds and assets to other approved PBO's and qualifying statutory bodies which carry on in South Africa public benefit activities listed in Part II of the Ninth Schedule, for which a section 18A tax deductible receipt was issued within 12 months of the end of the year of assessment in which the donation was received. SARS may (having regard to the public interest and purpose for which the conduit PBO wishes to accumulate the funds) defer, reduce or waive the obligation to distribute 75 per cent of those funds.

The purpose of the 75 per cent distribution rule is twofold in that it discourages conduit PBOs from locking in funds and to obtain a degree of matching between timing of the tax deduction claimed by the taxpayers and the distribution of such donations by the conduit PBO's.

### **II. Reason for change**

While Government is concerned that the funds required to support public benefit activities might potentially be locked-in to accumulate reserves, several entities have indicated that the 75 per cent distribution rule is too restrictive, and affects their sustainability adversely. Conduit PBOs need to have some flexibility to build up reserves over time so as to ensure some degree of financial sustainability. Similar to allowing non-funding PBO's to conduct limited trading activities, it is proposed that conduit PBO's be allowed more flexibility to earn passive income.

### **III. Proposal**

#### *A. Distribution requirement*

It is proposed that the 75 per cent distribution requirement of all funds received by way of donation during that year in respect of which receipts were issued be reduced to at least 50 per cent.

#### *B. Conditions regarding the use of undistributed funds*

100 per cent of all returns on investments made by the conduit PBO in respect of undistributed funds should be distributed to qualifying PBOs (Part II of the ninth schedule) after 5 years from the date that the Commissioner issued a reference number to the PBO, or every five years from 1 January 2015 if that PBO was incorporated or established prior to 1 March 2015. Conduit PBO's will be required to change their founding documentation to facilitate this condition.

#### **Example 1**

##### **Facts:**

Funding PBO A receive donations amounting to R200 000.

**Result:**

Funding PBO A is required to distribute R150 000 (75 percent) during the current year.

With a distribution requirement of 50 percent, Funding PBO A will only be required to distribute R100 000 during the year.

**IV. Effective Date**

The proposed amendments will come into operation on 1 March 2015 and applies in respect of donations made on or after that date.

---

**4.12. REFINEMENTS TO THE EMPLOYMENT TAX INCENTIVE**

[Applicable provisions: Sections 7(5); 9(4) and 10(3) of the Employment Tax Incentive Act]

**I. Background**

The employment tax incentive was introduced on 1 January 2014 to support employment growth amongst the youth by sharing the cost of employment between the government and the private sector. The incentive is available to employers if they hire qualifying employees on or after 1 October 2013. One of the conditions for an employee to qualify for the incentive is that their monthly remuneration must be greater than R2 000 or the applicable minimum wage and less than R6 000. The value of the incentive that the employer may claim is dependent on the value of the monthly remuneration.

For employees who only work for a part of the month their remuneration must be 'grossed up' to calculate the value of the incentive and then the amount of the incentive they can claim is 'grossed down' in the same proportion.

Employers that do not have a sufficient pay-as-you-earn liability in a month to deduct the value of the incentive may roll over this excess amount to the following month. The Employment Tax Incentive Act allows for the introduction of a reimbursement mechanism that would reimburse employers the amount of the incentive that is rolled over on a bi-annual basis. The rolled over amounts of the incentive are capped at R6 000 per qualifying employee on the day after the reimbursement is intended to take place. The intention of the cap was to limit the potential liability that may arise from rolled over amounts for employers that were not tax compliant.

**II. Reasons for change**

The 'grossing up' provision entails some discretion on the part of the employer to determine the level of remuneration for that employee if they had worked the full month. Different sectors may also have varying stipulated working hours for full time employees. An employer who has a 'full time' employee who works 80 hours a month and receives R4 000 in remuneration will receive the same incentive as an employer who employs a 'full time' employee who works 160 hours a month with the same remuneration. The definition of 'full time' is not sufficiently clarified in the legislation and may create these unintended anomalies. Employers have also indicated that the calculation of 'full time' may be administratively difficult and they are concerned that SARS may question their assumptions used. Employers have asked for clarity on the calculation of the value of the incentive for employees who only work for part of a month.

The reimbursement mechanism is expected to be introduced in the last quarter of 2014. The current legislation will apply a limit to the rolled over amount on 1 September 2014 that would apply to all employers, notwithstanding whether the employer is tax compliant or not. The policy intention was not to limit the rolled over amount before the reimbursement mechanism was introduced. The current wording of the legislation would also imply that if an employer is not tax compliant on 31 August 2014, any excess would be rolled over to be claimed in the following months, but they can only access the reimbursement mechanism six months later, even if they were to become tax compliant on 2 September 2014.

### **III. Proposal**

To simplify the calculation of the incentive, and link the incentive to an hourly wage, it is proposed that the grossing up mechanism be linked to a baseline of 160 hours of work per month, rather than through the use of a discretionary 'full time' calculation. In effect, the incentive can be claimed for qualifying employees who earn between R12.50 an hour (if there is no minimum wage) and R37.50 an hour.

If the qualifying employee works 80 hours a week the remuneration is grossed up to the 160 hours (i.e. doubled) to check whether the remuneration falls between R2 000 (or the minimum wage) and R6 000. The incentive is calculated on this amount and then grossed down (or halved). If the qualifying employee works more than 160 hours in a month the actual value of remuneration is used to calculate the incentive amount.

The reimbursement mechanism will be simplified by 'ring fencing' the excess amount that is available to be rolled over as at the end of the employer reporting period (e.g. 31 August 2014). Employers will be able to claim the full value of the excess amount that has been ring fenced after SARS have determined that they are tax compliant. If an employer is not tax compliant, the excess amount will be reimbursed when the employer becomes tax compliant. However, if the employer fails to become tax compliant within the next six months (before the end of the next reporting period) the excess amount will be lost.

The amendment would still limit the potential liability from non-compliant employers and since the excess amount is no longer rolled over to the next period there will no longer be a need to retain the rollover cap. Instead, the excess amount that can be rolled over will be reset to zero at the first day after the end of the bi-annual reporting period. Under this approach employers would still be able to claim the full value of the excess amount if the reimbursement mechanism were to be introduced at a date later than 31 August 2014.

The incentive is currently based on monthly remuneration. However, National Treasury will continue to monitor the application of the incentive to ensure that employers do not manipulate the timing of salaries to claim for employees who significantly exceed remuneration of R72 000 during the year of assessment.

### **IV. Effective date**

The proposed amendments regarding the grossing up provision will come into operation on 1 March 2015.

The proposed amendments regarding the cap on the rolled over amount of the incentive will come into operation on 1 January 2014.



## 4.13. REFINEMENTS OF SPECIAL ECONOMIC ZONE TAX INCENTIVE PROVISIONS

[Applicable provisions: Sections 12R; 12S of the Income Tax Act; Draft Notice in terms of Section 12R Regarding Activities to which Section 12R does not apply]

### I. Background

In the 2012 *Budget Review*, it was announced that tax incentives would be considered for the new special economic zones (SEZ) as proposed by the Department of Trade and Industry that would build on experience with the current industrial development zones (IDZs). This was achieved by introducing sections 12R and 12S into the Income Tax Act during the 2013 Tax Laws Amendment Bill process. In the 2012 Budget Review, it was announced that tax incentives would be considered for the new especial economic zones (SEZs) that would build on experience with the current industrial development zones (IDZs), as proposed by the Department of Trade and Industry. This was achieved by introducing sections 12S and 12R in the Income Tax Act, which specifically deal with the SEZs.

### II. Reasons for change

Some of the provisions captured in section 12R are vague and potentially conflicting. Amendments are required to enhance the clarity of these provisions.

To further enhance the understanding of SEZ tax provisions, the following explanation is meant to assist taxpayers in ascertaining whether they are eligible for the tax incentives or not. The main elements are as follows:

The Minister of Trade and Industry will be responsible for regulating the qualifying criteria for entry into a special economic zone. Tax concessions provided to companies locating in a SEZ are as follows:

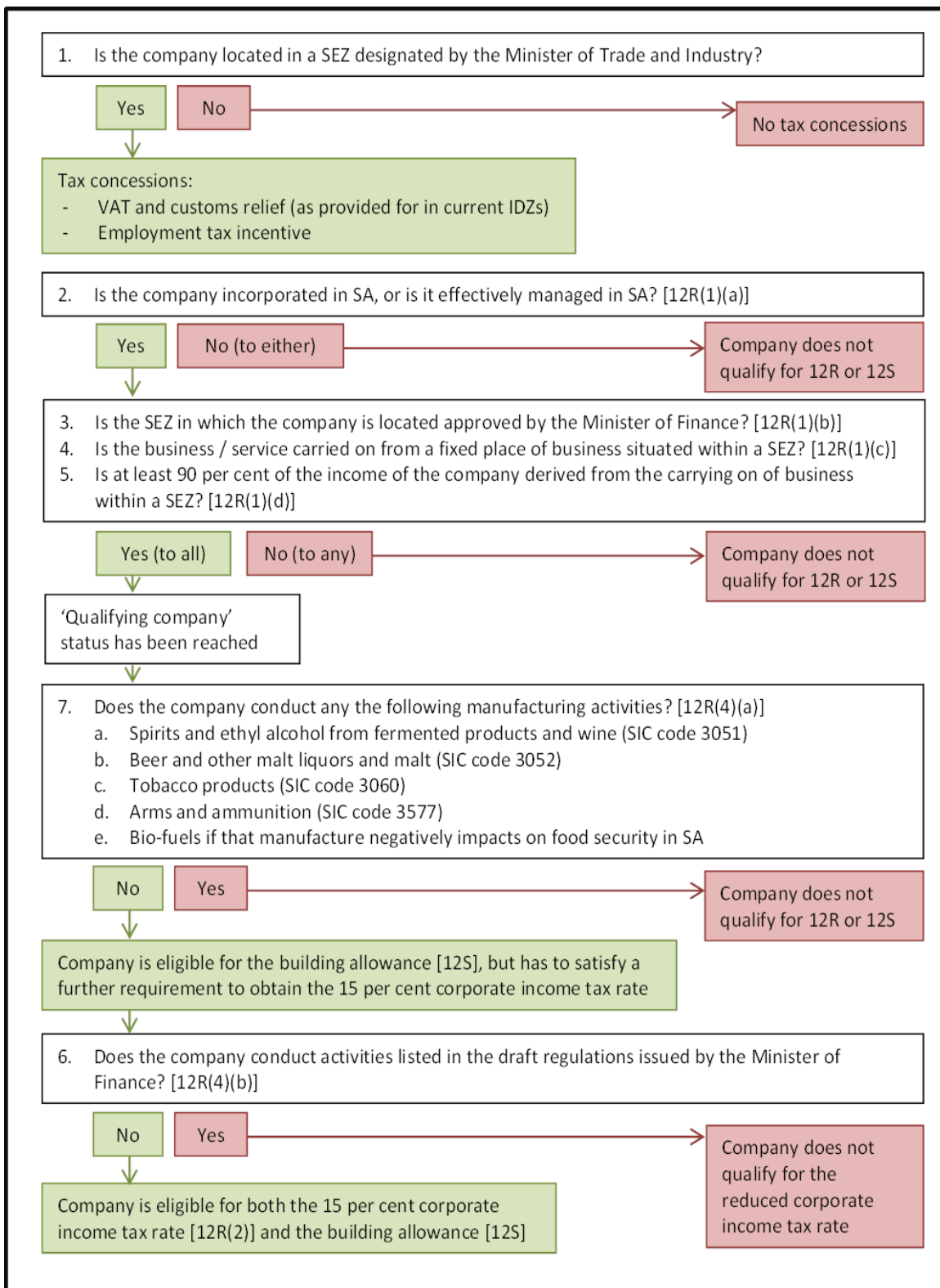
- All special economic zones will qualify for temporary VAT and customs relief (similar to that for the current IDZs), and the new employment tax incentive, with no age restriction.
- Qualifying companies operating within approved SEZs (by the Minister of Finance, after consultation with the Minister of Trade and Industry) may be eligible for two additional tax incentives:
  - All qualifying companies that do not conduct any of the activities as per section 12R(4)(a) of the Act will automatically be entitled to claim accelerated depreciation allowances on buildings (contained in section 12S).
  - Only qualifying companies that are not conducting either of the following:
    - activities as per section 12R(4)(a) of the Act; and
    - activities listed (according to the Standard Industrial Classification (SIC) codes) in the draft regulationswill be entitled to the building allowance and subject to a reduced corporate tax rate (i.e. 15 per cent instead of 28 per cent).

Companies can make use of the decision tree below to determine eligibility for the tax incentives.

### III. Proposal

It is proposed that section 12R be refined to take care of the following anomalies:

- It is unnecessary to refer to a category of special economic zone designated by the Minister of Trade and Industry.
- Approval of a SEZ by the Minister of Finance will be done by way of a notice in the Gazette.
- Requiring a business to carry on a type of business or provision of service that may be located in a SEZ is redundant in that this requirement is already achieved without the need for repetition.
- If a company operates in one or more SEZs approved by the Minister of Finance, the 90 per cent requirement will apply to more than one approved SEZ.
- The SIC codes will refer to version 7.
- The benefits of sections 12R and 12S will be allowed for a period of 10 years after the commencement of the carrying on of business in a special economic zone.
- A qualifying company will not be required to apportion its taxable income in an instance where, for example, 5 per cent of its income is derived from activities that will be listed in the draft regulations as per section 12R(4)(b) of the Act, or 7 per cent of its activities are carried on outside of the SEZ.
- Given the delay in respect of the introduction of the Special Economic Zones Act, 2014, the sunset clause in respect of the availability of this incentive will be pushed ahead to allow for the availability of the incentive for 10 years after the commencement by a taxpayer of carrying on a business within an SEZ.



#### IV. Effective date

The proposed amendments will come into operation on the date on which the Special Economic Zones Act, 2014 (Act No.16 of 2014) comes into operation.

## **5. INCOME TAX: INTERNATIONAL**

### **5.1. SIMPLIFIED FOREIGN BUSINESS ESTABLISHMENT EXEMPTION FOR CONTROLLED FOREIGN COMPANIES**

[Applicable provision: Proviso to section 9D(2A)]

#### **I. Background**

Controlled foreign company attribution rules are subject to various exemptions, such as the foreign business establishment exemption, related controlled foreign company party exemptions and the high-tax exemption. These exemptions seek to strike a balance between protecting the tax base and the need for South African multinational entities to be competitive.

The 2009 legislative amendments introduced the high-tax exemption for controlled foreign companies. The purpose of the high-tax exemption is to disregard all passive and diversionary controlled foreign company income if little or no South African tax is at stake once South African tax rebates are taken into account.

To qualify for high-tax exemption, the aggregate of foreign taxes payable by the controlled foreign company must be at least 75 per cent of the amount of South African tax that would have been imposed had the controlled foreign company been a South African taxpayer. In determining the aggregate of foreign taxes payable there should be taken into account the provisions of all applicable double tax agreements and any credit, rebate or other right of recovery of tax from a foreign government after disregarding any tax losses from other tax years or from other foreign companies.

#### **II. Reasons for change**

The structure of section 9D requires that the high-tax exemption be tested before the specific exclusions under subsection (9) are determined. As stated above, the high-tax exemption involves a hypothetical South African tax calculation based on the transactions of a controlled foreign company as if it had been a South African tax resident. If the actual foreign tax payable is at least 75% of the hypothetical South African normal tax, then no amount is taxed in the hands of the South Africa residents controlling the controlled foreign company under section 9D.

It is often an onerous exercise to establish whether the high-tax exemption applies if all amounts affecting the net income of the controlled foreign company are attributable to a foreign business establishment. For example, if a South African resident company controls more than 100 foreign subsidiaries, it would be difficult to establish whether a high-tax exemption applies if most of the income of these foreign subsidiaries is attributable to a foreign business establishment.

#### **III. Proposal**

In view of the above, it is proposed that the net income of a controlled foreign company be deemed to be nil if either the high-tax exemption or the foreign business establishment exclusion, when applied to aggregate taxable amounts, is met. The foreign business establishment will only be available if the controlled foreign company earned no passive or diversionary income which would otherwise constitute net income of the controlled foreign company.

#### **IV. Effective date**

The proposed amendment is deemed to have come into operation on 31 December 2014 and applies in respect of years of assessment ending on or after that date.

---

### **5.2. TRANSFER PRICING: SECONDARY ADJUSTMENTS**

[Applicable provision: Section 31]

#### **I. Background**

The transfer pricing rules apply arm's length principles to a transaction, operation, scheme, agreement or understanding that has been entered into between connected persons with terms and conditions that would not have applied between independent persons dealing at arm's length.

Prior to the 2011 legislative amendments, deemed dividend rules contained a provision relating to transfer pricing, in terms of which a deemed dividend arose from any additional taxable income (or reduced assessed loss) of a South African company stemming from a transfer pricing adjustment.

The 2011 legislative amendments introduced secondary adjustment rules in the form of a deemed loan. The deemed loan constitutes an affected transaction which implies that arm's length interest is to be calculated on the deemed loan. The accrued interest on the deemed loan is capitalised annually for the purposes of calculating the balance of the deemed loan. The deemed loan and the interest calculated on it is deemed to be payable until the amount is regarded as having been repaid to the taxpayer. The taxpayer is required to calculate and account for interest income at an arm's length rate on the deemed loan.

#### **II. Reasons for change**

Advanced tax systems make secondary adjustments in different forms such as deemed dividends, deemed equity contributions or deemed loans. According to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, "ordinarily, the secondary transactions will take the form of constructive dividends, constructive equity contributions, or constructive loans. For example a country making a primary adjustment to the income of a subsidiary of a foreign parent may treat the excess profits in the hands of the foreign parent as having been transferred as a dividend, in which case withholding tax may apply. It may be that the subsidiary paid an excessive transfer price to the foreign parent as a means of avoiding that withholding tax".

While the secondary adjustment is a well-established practice adopted by many countries, secondary adjustment in the form of a deemed loan is an administrative burden both for the taxpayer and the Revenue Administration. In practice, it is impossible for the foreign company to repay the loan and the deemed interest because the loan is a deemed loan and there are no contractual legal obligations supporting the settlement of the loan. It also creates difficulties in relation to the accounting treatment of the deemed loan and the relevant currency of the deemed loan and deemed interest.

Further, due to exchange control restrictions in the country of the connected person it may be impossible to repatriate the funds resulting in an ongoing interest charge for tax purposes.

### **III. Proposal**

In view of the above, it is proposed that the current form of the secondary adjustment be revised.

#### *A. Resident Companies*

The amount of the secondary adjustment will, in the case of a resident company and the other person to the affected transaction who is a person contemplated in paragraph (a)(i)(bb) (any other person that is not a resident), or a person contemplated in paragraph (a)(iii)(bb) (any other person that is a resident that has a permanent establishment outside South Africa), be deemed to be a dividend *in specie* paid by the resident company to that other person. The deemed dividend *in specie* will be deemed to have been declared and paid on the last day of a period of six months following the end of the year of assessment in which the adjustment is made. Therefore, where a South African subsidiary undercharges its foreign Parent company, the shortfall will be deemed to be a dividend *in specie* by the South African subsidiary to its Foreign Parent.

#### *B. Resident Natural Persons or Trusts*

The amount of secondary adjustment will, in the case of a resident natural person or a trust and the other person to the affected transaction who is a person contemplated in paragraph (a)(i)(bb) (any other person that is not a resident), or a person contemplated in paragraph (a)(iii)(bb) (any other person that is a resident that has a permanent establishment outside South Africa), be deemed to be a donation made by the resident natural person or trust to that other person. The deemed donation will be deemed to have been made by the resident natural person or trust on the last day of a period of six months following the end of the year of assessment in which the adjustment is made.

#### *C. Transitional Provisions: Existing Deemed Loans*

Deemed loans that are still in existence on the date of coming into operation of the provisions of the section or after 1 January 2015 will, in the case of a resident company be deemed to be a dividend *in specie* declared and paid, and in the case of a resident natural person or trust, will be deemed to be a donation.

#### **Example 1**

##### ***Facts:***

Foreign Parent company pays R65 million for goods provided by the South African subsidiary. The South African Subsidiary records taxable income based on the sale to its Foreign Parent. The arm's length price for the goods is in fact R100 million.

##### ***Result:***

A primary adjustment in terms of section 31 is effected, whereby the taxable income of the South African Subsidiary is increased to reflect the arm's length price of R100 million. The differential of R35 million

constitutes a deemed in specie dividend paid by the South African subsidiary to its Foreign Parent.

**Example 2**

***Facts:***

Foreign Sister company grants a R1 million loan to the taxpayer (a South African company). Foreign Sister company charges interest at a rate of 10 per cent, whereas the market related interest rate is 6 per cent. South African Company claims an interest deduction of R100 000.

***Result:***

SARS effects a primary adjustment in terms of section 31, whereby interest allowable as a deduction is reduced to the market related interest of R60 000. A secondary adjustment, in the form of a deemed dividend in specie paid to Foreign Sister company is triggered. Dividends tax is imposed on the R40 000 dividend deemed to have been paid by the South African company.

**IV. Effective date**

The proposed amendment will come into operation on 1 January 2015.

---

**5.3. CURRENCY OF REACQUISITION OF ASSETS OF PERSONS CEASING TO BE RESIDENT**

[Applicable provisions: Section 9H and paragraph 43(5) of the Eighth Schedule]

**I. Background**

Prior to 12 December 2013, assets of a taxpayer ceasing to be a South African tax resident were excluded from the exit charge if those assets consisted of direct or indirect interests of at least 20 per cent in an entity if 80 per cent of the market value of the interest in that entity is attributable to South African immovable property. The exit charge did not apply because these interests were assumed to remain within South Africa's taxing jurisdiction.

However, new rules deeming a person that ceases to be a South African resident to have disposed of all assets, including any interest in a property rich company on the day before ceasing to be a resident at market value and to have immediately reacquired those assets at an expenditure equal to that market value, became effective on 12 December 2013.

**II. Reasons for change**

The new rules deeming a person who ceases to be a South African resident to have disposed of and reacquired shares in a property owning company in South Africa do not state in which currency the reacquisition of these shares takes place. In this regard, clarity is required as this has an effect on the tax calculation when the reacquired shares are disposed of by the non-resident.

### **III. Proposal**

In view of the above, it is proposed where a person is deemed to have disposed of and reacquired shares in a property owning company in South Africa or a similar right to ownership or a vested interest in the assets of a trust, the currency in which the asset was actually acquired be deemed to be the currency of reacquisition.

#### **IV. Effective date**

The proposed amendment will come into operation on 1 January 2015.

---

## **6. VALUE ADDED TAX**

### **6.1. SECOND HAND GOODS – PRECIOUS METALS**

[Applicable Provision: Section 1(1) of the Value-Added Tax Act]

#### **I. Background**

In certain circumstances a vendor may acquire goods, not incur any VAT upon the acquisition of the goods, and yet still be entitled to claim a deduction of input tax in respect of the acquisition of the goods. A vendor who acquires second-hand goods, including goods made from precious metals, from a seller who is not a vendor, is entitled to claim a notional input tax deduction. This allows for the unlocking of part of the VAT on goods previously paid by final consumers as those goods re-enter the formal supply chain.

#### **II. Reasons for change**

While the acquisition of gold jewellery by VAT vendors from non-VAT vendors should allow for the deduction of notional input VAT, in practice this provision significantly contributes to creating an enabling environment to obtain fraudulent input tax deductions. Jewellery is smelted along with gold coins and illegally acquired raw gold.

#### **III. Proposal**

In order to address this problem, it is proposed that second-hand goods made from precious metals be excluded from obtaining the notional input tax.

#### **IV. Effective date**

The proposed amendment will come into operation on 1 April 2015.

---



## **6.2. DOCUMENTATION**

[[Applicable Provisions: Section 16(3)(a)(iii) and Section 16(3)(b)(ii)]

### **I. Background**

In the Taxation Laws Amendment Act 31 of 2013, the requirement for an importer to be in possession of a tax invoice prior to claiming the input tax credit was removed. Effectively, what remained was a requirement that the VAT on importation must be paid before the input tax may be claimed in the tax period in which the payment was made.

### **II. Reasons for change**

Vendors importing goods often arrange with SARS Customs to defer these payments. The 2013 amendment resulted in the input tax claim being potentially delayed by one or two months until the vendor has paid the full amount of the VAT on importation. This resulted in negative cash flow implications for the importer.

### **III. Proposal**

The proposal is that the requirement for payment to occur before the input tax deduction may be claimed, be deleted and replaced with a requirement that the importer prove that SARS Customs has released the goods in terms of the Customs and Excise Act.

The reason for including the requirement of a release by Customs is to prevent the deduction of input tax when the bill of entry/customs declaration is passed which could be done by the importer prior to the goods arriving in the Republic, i.e. this is the pre-clearance functionality offered by Customs. This will prevent pre-mature deductions and refunds of input tax.

### **IV. Effective date**

The proposed amendment will come into operation on 1 April 2015.

---

## **6.3. TAX INVOICES, DEBIT AND CREDIT NOTES**

[Applicable Provision: Section 54(1)]

### **I. Background**

Section 20(1) requires any registered vendor making taxable supplies to another person, to issue a tax invoice within 21 days of the date of the supply. Where an agent makes or receives a supply of goods or services for and on behalf of a principal (a registered vendor), who is resident in South Africa, the supply is deemed to be made by or to the principal and not by or to the agent. However, section 54(1) allows a VAT registered agent to issue a tax invoice in relation to that taxable supply made on behalf of the principal as if the agent had made a taxable supply.

However, there is no time limit stated in section 54 for the agent to issue a tax invoice. This results in an anomaly as the agent may take as long as he wants to issue a tax invoice that places the recipient of the supply in a difficult position by not having a valid tax invoice to deduct input tax.

## **II. Reasons for change**

Current provisions give rise to an anomaly in the requirements placed on the principal and agent to issue a tax invoice. As a result, the agent may take as long as he wants to issue a tax invoice that places the recipient of the supply in a difficult position by not having a valid tax invoice to deduct input tax.

## **III. Proposal**

To require agents making taxable supplies to issue a tax invoice within 21 days from the date of the supply.

## **IV. Effective date**

The proposed amendment will come into operation on 1 April 2015.

---

## **6.4. AGENTS**

[Applicable Provision: Section 54(3)]

### **I. Background**

Currently, any goods imported into the Republic by an agent (acting on behalf of the principal), is deemed to be made by the principal and not by the agent. The bill of entry or other document prescribed in terms of the Customs and Excise Act in relation to that importation may nevertheless be held by such agent.

However, the statement envisaged in section 54(3) only refers to supplies made by or to the agent on behalf of the principal but does not extend to the importation of goods. The particulars of the statement contemplated in paragraphs (e), (f) and (g) of section 20(4) does not include any particulars relating to the proof of payment.

### **II. Reasons for change**

There is currently uncertainty as to which documentation is acceptable to the Commissioner as proof of payment to entitle a principal to deduct input tax in respect of VAT paid on the importation of goods.

### **III. Proposal**

The statement envisaged in section 54(3) includes the importation of goods. Furthermore, the statement should include the receipt number for the payment of the tax in relation to the importation of the goods.

### **IV. Effective date**

The proposed amendment will come into operation on 1 April 2015.

---

## **6.5. CONTRACT PRICES**

[Applicable Provision: Section 67]

### **I. Background**

VAT is imposed on the supply of goods or services by a vendor in the course or furtherance of that vendor's enterprise. In this instance, a "vendor" includes a person who is liable to register under the VAT Act. Accordingly, a supplier making a supply of goods or services to the recipient, has a remedy to recover from the recipient an amount of VAT imposed on the supply subsequent to the conclusion of the agreement in terms of which the supply is made.

However, a person who was liable to register for VAT, but not so registered at the time of the agreement in respect of any supply of goods or services, and who fails to subsequently register and is now required to account for output tax on the supply in terms of the agreement cannot apply to recover the amount of VAT payable by him from the recipient of the supply. In this regard, VAT is technically imposed at the time of conclusion of the agreement and not subsequently. The consideration actually received by such vendor is deemed to have included VAT. An exception to this would be when the recipient of the supply has consented in writing, in the agreement, to reimbursing the vendor the VAT amount now due as output tax by the vendor.

### **II. Reasons for change**

These provisions are open to two contradictory interpretations as shown in a court case where it was ruled that vendors who were not registered as vendors at the time an agreement was concluded and who subsequently defaulted in not applying to be registered, are also entitled to the remedies provided in this section. This interpretation was not contemplated by the legislature.

### **III. Proposal**

It is recommended that section 67(1) be clarified as to specifically eliminate vendors that default to register under the VAT Act from applying the subsection.

### **IV. Effective date**

The proposed amendment will come into operation on 1 April 2015.

---

## **6.6. BARGAINING COUNCILS**

[Applicable Provision: Section 12(l)]

### **I. Background**

The supply of any goods and services provided by a bargaining council to its members, to the extent that the consideration for such supply consists of membership contributions, are exempt from VAT.

However, the bargaining councils also receive a fee for administering Funds such as Sick Pay, Leave Pay and Holiday Pay Funds on behalf of the employees in the industries. The

contributions to the Funds are made on behalf of the employees and are deposited into the bank accounts of the National Bargaining Council (NBC) which the council hold in trust (not registered trusts). The fee charged by the NBC for the administering of these Funds could be equal to the interest earned on the Funds. Any money that is not required for immediate use may be invested by the NBC in terms of the Labour Relations Act, 1995. The legal entitlement to the interest earned on invested income vests in the NBC in terms of a Main Collective Agreement.

## **II. Reasons for change**

There is currently no provision in the VAT Act to exempt the supply in respect of which contributions are made to these funds however, such funds should enjoy the same tax benefit as a “superannuation scheme”.

## **III. Proposal**

It is proposed that the exemption in terms of section 12(ℓ) be broadened to include the supply of goods and services by the Bargaining Council as required by section 28(1) of the Labour Relations Act, 1955.

## **IV. Effective date**

The proposed amendment will come into operation on 1 April 2015.

---

## **6.7. ZERO RATING OF GOODS FOR AGRICULTURAL, PASTORAL OR OTHER FARMING PURPOSES**

[Applicable Provision: Section 11(1)(g), Schedule 1 and Schedule 2, Part A]

### **I. Background**

Currently, the supply of goods used or consumed for agricultural, pastoral or other farming purposes, as are set forth in Part A of Schedule 2, are charged with tax at the rate of zero per cent. These goods may be supplied at the zero rate only if the recipient is a registered vendor who carries on agricultural, pastoral or other farming operations and is authorized by South African Revenue Service (SARS) to acquire the goods at the rate of zero per cent. This concession was intended to provide cash-flow relief to the agricultural sector.

### **II. Reasons for change**

There is strong evidence that substantiates that this provision is open to abuse as various entities (i.e. those with and without endorsement to acquire goods at the zero rate) have entered into activities to fraudulently obtain VAT input tax deduction.

#### **Example:**

Vendor A acquires goods from Vendor B at the zero rate, as Vendor A is in possession of a VAT103 (Notice of Registration) with the endorsement that it is entitled to acquire goods listed in Part A to Schedule 2 at the zero rate, in terms of section 11(1)(g).

Vendor A sells the same goods back to Vendor B at a lower rate per ton per commodity whilst charging VAT at the standard rate of 14%. This resulted in the refund to Vendor B and the refund is shared in proportions with Vendor A.

In addition to the above, Vendor B (in possession of a VAT103 that does not have an endorsement to acquire goods at the zero rate) would place huge orders at one of its suppliers, Vendor C, to supply goods at the zero rate to Vendor A. Vendor B would then, before the transaction is passed in the accounts of Vendor C, cancel the order but would request Vendor C to provide the paperwork and agreed to pay the penalty as set out in the penalty clause in the contract. Vendor B would continue with the transaction as if the original order for the commodities were never cancelled. Vendor A would in turn, generate paperwork supporting the sale of the said commodities back to Vendor B at the lower rate per ton per commodity, but charging VAT at the standard rate of 14%.

### **III. Proposal**

It is proposed that the zero rating of goods for agricultural, pastoral and other farming activities in section 11(1)(g) of the VAT Act be repealed.

### **IV. Effective date**

The proposed amendment will come into operation on a date determined by the Minister by notice in the Gazette, which notice may not be published earlier than 12 months after the promulgation of this Act.

---

## 7. CLAUSE BY CLAUSE

### INCOME TAX ACT 58 OF 1962

#### CLAUSE 1

Income Tax Act: Amendment to section 1

Sub clause (a): Amendment to paragraph (e)(iii) of the definition of 'company'. The definition of "REIT" requires an entity to be a company and thereby causes a circularity issue which will be solved by the proposed amendment. The proposed amendment comes into operation on 1 January 2015.

Sub clause (b) to (h): See notes on **DIVIDENDS TAX: CONTRIBUTED TAX CAPITAL REFINEMENTS**

Sub clause (i): Insertion of the definition of Estate Duty Act. In order to avoid repetition of the full citation of acts referred to in the Income Tax Act, it is proposed that the Estate Duty Act be defined.

Sub clause (j): Insertion of the definition of 'Financial Services Board' and 'Financial Services Board Act'. In order to avoid repetition of the full citation of the terms or acts used throughout the Act, it is proposed that 'Financial Services Board' and 'Financial Services Board Act' be defined.

Sub clause (k) & (l): See notes on **RESTRAINT OF TRADES RECEIPTS**

Sub clause (m): Amendment to the definition of 'post 1990 gold mine' is to bring it in line with the Mineral and Petroleum Resources Development Act. The term 'mining authority' was used in the Minerals Act, 1991 which was repealed and replaced by the Mineral and Petroleum Resources Development Act. The term 'mining authority' is not used in the Mineral and Petroleum Resources Development Act but the latter act requires that a mining permit must be granted before a mining company may commence operation. Paragraph (b) was therefore inserted to make provision for companies that acquired mining permits after 14 April 2004 in terms of the Mineral and Petroleum Resources Development Act. The proposed amendment is deemed to have come into operation on 1 May 2004.

Sub clause (n): See notes on **TAX TREATMENT OF ALLOWANCES IN RESPECT OF PUBLIC PRIVATE PARTNERSHIP**

Sub clause (o): Deletion of the definition of "regional electricity distributor". The system of regional electricity distributor has not been implemented and it elapsed on 1 January 2014.

Sub clause (p): See notes on **THE RETIREMENT FUND ACCRUAL DATE**

Sub clause (q): See notes on **THE RETIREMENT FUND ACCRUAL DATE**

Sub clause (r): Insertion of the definition of Share Blocks Control Act. In order to avoid repetition of the full citation of Acts referred to in the Income Tax Act, it is proposed that the Share Blocks Control Act be defined.

Sub clause (s): For the proposed amendments to the definitions of 'small business funding entity' and 'small medium or micro-sized enterprise', see notes on **TAX INCENTIVES FOR PROVISION OF FUNDING TO SMALL, MEDIUM OR MICRO ENTERPRISES**

## **CLAUSE 2**

Income Tax Act: Amendment to section 3

Sub clauses (a) and (b): Financial Services Board Act is defined with its full citation in section 1 of the Income Tax Act. The proposed amendments use the shortened version of the defined Financial Services Board Act, which is used throughout the Income Tax Act.

## **CLAUSE 3**

Income Tax Act: Amendment to section 6B

The proposed amendment corrects the alignment of the wording in section 6B(3)(c) to resolve the uncertainty regarding the interpretation of the provisions of that section. The proposed amendment is deemed to have come into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

## **CLAUSE 4**

Income Tax Act: Amendment to section 7

Section 37D(1)(d)(ii) of the Pensions Fund Act has been repealed and the essence of its contents is replaced by a newly inserted section 37D(1)(e). The proposed amendment aligns the Income Tax Act with the provisions of the Pensions Fund Act. The proposed amendment is deemed to have come into operation on 28 February 2014.

## **CLAUSE 5**

Income Tax Act: Amendment to section 8

Sub clause (a): The proposed amendment in sub clause (a) aims at ensuring gender-neutral language.

Sub clause (b): Section 14bis (Deductions in respect of aircrafts) was repealed by section 50 of Taxation Laws Amendment Act 31 of 2013. The proposed amendment in section 8(4) deletes paragraphs (g),(h),(i) and (j) which has reference to the repealed section 14bis. The proposed amendment is deemed to have come into operation on 12 December 2013.

Sub clause (c): The proposed amendment to Section 8(5)(b) aims to clarify that the "fair market value" for purposes of section 8(5) will be the "fair market value" as defined in section 1 of the Income Tax Act and not as determined by the Commissioner.

## **CLAUSE 6**

Income Tax Act: Amendment to section 8C

Section 9B (Circumstances in which certain amounts received or accrued in relation to disposal of listed shares are deemed to be of a capital nature) was repealed by section 17 of the Taxation

Laws Amendment Act 31 of 2013. The proposed amendment to section 8C(1)(a) deletes the reference to the repealed section 9B. The proposed amendment is deemed to have come into operation on 1 January 2013.

#### **CLAUSE 7**

Income Tax Act: Amendment to section 8EA

See notes on **THIRD PARTY BACKED SHARES: REVISION OF THE DEFINITION OF OPERATING COMPANY** and **THIRD PARTY BACKED SHARES: PREFERENCE SHARE REFINEMENT ON GUARANTEES**

#### **CLAUSE 8**

Income Tax Act: Amendment to section 8F

The proposed amendment to section 8F(2)(b) replaces the word “accrues” by the following words “declared and paid”. The amendment clarifies that the deemed dividend in specie is declared and paid to the person on the last day of the year of assessment of the company that owes the debt. The proposed amendment is deemed to have come into operation on 1 April 2014 and applies in respect of amounts incurred on or after that date.

#### **CLAUSE 9**

Income Tax Act: Amendment to section 8FA

The proposed amendment to section 8FA(2)(b) replaces the word “accrues” by the following words “declared and paid”. The amendment clarifies that the deemed dividend in specie is declared and paid to the person on the last day of the year of assessment of the company that owes the debt. The proposed amendment is deemed to have come into operation on 1 April 2014 and applies in respect of amounts incurred on or after that date.

#### **CLAUSE 10**

Tax Act: Amendment to section 9

The proposed amendments to sections 9(2)(i) and 9(3) align the treatment of lump sum payments to the treatment of pension and annuity payments. The proposed amendments come into operation on 1 March 2015 and apply in respect of years of assessment commencing on or after that date.

#### **CLAUSE 11**

Tax Act: Amendment to section 9C

Share Blocks Control Act is defined with its full citation in section 1 of the Income Tax Act. The proposed amendment in paragraph (a) of the definition of a qualifying share in section 9C(1) uses the shortened version of the defined Share Blocks Control Act, which is used throughout the Act.



## CLAUSE 12

Income Tax Act: Amendment to section 9D

Sub clause (a): The deletion of the definition of “foreign financial instrument holding company” is proposed because the defined term is no longer used in the provisions of the Income Tax Act.

Sub clause (b): See notes on **SIMPLIFIED FOREIGN BUSINESS ESTABLISHMENT EXEMPTION FOR CONTROLLED FOREIGN COMPANIES**

## CLAUSE 13

Income Tax Act: Amendment to section 9H

Sub clause (a): The proposed amendment clarifies that section 9H does not apply to a company that ceases to be a Controlled Foreign Company due to an amalgamation or a liquidation as defined in sections 44 and 47 of the Income Tax Act. The proposed amendment is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Sub clause (b): See notes on **CURRENCY OF REACQUISITION OF ASSETS OF PERSONS CEASING TO BE RESIDENT**

## CLAUSE 14

Income Tax Act: Amendment to section 10

Sub clause (a): See notes on **TAX INCENTIVES FOR PROVISION OF FUNDING TO SMALL MEDIUM AND MICRO ENTERPRISES**

Sub clause (b): Share Blocks Control Act is defined with its full citation in section 1 of the Income Tax Act. The proposed amendment in section 10(1)(e)(i)(bb) uses the shortened version of the defined Share Blocks Control Act, which is used throughout the Act.

Sub clause (c): The proposed amendment to subsection (1)(gC)(ii) aligns the treatment of lump sum payments to the treatment of pension and annuity payments. The proposed amendment comes into operation on 1 March 2015 and applies in respect of years of assessment commencing on or after that date.

Sub clause (d): The proposed amendments to subsection (1)(gI)(ii) replace the following words “severe illness” by the word “illness” since the term illness includes both concepts. The proposed amendments also include employer provided disability policies. The proposed amendments come into operation on 1 March 2015 and apply in respect of years of assessment commencing on or after that date.

Sub clause (e): Amendment to subsection (1)(j)(i) See notes on **EXEMPTION OF AMOUNTS RECEIVED OR ACCRUED IN RESPECT OF TAX FREE INVESTMENTS**

Sub clause (f): The proposed amendment to subsection (1)(iB) corrects an incorrect reference to section 25BA(b) by replacing it with section 25BA(1)(b) and clarify the wording. The proposed amendment comes into operation on 1 March 2015 and applies in respect of amounts received or accrued on or after that date.

Sub clause (g): The proposed amendment to subsection (1)(k)(gg) addresses an anomaly between subsections (1)(k)(gg) and (ff) of the Income Tax Act. An anomaly arises between subsection (1)(k)(gg) and (ff) in a case where a company earns dividends on shares held as well as on shares borrowed but not delivered to the market under a short sale by the time the dividend accrues. The dividend on the borrowed shares will be taxed under paragraph (ff) and the dividend on the other shares will be taxable to the extent of the manufactured dividend incurred on the borrowed shares. Paragraph (gg) was only supposed to address the situation where shares are held long and a short sale has been entered into.

**Example:**

The borrower of shares is holding them when a dividend accrues. That dividend is income in terms of paragraph (ff). The borrower is already the owner of 10 of the same kind and quality shares as 10 shares borrowed and delivered in the market under a short sale. Under paragraph (gg) the dividend accrued on the shares owned is income to the extent of the manufactured dividend incurred in respect of the borrowed shares as the borrower has no net exposure to shares. If a borrower is already the owner of 10 of the same kind and quality shares as 10 shares borrowed and also held at the time of accrual of the dividend, the current version of paragraph (gg) has the effect that the dividends on all 20 shares will be income. As the borrower still has the full economic interest in the shares owned, the dividend in respect of those shares should not be deemed to be income.

The proposed amendment is deemed to have come into operation on 1 April 2014 and applies in respect of amounts received or accrued during years of assessment commencing on or after that date.

Sub clause (h): In 2013, subsection (1)(k)(hh) was introduced to counter mismatches from various dividends/derivatives mismatches. As a result, dividends received or accrued to a company will no longer be exempt if used as an offset against deductible financial payments, for example dividend amount applied to cover a deductible payment owed in respect of a share derivative. The proposed amendment to subsection (1)(k)(hh) seeks to clarify the provision of this subsection and also makes provision for taking into account amounts that has the effect of reducing income of a covered person, as defined in section 24JB.

Sub clause (i): The proposed amendment to subsection 1(l) seeks to clarify that there must be a link between the intellectual property or knowledge or information in respect of which the royalty payment is made and the permanent establishment of the non-resident. The proposed amendment also replaces the word “accrued” by the word “accrues” as matter of writing style consistency. The proposed amendment comes into operation on 1 January 2015 and applies in respect of royalties that are paid or become due and payable on or after that date.

Sub clause (j): The proposed amendment deletes subparagraph (viii) of subsection (1)(t) dealing with regional electricity distributor as the system of regional electricity distributor has not been implemented and elapsed on 1 January 2014.

Sub clause (k): See notes on **TAX TREATMENT OF ALLOWANCES IN RESPECT OF PUBLIC PRIVATE PARTNERSHIP**

Sub clause (l): See notes on **EXEMPTION OF GRATUITOUS FUNDING IN THE HANDS OF SMALL MEDIUM AND MICRO ENTERPRISES**

## CLAUSE 15

Income Tax Act: Amendment to section 10B

The proposed amendment makes provision for a risk policy fund inserted in section 29A. The proposed amendment comes into operation on 1 January 2016. See notes on **LONG TERM INSURERS: TAX TREATMENT OF RISK BUSINESS OF LONG TERM INSURERS.**

## CLAUSE 16

Income Tax Act: Amendment to section 10C

The proposed amendments includes in the definition of “compulsory annuity” in section 10C of the Income Tax Act, amount of the remainder of the retirement interest of a person payable in the form of an annuity as contemplated in paragraph(e) of the definition of provident preservation fund. The proposed amendment will also allow non-deductible contributions to be deducted from the taxable income arising from the annuity. The proposed amendments come into operation on 1 March 2016.

## CLAUSE 17

Income Tax Act: Amendment to section 11

Sub clause (a): The proposed amendment to paragraph(i) is grammatical and replaces the word “have” by the word “has”.

Sub clause (b): For the deletion of paragraph (w)(ii)(cc) see notes on **CLARIFICATION OF THE LOSS REQUIREMENT IN RESPECT OF KEYPERSON INSURANCE POLICIES**

## CLAUSE 18

Income Tax Act: Amendment to section 11D

See notes on **REVISION OF THE RESEARCH AND DEVELOPMENT INCENTIVE**

## CLAUSE 19

Income Tax Act: Amendment to section 12D

See notes on **REFINEMENT OF ALLOWANCES IN RESPECT OF TELEPHONE LINES OR CABLES USED FOR THE TRANSMISSION OF ELECTRONIC COMMUNICATIONS**

## CLAUSE 20

Income Tax Act: Amendment to section 12E

In 2013, the term “shareholder of a company” was changed to “holder of shares in a company”. The proposed amendment in subsection (4)(a)(ii) aligns the wording accordingly.

## CLAUSE 21

Income Tax Act: Amendment to section 12H

Section 18 (Deduction in respect of medical and dental expenses) was repealed by section 51(1) of Taxation Laws Amendment Act, 2013. The term disability which was defined in the repealed section 18(3) is now defined in section 6B(1). The proposed amendment to section 12H(5) replaces the reference to the repealed section 18(3) by section 6B(1). The proposed amendment is deemed to have come into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

## CLAUSE 22

Income Tax Act: Amendment to section 12I

See notes on **REFINEMENT OF ALLOWANCES IN RESPECT OF INDUSTRIAL POLICY PROJECT INCENTIVE**

## CLAUSE 23

Income Tax Act: Amendment to section 12J

Sub clause (a): The proposed amendment in subsection (3)(b)(ii) seeks to clarify the wording.

Sub clauses (b) to (d): See notes on **CLARIFICATIONS ON THE VENTURE CAPITAL REGIME**

Sub clause (e): See notes on **BROADNING THE SCOPE OF VENTURE CAPITAL REGIME**

## CLAUSE 24

Income Tax Act: Amendment to section 12N

Section 12N applies in respect of a right of use or occupation granted to a private party in terms of a Public Private Partnership (PPP) on or after 2 November 2010 and treats a qualifying taxpayer (private party) that effects an improvement on land or building in terms of a PPP as if it owns the land and buildings in respect of which the improvements were made. Provided the requirements of section 12N are met, the private party to a PPP may claim allowances in terms of sections 11D, 12B, 12D, 12F, 12I, 12S, 13, 13bis, 13ter, 13quat, 13quin, 13sex or 36. The proposed amendment extends the list of allowances that may be claimed by the private party in terms of section 12N by adding section 12C. The proposed amendment is deemed to have come into operation on 1 January 2013 and applies in respect of expenditure incurred to effect improvements during any year of assessment commencing on or after that date.

## CLAUSE 25

Income Tax Act: Insertion of section 12NA

See notes on **TAX TREATMENT OF ALLOWANCES IN RESPECT OF PUBLIC PRIVATE PARTNERSHIP**

## CLAUSE 26

Income Tax Act: Amendment to section 12R

See notes on **REFINEMENTS OF SPECIAL ECONOMIC ZONE TAX INCENTIVE PROVISIONS**

## CLAUSE 27

Income Tax Act: Amendment to section 12S

See notes on **REFINEMENTS OF SPECIAL ECONOMIC ZONE TAX INCENTIVE PROVISIONS**

## CLAUSE 28

Income Tax Act: Insertion of section 12T

See notes on **EXEMPTION OF AMOUNTS RECEIVED OR ACCRUED IN RESPECT OF TAX FREE INVESTMENTS**

## CLAUSE 29

Income Tax Act: Amendment to section 18A

See notes on **PUBLIC BENEFIT ORGANISATIONS: LOWERING OF THE DISTRIBUTION REQUIREMENT OF TAX DEDUCTIBLE DONATIONS**

## CLAUSE 30

Income Tax Act: Amendment to section 19

Estate Duty Act is defined with its full citation in section 1 of the Income Tax Act. The proposed amendment in section 19(8)(a)(iii) uses the shortened version of the defined Estate Duty Act, which is used throughout the Act.

## CLAUSE 31

Income Tax Act: Amendment to section 20

Paragraph (i) of the proviso to section 20(1)(a) was inadvertently deleted by the Taxation Laws Amendment Act of 2012. The proposed amendment corrects the mistake by adding in subsection (1) to paragraph (a) of the proviso to the effect that no person whose estate has been voluntarily or compulsorily sequestered shall be entitled to carry forward any assessed loss incurred prior to the date of sequestration. Unless the order of sequestration has been set aside, in which case the amount to be so carried forward shall be reduced by an amount which was allowed to be set off against the income of the insolvent estate of such person from the carrying on of any trade. Without the addition of this proviso, both the insolvent estate (through section 25C) and the person after sequestration are entitled to the pre-sequestration assessed loss. The proposed amendment is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

## **CLAUSE 32**

Income Tax Act: Amendment to section 22

Sub clause (a): The proposed amendment to subsection (3)(a)(i) removes the Commissioner's discretion in determining the cost of trading stock in terms of this section, by deleting the reference to the provisions of paragraph (b). It proposes that IFRS should be used in determining the cost of trading stock in terms of this section.

Sub clause (b): The proposed amendment deletes paragraph (b) of subsection (3) as this paragraph makes provision for the Commissioner's discretion.

## **CLAUSE 33**

Income Tax Act: Amendment to section 23

In 2013, amendments were made to section 23(r) to clarify that a natural person that pays the premiums that cover him or her against death, disability, severe illness, unemployment may not claim the deduction in respect of the premiums but the employer of the natural person may deduct the premiums if it is paid by the employer. The proposed amendment to section 23(r) replaces the following words "severe illness" by the word "illness" since the term illness includes both concepts. The proposed amendment comes into operation on 1 March 2015 and applies in respect of years of assessment commencing on or after that date.

## **CLAUSE 34**

Income Tax Act: Amendment to section 23B

Given that there is currently one provision (which is section 11D), rather than two, for the research and development deduction, the exception to preventing double deductions in respect of research and development contained within section 23B(4) has become redundant. It is proposed that subsection (4) of section 23B should be deleted. The proposed amendment is deemed to have come into operation on 1 January 2014 and applies in respect of expenditure incurred in respect of research and development on or after that date, but before 1 October 2022.

## **CLAUSE 35**

Income Tax Act: Amendment to section 23H

Section 23H deals with the limiting and spreading of certain expenditure and refers to section 11D. Section 11D should not be subject to limitation. It is proposed that section 23H be amended to remove the reference to Section 11D. The proposed amendment is deemed to have come into operation on 1 October 2012.

## **CLAUSE 36**

Income Tax Act: Amendment to section 23I

The proposed amendments to section 23I replace "commas" with "or" to ensure that the writing style is consistent with other sections in the Act. .

## **CLAUSE 37**

Income Tax Act: Amendment to section 23M

See notes on **DEDUCTIBLE INTEREST LIMITATION IN RESPECT OF DEBTS OWED TO PERSON NOT SUBJECT TO TAX**

## **CLAUSE 38**

Income Tax Act: Amendment to section 23N

See notes on **DEDUCTIBLE INTEREST LIMITATION IN RESPECT OF REORGANISATION AND ACQUISITION TRANSACTIONS**

## **CLAUSE 39**

Income Tax Act: Insertion of section 23O

See notes on **EXEMPTION OF GRATUITOUS FUNDING IN THE HANDS OF SMALL, MEDIUM OR MICRO ENTERPRISES**

## **CLAUSE 40**

Income Tax Act: Amendment to section 24I

The proposed amendment to paragraph (a) of section 24I(10A) removes the reference to the repealed subsection (7A) as subsection (7A) was deleted by section 68 (1) (g) of Taxation Laws Amendment Act, 2013.

The proposed amendment at the end of paragraph (a)(ii)(aa) of section 24I(10A) replaces the word “or” by the word “and” as the use of the word “or” gives the provision a wider application than was intended and has the result that the deferral could apply where the full amount of the exchange item is reflected as current.

The proposed insertion of the words “or any portion thereof” at the beginning of subparagraph (ii) of section 24I(10A)(a) is to clarify that section 24I(10A) apply to the entire loan, provided that a portion of the loan is classified as a long term loan.

## **CLAUSE 41**

Income Tax Act: Amendment to section 24J

Sub clause (a): See notes on **AMENDMENT OF DEFINITION OF INSTRUMENT**

Sub clauses (b) and (c): The proposed amendment to section 24J(9)(g) and 24J(9A)(b) aligns the date in respect of covered persons with the date on which section 24JB came into operation. The proposed amendment is deemed to have come into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

## **CLAUSE 42**

Income Tax Act: Amendment to section 24JA

See notes on **REVISION OF SHARIA COMPLAINT FINANCIAL ARRANGEMENTS**

### **CLAUSE 43**

Income Tax Act: Amendment to section 24JB

Sub clause (a): The proposed amendment to the heading replaces the term “fair value taxation” by the term “taxation” and the term “instruments” by the term “assets and liabilities of certain persons”. The proposed amendment is deemed to have come into operation on 1 January 2014 and applies in respect of years of assessment ending on or after that date.

Sub clause (b): It is proposed that the definition of “financial instrument” in subsection (1) be deleted. This is a consequential amendment as a result of replacing of the term “instruments” by the term “assets and liabilities of certain persons” in the heading of section 24JB. The proposed amendment is deemed to have come into operation on 1 January 2014 and applies in respect of years of assessment ending on or after that date.

Sub clause (c) to (e): See notes on **REVISION OF FAIR VALUE TAXATION IN RESPECT OF FINANCIAL ASSETS AND LIABILITIES**

Sub clause (g): It is proposed that paragraph (a) of subsection (4) be amended by replacing the word “instrument” by the words “asset or financial liability”. This is a consequential amendment as a result of replacing of the term “instruments” by the term “assets and liabilities of certain persons” in the heading of section 24JB. The proposed amendment is deemed to have come into operation on 1 January 2014 and applies in respect of years of assessment ending on or after that date.

Sub clause (f): The proposed amendment to subsection (3) clarifies that an amount required to be taken into account in determining the taxable income in respect of financial instruments that fall within the ambit of section 24JB and in terms of an provisions of Part I of Chapter II of the Income Tax Act, must only be taken into account in terms of section 24JB. The proposed amendment is deemed to have come into operation on 1 January 2014 and applies in respect of years of assessment ending on or after that date.

Sub clause (h) and (i): The proposed amendments to subsection (6)(a)(i) &(ii) and subsection 6(b)(i)&(ii) are for clarification purposes and replace the words “taken into account under” by the words “of a nature as described in.” The proposed amendment is deemed to have come into operation on 1 January 2014 and applies in respect of years of assessment ending on or after that date.

### **CLAUSE 44**

Income Tax Act: Insertion of section 24P

Section 14 (Deductions in respect of ships) was repealed by section 49 of Taxation Laws Amendment Act, 2013. Paragraph (1) (c) of the repealed section 14 made provision for deductions in respect of future repairs to certain ships. The proposed new section 24P (Allowance in respect of future repairs to certain ships) seeks to reinstate paragraph (1) (c) of section 14, which was inadvertently deleted in 2013. The proposed amendment is deemed to have come into operation on 12 December 2013.



## **CLAUSE 45**

Income Tax Act: Amendment to section 25BB

Sub clause (a): See note on **REFINEMENT OF REAL ESTATE INVESTMENT TRUSTS (REITS)**

Sub clause (b): The proposed amendment to subsection (5) inserts the word 'aggregate' before the words 'capital loss' to ensure consistency with the provisions of this section. The proposed amendment is deemed to have come into operation on 1 April 2013 and applies in respect of years of assessment commencing on or after that date.

Sub clause (c): The proposed amendment to subsection 5(a) clarifies that the capital gains tax exemption will only apply to immovable property of a company that is a REIT or controlled company at the time of the disposal of the immovable property. The proposed amendment comes into operation on the date of promulgation of the 2014 Taxation Laws Amendment Act and applies in respect of years of assessment ending on or after that date.

Sub clause (d): The proposed amendment to subsection (6)(a) clarifies that a linked unit envisaged in that paragraph is a linked unit in a REIT or a controlled company. The proposed amendment is deemed to have come into operation on 1 April 2013 and applies in respect of years of assessment commencing on or after that date.

Sub clause (e): The proposed amendment to subsection 6(b) clarifies that a linked unit envisaged in that paragraph is a linked unit in a REIT or a controlled company that is a resident, and that the interest received must be deemed to be a dividend or foreign dividend. Where a controlled company is not a resident, the controlled foreign company rules in section 9D can apply in which case the REIT will be taxed on a percentage of the income of the CFC. The proposed amendment is deemed to have come into operation on 1 April 2013 and applies in respect of years of assessment commencing on or after that date.

Sub clause (f): In 2013, the term "shareholder of a company" was changed to "holder of shares in a company". The proposed amendment to subsection 8(b) replaces the term "shareholder" by the term "holder of shares in the REIT" to bring the wording in line with the wording used in the Income Tax Act. The proposed amendment is deemed to have come into operation on 1 April 2013 and apply in respect of years of assessment commencing on or after that date.

## **CLAUSE 46**

Income Tax Act: Amendment to section 25D

The purpose of the amendments to subsections (6) and (7) is to ensure that there is a provision for the translation of the functional currency to the currency of the Republic if the functional currency is not a currency that is denominated in Rand. The proposed amendment is deemed to have come into operation on 1 April 2014 and applies in respect of years of assessment commencing on or after that date.

## **CLAUSE 47**

Income Tax Act: Amendment to section 29A

Sub clauses (a), (b), (d), (e), (f), (h), (i),(j), (k), (l), (m), (o), (p), (q), (r), (t) and (u): See notes on **LONG TERM INSURERS: TAX TREATMENT OF RISK BUSINESS OF LONG TERM INSURERS**

Sub clause (c): The definition of 'value of liabilities' in subsection (1) has been amended to bring it in line with amendments to the Financial Services Board Act and to make provision for the risk policy fund inserted in terms of this section. The proposed amendments come into operation on 1 January 2016 and apply in respect of years of assessment commencing on or after that date.

Sub clause (g): The proposed amendment ensures that policies that fall under tax free investments as contemplated in section 12T will be placed in the untaxed policyholder fund. The proposed amendment comes into operation on 1 March 2015.

Sub clause (n): The proposed amendments to the formula in subsection (11)(a)(ii)(bb) is to clarify the wording. In its current form, the formula in subsection (11)(a)(ii) does not give the right result because the unrealised gains for the year are added in the denominator under DD of symbol Z, the hypothetical taxable amount must be excluded from symbol X by deleting DD in X under the current legislation. The formula must be amended by adding numerator U. Numerator U is equal to the CGT inclusion rate applicable to the fund multiplied by the amount in DD under symbol Z. In symbol X a new DD must be added to avoid a circular calculation with regard to subparagraph (iii). The proposed amendments are deemed to have come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date.

Sub clause (s): Proviso to section 29A(11)(g): See notes on **LONG-TERM INSURERS: AVOIDANCE OF UNWARRANTED RELIEF FROM ONGOING TAXATION IN RESPECT OF FOREIGN REINSURANCE**

#### **CLAUSE 48**

Income Tax Act: Amendment to section 30

Section 30(4) was intended as a transitional measure for public benefit organisations which could not amend their founding documents. Public benefit organisations which could not amend their founding documents were required in terms of this section to furnish SARS with the written undertaking that they will be administered in compliance with the provisions of this section. The proposed amendments to section 30(4) make provision for the submission of a written undertaking to remain in respect of a branch of a foreign organisation, which does not have a separate founding document relating to its activities in the Republic, and a trust established in terms of the last will of a natural person, which cannot be amended.

#### **CLAUSE 49**

Income Tax Act: Amendment to section 30C

See notes on **TAX INCENTIVES FOR PROVISION OF FUNDING TO SMALL MEDIUM AND MICRO ENTERPRISES**

#### **CLAUSE 50**

Income Tax Act: Amendment to section 31

Sub clause (a): See notes on **TRANSFER PRICING: SECONDARY ADJUSTMENTS**

Sub clause (b): The insertion of paragraph (d) in subsection (7) proposes an additional test that requires no interest to have been charged on the debt during the year of assessment. The debt will be tested annually to determine whether it meets the requirements for tax relief.

#### **CLAUSE 51**

Income Tax Act: Amendments to section 36

The proposed amendment to the definition of “capital expenditure” in subsection (11)(c)(aa)(B) replaces the terms ‘prospecting right’, ‘exploration right or production right’ and ‘retention permit’ by the term “mining right” as these terms are not used in the Mineral and Petroleum Resources Development Act. This is to align the provisions of Income Tax Act with the provisions of Mineral and Petroleum Resources Development Act. The proposed amendment is deemed to have come into operation on 1 May 2004.

#### **CLAUSE 52**

Income Tax Act: Amendment to section 37C

See notes on **REVISION OF ALLOWANCE IN RESPECT OF ENVIRONMENTAL CONSERVATION IN RESPECT OF NATURE RESERVES OR NATIONAL PARKS**

#### **CLAUSE 53**

Income Tax Act: Amendment to section 37D

See notes on **REVISION OF ALLOWANCE IN RESPECT OF ENVIRONMENTAL CONSERVATION IN RESPECT OF NATURE RESERVES OR NATIONAL PARKS**

#### **CLAUSE 54**

Income Tax Act: Amendment to section 41

Sub clause (a): The amendment proposes to delete in subsection (1) the definitions of “associated group of companies”, “domestic financial instrument holding company”, “foreign financial instrument holding company” and “prescribed proportion”. The terms are no longer used in the Income Tax Act and the definitions have become obsolete.

Sub clause (b): The proposed amendment to subsection (1) rectifies the wording of the definition of “trading stock”.

#### **CLAUSE 55**

Income Tax Act: Amendment to section 42

Sub clause (a): The amendment to subsection (6)(a)(i) proposes to rectify a cross-reference to ‘qualifying interest’. The proposed amendment is deemed to have come into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

Sub clause (b): The proposed amendment to subsection (7)(b)(i) moves the words of the proviso into the text of the subparagraph to improve the structure of the subsection.

## **CLAUSE 56**

Income Tax Act: Amendment to section 43

Subsection (3) was deleted with effect from 4 July 2013. The proposed amendment to subsection (4)(b)(i) deletes the reference to the repealed subsection (3).

## **CLAUSE 57**

Income Tax Act: Amendments to section 44

The proposed amendments to subsection (1)(a) and (b) allow the amalgamated company to retain assets to satisfy anticipated liabilities as well as the cost of administration relating to liquidation or winding-up of the amalgamated company.

## **CLAUSE 58**

Income Tax Act: Amendments to section 46

The proposed new subsection (6A) provides that section 46 does not apply in respect of an unbundling transaction if a REIT or controlled company as defined in section 25BB is the unbundling company.

## **CLAUSE 59**

Income Tax Act: Amendments to section 47

The proposed amendment to subsection (1)(a) allows the liquidating company to retain assets to satisfy anticipated liabilities as well as the cost of administration relating to liquidation or winding-up of the liquidating company.

## **CLAUSE 60**

Income Tax Act: Amendments to section 49D

The proposed amendment seeks to clarify that there must be a link between the property in respect of which the royalty payment is made and the permanent establishment of a non-resident and that the non-resident person must be registered as a taxpayer in South Africa. The proposed amendment is deemed to have come into operation on 1 July 2013 and applies in respect of royalties that are paid or become due and payable on or after that date and in respect of which an exemption under section 49D has not been granted.

## **CLAUSE 61**

Income Tax Act: Amendments to section 49E

The proposed amendment replaces the word “royalty” by the term “amount of royalties” and further clarifies the wording in the section. The proposed amendment is deemed to have come into operation on 1 July 2013 and applies in respect of royalties that are paid or become due and payable on or after that date and in respect of which withholding tax on royalties has not been withheld under section 49E.

## **CLAUSE 62**

Income Tax Act: Amendments to section 49F

The proposed amendment replaces the word “royalty” by the term “amount of royalties” and also clarifies that the person who withholds tax on royalties must submit a return to SARS. The proposed amendments come into operation on 1 January 2015 and apply in respect of royalties that are paid or become due and payable on or after that date on which this Act comes into operation.

## **CLAUSE 63**

Income Tax Act: Insertion of section 49H

The proposed amendment makes provision for the royalty regime to contain currency translation rules. The amendment makes provision for the amount of royalties to be translated to the currency of the Republic at the spot rate on the earlier of the date on which the amount of royalties is paid or becomes payable. The proposed amendment is deemed to have come into operation on 1 July 2013 and applies in respect of royalties that are paid or become due and payable on or after that date on which this Act comes into operation.

## **CLAUSE 64**

Amendment to section 50A

The proposed amendment to the definition of a “bank” in subsection (1)(a) clarifies that a South African branch of a foreign bank is exempt from withholding tax on interest.

## **CLAUSE 65**

Income Tax Act: Amendment to section 50E

The proposed amendment clarifies that the rate at which withholding tax on interest must be withheld is the same as the rate at which the withholding tax on interest is imposed in section 50B(1). The proposed amendment comes into operation on 1 January 2015 and applies in respect of interest that is paid or that becomes due and payable on or after that date.

## **CLAUSE 66**

Income Tax Act: Amendment to section 51A

The proposed amendment to the definition of “service fees” in section 51A is grammatical and replaces the word “accrued” by the word “accrues”. The proposed amendment comes into operation on 1 January 2016 and applies in respect of service fees that are paid or become due and payable on or after that date.

## **CLAUSE 67**

Income Tax Act: Amendment to section 56

Subsection (1)(h) has been amended to exempt donation to or by small business funding entities from donations tax. The proposed amendment comes into operation on 1 March 2015

and applies in respect of donations made on or after that date. See notes on **TAX INCENTIVES FOR PROVISION OF FUNDING TO SMALL MEDIUM AND MICRO ENTERPRISES**

#### **CLAUSE 68**

Income Tax Act: Repeal of Part VII of Chapter II of Act 58 of 1962

The Secondary Tax on Companies was replaced by the Dividends Tax. The amendment proposes the repeal of Part VII of Chapter II of Act 58 of 1962 since the Secondary Tax on Companies has been replaced by the Dividends Tax. The proposed amendment comes into operation on 1 April 2017.

#### **CLAUSE 69**

Income Tax Act: Amendment to section 64EB

Sub clause (a): The proposed amendment to subsection (2)(a)(ii) brings the wording in line with other provisions of the Income Tax Act. The proposed amendment is deemed to have come into operation on 4 July 2013 and applies in respect of amounts paid on or after that date.

Sub clause (b): See notes on **TAX INCENTIVE FOR PROVISION OF FUNDING TO SMALL MEDIUM AND MICRO ENTERPRISES**

Sub clause (c): The proposed amendments to subsection (2)(b) deem a manufactured dividend paid from the borrower to the lender to be a dividend and that the deemed dividend is deemed to have been paid by the borrower. The proposed amendment is deemed to have come into operation on 4 July 2013 and applies in respect of amounts paid on or after that date.

#### **CLAUSE 70**

Income Tax Act: Amendment to section 64F

Sub clause (a): The proposed amendment to subsection (1)(b) brings the wording in line with other provisions of the Income Tax Act.

Sub clause (b): See notes on **TAX INCENTIVES FOR PROVISION OF FUNDING TO SMALL MEDIUM AND MICRO ENTERPRISES**

Sub clause (c): See notes on **EXEMPTION OF AMOUNTS RECEIVED OR ACCRUED IN RESPECT OF TAX FREE INVESTMENTS**

#### **CLAUSE 71**

Income Tax Act: Amendment to paragraph 4 of the Second Schedule

The proposed amendment deletes item (d) of subparagraph (1). The proposed amendment comes into operation on 1 March 2015. See notes on **THE RETIREMENT FUND ACCRUAL DATE**

#### **CLAUSE 72**

Income Tax Act: Amendment to paragraph 9 of the Sixth Schedule

The proposed amendment deletes subparagraph (3) of paragraph 9. It is proposed that the rule that a registered micro business may only voluntarily deregister after a period of at least 3 years be deleted. It no longer serves the purpose of limiting the taxpayer from moving out of and into the turnover tax system depending on the tax payable for a specific year. Paragraph 8(3) of the Sixth Schedule currently does not allow a person who deregistered as a micro business from again entering the turnover tax system.

#### **CLAUSE 73**

Income Tax Act: Amendment to paragraph 1 of the Seventh Schedule

See notes on **VALUATION OF FRINGE BENEFIT FOR DEFINED BENEFIT CONTRIBUTION**

#### **CLAUSE 74**

Income Tax Act: Amendment to paragraph 5 of the Seventh Schedule

The proposed amendment to subparagraph (3A) replaces the word “and” at the end of item (b) by the word “or”. The proposed amendment clarifies that subparagraph (3A) must not apply if one of the conditions in item (a), (b) or (c) are met. The proposed amendment is deemed to have come into operation on 1 March 2014 and applies in respect of immovable property acquired on or after that date.

#### **CLAUSE 75**

Income Tax Act: Amendment to paragraph 7 of the Seventh Schedule

See notes on **VALUATION OF COMPANY CAR FRINGE BENEFIT**

#### **CLAUSE 76**

Income Tax Act: Amendment to paragraph 9 of the Seventh Schedule

See notes on **VALUATION OF FRINGE BENEFIT FOR EMPLOYER PROVIDED RENTAL ACCOMODATION**

#### **CLAUSE 77**

Income Tax Act: Amendment to paragraph 12D of the Seventh Schedule

See notes on **VALUATION OF FRINGE BENEFIT FOR DEFINED BENEFIT CONTRIBUTIONS**

#### **CLAUSE 78**

Income Tax Act: Amendment to paragraph 1 of the Eighth Schedule

The Securities Services Act, 2004 was replaced by the Financial Markets Act. The proposed amendment to the definition of “recognised exchange” in paragraph (a) replaces the reference to “The Securities Services Act, 2004” by the reference to “the Financial Markets Act, 2012 (Act No 9 of 2012)”. The proposed amendment is deemed to have come into operation on 3 June 2013.

## CLAUSE 79

Income Tax Act: Amendment to paragraph 10 of the Eighth Schedule

The proposed amendment to subparagraph (b) makes provision for the risk policy fund inserted in section 29A. The proposed amendment comes into operation on 1 January 2016. See notes on **LONG TERM INSURERS: TAX TREATMENT OF RISK BUSINESS OF LONG TERM INSURERS**

## CLAUSE 80

Income Tax Act: Amendment to paragraph 11 of the Eighth Schedule

The proposed amendment inserts item (m) in subparagraph (2). The amendment proposes to prevent a capital gain or loss from arising on an exchange in the circumstances contemplated in section 8B(2). The intention is that a capital gain or loss will only be determined when the replacement share is disposed of after the five-year period elapsed.

## CLAUSE 81

Income Tax Act: Amendment to paragraph 12 of the Eighth Schedule

Sub clause (a): The proposed amendment to subparagraph (1) deletes the following words "*Unless subparagraph (4) applies*" as they are superfluous as the event in subparagraph (2) does not refer to the event in subparagraph (4). Secondly the following words "*and paid*" are deleted since the words "expenditure actually incurred" is sufficient for the purpose of this paragraph.

Sub clauses (b): The proposed amendment to subparagraph (2)(a) inserts the word "or" after item (i). This is a consequential amendment as a result of the deletion of item (iii) in subparagraph (2)(a).

Sub clause (c): The proposed amendment to subparagraph (2)(a) deletes item (iii). When section 9H (3) was introduced in the Act, subparagraph (2)(a)(iii) became superfluous, hence the deletion.

## CLAUSE 82

Income Tax Act: Amendment to paragraph 12A of the Eighth Schedule

Sub clause (a): The proposed amendment to subparagraph (1) corrects the wording by replacing the words "section" by the word "paragraph".

Sub clause (b): The proposed amendment to subparagraph (4) indicates the correct position of the words following item (a). The proposed amendments are deemed to have come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date.

## CLAUSE 83

Income Tax Act: Amendment to paragraph 15 of Eighth Schedule



Share Blocks Control Act is defined with its full citation in section 1 of the Income Tax Act. The proposed amendment in item (ii) of subparagraph (e) uses the shortened version of the defined Share Blocks Control Act, which is used throughout the Act.

#### **CLAUSE 84**

Income Tax Act: Amendment to paragraph 20 of Eighth Schedule

Proposed amendments to sub item (vi) of subparagraph (1)(h). The amendment deletes the following words “subject to paragraph 12(5)” as subparagraph (5) was deleted by section 107(1) (c) of Act No 22 of 2012.

The amendment also deletes the following words “by way of disposal contemplated in paragraph 38(1)” and inserts some of the opening words used in paragraph 38(1). The use of the words “disposal” have an unintended consequence of limiting the applicability of the provision because a non-resident would not have a disposal of an asset except for the limited range of assets referred to in paragraph 2(1)(b). The intention is to refer to the means by which the person acquired the asset and the proposed amendment gives effect to this intention.

#### **CLAUSE 85**

Income Tax Act: Amendment to paragraph 29 of Eighth Schedule

Financial Services Board Act is defined with its full citation in section 1 of the Income Tax Act. The proposed amendment in subparagraph (2A) uses the shortened version of the defined Financial Services Board Act, which is used throughout the Income Tax Act.

#### **CLAUSE 86**

Income Tax Act: Amendment to paragraph 31 of Eighth Schedule

The Estate Duty Act is defined with its full citation in section 1 of the Income Tax Act. The proposed amendments to subparagraphs (1)(f)(i) and (2)(b)(i) use the shortened version of the defined Estate Duty Act, which is used throughout the Income Tax Act.

#### **CLAUSE 87**

Income Tax Act: Amendment to paragraph 41 of Eighth Schedule

The Estate Duty Act is defined with its full citation in section 1 of the Income Tax Act. The proposed amendment to subparagraphs (1)(a) uses the shortened version of the defined Estate Duty Act, which is used throughout the Income Tax Act.

#### **CLAUSE 88**

Income Tax Act: Amendment to paragraph 43 of Eighth Schedule

See notes on **CURRENCY OF REACQUISITION OF ASSETS OF PERSON CEASING TO BE RESIDENT**

## **CLAUSE 89**

Income Tax Act: Amendment to paragraph 44 of Eighth Schedule

Share Blocks Control Act is defined with its full citation in section 1 of the Income Tax Act. The proposed amendment to the definition of interest in subparagraph (b) uses the shortened version of the defined Share Blocks Control Act, which is used throughout the Act.

## **CLAUSE 90**

Income Tax Act: Insertion of paragraph 63B of Eighth Schedule

See notes on **TAX INCENTIVE FOR PROVISION OF FUNDING TO SMALL MEDIUM AND MICRO ENTERPRISES**

## **CLAUSE 91**

Income Tax Act: Amendment to paragraph 67B of Eighth Schedule

Share Blocks Control Act is defined with its full citation in section 1 of the Income Tax Act. The proposed insertion of a definition of Share Blocks Control Act in section 1 of the Income Tax Act renders the definition of Share Blocks Control Act in paragraph 67B of Eighth Schedule obsolete. It is therefore proposed that subparagraph (1) be amended by the deletion of the definition of Share Blocks Control Act.

## **CLAUSE 92**

Income Tax Act: Amendment to paragraph 77 of Eighth Schedule

In 2013, the term “shareholder of a company” was changed to “holder of shares in a company”. The proposed amendment to the heading replaces the term “shareholder” by the term “holders of shares” to bring the wording in line with the wording used in the Income Tax Act.

## **CLAUSE 93**

Income Tax Act: Amendment to paragraph 8 of the Tenth Schedule

See notes on **REFINEMENT OF OIL AND GAS INCENTIVE**

## **CUSTOMS AND EXCISE ACT 91 OF 1964**

## **CLAUSE 94**

Customs and Excise Act 91 of 1964: Continuation of certain amendments of Schedules

This clause provides for the continuation of any amendment, withdrawal or insertion in Schedules 1-6, 8 and 10 to the Customs and Excise Act made during the period from 1 September 2013 to 30 September 2014.

## **VALUE ADDED TAX 89 OF 1991**

### **CLAUSE 95**

Value Added Tax Act: Amendment to section 1

Sub clause (a): The proposed amendment to the definition of 'enterprise' in subsection (1)(b)(vi) inserts an additional measure to determine whether the provider of the electronic service is conducting an enterprise in the Republic. The proposed amendment comes into operation on 1 April 2015.

Sub clause (b): The proposed amendment to the definition of "second hand goods" in subsection (1)(ii) excludes goods containing gold (e.g. gold jewelry) from the definition of 'second hand goods'. The proposed amendment comes into operation on 1 April 2015.

### **CLAUSE 96**

Value Added Tax Act: Amendment to section 11

Sub clause (a): The proposed amendment to subsection (1) seeks to repeal the zero rating on the supply of goods for agricultural, pastoral or other farming purposes as are set out in Part A of Schedule 2. The proposed amendment comes into operation on a date to be determined by the Minister by notice in the Gazette which notice may not be published earlier than 12 months after the promulgation of this Act.

Sub clause (b): The proposed amendment to subparagraph (2) clarifies that electronic services as contemplated in paragraph (b)(vi) of the definition of 'enterprise' in section 1, can never be subject to zero rating. The proposed amendment comes into operation on 1 April 2015.

### **CLAUSE 97**

Value Added Tax Act: Amendment to section 12

See notes on **BARGAINING COUNCILS**.

### **CLAUSE 98**

Value Added Tax Act: Amendment to section 16

See notes on **DOCUMENTATION**

### **CLAUSE 99**

Value Added Tax Act: Amendment to section 20

The proposed amendment to subsection (5B) makes provision for invoices issued by a vendor as contemplated in paragraph (b)(vi) of the definition of 'enterprise' in section 1, to be regulated by Regulations issued by the Minister. The proposed amendment comes into operation on 1 April 2015.

## **CLAUSE 100**

Value Added Tax Act: Repeal of section 40A

The provisions of section 40A apply to the supply of goods and services by public authorities or public entities on or before 31 March 2005. This section has now become obsolete and it is proposed that section 40A be deleted.

## **CLAUSE 101**

Value Added Tax Act: Repeal of section 40B

The provisions of section 40B apply to the supply of goods and services by local authorities on or before 31 March 2005. This section has now become obsolete and it is proposed that section 40B be deleted.

## **CLAUSE 102**

Value Added Tax Act: Amendment to section 54

See notes on **AGENTS**

## **CLAUSE 103**

Value Added Tax Act: Amendment to section 65

The proposed amendment to paragraph (iii) allows a supplier of electronic services as contemplated in paragraph (b)(vi) of the definition of 'enterprise' in section 1, to advertise electronic services at a price that does not include VAT. The proposed amendment comes into operation on 1 April 2015.

## **CLAUSE 104**

Value Added Tax Act: Amendment to section 67

See Notes on **CONTRACT PRICES**

## **CLAUSE 105**

Value Added Tax Act: Amendment to section 74

The proposed amendments to subsection (3) replaces the term "Schedule" by the term "Customs Tariff or Excise Tariff and rectify incorrect reference to the Custom Duty Act and the Excise Duty Act and refer to the correct sections of the said acts. The proposed amendments are consequential as a result of the introduction of the Customs Control Act, 2014. The proposed amendments come into operation on the date on which the Customs Control Act, 2014 takes effect.

## **CLAUSE 106**

Value Added Tax Act: Amendment to section 86A

The proposed amendment rectify incorrect reference to the Custom Duty Act and the Excise Duty Act and insert a reference to the Special Economic Zones Act and replaces the term “industrial development zones” with the terms “IDZs or SEZs”. The proposed amendments are consequential as a result of the introduction of the Customs Control Act, 2014, and the Special Economic Zones Act. The proposed amendments come into operation on the date on which the Customs Control Act, 2014 takes effect.

#### **CLAUSE 107**

Value Added Tax Act: Amendment to Schedule 1 to Act 89 of 1991

Proposed amendments to subparagraph (a) of paragraph 7. See notes on **ZERO RATING OF GOODS FOR AGRICULTURAL, PASTORAL OR OTHER FARMING PURPOSES**. The proposed amendment comes into operation on a date to be determined by the Minister by notice in the Gazette which notice may not be published earlier than 12 months after the promulgation of this Act.

#### **CLAUSE 108**

Value Added Tax Act: Amendment to Schedule 2 to Act 89 of 1991

Repeal of Part A of Schedule 2: See notes on **ZERO RATING OF GOODS FOR AGRICULTURAL, PASTORAL OR OTHER FARMING PURPOSES**. The proposed amendment comes into operation on a date to be determined by the Minister by notice in the Gazette which notice may not be published earlier than 12 months after the promulgation of this Act.

### **TAX ON RETIREMENT FUNDS ACT 38 of 1996**

#### **CLAUSE 109**

Tax on Retirement Funds Act 38 of 1996: Repeal of the Tax on Retirement Funds Act, 1996

The last assessment period in terms of the Tax on Retirement Funds Act, Act 38 of 1996, was in 2007. The provisions of the Act are now obsolete. It is therefore proposed that the Tax on Retirement Funds Act 1996 be repealed. The proposed amendment comes into operation on 1 January 2015.

### **SECURITIES TRANSFER TAX ACT 25 OF 2007**

#### **CLAUSE 110**

Securities Transfer Tax Act: Amendment to section 1

The Securities Services Act, 2004 was replaced by the Financial Markets Act No 9 of 2012. The proposed amendment to section 1 replaces the reference to “The Securities Services Act, 2004” by the reference to “the Financial Markets Act, 2012”. The proposed amendment is deemed to have come into operation on 3 June 2013.

### **TAXATION LAWS AMENDMENT ACT, 2011**

## **CLAUSE 111**

The proposed amendment to section 139 of the Taxation Laws Amendment Act, 2011 extends the application of section 18B of the Value Added Tax Act for another 3 years to 1 January 2018. The proposed amendment is deemed to have come into operation on 10 January 2012.

## **EMPLOYMENT TAX INCENTIVE ACT, 2013**

### **CLAUSE 112**

Employment Tax Incentive Act, 2013: Amendment to section 1

See notes on **REFINEMENTS OF THE EMPLOYEE TAX INCENTIVE**

### **CLAUSE 113**

Employment Tax Incentive Act, 2013: Amendment to section 4

See notes on **REFINEMENTS OF THE EMPLOYEE TAX INCENTIVE**

### **CLAUSE 114**

Employment Tax Incentive Act, 2013: Amendment to section 5

The proposed amendment to subsection (2)(a) corrects a reference to a section of the Labour Relations Act by replacing section 187(f) by section 187(1)(f). The proposed amendment is deemed to have come into operation on 1 January 2014.

### **CLAUSE 115**

Employment Tax Incentive Act, 2013: Amendment to section 6

Sub clause (a): The proposed insertion of subparagraph (iii) in paragraph (b) is to make provision for a person that is a refugee who is in possession of a refugee identity document to be a qualifying employee. The proposed amendment is deemed to have come into operation on 1 January 2014.

Sub clause (b): The proposed insertion of paragraph (g) seeks to clarify that only employees who earn less than R6000 would qualify for the employment tax incentive in that month. For employees who earn exactly R6000, and receive an incentive value of zero, that month will no longer be seen as a qualifying month, which would reduce the number of months that the employer may claim for that employee. The proposed amendment is deemed to have come into operation on 1 January 2014.

Also see notes on **REFINEMENTS TO EMPLOYMENT TAX INCENTIVE**

### **CLAUSE 116**

Employment Tax Incentive Act, 2013: Amendment to section 7

See notes on **REFINEMENTS TO EMPLOYMENT TAX INCENTIVE**

#### **CLAUSE 117**

Employment Tax Incentive Act, 2013: Amendment to section 9

See notes on **REFINEMENTS TO EMPLOYMENT TAX INCENTIVE**

#### **CLAUSE 118**

Employment Tax Incentive Act, 2013: Amendment to section 10

See notes on **REFINEMENTS TO EMPLOYMENT TAX INCENTIVE**

### **TAXATION LAWS AMENDMENT ACT 31 OF 2013**

#### **CLAUSE 119**

Taxation Laws Amendment Act, 2013: Amendment to section 4

The amendment extends the effective date of the changes to the taxation of retirement fund contributions from 1 March 2015 to 1 March 2016. The vested rights provisions for provident fund members have also been amended to refer to contributions before and after 1 March 2016 instead of 1 March 2015 and has been reworded to include any other legal additions or removals from amounts within a provident fund account. The proposed amendments are deemed to have come into operation on 12 December 2013.

#### **CLAUSE 120**

Taxation Laws Amendment Act, 2013: Amendment to section 5

The amendment extends the effective date of the changes to the taxation of retirement fund contributions from 1 March 2015 to 1 March 2016. The proposed amendments are deemed to have come into operation on 12 December 2013.

#### **CLAUSE 121**

Taxation Laws Amendment Act, 2013: Amendment to section 26

The amendment extends the effective date of the changes to the taxation of retirement fund contributions from 1 March 2015 to 1 March 2016. The proposed amendments are deemed to have come into operation on 12 December 2013.

#### **CLAUSE 122**

Taxation Laws Amendment Act, 2013: Amendment to section 27

The amendment extends the effective date of the changes to the taxation of retirement fund contributions from 1 March 2015 to 1 March 2016. Included in this amendment is the removal of the words 'for the purposes of this paragraph' in subclause (iii) in order to allow employer contributions to flow through to the Fourth Schedule so that employers may withhold PAYE on

any tax payable as a result of the employer contribution. The proposed amendments are deemed to have come into operation on 12 December 2013.

#### **CLAUSE 123**

Taxation Laws Amendment Act, 2013: Amendment to section 29

The proposed amendment aligns section 11D with the provisions of the Tax Administration Act. The proposed amendment is deemed to have come into operation on 1 January 2014 and applies in respect of expenditure incurred in respect of research and development on or after that date, but before 1 October 2022.

#### **CLAUSE 124**

Taxation Laws Amendment Act, 2013: Amendment to section 92

The proposed amendments to subsection (3) are to rectify retrospective legislative amendments made in the 2013 Taxation Laws Amendment Act to section 43 of the Income Tax Act. Taxpayers did transactions in terms of wording of section 43 of the Income Tax Act prior to the amendments to section 43 being introduced in Parliament and published on the National Treasury website on 24 October 2013. The amendments to section 43 could therefore not be done with effect from 4 July 2013 but only from the date of publication of the amendments on the National Treasury website. The proposed amendments are deemed to have come into operation on 4 July 2013.

#### **CLAUSE 125**

Taxation Laws Amendment Act, 2013: Amendment to section 98

The proposed amendment postpones the implementation of withholding tax on interest from 1 January 2015 to 1 March 2015. The proposed amendment comes into operation on 1 March 2015 and applies in respect of interest that is paid or that becomes due and payable on or after that date.

#### **CLAUSE 126**

Taxation Laws Amendment Act, 2013: Amendment to section 108

Section 108(1)(a) of the Taxation Laws Amendment Act, 2013, amended paragraph (b) of section 64J(2) of the Income Tax Act. This amendment erroneously included the words following on paragraph (b). The proposed amendment indicates clearly that the words “reduced by ... effective date.” do not form part of paragraph (b) and therefore apply to both paragraphs (a) and (b) of section 64J(2). The proposed amendment is deemed to have come into operation on 1 April 2012.

#### **CLAUSE 127**

Taxation Laws Amendment Act, 2013: Amendment to section 112

The amendment extends the effective date of the changes to the taxation of retirement fund contributions from 1 March 2015 to 1 March 2016. The proposed amendment is deemed to have come into operation on 12 December 2013.



## **CLAUSE 128**

Taxation Laws Amendment Act, 2013: Amendment to section 113

The amendment extends the effective date of the changes to the taxation of retirement fund contributions from 1 March 2015 to 1 March 2016. The proposed amendment is deemed to have come into operation on 12 December 2013.

## **CLAUSE 129**

Taxation Laws Amendment Act, 2013: Amendment to section 117

The amendment extends the effective date of the changes to the taxation of retirement fund contributions from 1 March 2015 to 1 March 2016. The proposed amendment is deemed to have come into operation on 12 December 2013.

## **CLAUSE 130**

Taxation Laws Amendment Act, 2013: Amendment to section 118

The amendment extends the effective date of the changes to the taxation of retirement fund contributions from 1 March 2015 to 1 March 2016. The proposed amendment is deemed to have come into operation on 12 December 2013.

## **CLAUSE 131**

Taxation Laws Amendment Act, 2013: Amendment to section 125

The amendment extends the effective date of the changes to the taxation of retirement fund contributions from 1 March 2015 to 1 March 2016. The proposed amendment is deemed to have come into operation on 12 December 2013.

## **CLAUSE 132**

Taxation Laws Amendment Act, 2013: Amendment to section 171

The purpose of this amendment it is to align the effective date of section 13(2B) of the Value Added Tax Act with the corresponding provision in the Custom Duty Act and the Excise Duty Act.

## **CLAUSE 133**

Short title and commencement.