

A third batch of the draft Revenue Laws Amendment Bills, 2008, is hereby published for comment.

The National Treasury invites members of the public to submit comments on this draft batch by 5 September 2008 to:

Mr. Greg Smith:

greg.smith@treasury.gov.za

Amendment of section 7 of Act 58 of 1962, as amended by section 5 of Act 90 of 1962, section 8 of Act 88 of 1965, section 5 of Act 55 of 1966, section 7 of Act 94 of 1983, section 2 of Act 30 of 1984, section 5 of Act 90 of 1988, section 5 of Act 70 of 1989, section 4 of Act 101 of 1990, section 7 of Act 129 of 1991, section 5 of Act 141 of 1992, section 6 of Act 21 of 1995, section 23 of Act 30 of 1998, section 13 of Act 53 of 1999, section 5 of Act 59 of 2000, section 10 of Act 74 of 2002, section 17 of Act 45 of 2003, section 5 of Act 32 of 2004, section 9 of Act 31 of 2005, section 8 of Act 35 of 2007 and section 4 of Act 3 of 2008

1. Section 7 of the Income Tax Act, 1962, is hereby amended by the addition of the following subsection:

“(12) Any amount awarded or paid by a beneficiary fund as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956), to a person shall be deemed for the purposes of this Act to be income accrued to that person on the date of award or payment to the extent that that amount did not form part of any amount transferred to that beneficiary fund for or on behalf of that person from a trust.”.

Insertion of section 9E into Act 58 of 1962

2. (1) The Income Tax Act, 1962, is hereby amended by the insertion of the following section:

“Taxation of passive holding companies

9E.(1) For the purposes of this section—

‘excluded company’ means any company that is—

(a) a listed company;

(b) a member of the same group of companies as defined in section 41 as a listed company;

(c) a bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990);

(d) an authorised user as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

(e) a long-term insurer as defined in section 1 of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998);

(f) a short-term insurer as defined in section 1 of the Short-Term Insurance Act, 1998 (Act No. 53 of 1998);

(g) a company contemplated in paragraph (e)(i) of the definition of ‘company’ in section 1;

(h) a public benefit organisation as defined in section 30 and has been approved by the Commissioner in terms of that section; or

(i) a recreational club as defined in section 30A and has been approved by the Commissioner in terms of that section;

‘excluded shareholder’ means—

(a) any person that is not a resident;

(b) the Government, a provincial administration or a municipality;

(c) any public benefit organisation as defined in section 30 that has been approved by the Commissioner in terms of that section;

(d) any recreational club as defined in section 30A that has been approved by the Commissioner in terms of that section;

(e) any company or trust contemplated in section 37A;

(f) any fund contemplated in section 10(1)(d)(i) or (ii); or

(g) any person contemplated in section 10(1)(t);

‘gross income’ means gross income as defined in section 1, other than any—

(a) royalty received or accrued; and

(b) dividend received by or accrued to a company if that company holds at least 20 per cent of the total equity share capital and voting rights in the company declaring the dividend;

‘passive holding company’ means any company, other than an excluded company, where—

(a) the passive income of the company for the year exceeds 80 per cent of the gross income of the company for the year; and

(b) at any time during the year more than 50 per cent of the participation rights as defined in section 9D in the company are held by persons other than excluded shareholders;

‘passive income’, in relation to a company, means an amount equal to so much of the gross income of the company for a year of assessment as is derived from financial instruments reduced by an amount equal to the sum of—

(a) the expenditure actually incurred by the company during that year for purposes of any trade carried on by that company or any other company that forms part of the same group of companies as defined in section 41 as that company; and

(b) an allowance equal to the expenditure reasonably expected to be incurred by the company within the two years succeeding that year for purposes contemplated in paragraph (a),

increased by the amount allowed in terms of paragraph (b) in the preceding year.

(2) There must be levied and paid for the benefit of the National Revenue Fund a tax in respect of the dividends received by or accrued to a passive holding company during a year of assessment.

(3) The rates of tax chargeable in respect of the taxable income of a passive holding company and in respect of the dividends received or accrued as contemplated in subsection (2) are fixed annually by Parliament.

(4) A dividend paid by a company is not subject to the dividends tax imposed in terms of Part VIII of Chapter II to the extent that the sum of that dividend and all other dividends paid on or after the effective date as defined in that Part does not exceed the sum of—

(a) the dividends received by or accrued to the company on or after that date to the extent that the dividends are subject to tax in terms of subsection (2); and

(b) the taxable income derived by the company on or after that date to the extent that that taxable income is subject to a rate of tax that is fixed in terms of subsection (3).

(5) The provisions of this Act relating to the assessment and recovery of tax and administrative penalties in the event of default or omission apply with the changes required by the context in respect of the tax imposed in terms of this section.”.

(2) Subsection (1) comes into operation on the same date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of section 30 of Act 58 of 1962, as inserted by section 30 of Act 53 of 1999 and amended by section 36 of Act 59 of 2000, section 15 of Act 5 of 2001, section 15 of Act 19 of 2001, section 39 of Act 60 of 2001, section 30 of Act 74 of 2002, section 16 of Act 16 of 2004, section 24 of Act 20 of 2006, section 25 of Act 8 of 2007, section 43 of Act 35 of 2007 and section 22 of Act 3 of 2008

3. Section 30 of the Income Tax Act, 1962, is hereby amended by the substitution in the definition of “public benefit organisation” in subsection (1) for subparagraph (ii) of paragraph (a) of the following subparagraph:

“(ii) any branch within the Republic of any company, association or trust incorporated, formed or established in [terms of the laws of] any country other than the Republic that is exempt from tax on income in that other country;”.

Amendment of section 42 of Act 58 of 1962, as amended by section 21 of Act 88 of 1965, section 17 of Act 95 of 1967, section 29 of Act 89 of 1969, section 19 of Act 52 of 1970, section 23 of Act 88 of 1971, section 18 of Act 90 of 1972, section 22 of Act 65 of 1973, section 32 of Act 85 of 1974, section 22 of Act 69 of 1975, section 18 of Act 103 of 1976, section 19 of Act 113 of 1977, section 20 of Act 91 of 1982, section 28 of Act 94 of 1983, section 31 of Act 129 of 1991, section 27 of Act 141 of 1992, section 23 of Act 21 of 1994, section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 50 of Act 45 of 2003, section 33 of Act 32 of 2004, section 38 of Act 31 of 2005, section 29 of Act 20 of 2006, section 34 of Act 8 of 2007, section 53 of Act 35 of 2007 and section 26 of Act 3 of 2008

4.(1) Section 42 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1)(b) for subparagraphs (i) and (ii) of the following subparagraphs:

“(i) as trading stock, where that person holds it as trading stock;

- (ii) as a capital asset, where that person holds it as a capital asset; or
 (iii) as trading stock or as a capital asset, where that person holds it as trading stock and that company and that person do not form part of the same group of companies;”.

(2) Subsection (1) comes into operation on 1 January 2009 and applies in respect of a transaction entered into on or after that date.

Amendment of section 46 of Act 58 of 1962, as amended by section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 54 of Act 45 of 2003, section 36 of Act 32 of 2004, section 42 of Act 31 of 2005, section 36 of Act 8 of 2007, section 57 of Act 35 of 2007 and section 29 of Act 3 of 2008

5. (1) Section 46 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (7)(b) for subparagraphs (i) and (ii) of the following subparagraphs:

- “(i) who is **[not subject to normal tax in the Republic or who is subject to such tax in the Republic at a reduced rate as a result of the application of any agreement for the avoidance of double taxation]** an excluded shareholder as defined in section 9E; and
 (ii) who either alone or together with any connected person in relation to that shareholder **[acquires]** holds 20 per cent or more of [those] the shares in the unbundled company immediately after the distribution.”.

(2) Subject to subsection (3), subsection (1) comes into operation on 1 January 2009 and applies in respect of a distribution on or after that date.

(3) Subsection (1), to the extent it substitutes section 46(7)(b)(ii), is deemed to have come into operation on 16 September 2008 and applies in respect of a distribution on or after that date.

Insertion of section 89sept into Act 58 of 1962

6. The Income Tax Act, 1962, is hereby amended by the insertion of the following section:

“Power of Minister to determine date for submission of returns and payment of tax, interest and penalties

89sept.(1) Notwithstanding any other provision of this Act, where the date for the submission of a return or the payment of tax, penalties or interest is the last day of the financial year of the Government, the Minister may by notice in the *Gazette* prescribe any other date for submission of the return and payment of the tax, penalties and interest, which date may not fall on a day more than two business days prior to the last day of that year.

(2) Any return not submitted and payment not made on the date prescribed by the Minister in terms of subsection (1) shall, for purposes of this Act, be deemed not to have been made timeously.”

Substitution of section 93 of Act 58 of 1962

7. The Income Tax Act, 1962, is hereby amended by the substitution for section 93 of the following section:

“Collection of taxes under arrangements made under section 108

93.(1) If the Commissioner has, in accordance with any arrangements made with the government of any other country by an agreement entered into in accordance with section 108, received a request, in such form as the Commissioner may prescribe, for the collection from any person of an amount alleged to be due by him or her under the tax laws of such other country, the Commissioner may, by notice in writing, call upon such person to state, within a period specified in the notice, whether or not he or she admits liability for such amount or for any lesser amount.

(2) If such person—

(a) admits liability;

(b) fails to respond to the notice; or

(c) denies liability but the Commissioner, after consultation with the competent authority of such other country, is satisfied that—

(i) the liability for such amount is not disputed in terms of the laws of such other country; or

(ii) although the liability for such amount is disputed in terms of the laws of such other country—

(aa) such dispute has been entered into solely to delay or frustrate collection of the amount alleged to be due; or

(bb) there is a risk of dissipation or concealment of assets by such person,

the Commissioner may, by notice in writing, require such person to pay the amount for which he or she has admitted liability or the amount specified, as the case may be, on a date specified, for transmission to the competent authority in such other country.

(3) If such person fails to comply with the notice under subsection (2) the amount in question may be recovered, for transmission to such competent authority, as if it were a tax payable by such person under this Act.

(4) No steps taken in assistance in collection by any other country under any arrangements referred to in subsection (1), for the collection of an amount alleged to be due by any person under the tax laws of the Republic, and no judgment given against any such person in pursuance of such arrangements in such other country for any such amount, shall affect his or her right to have his or her liability for any such amount determined in the Republic in accordance with the provisions of the relevant law.”.

Amendment of paragraph 3 of Second Schedule to Act 58 of 1962, as amended by section 47 of Act 94 of 1983, section 50 of Act 30 of 1998, section 50 of Act 8 of 2007 and section 40 Act 3 of 2008

8. The Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 3 of the following paragraph:

“3. Any lump sum benefit which becomes recoverable in consequence of or following upon the death of a member or past member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund shall be deemed to be a lump sum benefit which accrued to such member or past member **[immediately prior to his or her death]** on the date of payment in terms of section 37C of the Pension Funds Act, 1956 (Act No. 24 of 1956): Provided that—

- (i) so much of any tax payable as is due to the provisions of this paragraph, may be recovered from the person to whom or in whose favour the lump sum benefit in question accrues[: **Provided further that**];
- (ii) where any annuity [**which became**] (including a living annuity) becomes payable [or may become payable or which is provided or may be provided] on or in consequence of or following upon the death of a member or past member of any such fund has [**on or after 1 July 1983**] been commuted for a lump sum, such lump sum shall for the purposes of this paragraph be deemed to be a lump sum benefit which has become recoverable in consequence of or following upon the death of such member or past member;
- (iii) where any such lump sum benefit becomes payable but the dependants or nominees elect an annuity (including a living annuity) that is purchased or provided by that fund, no lump sum benefit shall be deemed to have so accrued to the extent that the lump sum benefit was utilised to purchase or provide the annuity; and
- (iv) where any such lump sum benefit is paid to a beneficiary fund as defined in section 1 of the Pension Funds Act 1956 (Act No. 24 of 1956) no lump sum benefit shall be deemed to have so accrued.”.

Amendment of paragraph 11 of Part I of Ninth Schedule to Act 58 of 1962, as amended by section 126 of Act 45 of 2003

9. Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition to paragraph 11 of the following subparagraphs:

- “(c) The motivation, monitoring or reporting of development assistance for the poor and needy.
- (d) The provision of funds to an organisation—
- (i) which is incorporated, formed or established in any country other than the Republic;
 - (ii) which is exempt from tax on income in that other country;
 - (iii) the sole or principal object of which is the carrying on of one or more activities that would qualify as public benefit activities listed in Part I of this Schedule if carried on in the Republic; and
 - (iv) that carries on each of its activities—
 - (aa) in a non-profit manner;
 - (bb) with altruistic or philanthropic intent;
 - (cc) in a manner which does not directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation other than by way of reasonable remuneration; and
 - (dd) for the benefit of, or is widely accessible to the general public of that country including any sector thereof (other than small and exclusive groups).”.

Amendment of section 28 of Act 89 of 1991, as amended by section 29 of Act 136 of 1992, section 79 of Act 30 of 2000, section 44 of Act 5 of 2001, section 158 of Act 60 of 2001, section 118 of Act 74 of 2002, section 179 of Act 45 of 2003, section 37 of Act 32 of 2005 and section 32 of Act 36 of 2007

10. (1) Section 28 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“**[Every]** Subject to subsection (4), every vendor shall, within the period ending on the twenty-fifth day of the first month commencing after the end of a tax period relating to such vendor or, where such tax period ends on or after the first

day and before the twenty-fifth day of a month, within the period ending on such twenty-fifth day—”; and

(b) by the insertion of the following subsection:

“(4)(a) The Minister may, by notice in the *Gazette*, prescribe a date for the submission of returns and the making of payments which is not earlier than two business days prior to the date referred to in subsection (1), if that date is the last day of the financial year of the Government.

(b) Any return not submitted and payment not made on or before the date prescribed by the Minister shall be deemed not to have been made within the periods referred to in subsection (1).”.