Standing Committee on Finance (SCOF): Report-Back Hearings

21 September 2016

Draft Taxation Laws Amendment Bill, 2016 and Draft Tax Administration Laws Amendment Bill, 2016

Draft Response Document from National Treasury and SARS, as presented to SCOF

(Final version of this document will be published by date of introduction of the Bills)

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1. BACKGROUND

1.1. PROCESS

The Draft Taxation Laws Amendment Bill (TLAB), 2016 and the Draft Tax Administration Laws Amendment Bill (TALAB), 2016 were released for public comment on 8 July 2016. National Treasury and SARS briefed the Standing Committee on Finance (SCoF) on 24 August 2016. Public comments to the Committee were presented at a hearing that was held on 14 September 2016. The final report back to the Committee will be on 21 September 2016.

1.2. PUBLIC COMMENTS

National Treasury and SARS received responses from 64 organisations and individuals (see Annexure A attached). The deadline for public comments to the Committee was 12 September 2016. There were 13 organisations that submitted their comments to the SCoF for public hearings. However, only 9 presented their responses orally during the public hearings hosted by the SCoF on 14 September 2016. Workshops with stakeholders to discuss and review their comments on the 2016 Draft TLAB were held on 15 and 16 August 2016.

1.3. POLICY ISSUES AND RESPONSES

Provided below are the responses to the policy issues raised by the public comments received, both written and during the public hearings. These comments have been taken into account in the revised Bills. Comments that fall wholly outside the scope of the Bills have not been taken into account for purposes of this response document.

1.4 SUMMARY

- This response document includes a summary of the main written comments received on the 2016 Draft TLAB and the 2016 Draft TALAB as well as the issues raised during the public hearings held by the SCoF.

The main comments that arose during the Public Hearing and the other main issues in the 2016 Draft TLAB and the 2016 Draft TALAB are:

- Aligning tax charging provisions that enable the Minister of Finance to change the tax rates in all the tax acts;
- Introducing measures to prevent estate duty avoidance through the use of trusts;
- Removal of the tax exemption for income received from local retirement funds in relation to benefits earned while employed abroad;
- Addressing the circumvention of rules dealing with employee based share incentive schemes;
- Addressing double non-taxation arising from cross-border hybrid debt instruments;

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- Relaxing rules for hybrid debt instruments subject to subordination agreements to assist companies in financial distress;
- Refinement of third-party backed shares: Pre-2012 legitimate transactions;
- Extending the small business corporation regime to personal liabilities companies;
- Asset-for-share transactions for natural persons employed by a company;
- Extension of tax relief for outright transfer of collateral;
- Tax treatment of long-term insurers due to the introduction of SAM;
- Exemption of collective investment schemes from controlled foreign company rules;
- Adjusting the calculation for comparable tax exemption in respect of controlled foreign companies;
- Revision of the 2014 amendment relating to notional input tax on goods containing gold; and
- Timing of mineral and petroleum royalty final tax return; and
- Funds, employment of staff and mandate of Tax Ombud.

Draft Taxation Laws Amendment Bill

2. GENERAL

2.1. Aligning tax charging provisions that enable the Minister of Finance to change the tax rates in all the tax acts

(Main reference: all charging provisions of tax acts administered by the South African Revenue Service)

Comment: The draft 2016 TLAB contains proposed amendments that seek to align the tax charging provisions of the tax acts. The intention is to enable the Minister of Finance to change (whether it is for purposes of an increase or decrease) the tax rates in all the tax acts administered by SARS. As the proposal currently stands, the rate changes announced by the Minister of Finance in the annual Budget apply from the effective date announced by the Minister subject to Parliament passing the legislation giving effect to that announcement within 12 months of that announcement. This amounts to a delegation by Parliament of its legislative power to the Minister of Finance. In terms of section 77 of the Constitution, a money bill is required to be passed by Parliament.

Response: Accepted. The intention of the proposed changes is to give effect to any rate changes announced by the Minister of Finance with effect from the date of the announcement, which is normally the day of the Budget. In order to be in line with the constitutional requirements, the wording of the charging provisions will be amended to provide that the rate changes announced by the Minister of Finance may be applied with effect from the date announced by the Minister of Finance subject to Parliament passing the relevant legislation seeking to give effect to that rate change within 12 months of the announced effective date.

3. INCOME TAX: INDIVIDUALS, SAVINGS AND EMPLOYMENT

3.1. Introducing measures to prevent estate duty avoidance through the use of trusts

(Main reference: new provision - section 7C)

Comment: The 2016 draft TLAB proposes the introduction of a specific anti-avoidance measure in section 7C, which is aimed at curbing the tax-free transfer of wealth through the use of low interest or interest free loans to trusts. The draft bill proposes that a notional amount of interest should be imputed to the lender in respect of low interest or interest free loans advanced to trusts. The effect of this proposal is to subject the lender of such loan to income tax on a deemed amount of interest. While it is acknowledged that such loans are widely used as an estate planning tool in order to avoid estate duty and donations tax, the introduction of this specific anti-avoidance measure in the Income Tax Act to address the avoidance of donations tax and estate duty is flawed as it uses an income tax instrument to address estate duty and donations tax avoidance. This will lead to various other complications regarding the interaction of this provision with the rest of the Income Tax Act.

Response: Accepted. The interest forgone in respect of interest-free or low interest loans will no longer be treated as income but will be treated as an on-going and annual donation made by the lender on the last day of the year of assessment of the lender.

Comment: There is no need for the introduction of a further specific anti-avoidance measure aimed at curbing the tax-free transfer of wealth through the use of interest free loans to trusts. South Africa has case law, and in particular, a Supreme Court of appeal judgment that regards interest-free or low interest loans as a continuing donation to the extent of the interest forgone by the lender in the hands of that lender.

Response: Not accepted. With regards to the issue raised around the reliance of the available case law in dealing with the avoidance highlighted, this will require a facts and circumstances analysis of every loan arrangement to determine the amount or rate of interest applicable in every instance. This is therefore not a viable option. A specific anti-avoidance measure allows for the introduction of a standard rate of interest that will apply in all instances. As proposed the official rate of interest (which is currently set at 8 per cent for Rand denominated loans) will be used to determine whether a loan is subject to the specific anti-avoidance rule.

Comment: The proposed section 7C assumes as a starting point that all interest free or low interest loans to a trust are used for the purposes of avoiding estate duty or donations tax. While this may be the case in most instances, it is not always the case. The inherent flexibility of trusts arrangement makes them an appropriate vehicle for many objectives other than tax avoidance. For example trusts may be used as a vehicle to provide maintenance for children with disability, charitable trusts

may be used for the affairs of Pubic Benefit organisations, trusts may be used as employee incentive trusts, trusts may be used as a vehicle to protect assets from creditors or may be used to protect assets from a delinquent child who would otherwise squander the assets.

> *Response:* Accepted. The scope of the proposed section 7C will be narrowed and apply to loans made to a trust by either a natural person or, at the natural person's instance by a company in which that person together with connected persons in relation to that natural person hold an interest of at least 20 per cent.
>
> In addition, the following will be specifically excluded from the application of the proposed section 7C:
>
> - Special trusts that are established solely for the benefit of persons with disabilities as referred to in paragraph (a) of the definition of "special trust" in section 1 of the Act;
> - Trusts that fall under public benefit organisations as contemplated in section 30 of the Act;
> - Vesting trusts (where the vesting rights and contributions of the beneficiaries are clearly established);
> - To the extent that a loan used by the trust for funding the acquisition of the primary residence (as contemplated in paragraph 44 of the Eighth Schedule) of the lender;
> - A loan that constitutes an affected transaction and is subject to the provisions of section 31 of the Act;
> - Loans provided to the trust in terms of a sharia compliant financing arrangement; and
> - A loan that is subject to the provisions of section 64E(4) of the Act.

Comment: The proposal is ambiguous as it does not state whether the provision will apply to all loans currently in existence or only to loans entered into after 1 March 2017. It will be grossly unfair if it is to apply to existing loans. This would be a retrospective amendment as the structures were created in anticipation of a particular tax treatment. If these amendments are to apply to existing loans, individuals should be afforded the chance to adjust their tax affairs without facing unduly harsh tax treatment (such as capital gains for selling the assets in the trust).

> *Response:* Not accepted. The proposal is intended to apply to all loans, including those in existence before 1 March 2017. The amendment is not retrospective as it does not change the tax liabilities for previous years of assessment, but changes the tax treatment of these structures going forward.

Comment: The Income Tax Act currently contains anti-income splitting rules (more commonly referred to as the attribution rules set out in section 7 and the Eighth Schedule). These rules aim to restore the economic benefit derived by any person by reason of a transfer of property that has an element of liberality or generosity back to the other person who made that transfer of property. In the case of interest-free or

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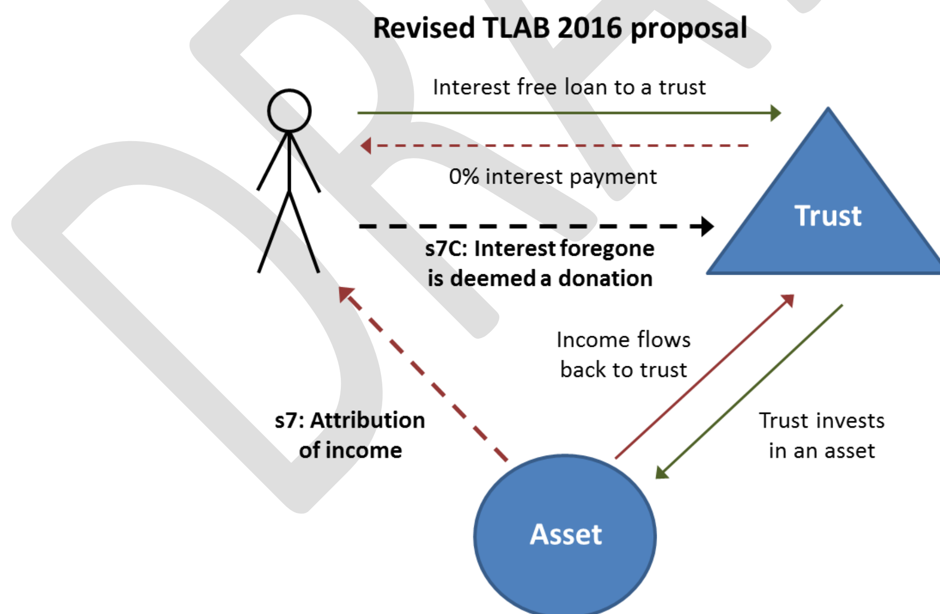
low interest loans, the interest forgone triggers the operation of the attribution rules. In principle, the rules will result in the person making an interest-free or low interest loan being taxed on income or capital gains arising as a result of the loan funding. The proposed anti-avoidance measure potentially results in double taxation as a notional interest charge will also be included in the income of the same person making an interest-free or low interest loan.

Response: Not accepted. The attribution rules indirectly deal with the situation where interest is forgone. However, income must have been derived for these rules to apply and it is only with regards to certain instances (i.e. where the risk of income splitting is considered high such as with spouses and minor children). To this end, the proposed specific anti-avoidance provision is still necessary. In the revised version, the interest foregone will be deemed to be a donation in the hands of the lender. Currently, the attribution rules still apply in cases where there may be no interest free or low interest loan and where an outright donation is made and income and/or a capital gain arises as a result of the donated asset or funding. Donations Tax would be paid on the initial donation amount, even if the attribution rules are applied on the resultant income and/or capital gain. This is not seen as double taxation as there is an initial tax on the transfer of wealth and a tax on income and/or capital arising on an annual basis. The same principle applies in cases of interest free loans. Donations Tax will be applied on the interest foregone and the attribution rules will continue to apply for income earned from the donated asset or funding.



Comment: The draft 2016 TLAB proposes that the annual donations tax exemption of R100 000 contemplated in section 56 of the Income Tax Act will not be available for use in reducing the principal outstanding in respect of interest free or low interest loans in terms of the proposed section 7C. However, the proposed provision in section 7C denying the use of the annual donations tax exemption goes further than this intention and denies the use of the annual donations tax exemption in respect of

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all loans made to a trust irrespective of whether or not they are interest free or low interest bearing. Furthermore, the denial of the annual donations tax exemption creates an uneven playing field and can be easily avoided by taxpayers.

> *Response:* Accepted. The denial of the annual donations tax exemption of R100 000 contemplated in section 56 of the Income Tax Act will be removed from the provisions of section 7C.

Comment: The proposed anti-avoidance measure creates uncertainty around loan arrangements involving foreign trusts. The currently available transfer pricing rules in section 31 of the Act also deem a notional amount of interest to have been received by a resident in the instance that an interest free or low interest loan is granted. As the more specific provision, the proposed anti-avoidance measure will apply in these circumstances. This will mean that secondary adjustment under section 31 of the Act which further deems the notional interest to be a donation for purposes of donations tax will not be applicable.

> *Response:* Accepted. A rule will clarify the interaction between the current transfer pricing rules in section 31 of the Act and the proposed section 7C. In this respect, only transfer pricing rules in section 31 of the Act will apply. For purposes of the proposed section 7C, no donation will be deemed in respect of a loan arrangement that is subject to section 31 of the Act.

Comment: The proposals in section 7C are contrary to the Davis Tax Committee (DTC) report on Estate Duty, and NT and SARS should have waited until the DTC had completed its work before making changes to the way trusts are taxed.

> Response: Noted. While it is true that the proposed amendments contained in s7C do not address all the concerns raised and proposals made in the DTC report, the proposed amendments do address several of the key DTC concerns, through different avenues. Specifically, section 7C addresses the avoidance of donations tax and estate duty through the use of loan structures in the transfer of assets to trusts. In monetary terms the issue of estate pegging is mitigated by taxing the low or no interest free element of loans as donations throughout the life of the loan. In doing so, tax leakage from such loan structures is significantly reduced. The issue of such tax avoidance is central to many of the DTC concerns.

Below are the key DTC concerns and proposals which Section 7C aims to address:

DTC proposal: If an estate owner founds a trust and continues to hold de facto control of the trust he/she should be held liable for the assets in the trust including the growth therein.

> *Section 7C*: The issue of de facto control via a loan structure (as in the point below) is addressed by Section 7C. By deeming the foregone interest as a donation, and taxing it annually, the estate owner will effectively be held liable for

assets in the trust in cases where donations tax and estate duty could previously be avoided.

DTC proposal: Provisions of section 3(3)(d) of the Estate Duty Act should be extended to include deeming provisions that identify deemed control of a trust where a loan account exists between a trust and connected person, where the loan is interest free or subject to interest below the official rate of interest.

Section 7C: As indicated above section 7C is aligned with this DTC proposal, but it does so via deeming provisions in the Income Tax Act, rather than the Estate Duty Act. The key objective, namely to ensure that wealth transfers are fully taxed, is fundamentally the same in terms of what the DTC and the S7C proposals want to achieve.

DTC proposal: Capital gains from discretionary trusts should to be taxed inside the trust up until time of vesting or disposal as defined in the Eight Schedule to the Income Tax Act.

Section 7C: Although it does not deal with CGT, section 7C does address the related estate pegging issue (whereby loan structures are used to peg asset values at loan values) and it provides a tax neutral position compared to someone who does not use such structures. Instead of taxing CGT inside the trust as proposed by the DTC, foregone interest is taxed as an on-going donation during the life of the loan in the hands of the donor, thereby also capturing the time value of money in a growing asset. The issue of tax deferral regarding CGT (whereby assets are held in a trust and disposed later or not at all) remains.

DTC proposal: No attempt should be made to implement some sort of transfer pricing regulations regarding domestic trust arrangements

Section 7C: Section 7C is not an attempt to introduce transfer pricing rules, despite containing some transfer pricing concepts. It merely requires loans to trusts to be at market rates in order not to attract donations tax. The principle of fair market value at arms' length is already defined in Section 55 of the Income Tax Act which deals with donations tax, so section 7C merely echoes that. The concepts are similar to the transfer pricing concepts described in section 31 of the Income Tax Act, but section 7C did not introduce them. Furthermore transfer pricing for cross border transactions is much more complicated, requiring comparables and functional analysis in determining arm's length pricing. Section 7C does not introduce any such measures. Any confusion relating to the interaction between section 7C and section 31 is also clarified in section 7C, where it is determined that section 31 would trump section 7C.

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3.2. Addressing the circumvention of rules dealing with employee based share incentive schemes

(Main references: section 8C and 8CA)

Employee share schemes (ESSs) that provide employees with restricted equity instruments are generally designed for two main purposes. Such schemes provide an incentive for employees to own shares in the employer company and can assist employers in retaining employees. Secondly, ESSs can also assist with liquidity constraints faced by start-up firms who may otherwise struggle to retain highly skilled individuals.

From a tax policy principle perspective, the following points are important to note:

- ESSs generally provide benefits to both the owners of businesses (shareholders) and employees as they can serve as a mechanism to align both parties' interests.
- These benefits can be classified as private benefits in that no 'external' benefit accrues to society.
- If there was a positive externality accruing to society (which is an example of a market failure), there would be an argument for government to intervene and incentivise such schemes.
- Because this is not the case, the policy intent is tax neutrality, i.e. the tax system should not sway a business decision as to whether employees should receive cash or shares in return for services rendered.
- The 2016 tax proposal sought to instil tax neutrality and was not intended as an additional revenue raising measure.

In South African tax legislation, amounts in cash or in kind that are received or accrue in respect or by virtue of services or employment are treated, as a point of departure, as gross income. Section 8C (dealing with taxation of directors and employees on vesting of equity instruments) forms part of a set of anti-avoidance measures aimed at preventing the characterisation of an amount that relates to services or employment as a capital gain or as an exempt amount subject only to dividends tax.

Currently, if an employee receives a restricted equity instrument, he/she has no right to the underlying equity instrument until the restriction lifts at the end of the restriction period. If the employee resigns, employment conditions would not be fulfilled and the restricted equity instruments would be forfeited. If the employee fulfils the employment conditions, the market value of those shares on the date that they vest in the employee is included in his/her taxable income and taxed at the marginal personal income tax rate. The market value is taxed as income because the employee only received those equity instruments by virtue of his employment.

Proposed amendment in the 2016 Draft TLAB

The underlying intent behind the draft 2016 TLAB proposal on section 8C was to subject to normal tax pre-vesting dividends as income. From a principle perspective, dividends in respect of restricted equity instruments that are received by employees during the restriction period (prior to vesting) should form part of remuneration for past services rendered. Employees receive such dividends on the basis that they hold a restricted equity instrument linked to the rendering of services and as an encouragement to remain in employment.

Feedback from an extensive consultative process shows that Tax practitioners and policy makers are in broad agreement and certain notable differences of opinion with the principle of taxing pre-vesting dividends at the marginal personal income tax rate rather than the dividends tax rate of 15 per cent. Specifically, there are interpretation differences that arise in respect of the corporate income tax (CIT) treatment of the cost of setting up ESSs (i.e. providing the shares to the employees, setting up and paying a trust to acquire shares, or reimbursing a holding company for issuing shares) and the dividend payments that flow to employees with restricted equity instruments before vesting.

Currently, the legislation provides no standard method for allowing businesses to deduct any cost incurred. The SARS has been using a facts and circumstances approach to determine whether or not companies are eligible for a deduction under section 11(a) and whether it should be spread in terms of section 23H. Rulings have also been issued in this regard. The original proposal sought to bring in a legislative provision to achieve tax neutrality, allowing the employer to deduct the actual cost incurred (and paid) to provide employees with restricted equity instruments.

Comment: Given that (i) the market value of restricted equity instruments is included in an employee's gross income upon vesting (when the employee obtains an unrestricted right to the equity instrument), and (ii) the proposal for dividends to be treated as remuneration for employees, it is argued that employers should receive a notional deduction that matches (is equal in value to) the sum of the two income streams included in an employee's taxable income. With respect to the second element, it is argued that failure to allow dividend payments as a deduction will result in economic double taxation and a combined company and individual effective tax rate of 57.5 per cent for persons with a marginal tax rate of 41 per cent).

Response: Noted. The request for perfect matching appears to be based on the following principle: what is deemed to be remuneration for the employee should be deemed to be a deductible expense for remuneration for the employer. Each of the two income streams is dealt with separately below:

(i) Cost of providing restricted equity instruments

The argument for matching is noted. However it is the timing of the PIT inclusion and CIT deduction that appears to be causing the perceived mismatch. At the

end of the vesting period, the value of the equity instrument may have increased or decreased, depending on economic performance and dividend distributions. This affects how much is included in an employee's gross income. Even though the employer provides those shares, the day on which the cost is incurred and paid varies according to scheme. The payment could occur (i) when the ESS is set up (e.g. in cases where a trust is set up for current and future employees) before the equity instruments are awarded; (ii) at the start of the restriction period; (iii) when an equity instrument vests; or (iv) never in the case of perpetual schemes. In the first two scenarios, fluctuations in share prices after the start of the restriction period have no bearing on the payment. A simple example is used to explain this point.

In year 1, an employer incurs and pays R100 for shares to set up an employee share scheme where shares vest after a 2-year period. In year 1, the employer can deduct R100. The tax outcome is exactly the same as if the employer paid R100 in wages, as is the case in year 2. Assuming the value of the shares is eroded though pre-vesting dividends of R110 in year 2, there is no underlying share value that vests, resulting in deemed remuneration of R110, which will be taxed at 41 per cent. Hence, no matter the form of income stemming from a restricted equity instrument (share value upon vesting or pre-vesting dividend), the employee will be taxed at his or her marginal tax rate. For the employer, the dividend payment of R110 has no bearing on the cost actually incurred and paid by the employer. Where the share value upon vesting may have an impact is in those instances where the employer actually pays the 'cost' / value of the shares at a later date. In such cases, the market value on the day of payment will be the applicable amount to be deducted.

(ii) Dividend payments that are received by employees holding a restricted equity instrument

The stated effective tax rate of 57.5 per cent is obtained by adding the corporate income tax (28 per cent) on profits to the effective personal income tax applied to dividends (deemed to be remuneration) that are declared from after-tax corporate income (41 per cent marginal tax rate * (1 – 0.28)). When dividends tax of 15 per cent is applied, the combined result is 38.8 per cent (0.28 + 0.15*(1 – 0.28)).

This argument is based on three underlying assumptions:

- it either assumes the initial cost (of the shares) incurred and paid by the company is zero, or fails to take the proposed deduction for the initial cost of the shares (from which dividends arise) into account (both of these assumptions have the same effect);
- the market value of the share price is higher when the restriction lifts, compared to that at the start of the restriction period; and
- the employer makes the payment before the restriction lifts (assuming (ii) is true).

It is acknowledged that the listed assumptions may be true, but it is also possible, for example, that the share price drops below that at the start of the restriction period.

It is a fundamental tax principle that companies are only able to deduct actual cost incurred. The requirement for payment to have occurred adds an element of flexibility for taxpayers as the date of payment (whether at the start of the restriction period, during the restriction period, or on vesting) determines the value of the deduction. If, on vesting, the market value of shares drops due to market movements or dividend stripping (relative to start of the restriction period) and the employer makes payment at the end of the period (upon vesting), the deduction will be less than if the payment was made upfront.

Therefore, claiming that the effective tax rate will always be 57.5 per cent is not accurate, as it depends when payment is made and what happens to the market value of restricted equity instruments.

The argument that dividend payments to employees in restricted equity schemes (where there is no right to the shares) should be deductible because they are treated as remuneration is rejected. The employees are receiving income by virtue of the fact that they are employed (if they leave their employment, they would receive nothing). From the employer's perspective, dividends are paid from after-tax profits and are effectively an expense borne by the shareholders, not the company. Furthermore, the decision to declare and distribute dividends depends on the economic circumstances and the profitability of the company at the time, as well as how much profit should be retained (versus paid to shareholders).

If there is a 5-year vesting period and substantial growth in the share price, as well as pre-vesting dividends, it would seem unfair that the employee includes a much higher value in his/her taxable income relative to the cost incurred and paid by the employer. However, it is known that equity instruments and returns thereon (dividends) are subject to market forces and the state of the economy, and a lot of ups and downs can happen over a 5-year period. The key is that these all originate from the initial equity 'given' to the employee – either to reward them for services rendered, or retain their services, or a combination of both of these.

Comment: There is a lot of concern by taxpayers in respect of complex administrative challenges and changing of payroll and other systems that will be required as a result of the policy change. For example, an employee receiving a dividend is currently subject to dividends tax that is automatically withheld – either by the company in the case of a private company, or by a central securities depository participant (CSDP) in the case of listed instruments. With the proposal, such dividends would instead be subject to PAYE if treated as remuneration.

Response: Noted. It is proposed that the original proposal (treating pre-vesting dividends as remuneration and clarifying the tax treatment of costs incurred to provide employees with restricted equity instruments) be withdrawn for now. This is for two main reasons. Firstly, at this stage there is no agreement reached on the proposed corporate income tax deduction and Treasury is not comfortable allowing a notional deduction that is delinked from the cost actually incurred and paid. Taxpayers also feel strongly that dividend payments should receive a deduction, which is not agreed from a policy perspective. Secondly, it is accepted that the proposal will result in administrative complexities and the need to fundamentally change the administration of Dividends Tax and payroll systems. Both these issues (policy and administration) require further refinement and more time to ensure they are implemented appropriately. A third concern noted by some tax advisors relates to BBBEE restricted share options schemes that might be negatively affected. The argument being that the dividend flows are required to fund such schemes and taxing the dividends at the marginal rates might be detrimental to such schemes. This concern could potentially be addressed through a different route , but it should not prevent attempts to follow the correct policy rationale.

Even though the main proposal is being removed from the 2016 TLAB, Treasury retains its principled policy stance on this issue.

Revised proposal – tackling avoidance by means of 'dividend stripping'

Even though the broader policy principle is not being pursued this year, it is necessary to put a stop to tax avoidance that is currently being achieved through 'dividend stripping'. This can occur if the value derived from the underlying shares is liquidated in full or in part by means of distributions that are effected before the restrictions fall away. An example is distributions resulting from the disposal or redemption of the underlying shares or resulting from a return of capital in respect of the underlying shares. Distributions qualifying as a return of capital or a foreign return of capital in respect of the underlying equity shares are treated as revenue. The current inclusion does not extend, however, to a return of capital by way of a distribution of an equity instrument. The 2016 TLAB will thus include an anti-avoidance measure to curtail such behaviour.

3.3. Disallowing the exemption for a lump sum, pension or annuity from a retirement fund that is located within the Republic

(Main reference: section 10(1)(gC)(ii))

Comment: Removing the exemption for retirement benefits paid from local retirement funds in respect of services rendered outside of the Republic is against the policy intent that has been in place since 2001 that was confirmed in Binding General Ruling 25 which was issued in November 2014.

Response: Not accepted. The Explanatory Memorandum on the Revenue Laws Amendment Bill, 2000 elaborated on the tax implications from a move to the residence basis of taxation and stated that "foreign pensions (would) not be taxed

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at this stage", where one of the arguments for this position was that it "may discourage foreigners from retiring in the Republic". There is no mention of allowing benefits paid from local retirement funds to be exempt, and since 2001 that has not been the policy position. In late 2014, after requests for clarification, the interpretation of the legislation was not found to be in line with the policy intent and the current proposal rectifies the legislation in this regard.

Comment: Pensioners are a vulnerable group who are not able to adjust their work effort and income and this amendment will have a significant financial impact since all amounts received from foreign service which are currently tax exempt will now by fully taxable. This will lead to financial hardship for pensioners who are wholly reliant on their pension as their sole source of income. It is proposed that if the amendment does go ahead it only applies to taxpayers who commence their retirement fund membership after 1 March 2017.

Response: Not accepted. The nominal value of contributions made to a local retirement fund for services rendered outside of the Republic will remain exempt from tax if the taxpayer did not receive a deduction in respect of those contributions. This amendment will ensure that we maintain the principle of horizontal equity, taxpayers in the same situation with similar levels of income should be treated and taxed in the same way.

Comment: South Africa previously made provision for non-resident individuals who were looking to retire in South Africa to be able to transfer their retirement fund assets from a foreign retirement fund into a local retirement fund with the aim of increasing the level of investments in South Africa. The funds accumulated in the foreign retirement funds arose from services rendered outside the Republic and have been exempt from tax when paid out to retirees in South Africa. The proposed amendments will lead to the taxation of pension benefits to individuals who have transferred their pension benefits from a foreign retirement fund to a local retirement fund, whilst if they have kept their funds in the foreign retirement fund they would remain exempt from tax. It is suggested that pension benefits remain exempt from tax when paid from funds transferred to a local retirement fund from a foreign retirement fund.

Response: Accepted. The draft legislation will be changed to allow benefits paid to a resident arising from retirement assets from a foreign retirement fund that have been transferred to a local retirement fund to remain exempt from tax. The tax treatment will be the same for benefit payments made to individuals residing in the Republic from a retirement fund located outside the Republic.

3.4. Roll-over of excess retirement fund contributions before 1 March 2016

(Main reference: section 11(k))

Comment: The proposal to extend the rollover relief for pension funds is applauded, but to disallow the rollover of excess contributions for provident fund contributions goes against the retirement reform objective of "harmonisation" and creates

unnecessary distinctions between different types of retirement funds. This will create further confusion and antagonism.

Response: Not accepted. The deduction for retirement fund contributions is provided to taxpayers as an incentive to increase retirement savings and correspondingly it is expected that the taxpayer purchases an annuity with two-thirds of those amounts upon retirement. Allowing provident fund members to rollover previous contributions to receive a deduction would break that principle as they would be receiving a deduction on historical contributions for which there is no requirement to purchase an annuity on retirement.

4. INCOME TAX: BUSINESS (GENERAL)

4.1. Addressing double non-taxation arising from cross-border hybrid debt instruments

(Main reference: sections 8F and 8FA)

The 2016 Draft TLAB contains a proposal aimed at addressing double non-taxation arising from hybrid debt arrangements where the borrower of a debt instrument is not a South African taxpayer. To stop this arbitrage, it is proposed that the scope of the current anti-avoidance measures should be limited to instances where the South African rules can deny an interest deduction for the issuer of a hybrid debt instrument. The anti-avoidance rules should not apply to the following:

- In instances where the issuer is a resident company; and
- In instances where the issuer is a non-resident company in respect of the debt instrument that is attributable to a permanent establishment in South Africa or a controlled foreign company whose profits are attributed to a South African resident.

This means that where the issuer is not within the South African tax net, the hybrid debt instrument anti-avoidance measures will not apply and interest paid by that non-resident issuer will not get dividend treatment. As announced in the 2016 Budget Review, this proposal came into operation from 24 February 2016 and applies in respect of amounts incurred in respect of an instrument issued on or after that date.

Comment: This proposal is deemed to have come into effect from 24 February 2016 and will apply in respect of instruments that had been issued prior to that date as it is proposed that change will apply in respect of amounts incurred on or after 24 February 2016. This results in the retrospective effect of the exclusion and no time is afforded to taxpayers to restructure their affairs.

Response: Not accepted. The intention to exclude hybrid-debt instruments issued by non-residents was announced by the Minister of Finance in the 2016 Budget Review. It was clearly stated in the 2016 Budget Review that these cross-border hybrid-debt instruments were being used to intentionally create hybrid treatment of the instrument and the interest charged in respect

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thereof by taking advantage of the re-characterisation mechanism of the anti-hybrid debt rules to benefit from a lower tax charge on foreign dividends. Such arrangements lead to base erosion and profit shifting (BEPS) and it was indicated that measures to stop such arrangements will be effective from the date of the announcement (i.e. 24 February 2016).

4.2. Relaxing rules for hybrid debt instruments subject to subordination agreements to assist companies in financial distress

(Main reference: section 8F)

The specific anti-avoidance measures dealing with hybrid-debt instruments treat interest incurred in respect of a hybrid debt instrument as a dividend if that debt instrument contains equity-like features. One of these features, is that the anti-avoidance measures will be triggered by any arrangement where the obligation to repay any amount owing in respect of the debt instrument (i.e. the principal amount or interest) is subject to the debtor retaining solvency.

In the current economic climate, it is not uncommon for companies to enter into subordinate agreements at the insistence of their auditor with the aim of subordinating their shareholder loans in favour of third party lenders to maintain solvency so that they may continue to trade with the hope of making a financial recovery. The re-classification of the interest as a result of the subordination agreement, gives rise to added pressures for the company.

- In order to assist companies in financial distress, it is proposed that interest paid in respect of a hybrid-debt instrument will not be reclassified if –
  - the debt is between companies that form part of the same group of companies (i.e. there is at least a 70% shareholding); and
  - following the interest payment, the borrower company would not be solvent or liquid.

Comment: The proposed scope of relief in the 2016 draft TLAB granted for hybrid debt instruments that are subject to subordination agreements is extremely limited. By limiting the relief to only debt between resident companies forming part of the same group of companies many other companies that need the relief are left out. Some of these include small businesses held by individuals and companies owned by non-resident shareholders who may have lent the company money and are required to subsequently subordinate those loans. Relief should be applicable in instances where loans are entered into between connected persons.

Response: Accepted. Relief will be extended so that subordination agreements entered into for purposes of maintaining a debtor company's solvency and liquidity will not be adversely impacted by the anti-hybrid debt rules.

Comment: The proposed relief is dependent on making a determination whether following the payment of an amount in respect of a debt instrument a debtor company would be solvent. This test is not easy and subjective. The determining factor should be based on objective criteria.

Response: Accepted. The relief will be granted if payment of an amount owed is deferred at the insistence of an auditor that is registered under the Auditing Profession Act (Act No. 26 of 2005).

4.3. Refinement of hybrid equity instrument and third-party backed share rules: Pre-2012 legitimate transactions

(Main reference: sections 8E and 8EA)

In 2012, third-party backed shares anti avoidance rules were introduced in the Income Tax Act to deal with share instruments with debt like features, e.g. preference shares. These rules targets share issues where the dividends in respect of those shares are guaranteed by unrelated third parties. It has come to Government attention that these rules have the unintended consequences of impeding certain historic legitimate arrangements and transactions that were entered into before 2012, i.e., before the introduction of these rules. In order to provide relief in respect of these legitimate transactions that were entered into before 2012, it is proposed that:

- Parties that entered into any transaction before 2012 that fall foul of these rules be allowed to cancel these transactions.
- The cancellation should be effected within a window period of 12 months starting from 1 January 2017 to 31 December 2017.

Comment: While the 2016 Draft TLAB amendments to section 8EA relating to pre-2012 legitimate transactions are welcomed, the requirement that it will only apply to preference shares issued before 1 April 2012 might be unduly restrictive. There are agreements that were signed before 1 April 2012 where certain conditions precedent (outside of the control of the parties to the agreement) were still outstanding after 1 April 2012 essentially meaning that the preference shares could not be issued until the finalisation of those conditions precedent. It is proposed that the envisaged relief apply to preference shares issued in terms of agreements that were finally signed prior to 01 April 2012 and not only preference shares issued prior to that date.

Response: Accepted. Changes will be made in the 2016 Draft TLAB to take into account of these concerns.

Comment: There is a mismatch between the applicable effective date per the draft legislation and the Explanatory Memorandum. It is proposed that the effective date be clarified.

Response: Accepted. The effective timeframe for the proposed allowable period to cancel any enforcement obligation or right is contained within the body of the legislation and as such the date of proclamation is sufficient as an effective date. The relevant change will be made in the Explanatory Memorandum.

Comment: It is submitted that the definition of 'operating company' be expanded to include start-up companies or companies where an actual state of operation potentially could take a while to be achieved e.g. independent renewable energy producers.

Response: Accepted. The definition of "operating company" will be extended to include start- up companies.

Comment: Not all taxpayers affected by the imposition of section 8EA will benefit from the proposed relief envisaged. Taxpayers that entered into transactions prior to April 2012 but who have since paid their taxes will not be entitled to refunds. It is proposed that taxpayers who already paid their taxes to adhere to then legislation be granted tax credits to be utilised in the next year of assessment.

Response: Not accepted. South African tax legislation does not contain any form of a tax credit system in relation to corporate income tax. In fact the entire South African tax regime only details one tax credit through the medical expense tax credit, which in turn is only applicable to natural persons.

4.4. Addressing the circumvention of anti-avoidance rules dealing with third-party backed shares

(Main reference: sections 8E and 8EA)

In order to curb the circumvention of the anti-avoidance rules dealing with third party backed shares through the formation of a trust holding mechanism, whereby investors acquire participation rights in trusts and the underlying investments of those trusts are preference shares, the 2016 Draft TLAB proposes that amendments be made in the definitions of "*hybrid equity instrument"* and *"preference share"* to include any right or interest where the value of that right or interest is directly or indirectly determined by the underlying share that is either an equity share or a share other than an equity share.

Comment: If considering the proposed amendments to the legislation in as far as it relates to (1) pre-2012 legitimate transactions in respect of hybrid equity instruments and (2) and the proposed circumvention of anti-avoidance rules scenario, it is unclear as to why there is a mismatch in the allowable period per the proposed legislation to 'restructure' these two structures? It is proposed that a one year grace period be given from date of promulgation as it relates to the circumvention of anti-avoidance rules scenario.

Response: Not accepted. Unlike the proposed relief for pre-2012 legitimate transactions in respect of hybrid equity instruments, this proposed amendment is by its nature a dedicated anti-avoidance measure aimed at schemes that use the hybrid equity anti-avoidance rules to the detriment of the fiscus. Government's intent with regard to the misuse of anti-avoidance measures described above was already communicated in the public sphere in February 2016 via the Budget Review 2016. Even if the original intention was not to obtain a tax benefit it can't be argued that the holder of the vested right in the trust did not obtain the tax advantage and as such falls squarely within the intended anti-avoidance measure.

Comment: It is proposed that existing investors in soon to be offending structures that are seen to circumvent the hybrid equity anti-avoidance rules be excluded from the

new proposed provisions for as long as they retain their interest in that structure. Essentially the proposed legislation should only apply to new investments in these targeted structures.

Response: Not accepted. The anti-avoidance measure contained in sections 8E and 8EA are aimed at share instruments with debt-like features. The third-party guarantees, whether directly or indirectly, protects the instrument's yield so that the instrument provides security features similar to debt. This creates a tax advantage for the holder of the instrument through the benefit of a lower dividend withholding tax as opposed to the rate of tax if interest had been included in the taxable income of the holder of the instrument.

Comment: Although it is understood by Industry why the anti-avoidance amendment with respect to the interposition of a trust or another level of ownership with regard to the ownership of a third party backed share is being made there is a concern that it affects current vanilla structures:

(a) It is proposed that the amendment be changed to carve out transactions where a 'covered person' (per s24JB) guarantees the preference share for vested right holders / shareholders of the trust / entity with underlying preference shares?

(b) In the alternative that the amendment be changed to carve out transactions where a third party guarantees the amount from the underlying preference share to the vested right holder / shareholder if that guarantee is linked to market making (buying and selling of vested rights / shares in a trust / entity that speculates in preference shares) and not to an action of default on the underlying preference share.

Response: Not accepted. Even if the original intention was not to obtain a tax benefit the holder of the vested right still obtains a tax advantage and as such a covered person / bank has the benefit of marketing and selling a tax beneficial product outside the scope of the third party backed share anti-avoidance rules.

4.5. Extending the small business corporation regime to personal liability companies

(Main reference: section 12E)

The small business corporation regime provides for small business corporations to be subject to tax at progressive tax rates which are more favourable than the normal flat rate of 28 per cent. In order to qualify for the special dispensation, the entity must meet the definition of a "small business corporation" in the Income Tax Act. When the regime was introduced, a small business corporation had to either be a close corporation or a company registered as a private company in terms of the then applicable Companies Act, 1973. When the new Companies Act came into effect in 2011, the definition of a private company in the new Companies Act expressly excluded a personal liability company. This means that personal liability companies cannot benefit from the small business regime. In order to correct this, changes have

been made in the 2016 Draft TLAB that personal liability companies should be expressly included in the definition of a “small business corporation” contained in the Income Tax Act.

Comment: The 2016 Draft TLAB proposes that personal liability companies should be expressly included in the definition of a “small business corporation” with effect from 1 March 2016 and that personal liability companies should only benefit from the favourable small business tax regime for the years of assessment ending on or after that date. However, the exclusion of personal liability companies from qualifying as small business corporations had no policy basis. This exclusion was a result of an unintended omission made when technical corrections were made to section 12E for purposes of updating that provision with the introduction of the New Companies Act. As such the inclusion of personal liability companies should be retrospective.

> *Response:* Partially accepted. The effective date will be changed from 1 March 2016 to 1 March 2013. As such, personal liability companies will benefit from the favourable small business tax regime in respect of years of assessment commencing on or after 1 March 2013. This date is proposed as years of assessment prior to the 2013 year of assessment would have prescribed.

4.6. Asset-for-share transactions for natural persons employed by a company

(Main references: section 42)

Comment: It is noted that the proposed amendment to the roll-over rules pertaining to asset-for-share transactions that seeks to align the scenario under which a natural person may benefit from roll-over relief without having to acquire a 10 per cent stake in the company to which he or she is disposing of an asset to the original policy intent. As set out in the draft explanatory memorandum to the draft 2016 TLAB, a natural person who is engaged in the business of a personal liability company on a full-time basis will automatically qualify for roll-over treatment on any asset disposed of by him or her to that personal liability company in exchange for shares in it (without regard to the size of the stake). The rationale was that roll-over relief that is not subject to the qualifying interest test was originally intended for professionals wishing to incorporate. The current scope of the rule, which allows any natural person that is engaged in the rendering of a service on a full-time basis with the business of any service company, is commercially useful and no abuse arises from the status quo.

It is noted that in many instances a target company may have a number of management or employee shareholders that the acquiring company may want to continue to incentivise who hold a very small interest in the target company and will also not hold the required qualifying interest of 10 per cent in the acquiring entity following the asset-for-share corporate action. The status quo is useful under these circumstances as the management or employees also benefit from roll-over relief. If the proposed amendment is not dropped, it will result in capital gains tax on their disposal of their interest in a target company.

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Response: Accepted. The current provision granting roll-over relief to natural persons in the case of asset-for-share transactions without to the qualifying interest goes much further than originally intended. The provision is being interpreted as allowing for roll-over relief to natural persons that are employed on a full-time basis by a company whose business involves the rendering of a service. The question that arises from this interpretation which will need to be addressed in future is what the policy rationale is for excluding non-service rendering companies.

The policy rationale regarding roll-over relief granted to natural persons rendering services will be considered at a later stage.

4.7. Extension of relief for the outright transfer of collateral

(Main references: sections 1, 22 and paragraph 11 of the Eighth Schedule to the Act and section 1 of the Securities Transfer Act No. 25 of 2007)

In view of the fact that collateral arrangements support financial stability objectives and because of the role they play in mitigating credit risk, the following changes were proposed in the 2016 Draft TLAB:

- To extend the allowable period with which the identical shares are returned to the borrower by the lender from 12 months to 24 months;
- To cater for corporate actions in relation to situations outside the control of the parties, that could result in an identical share being unable to be returned in terms of this arrangement;
- To extend the tax dispensation to include listed Government bonds that are transferred in terms of this arrangement.

Comment: The current rules regarding collateral arrangements do not address the possible scenario where a corporate action could result in either (1) different shares replacing collateral taken as part of a collateral arrangement or (2) no shares being able to be returned as part of that collateral arrangement. The proposed legislation fails to address the second scenario envisaged in the proposed policy amendment detailed above.

Response: Accepted. Changes will be made in the 2016 Draft TLAB to take into account of these concerns.

Comment: The draft Explanatory Memorandum states that Government recognises that the use of government bonds as collateral is embedded in the financial markets industry and affects all its participants and transactions and as such that the provisions regarding collateral arrangements be extended to government bonds. Based on the same reasoning as above, it is proposed that similar provisions be extended to security lending arrangements.

Response: Accepted. The current treatment of government bonds will be extended to apply to security lending arrangements.

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Comment: In view of the proposed amendments recognising the impact of corporate actions on collateral arrangements, it is proposed that the definition of "identical share" be amended to delete any reference to section 44 amalgamation transactions.

> *Response:* <u>Accepted.</u> Changes will be made in the 2016 Draft TLAB as the reference to these provisions is obsolete in light of the new proposed amendments.

Comment: The proposed extension of the current 12 month limitation to 24 months on collateral arrangements should also apply to securities lending arrangements.

> *Response:* <u>Not accepted.</u> The proposed amendments to extend the current 12 month limitation to 24 months will not be extended to cover securities lending arrangements because securities lending arrangements are short term in nature and as such should never exceed 12 months. This was also confirmed with relevant stakeholders during the consultation meetings.

5. INCOME TAX: BUSINESS (FINANCIAL INSTITUTIONS AND PRODUCTS)

5.1. Tax treatment of long-term insurers due to the introduction of Solvency Assessment and Management Framework (SAM)

(Main reference: section 29A)

<u>Proposed amendments in the 2016 Draft TLAB</u>

The 2016 Draft TLAB that was released for public comment on 8 July 2016, proposes amendments in relation to the tax treatment of long term insurers due to the imminent change of current regulatory basis to SAM:

<u>Meeting with Financial Services Board (FSB), long term insurance industry and tax practitioners on 1 September 2016</u>

On 1 September 2016, a meeting was held with FSB, long term insurance industry and tax practitioners. During the meeting, the following amendments were proposed in the 2016 Draft TLAB:

- Clarification of the meaning of liabilities
- Changes be made in section 29A(15) to the phasing in of negative liabilities
- Introduce a new section 29A(16) that excludes negative liabilities that are recognised as an asset for accounting purposes and reported as such to the shareholders.
- Clarification to the definition of risk policy

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Proposed changes to the 2016 Draft TLAB

Based on the above, the following changes are proposed in the 2016 Draft TLAB:

- Section 29A(15)

(15) For the purposes of subsection (14) ***'phasing-in amount'*** *in relation to a policyholder fund or the risk policy fund means–*

(a) if the amount of negative liabilities that has been recognised in accordance with IFRS as reported by the insurer to shareholders in the audited annual financial statements relating to policies allocated to that fund, ***reduced by negative liabilities recognised as an asset,*** *exceeds the amount of negative liabilities that has been recognised in determining the value of liabilities relating to policies allocated to that fund in respect of the year of assessment of the insurer ending during 2016, the amount of that excess; or*

(b) if the amount of negative liabilities that has been recognised in determining the value of liabilities relating to policies allocated to that fund exceeds the amount of negative liabilities that has been recognised in accordance with IFRS as reported by the insurer to shareholders in the audited annual financial statements relating to policies allocated to that fund in respect of the year of assessment of the insurer ending during 2016, ***reduced by negative liabilities recognised as an asset****, the amount of that excess."*

- Section 29A(16)

(16) For purposes of this section asset excludes–

(a) negative liabilities;

(b) policies of reinsurance;

(c) a deferred tax asset; or

(d) goodwill,

recognised as an asset in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements.

- Clarification to the definition of risk policy

In order to clarify the policy intent with respect to the definition of risk policy, the following definition is proposed:

risk policy *means –*

a. any policy issued by the insurer during any year of assessment of that insurer commencing on or after 1 January 2016 under which the benefits payable

i. cannot exceed the amount of premiums receivable, except where all or substantially the whole of the policy benefits are payable due to death, disablement, illness or unemployment and excludes a contract of insurance in terms of which annuities are being paid; or

ii. other than benefits payable due to death, disablement, illness or unemployment, cannot exceed the amount of premiums receivable and excludes a contract of insurance in terms of which annuities are being paid; or

b. any policy in respect of which an election has been made as contemplated in subsection (13B);

Additional comments considered following the consultative meeting:

Comment: The proposed amendment to the definition of "adjusted IFRS value" relating to deferred tax liabilities determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements is limited to the policyholder fund and not risk policy fund.

Response: Not accepted. The proposed amendment was intended to cater only for policyholder fund. Unrealised gains on assets allocated to the risk policy fund are not earned for the benefit of specific policyholders as in the case of policyholder funds under the trustee basis of taxation.

Comment: The proposed "adjusted IFRS value" definition is silent on the treatment of Deferred Acquisition Cost ("DAC") and Deferred Revenue Liability ("DRL"). The treatment of DAC and DRL is not consistent throughout the industry.

Response: Accepted. Given the various interpretation for the treatment of DAC, it is recommended that consensus be reached with all insurance companies on the tax treatment before an amendment is made. Therefore, proposal relating to the treatment of DAC and DRL should not be considered in the 2016 TLAB process but be considered for the 2017 TLAB process.

Comment: The proposed definition of "adjusted IFRS value" envisages a reduction of the IFRS policyholder liabilities on a net reinsurance basis as reflected in the annual financial statements without a corresponding adjustment to the reinsurance asset allocated to the policyholder fund or risk policy fund.

Response: Not accepted. It is submitted that the reference to amount of liabilities "*net of amounts recognised as recoverable under policies of reinsurance*" is sufficiently clear as reference is made to amounts as opposed to assets or liabilities that are recognised as recoverable under policies of reinsurance. The explanatory memorandum will give further examples clarifying the reduction of IFRS policyholder liabilities by amounts recoverable under policies of reinsurance.

Comment: The proposed change to "adjusted IFRS value" and phasing-in rules/transitional rules creates effective date problems for insurers with a 30 June year end. Some insurers with 30 June year end may materially misstate their interim financial statement results if the Insurance Act comes into operation before /on 30 June 2017.

Response: Accepted. It is acknowledged that the effective date may create difficulties for insurers with 30 June year end. In order to cater for these circumstances, recommendations have been made to FSB to make the Insurance Act to come into operation on 1 July 2017. Furthermore, although it

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is acknowledged that some insurers with a 31 December year end may theoretically have difficulty in finalising amounts, however, during the consultation meetings with the insurance industry and tax practitioners, it was submitted that the amendments to the financial statements are known in advance.

Comment: The proposed phasing-in rules/ transitional rules are welcomed however, the amendment may create some abuse whereby insurance companies may change their accounting approach and reflect negative liabilities going forward as assets on a gross basis.

Response: Noted. There is merit that some insurance companies may change its accounting approach on treatment of negative liabilities. The proviso will be added to ensure that basis of determining the asset will be consistent with principles of determining policy liabilities for IFRS purposes and the elimination of assets will be consistent with FSB approach in determining the value of liabilities for tax purposes for 2015 years of assessment.

Comment: It is proposed that an exception is made for cell captives to use an "adjusted IFRS" basis. Under IFRS 10, a cell can only be consolidated by the cell owner it it first meets the definition of "deemed separate entities". IFRS 4 defines an insurance contract and the measurement of liabilities as dependent on the classification of contracts as an insurance or investment contract. Due to the above IFRS's statements and the fact that the shareholders agreement is read in conjunction with insurance contract, the impact is that first party cell arrangements are not recognised in the income statement. Third party cell arrangements are recognised but the inclusion of cell underwriting profits and expenses do not impact the company's net results, as the result of cell activities that are transferred back to the cell owner (reinsured third party cell owner resulting in a NIL Profit for third party cell arrangements in the Income Statements). The current basis of IFRS is that the cells profits are not in the Annual Financial Statements. However, currently for Income Tax purposes, tax is paid on the cells profits. It is therefore proposed that section 28 (short term insurance) and 29A (long term insurance) should use "adjusted IFRS" as a basis for the valuation of insurance liabilities but the effect of IFRS 10/IFRS 4 on the cell captive arrangement should be ignored.

Response: Accepted. Changes will be made in the 2016 Draft TLAB so that the provisions for taxation of both short term and long term insurance business should use the proposed definition of "adjusted IFRS" as a basis of calculating liabilities.

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6. INCOME TAX: BUSINESS (INCENTIVES)

6.1. Addressing possible administrative and technical changes in respect of industrial policy projects for section 12I

(Main reference: section 12I)

In the 2016 Draft TLAB changes were proposed in section 12I in order to enable SARS to recoup the difference in allowance claimed in respect of a project which was approved as a preferred status but changes to a qualifying status by the end of the compliance period and to extend the period to bring asset into use and the discretion contemplated in section 12I(19)(a) be extended to also include a reference to section 12I(7)(c).

Comment: Given the extension of the section 12I programme until 31 December 2017 and the limited budget of R20 billion, the possibility of projects being submitted after the budget has been depleted is highly likely. Section 12I(9) of the Income Tax Act must be amended to provide the Minister of Trade and Industry the authority to (i) approve projects without allocating a budget to it and (ii) to reallocate any unutilized allowances which are not claimed by taxpayers after the relevant "compliance period" when the approved project has lapsed.

> *Response:* Not accepted. If the budget is depleted due to project approvals, the committee cannot adjudicate on any further applications, and hence may not approve projects where there is no budget to do so. If the budget subsequently becomes available due to project withdrawals, the committee may reconsider applications at such a time, and any new applications will have to meet the criteria for approval. Proposals to increase the R20 billion limit is a policy and budget decision that cannot be taken without following due process, including a proper evaluation of the effectiveness of this incentive.

Comment: The 2016 draft TLAB proposes that a recoupment should arise on the difference in the allowance claimed in respect of a project which was approved as a preferred status project but changes to a qualifying status project during the compliance period. Differences in the amounts allowed as a deduction under the preferred status as compared to the deductions allowed under the qualifying status of a project will result in a recoupment in the hands of the taxpayer and should be added back to the taxable income of the taxpayer in the year that the status of the application was substituted. It should be clarified that the time of substitution means the year in which the Minister of Trade and Industry makes that decision as opposed to the effective date of substitution. Recommend that it be clarified that any recoupment arises in the year of assessment in which the Minister of Trade and Industry makes a decision to substitute.

> *Response:* Accepted. This matter will be clarified in Explanatory Memorandum.

Comment: Legislation should factor in the impact of penalties and interest on historic provisional tax returns that could now potentially be incorrect should a taxpayer's IPP status change from preferred to qualifying.

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Response: Comment misplaced. Legislation was specifically designed to allow for the aggregate recoupment to be made during the year of assessment in which the status is substituted so as to ensure that historic years of assessment are left untouched so as to avoid possible understated provisional tax penalties and interest.

6.2. Urban Development Zones (UDZ) – Allowing additional municipalities to apply for the UDZ tax incentive

(Main reference: section 13quat)

The 2016 draft TLAB proposes that the UDZ tax incentive be amended to provide a framework for the Minister of Finance to consider applications for Municipalities currently not allowed to designate a UDZ area to be able to designate one.

Comment: The manner in which s13*quat*(6) is drafted has the effect that the requirements in s13*quat*(6)(b) do not apply to municipalities approved by the Minister. Section 13*quat*(6)(b) should also apply to municipalities approved by the Minister.

Response: Accepted. The required technical change will be made in the legislation to address this.

6.3. Accelerated capital allowance in respect of supporting infrastructure used in producing renewable energy

(Main reference: section 12U)

The 2016 draft TLAB proposes that the provisions of the Income Tax Act be broadened to allow for the tax deduction of capital expenditure incurred for supporting capital infrastructure for large scale renewable energy projects that generate electricity exceeding 5 megawatt.

Comment: The proposed ring fencing and roll over provisions associated with the proposed accelerated capital allowances on roads and fences used in the production of renewable energy will cause unnecessary complexity. The relative values of these supporting structures do not necessarily justify the required administrative burden.

Response: Accepted. The draft legislation will be changed to remove the ring fencing provisions to assist in easing the burden of tax compliance and administration.

Comment: The proposed legislation does not specifically refer to the construction of foundations with regard to fences but merely to its improvements. It is proposed that the construction of the foundation be specifically detailed in the proposed legislation.

Response: Accepted. The proposed legislation will be changed accordingly.

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Comment: A major infrastructure cost incurred within IPPP's is the construction of grid connection infrastructure. It is suggested that the proposed section 12U be extended to include the cost of grid connection equipment that have to be incurred by the Independent Power Producers ('IPP's') in terms of their agreements with power distributors like ESKOM. It is also important to factor in that IPP's do not necessarily own the grid connection equipment (build on behalf of ESKOM who takes ownership as part of the agreement) nor the land on which it is constructed.

> *Response:* Noted. This issue falls outside of the scope of the proposals included in Budget 2016. However, is may be subject to possible consideration in the future legislative amendment cycle.

Comment: It has been proposed that the legislation in terms of the accelerated capital allowance on roads and fences come into effect on 01 April 2016 and applies in respect of years of assessment commencing on or after that date. The effect of a prospective effective date is that the benefit of such a deduction will be limited to IPP's who have more recently won their bids in the IPPPP and to the detriment of earlier projects. It is proposed that the effective date of the suggested provisions be retrospectively enacted.

> *Response:* Not accepted. It would simply mean a dead weight loss as most historic bidding rounds have been closed based on calculations not taking into account the proposed changes.

6.4. Refining the enabling venture capital regime for start-up venture capital companies

(Main reference: section 12J)

In order to create a more enabling environment for Venture capital companies (VCCC's) the 2016 draft TLAB proposes that the connected persons test (which is an anti-avoidance measure) be performed 36 months after the first shares are issued by the VCC as opposed to being performed at the end of every year of assessment.

Comment: The proposed amendment does not envisage a scenario where an investor which does not claim the section 12J tax deduction not be subject to the same shareholding limitations and requirements as investors that claim the deduction.

> *Response:* Not accepted. It is currently possible to set up investment structures outside the VCC vehicle for investors which do not wish to claim the benefit.

Comment: There is a mismatch between the rate of the new proposed recoupment provisions and current recoupment provisions within section 12J.

> *Response:* Accepted. The proposed recoupment rate will match the historic recoupment rate in section 12J.

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6.5. Providing tax relief for mining companies spending on infrastructure for the benefit of mining communities

(Main reference: section 36)

To further assist mining companies to meaningfully contribute towards community development, the 2016 draft TLAB proposes that the current incentive on capital expenditure on infrastructure development for the benefit of employees be extended to cover infrastructure expenditure incurred for the benefit of community development. To be eligible for tax deduction, the infrastructure should reflect what was agreed to between the mining company and the Department of Minerals Resources. In turn, similar to allowable capital expenditure incurred for the benefit of employees, it is proposed that the tax deduction for infrastructure expenditure incurred for the benefit of the community be spread over a 10 year period or the remaining life of the mine (whichever is the shortest).

Comment: The eligible expenditure (for deduction) should be expanded to include all expenditure in respect of Social and Labour Plans (SLPs) to recognise that SLPs also require enterprise development and the payment of on-going expenses, such as teachers' salaries.

> *Response:* Not accepted. The intention was purely to match the tax treatment of eligible infrastructure (in terms of section 36(11)(d)) constructed for the wider community (in terms of an SLP) with the current tax treatment if constructed for employees.

Comment: The ten-year deduction period (or shorter if the remaining life of the mine is less) does not render a benefit for mining companies with mines that may be nearing the end of their useful lives. During this period, the deduction is likely to add to assessed losses, which the company derives no value from.

> *Response:* Noted. The issue could be explored further in future to decide whether to review the period (both from a policy and affordability perspective).

Comment: Independent Power Producers (IPPs) are similarly obliged in terms of their agreements with Eskom and the Department of Energy to commit a percentage of revenue to be spent on socio-economic development. Similar tax treatment should be extended to IPPs.

> *Response:* Noted. This issue falls outside of the scope of the proposals included in Budget 2016. However, is may be subject to possible consideration in the future legislative amendment cycle.

Comment: It is proposed that this amendment should be implemented retrospectively. One reason given is that expenditure in respect of infrastructure that would have qualified for deduction, but which has already been incurred, will not be eligible for the proposed deduction given that it will be effective from 1 April 2017.

Response: Not Accepted. This amendment will be implemented prospectively as stated in the draft EM and TLAB, i.e. from 1 April 2017. It is not possible to introduce a change in tax treatment on a date that suits each individual case. Changing the trigger of the deduction from 'expenditure incurred and paid' to the words suggested (i.e. linking it to the asset instead) is problematic from an administrative perspective and would require SARS to examine the point at which construction, acquisition, erection and improvement start and end.

6.6. Tax treatment of land donated under land reform initiatives

(Main reference: Section 56 of the Act, addition of a new provision in paragraph 64A and the new paragraph 64D of the Eighth Schedule to the Act)

In order to provide relief to other land reform initiatives as stipulated in Chapter 6 of the National Development Plan (NDP), the 2016 draft TLAB proposes that such land reform initiatives should be exempt from donations tax and capital gains tax.

Comment: There are two problems with the current proposed wording of the amendment. Firstly, the words "full ownership" in section 56(1)(o) which is read with the amended section 56(o)(ii) creates problems for certain projects. The NDP and certain organisations do not require that full ownership to be transferred. The NDP promotes partnerships. Farm producers will in most instances transfer a minimum of 30% up to 70%-100% over time. The wording of the proposed amendment must therefore cater for the transfer of an interest at less than 100% in immovable property or a company as owner of immovable property.

Paragraphs 64A and 64D of the Eighth Schedule to the Income Tax Act should be extended so that a "right to land" or a "right to property" includes a "share in a company which owns the land".

Response: Not Accepted. The proposals in the 2016 Budget Review were meant to cater for full ownership of land transferred under land reform initiatives as set out in the NDP. An extension to partial ownership of land through holding a share in a company shareholding which gives a right to land/property that is owned by a company may be subject to possible consideration in the future legislative amendment cycle.

6.7. Provision for exception to the prescription rules for the research and development (R&D) tax incentive

(Main reference: section 11D(20))

The Minister of Science and Technology appointed a Task Team to make recommendations on how the R&D tax incentive could be improved. One of the issues identified by the Task Team is the fact that delays in processing approvals could possibly result in tax assessments prescribing before the approval decision is communicated to the taxpayer. The 2016 draft TLAB proposes that a provision should be added that will allow SARS to re-open and re-assess a previous year's tax

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return in order to grant an R&D deduction that would've been deducted if approval was granted timeously.

Comment: Some taxpayers requested that a single-tranche deduction be allowed in the current year, rather than going back to the specific year(s) that the application(s) was (were) submitted. It appears that this is linked to the comments on uncertainty surrounding the inclusion of the proposed amendment in the Income Tax Act, rather than the Tax Administration Act (TAA). Taxpayers want comfort that affected R&D deductions can be claimed by way of reduced assessments without impacting the otherwise prescribed status of their tax returns. The provision should be moved back to TAA to reduce uncertainty on re-opening of assessments.

> *Response:* Not accepted. Consideration was given to amending the TAA. However, this section was specifically designed to remove the concern taxpayers have raised, i.e. it was intended to narrow the scope of the re-opening of tax returns to R&D adjustments. SARS has no intention of reopening assessments to audit any issues other than R&D. However, any illegal contraventions, such as fraud, would still be open for audit if assessments are reopened.

Comment: There was a request to allow a partial deduction whilst a taxpayer is waiting for pre-approval.

> *Response:* Not accepted. Prior to 1 January 2014, this was possible – taxpayers could claim 100 per cent of R&D expenditure on incurral (subject to audit), and were only required to submit an application to the R&D adjudication committee if they wanted to claim the 50 per cent uplift. The policy intent was to have a higher hurdle in place for obtaining the 50 per cent uplift. In a meeting in 2013 with industry, it became apparent that taxpayers saw no distinction between claiming 100 per cent of R&D expenses and the 50 per cent uplift. For this reason, it was agreed that they should be merged, which then required adjudication on 150 per cent. As stated on the SARS website, when calculating Provisional Tax, it is important not to assume that the Minister of Science and Technology will approve the application, as this may be subject to penalties should the approval be denied. However, for R&D expenses of a revenue nature, taxpayers can claim a section 11(a) deduction for 100 per cent of such expenses in the interim.

Comment: Some taxpayers raised the concern that SARS could impose penalties and interest for the underpayment of the second provisional tax payment. This could arise in a case where a taxpayer claimed 150 per cent of R&D expenses before the R&D projects were approved and, as a result, the taxable income and tax liability is lower than it would have been in the absence of the deduction.

> *Response:* Not accepted. With reference to the previous response, SARS has made it clear on their website that taxpayers should not assume an approval before receiving a letter signed by the Minister of Science and Technology (or a person to which this responsibility is delegated).

Comment: Some taxpayers submitted comments on issues other than the proposed amendment.

Response: Noted. Many of the issues raised are linked to the recommendations of the Task Team set up by the Minister of Science and Technology. The Task Team completed its report on 15 April 2016. In the limited time available before the start of the 2016 legislative cycle, it was proposed that an immediate solution which could be implemented is the current proposal, which allows taxpayers to reopen assessments and claim the deduction due to them even though the assessments had prescribed. The main complaint with respect to this incentive is the long delays taxpayers have experienced in receiving an approval/disapproval from the Minister of Science and Technology, who is advised by the adjudication committee. The Department of Science and Technology is currently working on measures to reduce the backlog and shortening turnaround times for providing decisions on applications, for example an online application process is set to go live in January 2017. To improve guidance and clarity of information requirements, a new version of the application form and new guidelines will be published in September/October 2016. These steps should substantially improve the efficiency of the system.

General Remarks

Due to additional comments received, as well as taxpayers' frustration with the administrative process, a meeting was held with industry at the Innovation Hub on Monday, 5 September 2016. The meeting was led by officials from DST and the National Treasury. In conclusion, it was agreed that the following three issues would be the focus in the short-term:

Taxpayers seek clarity on the adjudication committee's interpretation of what qualifies for the R&D tax incentive in terms of software development and internal business processes. In addition to this, taxpayers would like a definition for innovation. DST has draft guidelines on these three issues that taxpayers are able to provide comments on.

Taxpayers raised the issue that pilot plants and prototypes may be used for both R&D and commercial purposes. They were asked to provide further explanation and examples to National Treasury (RDtax@treasury.gov.za) by 14 October 2016.

The administrative process may require a redesign as some taxpayers find it difficult to provide sufficient information on the R&D project they intend to embark on upfront. First prize is for the DST measures to enhance efficiencies within the current system. However, taxpayers were still invited to provide information / suggestions on a refinement to the process, should the efficiency measures not yield sufficient progress. Such comments should also be submitted to the National Treasury (RDtax@treasury.gov.za) by 14 October 2016.

General comment on the task team report: all recommendations contained in the task team report will be considered jointly by the Minister of Science and Technology and the Minister of Finance. It is the prerogative of these policymakers to determine the appropriate steps and decisions, taking into account government's priorities and fiscal constraints. Neither Minister is bound by a recommendation put forward by the task team as it is their duty to take a considered view on these matters.

7. INCOME TAX: INTERNATIONAL

7.1. Exemption of collective investment schemes from controlled foreign company rules

(Main reference: section 9D(2))

The 2016 draft TLAB proposes, in the first instance, South African Collective Investment Schemes investing in a global fund should be excluded from applying the CFC rules. Secondly, it is also proposed that the conduit principle will apply and the tax liability will ultimately fall in the hands of the unit holder.

Comment: It is not clear whether the controlled foreign company (CFC) exemption of the collective investments schemes will apply to collective investment schemes in participation bonds which are also included in the definition of a company in section 1 of the Income Tax Act.

Response: Accepted. Amendments will be made to clarify that the CFC exemption of also covers collective investment schemes in participation bonds.

Comment: The proposed exemption of collective investment schemes from CFC rules should be extended to also cover unit holders in the collective investment schemes. This is because the unit holders of the collective investment scheme would need to consider whether the investments made by these collective investment schemes in foreign collective investment schemes would be CFCs. Foreign collective investment schemes are unable to provide useful information due to privacy rules and as a result of the administrative burdens to unit holders, the exemption should be extended to include investors i.e. unit holders of a CIS that indirectly hold investments in foreign companies.

Response: Not accepted. Section 9D imputation rules requires a CFC's net income to be imputed in the South African company's taxable income in instance where more than 50% of the participation rights or voting rights of that CFC are directly or indirectly held by South African residents. Furthermore, in instances where a South African resident exercises less than 10% of the participation rights in the CFC, such CFC's net income will be exempt from imputation. In this regard, taking into account the nature of the CIS investments, many of the unit holders who invest through CIS's holds minimal shares, which are in most cases, less than the 10% threshold, and therefore their net income will not be imputed in any case.

This proposed exemption was meant to provide some form of relief for the investment vehicle i.e. the collective investment scheme investing in global funds, which is regarded as a conduit, and not to the investors. By exempting the unit holders, it will have the effect that no tax will be paid by both the collective investment scheme and the investor.

7.2. Adjusting the calculation for comparable tax exemption in respect of controlled foreign companies

(Main reference: section 9D(2A)(ii)(bb))

In order to close the anomaly created by the current provisions for the calculation of the comparable tax exemption in respect of CFCs, the 2016 draft TLAB proposes that in determining the comparable tax exemption, the adjustment for foreign group losses and carry forward foreign losses of the CFC should be withdrawn. As a result, it is proposed that further proviso to subsection (2A) of paragraph (ii)(bb) of section 9D be deleted.

Comment: The deletion of the whole paragraph will result in the normal CFC operating losses not taken into account in the comparable tax exemption calculation. It is unclear whether a taxpayer is allowed to take into account losses which the CFC would have suffered had it not been in a group context. Clarification is required on whether the deletion of the whole paragraph and not only the adjustment for group losses was intentional as it is believed that the main issue was to remove the CFC losses in instances where the loss is set off in a group context as a result of other jurisdiction treating group companies as a single unit

Response: Accepted. The first part of paragraph (ii)(bb) of the proviso to section 9D(2A) will be reinstated and the foreign losses of the CFC to be disregarded will be limited to foreign losses arising from foreign tax years ending after the foreign company became a CFC. The adjustment for foreign group losses will be deleted.

7.3. Interest withholding tax where interest is written off

(Main reference: section 50G)

In order to provide relief in cases where interest withholding tax is paid on interest that becomes due and payable, but interest is subsequently written off as irrecoverable, the 2016 draft TLAB proposes that interest that is subject to withholding tax on interest monthly will be interest will be interest that accrues to a foreign person in a particular month excluding any interest which becomes irrecoverable in the same month, to the extent that the withholding tax was paid in respect of such irrecoverable interest.

Comment: The proposal should provide for the actual refund of the withholding tax paid in respect of the irrecoverable interest to cater for those instances where the foreign person no longer accrues any interest that is subject to withholding tax.

Response: Comment misplaced. Section 50G provides for an actual refund of the withholding tax paid in respect of irrecoverable interest and not a credit.

Comment: The proposed amendment to provide a refund of withholding tax on interest paid on an amount of interest that becomes irrecoverable is in line with the principle that a relief should be provided to a taxpayer where an amount of income that is subject to tax is ultimately never received by the taxpayer. The same issue arises to withholding tax on royalties, where tax could have been paid on royalties that a taxpayer never receives and therefore identical provisions should be made to provide a refund of withholding tax on irrecoverable royalties.

Response: Not accepted. The policy rationale for providing a refund of withholding tax on interest paid for an amount of interest that becomes irrecoverable is based on the fact that the rate of default on loans and other debts instruments where interest is payable is high, especially in this economic climate. However considering the nature of royalty payments, the probability of default is minimal, and as a result, the refund provision will not be extended to withholding tax on irrecoverable royalties.

7.4. Clarifying the non-application of the re-organisation rules to deferred exchange gains and losses

(Main reference: section 24I(10A) and section 41(2))

Comment: The carve out of unrealised gains and losses will negate the whole policy intent of section 24I(10A) which is to trigger tax on realisation. It is not clear why deferred foreign currency gains and losses stemming from section 24I(10A) should be excluded from reorganisation relief. The deferred foreign gains and losses will still be within a group of companies and still be within the reach of the fiscus. Further, the current volatility of exchange rates could have a negative impact on reorganisations.

Response: Accepted. The proposed amendment will be withdrawn.

7.5. Tax exemption of Multilateral Development Financial Institutions

(Main reference: section 10(1)(bB) and section 50D)

South Africa has signed agreements with a number of multilateral development financial institutions, including World Bank, International Monetary Fund, African Development Bank, European Investment Bank, Brics Bank. These agreements make provision for tax exemptions of these institutions. In order to take into account the spirit of these agreements, proposals have been made in the 2016 draft TLAB to clarify the tax exemption status applicable to these institutions based on these agreements.

Comment: The proposed insertion of section 10(1)(bB) raises questions as to why there is a need for a provision of the Income Tax to specifically give effect to the agreements concluded by South Africa as these are already regulated by section 231 of the constitution. Many of these agreements go beyond income tax and withholding tax exemptions to exempt employees of the bodies from income tax and to exempt

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the bodies from custom duties. Furthermore, the proposed exemptions do not cover all supranational bodies, such as the United Nations and African Tax Administration Forum.

> *Response:* Not Accepted. The proposed amendments were meant to clarify in the Income Tax Act, the income tax exemptions applicable to multilateral development financial institutions, and not to employees of the institution or matters relating to customs.

8. VALUE-ADDED TAX

8.1. Revision of the 2014 amendment relating to notional input on goods containing gold

(Main reference: section 1(1) of the definition of "second-hand goods")

Comment: It is not clear what the impact will be of the revised amendment on gold bars that are bought and sold for investment purposes. It seems that both the 2014 amendment and the current revision thereof continues to deny the notional input tax credit on the purchase (by VAT registered vendors) of gold bars from end consumers.

> *Response:* Accepted. Amendments will be made to ensure that, provided the gold bars will be re-sold in the same state, the notional input tax credit will be permitted.

Comment: The phrases "sole purpose" and "substantially the same state" are not defined in the VAT Act. Guidelines will need to be issued setting out the application of these phrases.

> *Response:* Accepted. It is proposed that SARS will publish an Interpretation Note to clarify this and to provide guidance on the applicability of these phrases with examples being provided.

Comment: Given that the main purpose of the amendment is to exclude the sale of items containing only small amounts of gold, the legislation should be amended to fully reflect that intention by simply excluding items containing insignificant amounts of gold (e.g. less than 10 per cent) in terms of value if the item is sold in the same or substantially the same state.

> *Response:* Not accepted. National Treasury met with representatives of the jewelry industry, the jewelry council, the metal concentrators, the Regulator and representatives of dealers in second-hand goods. This proposal was discussed and it was unanimously indicated that this would be impractical to implement since it would not be possible to determine, at point of purchase, what that percentage would be. The proposed legislative amendment was the option that was agreed upon as being the most practically viable.

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8.2. Non-executive Directors' Fees

(Main reference: section 1(1) proviso (iii) of the definition of "enterprise")

Comment: There is much confusion as to whether both employee's tax and VAT are payable on non-executive Directors' fees. There are differing views on whether non-executive Directors are employees of the company or independent contractors. This leads to differing views on whether the fees earned by non-executive Directors are "remuneration" for employee's tax purposes or fees for services rendered for VAT purposes or both.

Some non-executive Directors have expressed the view that they would rather be regarded as employees for tax purposes, especially considering the risks that they take in their capacity as non-executive Directors and the time consumed in fulfilling their duties. They often do not have the time or the resources required for VAT compliance.

This issue is further complicated by the fact that many non-executive Directors may be non-executive Directors for a number of companies at the same time.

Clarity is required. The confusion has not been clarified in the Taxation Laws Amendment Bill since there has been no proposed amendment to the VAT Act in this regard. It is suggested that the proviso in the definition of "enterprise" be adjusted to fully prevent double taxation. Amounts subject to payroll tax should simply not be subject to VAT.

Response: Not accepted. The VAT Act is structured on the basis that, where a non-executive director (NED) supplies services to another person for a consideration, such NED will fall within the ambit of paragraph (a) to the definition of "enterprise".

Where the NED renders services as holder of any office (or an employee in the course of employment), those services are deemed not to be carrying on of an enterprise, to the extent that the NED receives "remuneration" as defined in the Income Tax Act. However, where such services are supplied independently from the person that pays the remuneration, then, the NED is carrying on an "enterprise". In this regard, the King Report requires that a NED be independent at all times and should a NED not meet this requirement, then disclosure must be made that the NED is not independent. Therefore, the King Report already provides guidance on the meaning of independently which should not be ignored when interpreting "independently" in the VAT Act.

Further, the contractual relationship between the NED and the entity that appoints the NED, will provide factual evidence as to whether the NED is indeed appointed as holder of office (or an employee in the course of employment). If this is the case, the next interrogation is whether the NED receives remuneration

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under the Income Tax Act and if this is the case, then a further interrogation must be made as to whether the services of the holder of office is carried on independently from the entity. If the NED renders such services independently, then the NED will be carrying on an “enterprise”. Should payment for the NED’s services not fall within the ambit of “remuneration”, the services rendered by the NED will not fall within the ambit of the proviso, but will potentially fall within paragraph (a) to the definition of “enterprise”.

Based on the above, the perceived double taxation, i.e. the NED being subject to both PAYE (being a withholding mechanism for the liability for Income Tax, as it is to the benefit of the NED, since it eases the financial burden that exists with making Provisional Tax payments) and VAT, is no different from a normal enterprise that is required to register for both Income Tax and VAT, hence, no amendment to the VAT Act is required.

It is proposed that SARS address the uncertainties between VAT and PAYE in an Interpretation Note.

Draft Tax Administration Laws Amendment Bill

9. Income Tax Act, 1962 (ITA)

9.1. Commissioner may notify any category of persons that they are provisional taxpayers

(Main reference: paragraph 1 of the Fourth Schedule; clause 5)

Comment: Foreign employees of multinational companies who are temporarily seconded to work in South Africa will often remain on their home country payroll. Because the local entity does not pay them, nor is liable to pay them, there is no South African employees' tax withholding obligation on a local entity. The multinational may not even have a South African resident entity, or may only have a non-resident branch, and therefore there is no resident employer or resident representative employer liable for PAYE withholding. These individuals are only taxed on assessment, unless they are provisional taxpayers in respect of other income.

On the basis that the intention is that resident (local) employees deriving remuneration in South Africa from non-resident employers should be provisional taxpayers it is proposed amendment should focus on the fact that it is remuneration derived from a non-resident employer that does not have a resident agent with authority to pay remuneration.

Response: Accepted. An amendment will instead be proposed to subparagraph (a) of the definition of ‘provisional taxpayer’ providing for the inclusion in the definition of any person who derives by way of income “any remuneration from an employer that is not registered in terms of paragraph 15”. This will cover

employees of non-resident employers, international missions and other employers that are not registered for employees’ tax purposes.

Comment: As currently drafted, the amendment will not achieve its stated objective. The definition of "provisional taxpayer" is designed in such a way that the specific inclusions are all subject to the provisos (i.e. "but shall exclude"). Adding an additional specific inclusion will not necessarily ensure that that category of person becomes a provisional taxpayer, as they may still qualify for one of the exclusions. This is particularly the case for the employees envisaged here.

Response: <u>Accepted.</u> An appropriate amendment to exclude this class of provisional taxpayer from subitem (BB) will be proposed.

9.2. Amendments relevant to deduction tables to be used by employers when withholding employees’ tax

(Main reference: paragraph 9 of the Fourth Schedule; clause 7)

Comment: The current version of paragraph 9(1) provides that the Minister must have regard to the rebates applicable in terms of section 6 and section 6*quat*. There is no specific provision in paragraph 9 that provides that the rebates must be deducted from the amount of the normal tax in determining the employees’ tax to be withheld.

Paragraph 9(6) should be amended to also provide that the section 6 rebates (primary, secondary and tertiary) as well as the section 6*quat* rebate must be deducted.

Response: <u>Comment misplaced.</u> The proposed amendment to paragraph 9(1) specifically caters for the deduction of the listed rebates. Paragraph 9(6) provides for the compulsory deduction of section 6A and 6B rebates (medical scheme tax credits) by employers if the specified conditions are met.

9.3. Provisional tax to be paid on amounts listed in paragraph (d) of definition of gross income in section 1 [amounts not taxed under the lump-sum tax tables]

(Main reference: paragraph 20 of the Fourth Schedule; clause 12)

Comment: Although these amounts do not constitute severance benefits, these amounts are remuneration and are subject to employees’ tax. In principle, the underestimation penalty should be imposed when the person underestimated the final taxable income for the relevant year of assessment and also paid insufficient employees’ tax and provisional tax.

The tax on lump sums (according to the special tables) should be excluded from provisional tax as must those lumps sums. The other lump sums must be included in the estimate and employees’ tax withheld on these amounts.

Response: Noted. This is the intent of the proposed amendments.

10. Customs and Excise Act, 1964 (C&E Act)

10.1. Facilitating the marking, tracking and tracing of tobacco products

(Main reference: section 35A; clause 16)

Comment: The amendment extends the provision from cigarettes to cigarettes and any other tobacco products. What other products are intended?

Response: Noted. The Protocol to Eliminate Illicit Trade in Tobacco Products under the World Health Organisation's Framework Convention on Tobacco Control compels South Africa to implement the marking, tracking and tracing of initially cigarettes and eventually all tobacco products. The amendment has been updated to only refer to tobacco products, as this includes cigarettes and better captures the future obligations under the Protocol.

Comment: It is proposed that the proposed wording of "distinguishing marks or numbers" be replaced with "unique identification markings" according to the terminology used in the Protocol to Eliminate Illicit Trade in Tobacco Products.

Response: Partially accepted. The wording "identification markings" will be substituted for "distinguishing marks or numbers". Although the requirement of "unique" is added in the Protocol, it has not been included due to the potentially subjective nature of what would be considered unique. This requirement will, however, be considered in the development of the rules in this regard.

Comment: It is proposed that section 54 be aligned in accordance with the section 35A amendment and their comments thereon. This would ensure that the packaging, marking, tracking and tracing requirements for locally manufactured product is harmonised with those for the equivalent imported product.

Response: Accepted. A corresponding amendment of section 54 will be added. The comments on section 35A have been considered and applied to this section 54 amendment in line with the responses above.

10.2. Updating the maximum allowed weight of imported cigarettes

(Main reference: section 113; clause 20)

Comment: The proposed maximum weight for imported cigarettes of 0.8kg per 1000 only accounts for the tobacco content. The average cigarette weight including paper and filter is 925mg. The weight of all packaging should be further added, which raises the weight per 1000 cigarettes to between 1.3kg and 1.8kg. It is therefore proposed that the maximum weight for imported cigarettes remain at 2kg per 1000.

Response: Partially accepted. The submitted information was used to update the amendment to a maximum weight for imported cigarettes of 1.2kg per 1000. This accounts for the average cigarette weight of 925mg and unit packaging only. To achieve stricter enforcement control, outer carton packaging and master case packaging is not included in the allowed weight. The inclusion of unit packaging, though, allows for verification of the permitted weight without having to damage cigarette packets that could not be replaced on imported products.

11. Value-Added Tax Act, 1991 (VAT Act)

11.1. Documentary proof – relief for defective notices

(Main reference: section 16; clause 24)

Comment: The proposed attempt to provide relief for vendors with defective invoices due to circumstances beyond their control is supported. However, it is submitted that the requirement of a formal rulings process for relief would be fairly onerous and excessive. Invoice defects periodically arise without easy correction. The counter-party may have undergone a reorganisation or other change or simply have faulty systems. Not all counter-parties are co-operative or have efficient processes. Many governmental entities are particularly difficulty to handle once a defective invoice is issued.

In cases such as these, a quick less-formal process is required in order to obtain relief. It is proposed that a more informal discretionary process be considered to address these situations as long as the vendor with the defective invoice comes forward timeously.

Response: Not accepted. SARS has the administrative capacity to deal with rulings that will follow upon this amendment. The application requirements for this type of ruling will furthermore be simplified to aid correct first time applications. It is expected that ruling applications under the proposed amendment will have a short turn-around period as an application for a ruling under the VAT Act is generally a quick process, unless it involves a complicated matter. It is not foreseen that a ruling under the amended section 16*(g)* would be complicated, as it does not involve questions of legal interpretation or policy but is a purely factual determination if the alternative documentary proof is acceptable. These documents need not be as extensive as those required for purposes of a verification of audit – it simply needs to constitute proof of the facts and circumstances that would have been demonstrated in the tax invoice, barring that which only the supplier could provide.

Comment: The proposed amendment should be amended to the effect that where SARS denied the input tax deduction, a vendor should subsequently be permitted a deduction where the vendor is able to show that it has made all reasonable efforts to obtain the correct documentation. This should be made subject to the vendor receiving a positive ruling from SARS in this regard.

Response: Noted: The vendor has five years to apply for the ruling i.e. to get the input tax deduction. This period aligns with the prescription period within which a vendor must submit a claim for input tax. A provision that a ruling must be requested by the vendor no later than two months prior to the expiry of the five-year prescription period will be considered in order to afford enough time for the processing of the request prior to prescription. SARS believes this period will generally be sufficient for the ruling, as also set out above.

11.2. Prescription period for claiming of refunds

(Main reference: section 44; clause 26)

Comment: Clarification is sought as to the circumstances when input tax may only be claimed in the tax period in which the supply occurred. In addition, under which circumstances, would the five-year period still be applicable? It is submitted that the proposed amendment be scrapped to prevent confusion among vendors and tax practitioners.

Response: Partially accepted. The Memorandum of Objects will be amplified to clarify that the proposed amendment does not limit input tax claims to the tax period in which the supply occurred, but merely aims to reinsert the previously repealed section 44(1) in order to allow for an input tax claim in respect of a particular tax period if received by the Commissioner within five years after the end of that tax period. Hence the proposed amendment aims to maintain the five year prescription rule that has always applied to VAT input tax claims, as a result of the fact that this is unique to VAT and is thus better regulated in the VAT Act than the Tax Administration Act.

Comment: Proposed amendment creates a mismatch by undermining coherence between the Tax Administration Act, 2011 and the VAT Act. Proposed amendment now requires a claim process for VAT refunds.

Response: Partially accepted. A VAT return is not only used to submit claims for a refund. The administrative process to recover overpaid VAT for prior periods which may result in a refund claim is available via the Request for Correction facility. The re-insertion of this sub-section does not create any new process for VAT refunds.

Furthermore, a VAT return constitutes a self-assessment and if a refund is due under that assessment, the payment of the refund is regulated under section 190 of the Tax Administration Act and no additional claim of the refund reflected in the assessment is required if SARS is satisfied that the assessment is correct. There is also no limitation period within which SARS must pay the refund lawfully owed by it under the assessment to the vendor. This is similar to how most refunds due under an assessment in respect of other tax types are regulated.

Accordingly, there is no mismatch or inconsistency between the VAT Act and the Tax Administration Act. However, to further enhance clarity on this issue,

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reference to section 190 of the Tax Administration Act will be deleted in section 44.

12. Mineral and Petroleum Resources Royalty (Administration) Act, 2008

12.1. Royalty tax final return

(Main reference: section 5; clause 34)

Comment: It is proposed that the current provision that the final royalty return is due 12 months after the tax year be retained. The period was increased to 12 months from the then 6 months period, with effect from the 2014 tax year as the shortened filing period resulted in unnecessary and costly administrative burdens for both the taxpayer and SARS mainly due to the fact that the Corporate Income Tax (CIT) and Royalty Tax computations are interdependent.

Response: Accepted. The 12 month period will be retained.

12.2. Discretion to increase royalty tax estimate not subject to objection and appeal

(Main reference: New proposed section 5A; clause 35)

Comment: In terms of the proposed section SARS may increase a royalty tax estimate. In terms of paragraph 9(3) of the Fourth Schedule to the ITA, SARS may also increase a provisional tax estimate and such estimate is not subject to objection and appeal.

Response: Partially accepted. This limitation i.e. that the increase in the royalty tax estimate is not subject to objection and appeal was not contained in the draft Bill released for comment. As the proposed amendments to the Mineral and Petroleum Resources Royalty (Administration) Act, aim to closely mirror the provisions of the Fourth Schedule, the discretion to increase the royalty tax estimate should, similarly to the discretion to increase a provisional tax estimate, not be subject to objection and appeal. The reason for this approach was fully canvassed when it was adopted in the provisional tax system."

13. Tax Administration Act, 2011 (TAA)

13.1. Funds of the Tax Ombud

(Main reference: section 14; clause 47)

Comment: The draft amendment is not clear as the preposition "of" in the phrase "funds of SARS" denotes ownership of the funds by SARS and therefore control of the funds by it. Hence, a clear separation is still not achieved between the funds owned and thus controlled by SARS on the one hand, and those for use and controlled by the OTO on the other hand. The ring-fenced funds of the Tax Ombud cannot at the same time be said to be the "funds of SARS".

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Response: Accepted: The proposed amendment will be reworded to clarify that the expenditure connected with the functions of the office of the Tax Ombud is paid in accordance with the budget approved by the Minister for the office. Reference to this amount being paid "out of the funds of SARS" will be removed.

13.2. Employment of staff by Tax Ombud

(Main reference: section 15; clause 48)

Comment: It is not clear whether only the staff from SARS will be appointed in the office of the Tax Ombud as they must be employed in terms of the SARS Act. The deletion of secondment but the inclusion that they must be employed in terms of the SARS Act makes it unclear as to how employment in the Office of the Tax Ombud will be done.

Response: Accepted. The proposed amendment will be reworded to clarify that the Tax Ombud must appoint the staff of his or her office who must then be employed in terms of the SARS Act. The reference to the SARS Act is essential if the Tax Ombud's staff are to enjoy the same conditions of service as SARS staff.

Comment: It is proposed that other members within the tax/accounting industry in private practice be recruited to the office as a way of balancing the composition thereof and ensure independence.

Response: Noted. The proposed rewording of this section as discussed above will clarify that the Office of the Tax Ombud is free to appoint whomsoever is chosen.

13.3. Mandate of Tax Ombud

(Main reference: section 16; clause 49)

Comment: While the extension of the mandate of the Tax Ombud is welcomed it is noted that such a review may only be conducted at the request of the Minister of Finance. This is entirely impractical. The Tax Ombud should have the power to initiate an investigation of his own accord and not require a mandate from the Minister to do so. Alternatively, the initiative to investigate may be made subject to the Minister's prior approval.

Response: Accepted. The proposed amendment will be reworded to expand the mandate of the Tax Ombud to review, on own initiative with approval of the Minister, any systemic and emerging issue related to a service matter or the application of the provisions of the TAA or procedural or administrative provisions of a tax Act as defined in section 1 of TAA.

Comment: Office of the Tax Ombud should be able to make requests to the Minister for mandate extension.

Response: Comment misplaced. The extension to the Tax Ombud's mandate proposed in the draft Bill flows from such a request to the Minister.

Comment: The Tax Ombud should also be given powers to investigate complaints from taxpayers pertaining to infringement of their rights by SARS. In addition, it should also be given the power to investigate any right violations by SARS (this should include allegations that SARS tends to deliberately delay paying refunds especially when it comes to their financial year end).

Response: Comment misplaced. The extension of mandate proposed this year is intended to allow the Tax Ombud to review allegations of systemic issues, even if not supported by specific taxpayer complaints.

Comment: It is submitted that the Tax Ombud needs to have some powers beyond mere advice to Parliament e.g. it should have the power to request temporary injunctions against SARS' action before the courts. Taxpayers, especially those of lesser means, often need protection to hold back the large administrative machinery of SARS in egregious cases. In effect, the Tax Ombud is often in the same position as a "public defender" in a criminal case so members of the public have representation when they cannot individually afford protection.

Response: Not accepted. As an initial matter, the Tax Ombud makes independent recommendations to taxpayers and SARS on how to resolve a matter before him. The Tax Ombud's reports to the Minister of Finance and ultimately Parliament provide for accountability and oversight for both the Tax Ombud and SARS. The proposed role as a "public defender" would change the office of the Tax Ombud from an independent role to a partisan one.

The proposed amendments with respect to the provision of reasons for not accepting the Tax Ombud's recommendations will provide the Tax Ombud with feedback on recommendations and further strengthen oversight, since such reasons may be included in the reports the Tax Ombud prepares.

Comment: While National Treasury ultimately has the theoretical power over tax administration legislation, this legislation is written and driven solely by SARS in practice. The enforcer of the (tax) law should not have an almost exclusive say over legislation in terms of enforcement. In essence, the law cannot be written exclusively by the police of any law without some assurance that public rights are protected in a meaningful way.

Response: Comment misplaced. It is common practice for government departments or entities to prepare legislation for introduction by their Ministers. SARS is subject to an additional layer of oversight in that it makes proposals that are subject to review by National Treasury before being approved by the Minister of Finance. These proposals are then subject to public consultation and the normal Parliamentary process.

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Comment: While the Tax Ombud arguably has the same rights as any other person to comment on draft legislation, its mandate should be broadened to include the review of administrative provisions of tax Acts and to make recommendations in this regard i.e. he or she should be compelled to review and make recommendations on the administrative provisions of tax Acts and not just their application given the lack of any other meaningful counter-weights in this area.

Response: Not accepted. As stated when the TAA was introduced, the introduction of a Tax Ombud was proposed in view of the fact that it would be in line with international best practice, with particular regard to the frameworks of Canada's ''Taxpayer Ombudsman'' and the United Kingdom's ''Revenue Adjudicator''. The mandate of the Tax Ombud and the limitations thereof were largely based on the models of these jurisdictions.

13.4. Extended accountability measures for both taxpayers and SARS

(Main reference: section 20; clause 50)

Comment: The extended accountability measures are welcomed however, the proposed amendment sets no timelines within which reasons must be provided.

Response: Accepted: A period of 30 days will be inserted.

Comment: Delete requirement for taxpayers to provide reasons as it serves no purpose.

Response: Not accepted. The requirement for both taxpayers and SARS to provide reasons for not accepting recommendations provides the Tax Ombud with valuable and useful feedback irrespective of which party disagrees with them.

13.5. Period of objection and appeal

(Main reference: section 104; clause 55)

Comment: Although the slight extension in the time period for reasonable ground extensions is welcomed, a more substantial change is required. The need for a longer period in this regard exists for multiple reasons. The required SARS notice is often left solely on e-filing not to be noticed by (less sophisticated) taxpayers for many months, many SARS notices are often vague in terms of the issues at hand and requests for information are often open-ended. All of these issues leave taxpayers in confusion with many simply shutting down (only to consult their advisors when time spans have long since passed).

The level of skill within private operations can also be problematic. Operational business systems fail and the press of business can easily cause the short 30/21 day time periods to pass. Obtaining the right tax advisors as well as retrieval and collection of information all takes time. Most business operational statistics / books have to be examined to provide a more detailed set of information be required during the objection period.

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It is proposed that the period for reasonable ground extensions be extended to a period of 6 months as opposed to a mere 30 days.

> *Response:* Comment misplaced. As announced in the 2016 Budget Review, the initial period for submitting objections will be extended in the dispute resolution rules. The revised period will take account of the various issues mentioned above. The objective is to ensure that the objection period is adequate so as to avoid extension requests, which unnecessarily complicate the dispute process and systems for taxpayers and SARS. The longer 30 business day period proposed for reasonable ground extensions is a complementary measure.

Comment: The initial 30-day period to object should be extended to 90 days for complex cases. Under section 99(4) of the TAA, SARS recognizes the need for longer time periods of assessment beyond the three-year period in obvious complex cases. This should also apply with regard to objections related to these cases.

> *Response:* Comment misplaced. As mentioned above, the initial period for submitting objections will be extended in the dispute resolution rules. The current thinking is that the period will be extended for all cases to address the needs of both unsophisticated taxpayers and complex cases.

13.6. Penalties for impermissible avoidance arrangements

(Main reference: section 221; clause 59)

Comment: Proposed penalty for impermissible avoidance arrangements will have little impact as no tax advisor would knowingly proceed with an arrangement of this kind nor disclose a transaction as such. Any transaction skating “close to the edge” would be covered with a variety of advisory opinions to the contrary.

> *Response:* Noted. South African and international experience is that transactions subject to a general anti-anti-avoidance rule (GAAR) continue to be undertaken by taxpayers and challenged by tax administrations.

Comment: The penalty should not apply if an impermissible arrangement is deemed to exist because of round-trip financing (section 80D) or a tax-indifferent or accommodating party (section 80E). These deeming rules are fairly wide and can trigger an impermissible arrangement even if the sole or main tax purpose of the transactions cannot be explicitly proven (see section 80G).

The penalty should also not apply if triggered by the “use or misuse” test because this aspect of the legislation is wholly untested under South African law (being a Canadian derivation). Taxpayers should not be subject to a penalty for a concept that remains wholly uncertain.

> *Response:* Not accepted. The penalty will only apply if a Court confirms the application of the GAAR. International precedent exists for the imposition of this

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type of penalty, often with higher penalties according to comparative research done.

Comment: Where a taxpayer has come forward voluntarily (i.e. decides that a particular transaction is vulnerable under GAAR) and has volunteered the tax before a notification of an audit or investigation, what would be the logical basis for applying the 2% penalty?

Response: Accepted. The percentage in the case of voluntary disclosure prior to notification of audit or investigation will be reduced from 2% to 0%.

13.7. Voluntary disclosure relief

(Main reference: section 225; clause 61)

Comment: The proposed amendment is a step forward at clarification but still falls far short of the clarification required. The term "investigation" remains wholly undefined.

Response: Comment misplaced. The term criminal investigation is used and specific provisions regarding criminal investigations are set out in sections 43 and 44 of the TAA.

Comment: The new definition merely shifts the concern to the core issue i.e. what does notification actually mean? It is proposed that the term firstly be limited to a written (printed or electronic) form of notification aimed directly at the taxpayer. Public statements / warnings from SARS about their general direction (e.g. public statements about the HSBC investigation) should be outside the ambit of the notification intended. Informal conversations need to be excluded.

Response: Partially accepted. A requirement for notification will be consistently inserted, as opposed to the current requirement of being aware of an audit or criminal investigation. The need for the taxpayer to have been effectively notified of an audit or criminal investigation will then be clear from the construction of section 226. Sections 250 to 255 already regulate the delivery of notices.

Comment: Even if the term is limited to a written (printed or electronic) form of notification aimed directly at the taxpayer, there are many forms of direct written / electronic communication to a taxpayer that would create confusion. Is a mere request for information sufficient? How does one know exactly whether the request explicitly relates to the matter to be voluntarily disclosed? The SARS target of examination should have to be disclosed (at least in a general way) for voluntary disclosure to be removed. Open-ended requests should not cut-off the opportunity for relief.

Response: Comment misplaced. SARS's notices of the commencement of an audit generally set out the initial scope of the audit. Section 226(1)*(a)* already makes it clear that the audit or criminal investigation must "be related to the 'default' the person seeks to disclose". Even if it is so related, a senior SARS

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official may permit an application if the default that the application relates to would not have been detected during the audit or criminal investigation.

Comment: The notification needs to have a time limit. Many forms of notice are often raised but left outstanding with little action. Notifications should probably be ignored after a 2/3 year time frame.

Response: Not accepted. Audits (and criminal investigations) may require extended periods of time. The keeping taxpayer informed provisions of section 42 of the TAA provide for periodic reporting of the stage of completion and a conclusion report for audits.

Comment: The word "voluntary" is sometimes interpreted as a separate requirement. Under this interpretation, pending possible action by SARS (e.g. various forms of awareness or notification) can render an application involuntary. The net result is to deny the application for relief. The term is merely a label for the relief intended. To avoid the term being viewed as a separate requirement, it should be replaced with the term "relief under this Part" throughout Part B of the TAA.

Response: Not accepted. It is a specific requirement of section 227 that disclosures must be voluntary. As a matter of principle a disclosure that is compelled cannot be equated with a disclosure that has been made voluntarily.

13.8. Qualification of person subject to audit or investigation for voluntary disclosure

(Main reference: section 226; clause 62)

Comment: Subsections (1) and (2) of section 226 for voluntary disclosures have become confused. As a general matter, eligible matters for voluntary disclosure must be unrelated to an audit or investigation. This is the main channel for seeking relief as described under section 226(1). However, under section 226(2) related matters may still be brought forward upon the discretionary direction of a senior SARS official.

Response: Accepted. These subsections will be extensively reworded to provide the required clarity.

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Annexure A

Public comments: Taxation Laws Amendment Bill, 2015

NO	Name of Company	Contact Person
1	ABSA	CHRISTOPHER NUNN
2	ADKINS FINANCIAL PLANNING	ROGER ADKINS
3	ADV ANIRUNDHRA	ADV ANIRUNDHRA
4	AMERICAN CHAMBER OF COMMENCE SA	AVRILLE BIRD
5	CFO/ ANGLO ASHANTI	CHRISTINE RAMON
6	ASISA	SUNETTE MULDER
7	ACTUARIAL SOCIETY OF SA	ROSEANNE MURPHY DA SILVA
8	ASSUPOL	NIEL DE KLERK
9	BASA	LEON COETZEE
10	BDO	KEZIA TALBOT
11	BOWMAN GILFILLAN	PATRICIA WILLIAMS
12	BUSA	OLIVIER SERRAO
13	CASHKOW	DIRK SLOT
14	CATALYST SOLUTIONS	CHRISTO ENGELBRECHT
15	CLIFFE DEKKER HOYMEYR	EMIL BRINCKER
16	COX YEAST ATTORNEYS	RS GREEN
17	DELIOTTE	NAZRIEN KADER
18	DISCOVERY	HYLTON KALLNER
19	ED LIPTAK	EDWARD J LIPTAK
20	ENS	MANGALISO NZIMANDE
21	ENS 2	BERIC CROONE/ PETER DACHS
22	EY	JUSTIN P LIEBENBERG
23	ESKOM	JACQUI KILANI
24	FISA	LOIUS VAN VUUEREN
25	FRITS NORTJE	F NORTJE
26	GARLICKE BOUSFIELD	NR PISTORIUS
27	GB &G	RD GOWAR
28	GRANT THORNTON	MJ BETTS
29	GRAYSTONE ELLIOT	BERNARD VAN DER MERWE
30	IDC	JAN PIENAAR
31	IRFA	WAYNE VAN PENSBURG
32	J VAN VUUREN	JOUBERT VAN VUUREN
33	JAVA CAPITAL	GAY VOLGELMAN
34	JIMMY DANIELS ATTORNEYS	JIMMY DANIELS
35	KNF VENTURES	KEET VAN ZYL
36	KPMG GENERAL	LESLEY BOSMAN
37	LEADER RUBBER COMPANY	ANDREW SUMMERS
38	MANGO ATTORNEYS	DS MANGO
39	MAZARS	MIKE TEUCHERT
40	MERVIN MESSIAS	ADVOCATE A.H DAVEY
41	METAL CONCENTRATORS	GREGOY MAGID
42	MMI HOLDINGS	KGAUGELO BOKABA
43	MTN	CAREL GERICKE / VIM ZAMA
44	NEDBANK	RIAAN CLOTE

45	NTOMBI NYAMANE ATTORNEYS	NTOMBIZONKE NYAMANE
46	OLD MUTUAL	ZANELE NXUMALO/ GARY EAVES
47	PAYROLL AUTHORS GROUP	ROB COOPER
48	PKF	PAUL GERING
49	PROF ENGELBRECHT	PROF AC ENGELBRECHT
50	PWC	KYLE MANDY
51	REDISA	CHARLIE KIRK
52	RICHARD VINE-MORRIS	RICHARD VINE-MORRIS
52	SA DIAMOND AND PRECIOUS METALS	ASHOK DAMARUPURSHAD
53	SAIA	NICO ESTERHUIZEN
	SAICA	PIETER FABER
54	SAIPA	FAITH NGWENYA
55	SAIT	DUANE NEWMAN
56	SARS	JOHN HANSSEN
57	SASLA	JAMES BURGESS
58	SAVCA	ERIKA VAN DER MERWE/ BUKIWE KABI
59	SIMODISA SART UP	MATSI MODISE
60	STRATE(ASISA)	ANTHONY VAN EDEN
61	TRUE NORTH GROUP	PETER FORSHAW
62	VODACOM	JOHN VAN DER WESTHUIZEN
63	WEBBER WENTZEL	ANNE BENNETT
64	WERKMANS ATTORNEYS	E MAZANSKY

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