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SUBMISSION

2017 Draft Taxation Laws Amendment Bill

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Dear Allan and Teboho

Representations on the Draft Taxation Laws Amendment Bill, 2017 ("TLAB 17")

We present herewith our written submissions on the above-mentioned Draft Bill.

Our submissions include a combination of representations, ranging from serious concerns about the impact or effect of certain provisions to simple clarification-suggestions for potentially ambiguous provisions. We have deliberately tried to keep the discussion of our submissions as concise as possible, which does mean that you might require further clarification. You are more than welcome to contact us in this regard.

Yours sincerely

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Attached:

- Detailed submissions

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1:*INCOME TAX*

INDIVIDUALS, SAVINGS AND EMPLOYMENT

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1.1 Tax relief for bargaining councils regarding tax non-compliance

Comment	Recommendation
The proposed relief for bargaining councils is extraordinarily generous and raises serious questions as to whether it is fair and equitable that such relief should be granted. While relief is available to taxpayers in other circumstances, most notably the special VDP, the relief proposed for bargaining councils is far more generous. The question has to be asked what makes the circumstances of these cases unique as indicated in the draft EM and the Budget Review. Not only is the proposed 10% levy on employees' tax not withheld and investment income not declared low (particularly when compared to the 40% of market value of assets under the special VDP subject to income tax at an effective rate of 40%), the period for which exemption is proposed is also generous. It grants exemption from tax for periods during which both SARS and the bargaining councils in question knew they were non-compliant. Moreover, it grants exemption from income tax on investment income for periods the returns for which are not even due at this stage (or may be due, but have not been submitted). It also gives a very generous period (more than a year) for payment of the levy. It is highly questionable why such favourable treatment is afforded to such non-compliant taxpayers and what the implications of such generosity for tax morality in the case of compliant taxpayers may be.	Careful consideration should be given to the extension of such relief to non-compliant taxpayers. While it may be reasonable to grant relief from penalties and interest, it is submitted that it is not appropriate to grant relief from the tax due.

1.2 Repeal of foreign employment income exemption

Comment	Recommendation
We refer to the joint submission of 15 May 2017 made by us, SAICA, SAIT, EY, KPMG and Deloitte. We incorporate that submission into this submission by reference. In addition, we highlight certain issues below.	The unintended consequences of the proposed repeal of s10(1)*(o)*(ii) should be carefully considered. In particular, it could result in many expats breaking SA tax residence, either through a treaty or by formal emigration.
The vast majority of SA expats are not international assignees of multinational companies, but individuals who have independently sought employment in other countries in order to obtain international experience or for better work opportunities. Many of these expats would remain ordinarily resident in SA (on the basis that they intend to return to SA and have not permanently emigrated). However, many of them would also have become tax resident in their host countries (the UAE is a case in point where a tax residence certificate can be obtained on the basis of a residence permit). The implication of such a scenario is that the tie-breaker of any applicable double tax treaty will come into play. In many cases the expat will be tax resident outside SA (on the basis that he has no permanent home in SA and has a permanent home in the other country or, alternatively, on the basis that that his centre of vital interests is in the other country). It is therefore relatively easy to break SA tax	

INCOME TAX ACT:
Section 10(1)(*o*)(ii)

Comment	Recommendation
residence under a treaty. A person could achieve this simply by either ensuring that no permanent home is available in SA while a permanent home is available in the other country or by moving the person's family to the other country. In such cases, SA would have no taxing rights to the foreign employment income. In most instances, there would be little to no exit charge on such a migration of residence.	
In the case of outbound international assignees of multinational companies, many such expats will also break SA tax residence when assigned to a treaty country and SA would have no taxing rights over their income. However, in other cases, SA tax residence may not be broken. In such circumstances, the compliance burden for both the taxpayer and the employer could increase substantially in determining tax residence and securing credits for foreign taxes. Furthermore, it could result in an increase in costs for the employer group due to tax equalisation, negatively impacting the competitiveness of SA business on foreign projects.	The exemption should be retained pending a detailed review of the economic impacts of the proposed repeal on SA businesses with operations abroad.

INCOME TAX ACT:
Section 10(1)(*o*)(ii)

1.2 Repeal of foreign employment income exemption

	Comment	Recommendation
	In the Budget, it was proposed that the exemption would be removed for those that are not subject to tax on income in the source state. However, the proposed amendment goes much further by removing the exemption in its entirety. This will result in a significant increase in the compliance burden for taxpayers and the administrative burden for SARS while not resulting in a significant increase in tax revenues. A case in point is the UK which has a top tax rate of 45%. However, this tax rate is only reached at GBP 150,000 (currently equivalent to approximately R2.6 million).	It is submitted that the exemption should remain in place for foreign employment income which is subject to tax.
	Most expats affected by the proposed amendment will be provisional taxpayers as defined and will need to submit provisional tax returns. This could give rise to challenges in estimating tax liabilities in SA given the volatility of the Rand and could lead to significant over- or underpayments of provisional tax.	Consideration should be given to the practicalities of how provisional tax is addressed in the context of expats.There should be extensive amendment of the SARS assessment practices and procedures to streamline the process for claiming and receiving of tax credits.
INCOME TAX ACT: Section 10(1)(*o*)(ii)	Securing credits from SARS for foreign taxes paid is a real challenge and replete with practical difficulties. These difficulties include differences in years of assessment and obtaining the required evidence of foreign taxes paid.	Mechanisms will need to be found to alleviate the burden on taxpayers with respect to foreign tax credits.

Comment	Recommendation
Where a local employer pays the remuneration, the employer may have an obligation to withhold both SA employees' tax and foreign tax with no relief for the foreign tax. This could result in significant hardship for employees.	If Treasury proceeds with the complete withdrawal of the exemption, provision should be made for the reduction of employees' tax by any foreign tax payable.
Options aside from the wholesale repeal of the exemption have seemingly not been considered.	Other options to the repeal of the exemption should be considered. Alternatives could include – ● Exemption by progression (as is done in Germany) where exemption for non-SA rendered services could still remain but the exempt earnings is considered in deriving the SA tax rate applicable for other worldwide income (such as SA related remuneration, investment income and capital gains). ● Having a tax rate threshold or a "black list/white list", which would allow for the taxation of SA residents on remuneration to low/no tax jurisdictions yet would avoid the significant SARS administration involved for assignees to countries with similar tax rates as SA.

INCOME TAX ACT:
Section 10(1)(*o*)(ii)

1.2 Repeal of foreign employment income exemption

	Comment	Recommendation
	Many South African residents working abroad make contributions to foreign social security schemes. These contributions can be significant. The restriction of SA tax relief only to foreign taxes on income and not also to social security taxes would result in effective double taxation on these individuals.	S6*quat* should be amended to allow for employee social security contributions abroad to be allowed for foreign tax credit purposes.
	In summary, careful consideration should be given to the unintended consequences of this proposal, which could include wholesale emigration of expats, capital flight and loss of foreign remittances (all with consequential implications for tax revenues in SA), as well as the negative impact on the competitiveness of SA business and the significant compliance and administration challenges that will arise.	
INCOME TAX ACT: Section 10(1)(*o*)(ii)	With the repeal, the cost of living in other countries has not been taken into consideration. Generally, the cost of living in other countries is higher than in South Africa (both Cape Town and Johannesburg are in the bottom 20 in the Mecer 2017 Cost of Living Report).The table in the next slide is an estimate of the taxable liability that is paid in various countries before taking into account living expenses.	A cost of living allowance should be introduced to ease the financial burden that the taxpayer is faced with.The living allowance should include housing, transport, food, clothing and household expenditure.The rates for the living allowance should be gazetted as is done for the subsistence allowance.

1.2 Repeal of foreign employment income exemption

Comparison of SA and other country taxes on individuals										
Country	Currency	ZAR exchange rate	Income	PIT	Payroll taxes / social security contributions	Total taxes	ZAR PIT	ZAR payroll taxes	ZAR total taxes	Maximum tax rate
South Africa	ZAR	1.00	1,000,000	314,990	1,785	316,775	314,990	1,785	316,775	45.00%
United Kingdom	GBP	17.13	58,377	12,051	4,691	16,742	206,430	80,358	286,788	45.00%
United States New York	USD	13.32	75,075	15,928	5,743	21,671	212,156	76,500	288,656	39.60%
Germany	EUR	15.63	63,980	16,487	11,251	27,738	257,689	175,858	433,548	45.00%
Namibia	NAD	1.00	1,000,000	269,000	972	269,972	269,000	972	269,972	37.00%
Botswana	BWP	1.29	775,194	172,648	0	172,648	222,717	0	222,717	25.00%
Zimbabwe	USD	13.32	75,075	20,876	920	21,796	278,067	12,258	290,325	50.00%
Swaziland	SZL	1.00	1,000,000	303,300	18	303,318	303,300	18	303,318	33.00%
Lesotho	LSL	1.00	1,000,000	287,572	0	287,572	287,572	0	287,572	30.00%
Mozambique	MZN	0.22	4,545,455	909,091	136,364	1,045,455	200,000	30,000	230,000	32.00%
Zambia	ZMW	1.49	671,141	233,738	895	234,632	348,269	1,333	349,602	37.50%
Angola	AOA	0.08	12,500,000	2,111,650	375,000	2,486,650	168,932	30,000	198,932	17.00%
Nigeria	NGN	0.04	27,027,027	6,278,486	270,270	6,548,757	232,304	10,000	242,304	24.00%
Kenya	KES	0.128	7,812,500	2,284,883	2,400	2,287,283	292,465	307	292,772	30.00%
Tanzania	TZS	0.006	166,666,667	25,000,000	8,333,333	33,333,333	150,000	50,000	200,000	30.00%
Malawi	MWK	0.018	55,555,556	8,333,333	2,777,778	11,111,111	150,000	50,000	200,000	30.00%
Uganda	UGX	0.0037	270,270,270	95,214,108	13,513,514	108,727,621	352,292	50,000	402,292	40.00%
Ghana	GHS	3	333,333	66,667	18,333	85,000	200,000	55,000	255,000	25.00%
Japan	JPY	0.12	8,333,333	1,280,667	49,737	1,330,403	153,680	5,968	159,648	45.00%
United Arab Emirates	AED	3.6	277,778	0	0	0	0	0	0	0.00%
Qatar	QAR	3.63	275,482	0	0	0	0	0	0	0.00%
Oman	OMR	34.33	29,129	0	0	0	0	0	0	0.00%
Hong Kong	HKD	1.7	588,235	86,500	18,000	104,500	147,050	30,600	177,650	17.00%

	Comment	Recommendation
	The proposed amendment relating to loans to companies is too broad. This is illustrated in the following scenario. Mr A is a beneficiary of Trust T. Mr B is the son of Mr A and the sole shareholder of Company C. Mr A makes an interest-free loan to Company C. The loan is caught by s7C as Mr A is a connected person in relation to Trust T and Company C is a connected person in relation to Trust T. In another scenario, the facts are the same as above except that Mr A is the sole shareholder of Company C. Again the loan is caught notwithstanding that the trust is not a shareholder of the company.	The problem with the provision is that it applies where the borrowing company is a connected person in relation to the trust, which does not require any shareholding by the trust in the company. It is suggested that the trigger for the anti-avoidance provision to apply should be where trust directly or indirectly holds more than 50% of the equity shares in the borrowing company.
	The amended s7C(4) provides that "... those persons must be treated as having donated, to ***that trust***, the part of that amount …". This does not adequately address loans to a company.	The deemed donation should be to "that trust or other company, as the case may be, …"
INCOME TAX ACT: Section 7C	S7C(5)*(d)* only makes provision for a loan to a trust for the funding of a primary residence. S7C(5)*(f)* (which deals with sharia compliant financing arrangements) does not cater for a loan to a company.	These provisions should be amended to make provision for the exclusion of loans to companies in addition to trusts.

Comment	Recommendation
The proposed s7C(1A) seemingly does not address the situation where a loan claim is subsequently acquired by a company that is a connected person in relation to a natural person who would be covered by s7C(1) had it provided the loan. This creates a loophole to further circumvent the application of s7C.	s7C(1A) should be extended to apply to loan claims acquired by a company in circumstances analogous to those in s7C(1)*(b)*.

INCOME TAX ACT:
Section 7C

1.4 Excluding employee share scheme trusts from measures to prevent tax avoidance through the use of trusts

Comment	Recommendation
We welcome the proposed amendments. However, we note that it was proposed in the Budget Review that an exclusion for business trusts (and presumably business companies held by trusts) would also be introduced.	The proposed exclusion of businesses should be included in the Bill.

INCOME TAX ACT:
Section 7C

INCOME TAX ACT
Sections 8C & 8C(1A). Paragraphs 64E,80(2) and 80(2A) of the Eighth Schedule

Comment	Recommendation
We welcome the proposed amendment which (hopefully) should put this matter to bed once and for all. However, we do have some concerns which are elaborated on briefly below.	
The proposed amendments now make it clear that where an employee share trust disposes of shares and distributes the proceeds to a beneficiary, the capital gain will be disregarded in the trust and the distribution will be subject to income tax in the hands of the beneficiary. However, it does not address the situation where an employee share trust distributes the shares to the beneficiary, in which case para 80(1) of the 8th Schedule would not be applicable (as it does not apply in such circumstances). In such a case, the market value of the shares distributed by the trust would be subject to income tax in the hands of the beneficiary in terms of s8C. However, the capital gain of the trust would also be subject to tax in the hands of the trust.	Para 80(1) should also be amended to remove the exclusion of s8C equity instruments and be made subject to para 64E, which should be amended to also cater for distributions of equity instruments by an employee share trust.

INCOME TAX ACT
Sections 8C & 8C(1A). Paragraphs 64E,80(2) and 80(2A) of the Eighth Schedule

Comment	Recommendation
It is noted that the draft EM indicates that the amendments are intended to be clarificatory in nature. However, the effective date is proposed to be in respect of amounts received on or after 1 March 2017.	On the basis that the amendments are intended to be clarificatory, it is suggested that the amendments be backdated to 8 January 2016, the date that para 80(2A) was inserted.
We also welcome the proposed changes to s10(1)*(k)*(i) para *(jj)* of the proviso to clarify the purpose of the provision. However, we question the need for item (C) of that paragraph which has the effect that where an unrestricted equity instrument is acquired in the form of a dividend in respect of a restricted equity instrument does not qualify for the exemption. We consider this exclusion from the exemption to be superfluous because s8C(1)*(a)*(ii) already includes in income any equity instrument (including unrestricted equity instruments) acquired by virtue of a restricted equity instrument and therefore overrides the dividend exemption.	Item (C) of para *(jj)* of the proviso should be deleted in its entirety, amounts derived directly or indirectly from items (A) and (B) retained and the proposed para *(kk)* would then be unnecessary.
We note that s10B(6) contains similar provisions in the context of foreign dividends which give rise to the same concerns as with para *(jj)* of the proviso to s10(1)*(k)*(i).	S10B(6)*(b)*(ii) should be deleted as unnecessary in light of s8C(1)*(a)*(ii).

1.6 Increase of thresholds for exemption of employer provided bursaries to learners with disabilities

Comment	Recommendation
No comments	

INCOME TAX ACT:
Section 10(1)(*q*A)

1.7 Transferring retirement fund benefits after reaching normal retirement date

Comment	Recommendation
Contrary to what is indicated in the draft EM, no effective date is included in the draft Bill for these changes.	An effective date is required for the changes as per the draft EM.

INCOME TAX ACT:
Section 1 definition of "pension fund", "provident fund and "retirement fund".
Paragraph 2 and 7 (new) of the Second Schedule.

1.8 Tax exemption status of pre-March 1998 build up in public sector funds

Comment	Recommendation
No comments	

INCOME TAX ACT: Paragraphs 5(1)(*e*) and 6(1)(*b*)(v) of the Second Schedule

1.9 Removing the 12-month limitation on joining newly established pension or provident fund

Comment	Recommendation
No comments	

INCOME TAX ACT: Provisos (*b*)(iii) definition "provident fund" and (*c*)(ii)(cc) "pension fund"

1.10 Postponement of annuitisation requirement for provident funds to 1 March 2019

Comment	Recommendation
The postponement is noted. However, we note our disappointment at the further delay of this crucial change to the law.	

Comment	Recommendation
The belief that moving the deduction for contributions to retirement funds from s11 to s11F will address the trade requirement is misplaced. S11*(x)* brings every deduction within the scope of s11. Furthermore, s23*(g)* further limits any deduction to the extent that it is not laid out or expended for the purposes of trade.	A specific exclusion of the trade requirement and the provisions of s23 is required. See, for example, s18A in this regard.
It is noted that the introduction of the new limitation in s11F(2)*(c)* for taxable income before taxable capital gains is retrospective to 1 March 2016. This would be unfair to taxpayers as it could result in additional tax liabilities with retrospective effect.	The introduction of the new limitation should apply prospectively from 1 March 2017.

INCOME TAX ACT:
Sections 11(*k*) and 11F (new)

2:*INCOME TAX*

BUSINESS (GENERAL)

PwC

Comment	Recommendation
The provisions of s19 and para 12A 8th Sch. apply where a debt was used to directly or indirectly fund any expenditure. The proposed s36(7EA), however, refers only to a debt that was used to fund any amount of capital expenditure. This leads to uncertainty as to whether the mining provision applies only to direct financing of capital expenditure or also includes indirect funding.	It should be made clear in the provision as to whether it applies to both direct and indirect funding of capital expenditure or only to direct funding.
The proposed s36(7EA) contains no exclusions from its application, unlike s19 and para 12A 8th Sch. This would place miners at a significant disadvantage relative to other industries.	Similar exclusions to those contemplated in s19(8) and para 12A(6) 8th Sch. should be included in s36(7EA).
Para 56 8th Sch. contains a number of exceptions that allow for capital losses in the case of disposals of debts owed by connected persons which would ordinarily be disregarded. Such exceptions include any reduction of expenditure in terms of para 12A 8th Sch. No such exception is proposed in respect of reductions of capital expenditure in terms of s36(7EA).	Para 56 8th Sch. should include an exception for reductions of capital expenditure in terms of s36(7EA).

INCOME TAX ACT:
Section 36

Comment	Recommendation
The proviso refers to a mining company. There is no reference in s36 or para *(j)* gross income to a mining company and is therefore misplaced.	The reference to a mining company should be removed.
S36(7F) includes a per mine ringfence. The proposal does not take account of how the reduction of capital expenditure is to be applied in the context of this ringfence, i.e. is capital expenditure of only the mine to which the debt applies to be reduced or is capital expenditure of other mines to be reduced?	The provision should clearly establish how reductions of capital expenditure should be applied in the context of the mine ringfence.
The definition of capital expenditure includes certain notional amounts in the case certain gold mines and debts from the disposal of low-cost residential units to employees. Such notional amounts would not be funded by any debt and therefore would seemingly not fall within the parameters of the proposed provision with the result that such capital expenditure cannot be reduced which would in turn result in no recoupment under para *(j)* gross income.	The proposed provision should take into account the notional amounts contemplated in the definition of capital expenditure.

INCOME TAX ACT:
Section 36

2.2 Addressing the tax treatment of debt forgone for the benefit of dormant companies

Comment	Recommendation
While we welcome the proposal to provide relief for debt reductions of dormant companies, we are concerned that the proposed requirements are too restrictive and could result in many dormant companies not qualifying for such relief.	
The requirement that the company must meet all of the requirements in the year of assessment of the debt reduction and the preceding 3 years of assessment is too long. This could have the result that groups of companies would be forced to keep dormant companies for 4 years before being able to wind them up.	The proposed period for which a company must be dormant should be reduced to the current year of assessment plus one. This would then align with the forfeiture of any balance of assessed loss.
The requirement that no amounts must have been received or accrued to the company is too broad. As it stands, this would capture any receipts or accruals on the realisation of capital assets, including deemed proceeds (e.g. on the *in specie* distribution of assets), and potentially even the repayment of debts.	It is suggested that the requirement that no amounts must have been received or accrued to the company should be limited to amounts in the form of gross income.

INCOME TAX ACT:
Section 19. Paragraph 12A of the Eighth Schedule.

2.2 Addressing the tax treatment of debt forgone for the benefit of dormant companies

Comment	Recommendation
The requirement that no assets must have been transferred to or from the company is too restrictive. It frequently happens that, in cleaning up dormant companies, various debts are transferred by way of cession in order to eliminate and consolidate group debts to leave a single consolidated outstanding amount. This requirement would result in taxpayers having to wait a further minimum 3 years before waiving the remaining outstanding debt.	The requirement that no assets have been transferred to or from the company should be removed.
The requirement that the company not incur any liability is too restrictive. For example, any company is required to file an annual return with CIPC and pay the applicable fee. Compliance with this requirement would penalise any dormant company. It may be that a dormant company could also incur other liabilities, notwithstanding that it does not carry on any trade.	The requirement that no liabilities are incurred should be removed.
It is not clear why debt owing to non-resident group companies is excluded from the relief. The same impediments to winding up dormant companies apply equally to such debt.	Debts owing to non-resident group companies should not be excluded from the relief.

INCOME TAX ACT:
Section 19. Paragraph 12A of the Eighth Schedule.

Comment	Recommendation
The proviso states that the relief will not apply to debts incurred in respect of assets disposed of in terms of corporate reorganisation rules. It is not clear what the perceived mischief is that leads to such an exclusion, but it could result in significant difficulties. This may be illustrated by way of the following example. Company A holds all the shares in Company B. Company B acquired a property for R10 million funded by way of a loan from Company A. Company A intends to rationalise the group and transfer the property from Company B to Company A at a time when the property is valued at R8 million. A transfer of the property in settlement of the loan of R10 million would result in a debt reduction of R2 million and possible recoupment for Company B. However, a sale of the property for R8 million with the consideration set off the loan would not result in a debt reduction. The subsequent waiver of the balance of the loan would, however, result in a debt reduction and a tax liability for Company B which cannot be recovered by SARS. The non-applicability of the relief in this scenario is seemingly non-sensical.	The exclusion for debts that were incurred in respect of assets disposed of under the corporate reorganisation rules should be removed.

INCOME TAX ACT:
Section 19. Paragraph 12A of the Eighth Schedule.

Comment	Recommendation
The proviso also excludes any debt incurred or assumed to settle or take-over any debt incurred by any other group company. Again, it is not clear what the perceived mischief is which this exclusion seeks to address. However, it potentially significantly impacts the effectiveness of the relief by severely constraining its operation.	Consideration should be given to removing the exclusion for debt incurred or assumed to settle or take-over any debt incurred by any other group company.
The effective date of 1 January 2018 is unclear as to whether it applies to debt reductions on or after that date or to years of assessment ending on or after that date.	The effective date should be clarified to apply to debt reductions on or after 1 January 2018.
It is noted that the budget documents indicated that relief would also apply in the case of companies in business rescue. However, no such relief is included in the draft Bill.	The relief should be extended to apply to companies in business rescue as proposed in the Budget.

INCOME TAX ACT:
Section 19.
Paragraph 12A of the Eighth Schedule.

Comment	Recommendation
The proposed exclusions from s19 and para 12A apply only to debt reductions through the issue of shares. However, this ignores the fact that share issues have in the past merely been used as a mechanism to circumvent the debt reduction rules and simply add unnecessary complexity to what, in substance, is no more than a debt waiver. The proposed exclusion further muddies the water by suggesting that such issues of shares for an amount equal to the face value of the debt and the utilisation of the proceeds to settle the debt does, in fact, constitute a debt reduction. It is noted that the draft EM does suggest that the debt reduction rules should not apply to group debt that is forgiven. This implies that the exclusion should be broader than just debt reductions through the issue of shares and should include waivers of group debt.	It should be clarified explicitly that debt reductions indirectly through the issue of shares falls within the scope of s19 and para 12A. The exclusion from the debt reduction rules of group debt should not be limited to reductions through the issue of shares.

INCOME TAX ACT:
Sections 19 and 19A & B (new). Paragraph 12A of the Eighth Schedule.

Comment	Recommendation
The proposed s19A is penal in the sense that it does not take into account the market value of any shares issued. Assume, for example, that the debtor company had debt of R1,000 and that the market value of the shares issued on conversion amounted to R700. Assume also that the amount of recoupable interest is R400. In terms of the proposal, the full amount of recoupable interest of R400 will be recouped, notwithstanding that the debt reduction as contemplated in s1 only amounts to R300.	The recoupment of any interest should be limited to the amount by which the face value of the converted debt exceeds the market value of any shares issued as consideration (subject to our preceding submission in which case it is the increase in market value of all the shares issued which is relevant).
The proposed s19B applies only to debt within a group of companies. This discriminates against, for example, companies held by individuals. Such companies can and do face the same challenges with respect to debt capitalizations.	S19B should not be limited to groups of companies but should extend to any debt between a company and a connected person.

INCOME TAX ACT:
Sections 19 and 19A & B (new). Paragraph 12A of the Eighth Schedule.

Comment	Recommendation
The proposed s19B is extremely penal. The degrouping provision essentially amounts to a 6-year rule similar to that applicable to s45. Such a rule will severely impede the ability of groups to manage their affairs, particularly given that it effectively applies to both the debtor and creditor companies. For example, if the group wished to wind up or dispose of the creditor company this would result in the trigger of s19B. Similarly, the capitalisation of a debt may be a precursor to the disposal or part-disposal of or introduction of a new investor into the debtor company.	Our primary submission is that the proposed s19B should be withdrawn. Alternatively, the degrouping period should be substantially reduced from an effective 6 years of assessment to 2 years.
The reliance on the market value of shares issued to settle the debt as a mechanism for determining the deemed recoupment is flawed. In a wholly-owned group scenario, the number of shares issued to settle the debt is irrelevant. This mechanism is therefore open to manipulation (if too many shares are issued) or a trap for the unwary (if too few shares are issued).	It is very difficult to provide for a simple mechanism to remedy this flaw. Theoretically, regard should be had to the increase in the market value of all the shares of the debtor company at the time of the capitalisation (not at the time of degrouping) compared to the face value of the debt reduced.

INCOME TAX ACT:
Sections 19 and 19A & B (new). Paragraph 12A of the Eighth Schedule.

	Comment	Recommendation
	The recoupment in s19B is not in any way linked to a deduction. Assume for example that an intra-group debt was utilised to fund the acquisition of shares in another company in respect of which no deduction was available. No interest was charged in respect of the debt. The debt is capitalised as part of a restructuring of the company. In the event that there is a degroup within the 6 year period and an excess of the face value of the debt over the value of the shares, this would result in a deemed recoupment notwithstanding that the debt was in no way connected to any deductible expenditure. This position should be contrasted with that had s19 applied to the debt reduction, in which case there would be no recoupment.	Any recoupment in terms of s19B should apply only to the extent that the debt funded deductible expenditure.
INCOME TAX ACT: Sections 19 and 19A & B (new). Paragraph 12A of the Eighth Schedule.	The effective date of 1 January 2018 is unclear as to whether it applies to debt reductions on or after that date or to years of assessment ending on or after that date. Insofar as a19B is concerned, it would have the effect of applying retroactively to debt conversions that took place prior to 1 January 2018 where a degroup takes place on or after that date.	The effective date should be clarified to apply only to debt conversions that take place on or after 1 January 2018.

Comment	Recommendation
The proposal for the inclusion in proceeds of dividends received within 18 months of the disposal of the interest in the company goes too far and will catch normal dividends paid within that period where there is no mischief involved. By way of illustration, assumed that Company A holds 100% of the shares in Company B. Company A disposes of the entire shareholding in Company B to a third party for an amount of R50 million. In the 18 months prior to the disposal, company A received dividends amounting to R2 million from Company B in accordance with its dividend policy. As the proposal stands, the dividends of R2 million will be added to the proceeds on disposal. There is no mischief involved with such a scenario as the dividend is not an amount which is in reality consideration for the sale of the shares. What Treasury is concerned with in this scenario is the situation where, for example, Company B pays a dividend of R99 million on loan account to Company A which then disposes of the loan and shares for R100 million.	In order to more closely target the real source of the mischief, it is recommended that the 18 month rule should apply only to extraordinary exempt dividends as contemplated in para 19 of the Eighth Schedule while any exempt dividends continue to be targeted where those dividends are causally connected to the disposal. It is further recommended that the 18 month rule should apply only to dividends received or accrued on or after 19 July 2017 as it would be inequitable to include such dividends in proceeds simply on the basis of a disposal taking place within 18 months of the dividend distribution.

INCOME TAX ACT:
Section 22B.
Paragraph 43A of the Eighth Schedule

	Comment	Recommendation
	The definition of a qualifying interest includes a holding of at least 20% of the equity shares or voting rights if no other person holds the majority of the equity shares or voting rights. In order to escape this inclusion, this implies that another person must hold the requisite majority alone without taking into account that the person may hold control together with connected persons. To illustrate, Company A holds 20% of the shares in Company B. Company C and Person A each hold 40% of the shares in Company B. Person A holds all the shares in Company C. In such a scenario, the 20% shareholder would not have the degree of influence envisaged as the other shareholders in concert would have control.	It is recommended that a holding of 20% to 50% of the shares and voting rights should not be a qualifying interest if another person, whether alone or together with any connected person in relation to that person, holds the majority of the equity shares or voting rights.
INCOME TAX ACT: Section 22B. Paragraph 43A of the Eighth Schedule	The proposed provisions will apply to a company making an *in-specie* distribution of a qualifying interest outside of the corporate reorganisation rules which will result in dividends in the 18 months prior to disposal being added to proceeds. It is submitted that such disposals do not present a concern from a policy point of view as they do not involve a cash value strip of the shares disposed of.	The provisions should not apply in the case disposals by way of *in-specie* distributions.

Comment	Recommendation
The provision catches dividends received in respect of non-equity shares where the company also holds a qualifying interest. It is submitted that dividends in respect of non-equity shares do not give rise to an avoidance concern as contemplated in these provisions. By way of example, Company A holds 75% of the equity shares in Company B. The balance of the equity shares are held by a BEECo. In order to fund Company B, Company A subscribed for redeemable preference shares carrying a right to dividends at fixed rate. The effect of the provisions is that any dividends received by Company A in respect of the preference shares within 18 months of their redemption or as part of the redemption will be included in proceeds and subject to CGT.	The provisions should apply only to disposals of equity shares.

INCOME TAX ACT:
Section 22B. Paragraph 43A of the Eighth Schedule

Comment	Recommendation
It is acknowledged that the interposition of SA holding companies between a foreign parent company and a SA subsidiary has been used as a mechanism to create CTC. However, the proposed anti-avoidance rule goes too far in some respects. The mischief with which the provision is concerned only arises in respect of the issue of shares to non-residents and not to the issue of shares to residents. Residents would be subject to tax implications in respect of any distribution of CTC.	It is recommended that the provision should apply only to the issue of shares to non-residents.
On the other hand, the proposed provision is too narrow in that it limits its application to the issue of shares to companies. The same potential for mischief arises in respect of shares in SA resident companies held by other persons.	The anti-avoidance rule should apply equally to shares issued to persons other than companies

INCOME TAX ACT:
Section 8G(new)

Comment	Recommendation
Another problem with the proposed legislation is illustrated by the following example. A multinational group of companies decides to use SA as a location for the holding of its African operations. To this end, F Co disposes of its shareholdings in its African subsidiaries to SA Holdco (the holding company of SA Opco) in exchange for an issue of shares in SA Opco. As the proposed provision reads, the CTC of the shares issued by SA Holdco will be equal to the CTC of the shares of the African subsidiaries. This makes no sense in the context of such an arrangement.	The anti-avoidance rule should apply only to the acquisition of shares in a resident company and not shares in non-residents.
The draft EM refers to a concerned from disguised sales of shares utilising a subscription and buyback mechanism which results in an uplift in the CTC of the target company. However, the draft EM does not detail any proposal in this regard and nor does the proposed anti-avoidance rule address this mechanism.	Clarity is required as to whether there is an intention to address this concern and, if so, the mechanism to do so.

INCOME TAX ACT:
Section 8G(new)

Comment	Recommendation
It is noted that the draft TALAB also contains a proposed s7D!	The draft TALAB and draft TLAB should be coordinated so as to eliminate the use of the same sections for different purposes.
It is acknowledged that the *in duplum* rule presents a problem insofar as certain anti-avoidance rules are concerned. However, it should be noted that this harks back to the Woulidge case in respect of which judgment was handed down by the SCA in 2002. It is noteworthy that that case dealt with the application of the attribution rules in s7 and not with any provision to which the official rate of interest had application. The implication of this is that the application of the *in duplum* rule in the context of the various anti-avoidance rules dealing with low or no-interest loans is far broader than just those that apply the official rate of interest. Apart from s7, the application of the *in duplum* rule could extend to the CGT attribution rules in paras 68 to 73 of the 8th Schedule and potentially even to the application of s31.	The provision should not be limited to those circumstances where interest is determined at the official rate of interest, but should also apply where interest is to be determined at a market-related rate..

INCOME TAX ACT:
Section 7D

Comment	Recommendation
The official rate of interest is not defined in s1, but is defined in para 1 of the 7th Schedule. However, such definition is not incorporated into the proposed s7D by reference and, accordingly, the term is undefined for purposes of the proposed s7D.	As the official rate of interest is now used in various parts of the ITA, it is submitted that the definition should be moved from the 7th Schedule to s1 and the provisions of s7C and s64E amended to remove reference to the definition in the 7th Schedule.
It is noted that the effective date is proposed to be years of assessment ending on or after 1 January 2018. However, it is noted that the proposed provision will affect the determination of fringe benefits on loans for purposes of the 7th Schedule. While this will not have retrospective effect insofar as an employee's liability for tax is concerned, it would have retrospective effect insofar as the employer's obligation to withhold employees' tax is concerned and will automatically result in affected employers being non-compliant and liable for penalties and interest.	In order to address the implications for employers, it is suggested that a transitional rule should be introduced allowing for employers to withhold employees' tax on any fringe benefit arising as a result of the introduction of this provision in the last month of the year of assessment for the first year of assessment affected by the provision.

INCOME TAX ACT:
Section 7D

Comment	Recommendation
The proposal to clarify that contingent debt falls within the scope of the corporate reorganisation rules is welcomed. However, some residual concerns remain as indicated below.	
For purposes of an amalgamation transaction, s44(4) requires any assumed debt to have been incurred. By definition, contingent liabilities are not incurred. It could therefore be argued that the assumption of contingent liabilities would still not qualify for purposes of amalgamation transactions.	It is suggested that s44(4) be amended to more closely align it with the wording of s42(8) which does not require debt to have been incurred for purposes of the going concern rule.
A slightly different concerns arises with regard to liquidation distributions. In this regard, s47(3A) provides that rollover relief will apply only to the extent that the holding company has not assumed any debt incurred within 18 months unless it is the refinancing of debt incurred more than 18 months before the disposal or it relates to a business disposed of as a going concern. As contingent liabilities are not incurred, the inclusion in debt will result in rollover relief being available for contingent liabilities that have nothing to do with a going concern.	It is suggested that s47(3A) should require any debt to be incurred more than 18 months before the disposal (or a refinancing of such debt) or if it arose in the course of a business disposed of as a going concern.

INCOME TAX ACT:
Section 41

2.8 Extension of collateral and securities lending arrangement provisions

Comment	Recommendation
No comments.	

INCOME TAX ACT:
Section 22
SECURITIES TRANSFER TAX ACT:
Section 1

2.9 Third-party backed shares: Amendment of the provisions to cover certain qualifying purposes

Comment	Recommendation
We welcome the proposed amendment.	

INCOME TAX ACT:
Section 8EA

3:INCOME TAX

BUSINESS (FINANCIAL INSTITUTIONS AND PRODUCTS)

PwC

3.1 Refinement to the taxation of financial assets and liabilities due to changes in accounting standard

Comment	Recommendation
No comments	

INCOME TAX ACT:
Sections 24JB(1) and (2)

3.2 Exclusion of impairment adjustments from the determination of taxable income

Comment	Recommendation
No comments	

INCOME TAX ACT:
Section 11(*j*A) (new)

3.3 Application of hybrid debt instruments rules in respect of covered persons defined in section 24JB

Comment	Recommendation
No comments	

INCOME TAX ACT:
Section 24JB(1)

3.4 Amendments to the tax valuation method for long term insurers due to the introduction of solvency assessment and management framework

Comment	Recommendation
Definition of "adjusted IFRS value" In the definition of "L", the draft EM makes it clear that "net" means net of reinsurance and net of negative liabilities. The legislation is however not clear in this regard and could cause confusion.	In the definition of "L", we recommend that "net" be inserted before "negative liabilities" as well.
Section 29A(15)(a) and (b) The term"taken into account" is already an improvement from the use of "disclosure" previously, but even this is applied inconsistently. i.e. in para (a) the wording relating to the AFS is "taken into account" and in para (b) the wording relating to the AFS is "disclosure". The same is true for the wording relating to the Tax. The best wording to use to avoid confusion would be "recognised" in all four of these instances. Where the wording disclosure is used, taxpayers could think that they could change their tax treatment by just changing the way a negative liability is disclosed in the AFS (i.e. as a separate asset on the AFS rather than netting it off against the positive liabilities), even though the recognition of the negative liability would not be changed on the AFS.	We recommend that the words "taken into account" as well as "disclosure" in s29A(15)(a) and (b) be replaced with "recognised" in all four instances.

INCOME TAX ACT:
Section 29A

Comment	Recommendation
Section 29A(15) - Proviso Clarification is needed in the proviso to s29A(15) to make it clear that the "net negative zerorisation" should be per tax fund, and not in total for all funds. In addition, if the “net negative zerorisation” is per tax fund, the wording “disclosed” cannot be used, but rather “recognised” should be used. One could have a scenario where a specific tax fund is in a “net negative” position and should qualify for the “zerorisation” of that “net negative” position for that tax fund, but this would maybe not be disclosed on the AFS as a “net negative” (since IFRS only discloses the total net negatives and not net negatives per tax fund), although it would be “recognised” in the AFS.	We recommend the following wording for the proviso to section 29A(15): “Provided that the reduction of negative liabilities recognised as an asset should only apply where the positive liabilities reduced by the negative liabilities result in a net asset for that fund, which is recognised for financial reporting purposes.”

INCOME TAX ACT:
Section 29A

3.5 Tax treatment of deferred acquisition costs by long term insurers

Comment	Recommendation
No comments	

INCOME TAX ACT
Sections 29A(1)(*c*) & 29A(16)(*e*).

4: *INCOME TAX*

BUSINESS INCENTIVES

PwC

4.1 Extending the scope of non-recoupment rule for venture capital companies

Comment	Recommendation
We welcome the proposed amendment to exclude distributions of CTC as a recoupment in the same manner as disposal of the share.	
However, we note that the proposals in the draft Bill do not go anywhere near as far as what was envisaged in the Budget which included amendments to the qualifying company test.	Amendments should be made to relax the rules in relation qualifying companies as proposed in the Budget.

INCOME TAX ACT:
Section 12J

	Comment	Recommendation
	We note that a further requirement for deduction of donations in terms of s18A is proposed to be snuck into the legislation in the form of an approval by the Commissioner for purposes of the section. No explanation for this is provided in the draft EM. We are opposed to this additional requirement which will have the effect that no donations to a PBO, institution, board or body contemplated in s10(1)*(cA)*(i) or government department will be deductible as none of these would have been approved by the Commissioner for purposes of s18A. There is no need for such a requirement as the requirements for qualification are fully regulated by the approval of a PBO in terms of s30, part II of the 9th Schedule, s18A(1C) or a combination thereof. Requiring specific approval by the Commissioner for purposes of s18A will undermine the ability of such organisations to raise funding through donations and impose a substantial administrative burden on them.	The proposed requirement for approval by the Commissioner for s18A purposes should be withdrawn.
INCOME TAX ACT: Section 18(*b*A)	The acronym used for the United Nations Office on Drugs and Crime is for the United Nations Disarmament Commission.	Amend the acronym to UNODC

4.3 Correcting the inconsistent tax treatment between cash grants and in-kind grants of trading stock

Comment	Recommendation
The proposed denial of a deduction for government grants of trading stock in kind applies to all government grants and not only those that are exempt in terms of s12P(2). The implication is that a government grant of trading stock that is not exempt in terms of s12P(2) will be taxable while no corresponding deduction will be allowed.	The denial of the deduction of government grants of trading stock should only apply to those grants that are exempt in terms of s12P(2).

INCOME TAX ACT:
Section 22

Comment	Recommendation
One of the reasons highlighted for the proposed changes is that the mining company in question may no longer have the means to pay the tax in respect of the penalty. However, the proposed provisions continue to impose a tax liability on the mining company in the case of contraventions. It is not clear how this addresses the concern where the mining company has no ability to pay the tax in question.	Clarification is required in this regard. Surely it would be better to impose any tax liability of the rehabilitation company or trust given that this is where the assets are located?
The proposed s37A(6) proposes the penalty to be 40% of the highest market value of an impermissible investment during the year. This is impractical as the market value of such investments would need to be determined for every day of the year. It is further implied that this assessment must also take into account market values for periods when the impermissible investment was not held, i.e. before it was acquired or after it was disposed of.	It is suggested that the penalty should be based on the market value of the impermissible investment on the last day of the year of assessment if held at that date or at the date of disposal.
The highest market value approach is also proposed for impermissible distributions in s37A(7). This makes no sense in the context of distributions which would ordinarily entail distributions of money.	The penalty for impermissible distributions should be based on the market value of the property distributed at the time of the distribution.

INCOME TAX ACT:
Section 37A

Comment	Recommendation
Similarly, s37A(8) also proposes the use of the highest market value of all the property for purposes of determining the penalty. This is entirely impractical to implement and should be simplified.	It is suggested that the penalty in s37(8) should be based on the greater of the market value of the property at the beginning of the year of assessment at that at the end of the year of assessment.
The proposed s37A(8) applies in the case of contravention of any of the requirements of the section. However, some contraventions are already covered by s37A(6) and (7).	S37A(8) should apply to any contraventions other than those contemplated in s37A(6) and (7).

INCOME TAX ACT:
Section 37A

4.5 Industrial policy projects - window period extension

Comment	Recommendation
We welcome the proposed extension of the period for applications to 31 March 2020. We also regard the decision not to increase the R20 billion limit for additional allowances as prudent pending a review of the effectiveness of the incentive.	Although extended, there is still uncertainty by potential investors with regard to the availability of the 12I incentive as the budget is not extended. It is recommended that the budget is increased. Also, the backlog in processing applications creates further uncertainty and it is recommended that clear timelines are communicated.

INCOME TAX ACT:
Section 12I

5:*INCOME TAX*

INTERNATIONAL

PwC

5.1 Refinements of the domestic treasury management regime qualifying criteria

Comment	Recommendation
We welcome the proposed amendment to remove the requirement that the company must be incorporated in SA. However, we note that no effective date for the amendment is included in the draft Bill, contrary to what is indicated in the draft EM.	An effective date as proposed in the draft EM should be included in the Bill.

INCOME TAX ACT:
Section 1 definition "domestic treasury management company".

Comment	Recommendation
We welcome the proposal to provide relief from the application of s23I in the circumstances envisaged.	
We note that the proposed exclusion replicates the wording of the high tax exemption in s9D. However, it does not replicate the wording as to how foreign tax payable is to be determined.	It is suggested that the means of determining the amount of foreign tax payable be replicated in s23I or, alternatively, incorporated by reference.
The proposed amendment does not address the issue that is outlined in the draft EM concerning the breadth of the definition of"tainted intellectual property" in s23I(1). The means of addressing this issue is to amend the definition to make it clear that intellectual property will not be regarded as "tainted" where modification within the Republic is limited to "minor ongoing maintenance".	It is suggested that a proviso be added to paragraph (*d*) of the definition of "tainted intellectual property" in s23I(1)as follows: *"Provided that the term 'discovered, devised, developed, created or produced' shall not include minor ongoing maintenance."*

INCOME TAX ACT:
Sections 9D and 23I

	Comment	Recommendation
	As a first point, it should be noted that structures using foreign trusts interposed between a SA resident company and a foreign company are extremely rare. As such, the proposed addition to the definition of a CFC will have limited application in the context of multinational companies. The more common scenario where a foreign company is housed below a foreign trust is in the case of private individuals where, for example, a SA resident individual establishes a foreign trust which in turn holds a foreign company. The foreign company is then used as a vehicle for passive investments.	
INCOME TAX ACT: Sections 9D and 25BC (new)	The proposal for the inclusion of a CFC of a foreign company held through a foreign trust relies on a resident holding an interest in the trust. There is no definition of an interest in a trust. It is unclear as to what this means, particularly in the context of a discretionary trust where all that a beneficiary has is a *spes* that the trustees will exercise a discretion in their favour or a contingent right. It is submitted that, in the case of a discretionary trust, a beneficiary would not hold any interest in the trust.	If the proposal is to be clear and achieve the desired result, a carefully crafted definition of an interest in a trust would be required.

INCOME TAX ACT:
Sections 9D and 25BC (new)

Comment	Recommendation
The definition of a CFC in the context of foreign companies held by trusts does not contain any threshold for the level of interest in a trust required to be held by residents. For example, a trust could have one resident beneficiary and multiple non-resident beneficiaries with the resident beneficiary having a negligible interest in the trust. However, as currently proposed, this would still make any company held by the trust to the extent of more than 50% a CFC.	It should be required that residents hold more than 50% of the economic interest in the foreign trust in order for the foreign company held by the trust to be a CFC.
No rules are provided as to how the participation rights of a beneficiary of a foreign trust in the CFC are to be determined. S9D requires the net income of a CFC to be imputed to a resident in accordance with that resident's participation rights in the CFC.	Rules are required as to how the participation rights of beneficiaries of foreign trusts in foreign companies are to be determined.
The proposed CFC held through a foreign trust contains significant loopholes. For example, it is simple to avoid the definition by splitting the shareholding of the foreign company between 2 or more foreign trusts such that each holds no more than 50% of the participation rights in the foreign company.	If the proposed inclusion of foreign companies held through foreign trusts as CFCs is to be successful, the rules in this regard will need to be tightened to include such holdings together with connected persons.

	Comment	Recommendation
INCOME TAX ACT: Sections 9D and 25BC (new)	The inclusion as a CFC of any foreign company where the financial results are reflected in the consolidated financial statements of a resident company is too broad. For example, a foreign company whose results are equity accounted in the consolidated financial statements would seemingly be caught by the provision. As such, foreign companies that are only associates and not controlled may have the financial results at least partially reflected in the consolidated financial statements (in terms of IFRS 11) and will become CFCs. This is seemingly not what is intended. The inclusion of the financial results of a company in the consolidated financial statements as a basis of determining CFC status is therefore flawed.	Only companies that are consolidated in terms IFRS 10 should be covered.
	In terms of IFRS 10, it is the concept of control that determines whether a company should be consolidated. This concept extends beyond the participation rights or voting rights contemplated in the current definition of a CFC. For example, a company may have only 20% of the economic and voting rights attaching to the shares, but may be able to control the board of directors and hence require consolidation of the company.	The proposal to include any foreign company consolidated in a resident company as a CFC significantly extends the scope of the current definition and requires careful consideration.

INCOME TAX ACT:
Sections 9D and 25BC (new)

Comment	Recommendation
It should be noted that IFRS 10 does not require consolidation in all circumstances and there is an exemption available. For example, if a foreign listed multinational holds an interest in a foreign company through a wholly owned SA resident company, the SA resident company may not be required to consolidate the foreign company in certain circumstances. This would create a loophole in the CFC definition.	Either the loophole should be closed by excluding the exemptions from consolidation in IFRS 10 or the inclusion of such foreign companies should be reconsidered.
The further proviso addressing the amount to be imputed under s9D in the context of consolidation is confusing. The meaning of the term 'financial results' is unclear. 100% of the profits, assets and liabilities of a consolidated company would be reflected in the consolidated financial statements with separate disclosure of any non-controlling interest.	The proviso should be refined to make it clear that it is only the net amount of the profits after excluding the non-controlling interest compared to the total profits that constitutes the percentage participation rights.
It is unclear whether the proposed proviso relating to participation rights is to be applied only to CFCs included on the basis of consolidation or to those included on other bases.	It is submitted that the determination of participation rights on the basis of consolidation should apply only to those companies that constitute CFCs solely on the basis of consolidation.

Comment	Recommendation
It should be noted that in determining the 'financial results' included in the consolidated financial statements, intra-group transactions are eliminated such that only third party transactions are included. The exclusion of such intra-group transactions could significantly impact the overall economic interest of the parent in the company.	Consideration should be given to the effect of intra-group transactions on the participation rights.

INCOME TAX ACT:
Sections 9D and 25BC (new)

Comment	Recommendation
The proposed s25BC goes too far. This is illustrated through the below examples.	
Individual A is a SA resident and a beneficiary of a non-resident Trust B. Trust B holds all the shares in a foreign Company C. Company C earns passive interest income. The interest income is imputed to A in terms of the proposed amendments to s9D. Company C distributes the interest income as a dividend to Trust B. Trust B vests the dividend from Company C in A. The dividend received by A is taxable in his hands in terms of s25BC. The result is that both the interest and the distribution indirectly derived from the interest are taxable resulting in double taxation as s25BC overrides the provisions of s25B(2)/(2A) read with s10B(2)*(c)*.	S25BC requires reconsideration in order to eliminate double taxation in respect of amounts that are included both in terms of s9D and in terms of s25BC..

INCOME TAX ACT:
Sections 9D and 25BC (new)

	Comment	Recommendation
	Individual A is a SA resident and a beneficiary of a non-resident Trust B. Trust B holds all the shares in a foreign Company C which holds a residential property. Trust B earns dividend income from a listed portfolio held by it. Trust B vests the dividend income in A. The dividends received by A are taxable in his hands in terms of s25BC in full notwithstanding s10B(3). The result is that the distributions of a foreign trust that holds a foreign company to a resident individual will always be taxable in terms of s25BC, regardless of the nature of the funds from which such distributions are derived and regardless of their relationship with the foreign company.	S25BC should apply only to amounts distributed from a foreign trust that are derived from a foreign company that would have constituted a CFC, such amounts have not been included in income of any person in terms of s9D and such amounts would have been included in income had the foreign company been a CFC.
INCOME TAX ACT: Sections 9D and 25BC (new)	The proposed amendment effectively imposes domestic tax on amounts which may have already suffered foreign taxes, yet no amendment is made to provide relief from double taxation. Consequential amendment to s6*quat* is required in order that any foreign taxes in respect of amounts included in the income of a resident in terms of section 25BC may be claimed as a rebate.	S6*quat*(1) should be amended by the insertion, after paragraph (*f*) of the following: *"(g) any amount contemplated in section 25BC."* In addition, provision should be made for a credit in respect of taxes incurred by both the foreign trust and the foreign company related to the distribution.

Comment	Recommendation
S25BC seemingly commences from the presumption that all amounts of the foreign company would have been taxable in terms of s9D had the foreign company been a CFC. However, this presumption is incorrect as a CFC is potentially exempt from imputation of its income if any one of the exclusions in s9D(9) or the high tax exemption applies.	S25BC should only apply to the extent that amounts would have been taken into account as net income in the hands of the foreign trust in terms of s9D had the foreign company been a CFC.

INCOME TAX ACT:
Sections 9D and 25BC (new)

6:VALUE ADDED TAX

Comment	Recommendation
Section 8(23) – It appears to be broadening the application of the section. Previous interpretation by SARS limited the application of section 8(23) to individual housing subsidies. However, it appears that now all housing programmes qualify to be zero rated.	None- further discussion required with National Treasury and SARS to understand objective of section
Section 40D Section 8(23) has always being confusing regarding what national housing programmes qualified. It should therefore be broad enough to cover supplies which never qualified but vendors assumed it did and therefore applied section 8(23) .	This section applies in respect of the supply of services supplied before 1 April 2017, in respect of which the vendor applied the provisions of section 8(23).

VALUE ADDED TAX ACT:
Sections 8, and 40D

Comment	Recommendation
This section appears to be consistent with the provisions of the VAT Act, i.e. if VAT was charged then it must be paid over to SARS for the benefit of this fiscus. However, there have been many instances where the vendor has invoiced the Department of Human Settlements for the VAT at the rate of 14% and the department refused to pay the VAT. It is therefore proposed that this should only apply where the Department paid the VAT over to the vendor.	(4) If the vendor has charged tax at the rate referred to in section 7 (1) instead of the rate of tax in terms of section 11 (2) (s) in respect of the supply contemplated in subsection (1) and the vendor has received payment of such VAT, the Commissioner may not refund any such tax or any penalty or interest that arose as a result of the late payment of such tax, paid by the vendor to the Commissioner.”.

VALUE ADDED TAX ACT:
Sections 8, and 40D

Comment	Recommendation
Section 8(29) deems a supply to be made reference to the recipient of the supply. This is therefore a self supply as can be the case in section 8. It however does not align with section 18C. Define what falls within the scope of leasehold improvements as this is a fairly new concept for VAT purposes. Is it relevant to deem this only to be a taxable supply when there is no consideration or should it be always a taxable supply? If it is always a taxable supply, then the deeming is either not necessary or the deeming must apply to all leasehold improvements where the lessee is using it for taxable purposes - the latter being purely for clarification. It is recommended that transitional rules be provided.	(29) Where leasehold improvements are effected by a vendor, being a lessee, to the fixed property of the lessor, the lessee shall be deemed to have made a taxable supply of goods in the course or furtherance of the lessee's enterprise to the lessor to the extent of the leasehold improvements. Provided that this subsection shall not apply where such leasehold improvements are wholly for consumption, use or supply in the course of making other than taxable supplies by the lessee".

VALUE ADDED TAX ACT:
Sections 8, 9, 10 and 18

Comment	Recommendation
Section 9(12) – the time of supply is deemed to take place when the leasehold improvements are completed. The term "completed" is very subjective and it is recommended that a definition be inserted to provide the necessary certainty. Furthermore, consideration must be given to instances where the leasehold improvements are removed by the lessee prior to the end of the lease. Alternatively, the improvements are demolished once the lessor takes occupation of the property.	None- further discussion required with National Treasury and SARS to understand objective of section.
Section 10(28) – the relevance of the section is questioned considering that section 10(23) provides for the value to be 0.	

VALUE ADDED TAX ACT:
Sections 8, 9, 10 and 18

Comment	Recommendation
Section 18C – Amend section 8(29) to deem the supply to be made to lessor. Clarity is required on the circumstances when this section will apply as the land and the leasehold improvements will in most instances be used by the lessor for taxable purposes. The question is when will the provisions of section 17(2) ever apply to leasehold improvements. Furthermore, the lessor will not always be aware of the leasehold improvements effected to the leased property and therefore imposing an undue burden on the lessor. This output tax adjustment will create a tax obligation for a lessor who has no control over the use of the building or knowledge of the extent that the leasehold improvements are used for taxable supplies.	None- further discussion required with National Treasury and SARS to understand objective of section.

VALUE ADDED TAX ACT:
Sections 8, 9, 10 and 18

6.2 Clarifying the value added tax treatment of leasehold improvement

Comment	Recommendation
The formula B requires the lessor to know the actual cost of the leasehold improvements or the agreed costs. How will the lessor know the actual cost of the leasehold improvements? How often is there agreement on the value of the leasehold improvements? The further concern is whether the lessor subsequently supplies the right of use of the leasehold improvements to the lessee.	None- further discussion required with National Treasury and SARS to understand objective of section.

VALUE ADDED TAX ACT:
Sections 8, 9, 10 and 18

6.3 Goods supplied in the course of manufacturing of goods temporarily imported

Comment	Recommendation
The intention as stated in the explanatory memorandum is to align to section 11(2)(g), however there is a difference between the wording in section 11(2)(g)(ii) or (iv) and the proposed wording. . Furthermore, item 480 deals with goods temporarily imported for specific purposes and does not include “processing, repairing, cleaning, reconditioning or manufacture”.	Align the amendment to the wording in section 11(2)(g)(ii) or (iv)

VALUE ADDED TAX ACT:
Section 11(1)(*b*)

6.4 Clarifying the zero rating of international travel insurance

Comment	Recommendation
Section 11(2)(d) introduces two new concepts, namely, international journey; and inbound or outbound insurance policy. These terms must be defined.	Define international journey and inbound or outbound insurance policy

VALUE ADDED TAX ACT:
Section 11(2)(*d*)

6.5 Services supplied in connection with certain movable property situated in an export country

Comment	Recommendation
Consideration must be given as to whether this amendment will result in double taxation, i..e VAT paid in South Africa and in the country where the shares are listed.	Amendment should guard against double taxation

VALUE ADDED TAX ACT:
Section 11(2)(*g*)(i)

Comment	Recommendation
Schedule 2 Part B Item 1: The amendment aims to update the definition of a Brown Bread with reference to the Wheat Regulations promulgated in 2008 and published in Government Gazette No. 30782 of 22 February 2008 ("the 2008 Regulations"). Note that the 2008 Regulations have since been repealed and replaced by Regulation 405, Government Gazette no 40828 dated 5 May 2017 ("the 2017 Regulations"). The correct reference in Schedule 2 Part B Item 1 should thus be to the 2017 Regulations.	

VALUE ADDED TAX ACT:
Schedule 1, Part B, Item 1

Comment	Recommendation
To purely change the reference to the new 2017 Regulations, however, has the unintended consequence of changing the application of the current zero rating provision. The 1991 Regulation and as expressed in Practice Note 12 (withdrawn with effect 31 March 2016) had a broader application. The 2017 Regulations are aligned with industry developments and now include various subclasses of brown bread under the class Brown Wheat Bread. These subclasses under the class Brown Wheat bread represent bread that are baked using Brown wheat flour and represent the classes of bread as expressed in Practice Note 12. It is therefore proposed that the term “brown bread” be replaced with ‘brown wheat bread’.	“Item 1 Brown wheat bread as contemplated in the Regulations in terms of Government Notice [No. R.577] 405 published in Government Gazette No. [13074 of 15 March 1991] 40828 of 5 May 2017”.

VALUE ADDED TAX ACT:
Schedule 1, Part B, Item 1

7:CLAUSES

Clause 3 :Amendment to Section 6quat of Income Tax Act

Comment	Recommendation
Please refer to the comment under item 5.3 regarding the consequential amendment required by virtue of the proposed enactment of section 25BC.	

Comment	Recommendation
The top flush of the revised subsection (2) refers to "*any amount that is incurred by a company in respect of interest*". It is not clear what is meant by an amount incurred "*in respect of interest*". The language used is confusing, and we assume that it is intended that subsection (2) should refer to "*any amount of interest that is incurred*" (as opposed to "*any amount that is incurred in respect of interest*").	The language of the top flush of subsection (2) should be clarified to make it clear that it applies to certain amounts "*of interest*" (as opposed to certain amounts "*in respect of interest*").
The top flush of the revised subsection (2) is formulated in such a manner that there is no link between the interest incurred and the relevant instrument.	The language of the top flush of subsection (2) should be clarified to make it clear that it applies to <u>any amount of interest that is incurred by a company in respect of an instrument on or after the date that the instrument becomes a hybrid debt instrument.</u>

Comment	Recommendation
The revised subsection (2) does not even refer to hybrid interest (the subject of section 8FA), and refers to hybrid debt instruments (the subject of section 8F).	The language of the top flush of subsection (2) should be clarified to make it clear that it applies to hybrid interest.
The revised subsection (2) again refers to "*any amount that is incurred by a company in respect of interest*". It is not clear what is meant by an amount incurred "*in respect of interest*". The language used is confusing, and we assume that it is intended that subsection (2) should refer to "*any amount of interest that is incurred*" (as opposed to "*any amount that is incurred in respect of interest*").	The language of the top flush of subsection (2) should be clarified to make it clear that it applies to certain amounts "*of interest*" (as opposed to certain amounts "*in respect of interest*").
Since section 8FA applies to hybrid interest (as opposed to interest incurred in respect of hybrid debt instruments, to which section 8F applies), there is no need for section 8FA(2) to refer to an instrument.	The reference to "instrument" in the top flush of the proposed subsection (2) should be removed and the language in the top flush of subsection (2) should be clarified to make it clear that it applies to <u>any amount of interest that is incurred by a company on or after the date that the interest becomes hybrid interest.</u>

Comment	Recommendation
We find the proposal to delete s10(1)(*y*A)*(cc)* strange and not in the interest of transparency. Without publication in the Gazette, how would the public be aware of what projects the Minister has approved for exemption unless these are published?	The proposed deletion of this requirement should be reconsidered.
It is also noted that no effective dates for the proposed amendments to the exemption are included.	The amendments to the exemption should contain a stipulated effective date linked to the approval date.

Clause 24 :Amendment to Section 12E of Income Tax Act

Comment	Recommendation
The proposed amendment to the definition of personal service will have an impact on the qualification of a company as a small business corporation.This will in turn have an impact on the liability for tax of such a company. No specific effective date is provided for this amendment which will lead to uncertainty as to the tax status of affected companies.	A specific effective date linked to years of assessment should be provided in the Bill.

Comment	Recommendation
The proposed removal of the alternative method is misplaced. The yield to maturity method does not align perfectly with accounting practice, is complex to apply and would require substantial effort to adjust financial statements for small differences in timing of the accrual and incurral of interest. In practice, the alternative method is most commonly applied by companies for purposes of determining the incurral and accrual of interest in relation to interest-bearing arrangements as contemplated in s24J. As such, the removal of the alternative method will place a significant compliance burden on companies as well as an administrative burden on SARS.	The alternative method should be retained and the definition amended to refer to IFRS instead of GAAP.

Clause 47: Amendment to Section 35A of Income Tax Act

Comment	Recommendation
The proposed wording of the new s35A(1)*(d)* is flawed.	This provision should read “or such other rate as the Minister may announce …”.

Comment	Recommendation
We welcome the proposed amendments to allow for rollover relief in relation to the disposal of buildings to REITS. However, we note that the amendments do not make provision for the disposal of such assets to a controlled company as defined in s25BB. Controlled companies are treated in exactly the same manner as REITS and should therefore also be provided for in the corporate reorganisation rules.	Provision should also be made for disposals of assets to controlled companies.
The relief also needs to go further. Assume Company A to disposes of a building to a REIT in terms of s42. The REIT then in turn disposes of the building to a controlled company in terms of a s42 transaction. Subject to our further comment below, the REIT will not hold the building as an allowance asset and will therefore not qualify for rollover relief when it disposes of the building.	In order to address the concern, a REIT should be deemed to hold a building as an allowance asset notwithstanding that it is not entitled to any building allowances.
No effective date for the REIT amendments is included in the draft Bill. the absence of a specific effective date will lead to uncertainty.	It is submitted that an effective date should be provided for disposals on or after 19 July 2017.

Comment	Recommendation
We note that it is proposed that s42(3)*(a)*(ii) be amended to the effect that a REIT acquiring allowance assets will not be subject to recoupments on the allowances enjoyed by the other party to the asset-for-share transaction. It is submitted that this concession goes too far. Firstly, it should be noted that it is only building allowances which are denied in a REIT. Other asset allowances, such as s11*(e)* continue to be available. A REIT acquiring a building will be entitled to continue claiming such allowances on the movable components of such buildings, including things as lifts, escalators, central air conditioning, etc. The effect of the proposed amendment will also mean that such allowances enjoyed by the other party will not be recouped. Secondly, it should be borne in mind that REITS continue to be subject to recoupments on building allowances enjoyed by them prior to becoming a REIT.	The exclusion of REITS from s42(3)*(a)*(ii) should be reconsidered.
The comments made in relation to s42 apply equally to the proposed amendments to s44. Similar relief should be provided for in the context of s45 and s47.	

Clause 66: Amendment to Para 6 7th Schedule of Income Tax Act

Comment	Recommendation
Far from aligning the fringe benefit treatment of clothing with the uniform exemption, the proposed amendment will have the effect of making all uniforms provided by an employer to employees for use taxable as the uniform exemption will not apply.	The same requirements for the uniform exemption should be incorporated into the exclusion for clothing in para 6(4).

8: MATTERS NOT ADDRESSED IN THE BILL

Comment	Recommendation
In the Budget it was proposed that the exemption for the donation of ownership of land under land-reform initiatives be extended to certain partial transfers of ownership.	The Bill should include the changes as proposed in the Budget.
The Budget proposed the establishment of a special tax dispensation for foreign member funds to make SA more attractive as a location for the establishment of such funds. It is noted that no provisions are included to this effect.	
The Budget proposed an amendment to the definition of “resident of the republic” for VAT purposes to provide for foreign companies that are resident by virtue of effective management in SA.	The Bill should include the changes as proposed in the Budget.