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SUBMISSION

2018 Draft Taxation Laws Amendment Bill

pwc

Dear Allen and Teboho

Representations on the (draft) Tax Laws Amendment Bill, 2018 ("TLAB 18")

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.

As always, we thank the Standing Committee on Finance for the on-going opportunity to participate in the development of the SA tax law.

Yours sincerely

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Attached:

- Detailed submissions

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1:*INCOME TAX*

INDIVIDUALS, SAVINGS AND EMPLOYMENT

PwC

1.1 Clarifying the tax treatment and obligations of funds managed by bargaining councils

Comment	Recommendation
No comments.	

INCOME TAX ACT:
Paras 2 and 12E Seventh Schedule

Comment	Recommendation
It is not clear, from the proposed amendment to subsection (2) of section 6A, whether the words to be inserted in that subsection qualify both paragraph (i) and (ii), or whether they only qualify paragraph (i) (the words inserted refer only to "that fund" - i.e. the fund referred to in paragraph (ii) and not "that fund **or scheme**" (paragraph (i) refers to a scheme and not a fund).	It should be clarified whether the proposed amendment to subsection (2) refers to both funds and schemes (which appears to be the intention).

INCOME TAX ACT:
Section 6A

Comment	Recommendation
The draft EM states that the relief in respect of such loans will apply, *inter alia*, where the loan is granted **solely** for the acquisition of **residential accommodation**. The wording of the proposed item *(c)* of paragraph 11(4) is, however, far broader. Firstly, the proposed wording effectively allows for the debt to be used for the acquisition of any immovable property (the provision does not require the immovable property to constitute residential accommodation). Secondly, the debt need not be assumed for the sole purpose of the acquisition of such property (the proposed wording implies that the acquisition of the property could merely be one of the purposes of the assumption of the debt). Thirdly, there is no requirement that the employee actually occupy the property. Fourthly, unlike with paragraph 5(3A), there is no connected person exclusion.	To the extent that the wording of the proposed item *(c)* of paragraph 11(4) does not reflect the policy intent (as set out in the draft EM), the wording of item *(c)* should be changed so that it reflects that policy intent. It is further submitted that the wording of paragraph 5(3A) should be similarly tightened, particularly insofar as the nature and use of the immovable property is concerned.

INCOME TAX ACT:
Paragraph 11(4) of the Seventh Schedule

1.4 Tax treatment of transfers of actuarial surplus between retirement funds

Comment	Recommendation
The draft EM refers to paragraphs 1, 2*(l)* and 4 of the Seventh Schedule. The draft Bill only contains amendments to paragraph 2*(l)* (there are no amendments to paragraphs 1 and 4).	To the extent that amendments are required to paragraphs 1 and 4 of the Seventh Schedule to give effect to the proposal, these should be included.

INCOME TAX ACT:
Paragraph 2*(l)* of the Seventh Schedule

1.5 Alignment of tax treatment of withdrawals from preservation funds upon emigration or repatriation on expiry of work visa

Comment	Recommendation
No comments.	

INCOME TAX ACT:
Definitions of "Pension Preservation Fund" and Provident Preservation Fund"

1.6 Tax treatment of transfers to pension preservation or provident preservation funds after reaching normal retirement age but before retirement date

Comment	Recommendation
No comments.	

INCOME TAX ACT:
Definitions of "Pension Preservation Fund", Provident Preservation Fund", "Pension Fund" and "Provident Fund" and para 6A Second Schedule

2:*INCOME TAX*

BUSINESS (GENERAL)

PwC

Comment	Recommendation
Definition of "concession or compromise" As per the draft EM, a "concession or compromise" will arise where an interest-bearing debt owed by a company is settled by being converted to or exchanged for shares in that company or by applying the proceeds from shares issued by the company and the acquirer of the shares is a connected person in relation to the company after the arrangement. In paragraph *(b)* of the proposed definition of "concession or compromise", it is not clear whether the phrase "by reason or in consequence of that arrangement" qualifies the acquisition of shares by the creditor, or whether it qualifies the connected party relationship of the creditor. As such, paragraph *(b)* is potentially ambiguous in that, on one interpretation, it appears that, if the creditor is a connected party in relation to the debtor before the arrangement, a debt capitalisation arrangement will not be a "concession or compromise". This cannot have been the intention.	The wording of paragraph *(b)* of the definition of "concession or compromise" should be adjusted to make it clear that the phrase "by reason or in consequence of that arrangement" only qualifies the acquisition of shares by the creditor and not the connected person status.

INCOME TAX ACT:
Section 19 and para 12A of the Eighth Schedule

Comment	Recommendation
Para *(a)*(ii) of the definition contemplates an extinguishment of a debt by merger by way of the acquisition of the debt claim by the debtor. It should be noted that not all acquisitions of a debt claim by the debtor result in merger. For example, under South African law, where a debtor acquires a negotiable instrument evidencing an underlying debt prior to its maturity date, neither the negotiable instrument nor the underlying debt is discharged and the common law operation of merger is suspended by section 35 of the Bills of Exchange Act. Similar principles apply in respect of many debts regulated in terms of foreign law. The result is that, as drafted, the proposed definition will not apply to the acquisition of such negotiable instruments at the time of acquisition, but only at a later time when the negotiable instrument is applied against the debt and cancelled, either voluntarily or on maturity. It is at this later point when the concession or compromise will take place.	Ideally, the provisions should specifically address the acquisition of negotiable instruments in the context of a concession or compromise in order to reduce uncertainty associated with the acquisition thereof.

INCOME TAX ACT:
Section 19 and paragraph 12A of the Eighth Schedule

	Comment	Recommendation
	The proposed merger inclusion in the definition implies that, where a debt is extinguished by merger by reason of the acquisition of the debt by a connected person in relation to the debtor, it will constitute a concession or compromise. However, this scenario is not possible in law as the legal concept of merger entails a single person being both the debtor and creditor in relation to the same arrangement. What is more, it would not be desirable for this to be a deemed merger event as it would make it impossible to move debts around within a group of companies. It would also have unintended consequences insofar as acquisitions of debts from third parties are concerned in situations where the debtor is a connected person (for example in scenarios where a debt is acquired in terms of a put option forming part of a security package).	It should be made clear in the definition that the connected person element in para *(a)*(ii) of the definition applies only in respect of the redemption of a debt and not in respect of merger by acquisition.
INCOME TAX ACT: Section 19 and para 12A of the Eighth Schedule	It is understood from the EM that it is intended that non-interest-bearing debt of a company that is capitalised by a connected person should be excluded from the debt reduction rules. However, as currently drafted such debt that is directly or indirectly capitalised by a connected person will still fall within para *(a)* of the definition.	Non-interest-bearing debt of a company that is directly or indirectly capitalised by a connected person should be specifically excluded from the definition of a concession or compromise.

Comment	Recommendation
Definition of "debt benefit" The definition in the context of a cancellation, waiver or remittance does not make provision for the situation where a debtor gives some consideration in this regard. While, generally, there may be no consideration given, this is not always the case. For example, the debtor and creditor may agree that the creditor will accept, for example, 50c in the Rand in full and final settlement settlement of a debt.	The definition of a "debt benefit" in para *(a)* should be reduced by the value of any consideration given by the debtor.
Para *(b)* of the definition provides for a debt benefit to the extent that the face value of the debt exceeds any expenditure incurred in respect of the redemption or acquisition of the debt. It should be noted that this will create a problem where a debt is redeemed with or acquired from a non-connected person in exchange for the issue of shares as the issue of shares is not regarded as expenditure in terms of our law. As such, where, for example a debt with a face value of R1000 is acquired (resulting in extinguishing of the debt by merger) in exchange for the issue of shares with a market value of R800, the full face value of R1000 will be the debt benefit, rather than the value of the concession on the part of the creditor amounting to R200. This could be a particular problem with convertible debt.	In Para *(b)* of the definition of "debt benefit", the debt benefit should be the extent to which the face value of the debt exceeds the value of the consideration (not expenditure) given for the redemption of the debt or its acquisition.

INCOME TAX ACT:
Section 19 and paragraph 12A of the Eighth Schedule

Comment	Recommendation
Application to capitalised debt It is understood that the intention is that, as a general rule, interest will not be subject to recoupment in terms of section 19, but rather in terms of general rules. It is further understood that capitalised connected person debt of a company should not result in a recoupment of the expenditure funded with such debt capital. Rather, it is understood that any interest capitalised in relation to such connected person debt would be subject to recoupment. It is noted that the amendments do not achieve this. Any debt benefit associated with connected person debt of a company that is capitalised will result in a tax benefit to the extent that the value of the increased shareholding is less than the face value of the debt and will result in a tax implication for any expenditure funded by such debt (unless within a group of companies). Furthermore, capitalised connected person interest debts are not dealt with at all as this is excluded from the definition of debt and it is not clear how the general rules will apply to such interest, particularly insofar as indirect capitalisations through cash subscriptions and application of the proceeds are concerned.	The application of the debt reduction rules to capitalised connected person debt and capitalised interest require clarification in the legislation.

INCOME TAX ACT:
Section 19 and paragraph 12A of the Eighth Schedule

Comment	Recommendation
Definitions of "direct interest", "indirect interest" and "market value" It is not clear why these definitions are required. As regards the definitions of "direct interest" and "indirect interest", these definitions are, in any event, inadequate: they do not cover scenarios in which shares in a company are indirectly held *via* a number of intermediary companies, and adjusting the wording of these definitions in order to accommodate these scenarios would result in unnecessarily complex legislation. The definition of "market value" only serves to complicate the provisions unnecessarily.	Ordinary rules of interpretation, augmented by an appropriate interpretation note, should suffice in setting out the rules relating to the determination of an "effective interest" in a company that is held directly or indirectly. The objective of the proposed definition of "market value" should be achieved by incorporating it into the provision itself, and not via the definition. In order to avoid complexity, all three of these definitions should be deleted (with any necessary adjustments to the provisions and/or the issue of appropriate interpretation notes).

INCOME TAX ACT:
Section 19 and paragraph 12A of the Eighth Schedule

Comment	Recommendation
General comment As a general comment, the proposed amendments to section 22B and paragraph 43A are, for all intents and purposes, unreadable and cannot be readily understood in their present form, even with excessive and unnecessary effort. They are drafted in such a manner that multiple meanings are unavoidable. This makes it exceedingly difficult (if not impossible) to comment meaningfully on the scope and effect of the proposed provisions, much less the policy underlying them. Moreover, the EM is not particularly helpful in addressing these concerns. Whilst it is acknowledged that the issues and transactions involved are complex, it is imperative (in the interests of the integrity of the tax system as a whole) that these provisions are redrafted so that they are readable and understandable. It is of utmost importance that public comment is obtained on the redrafted rules before a final version of the rules is promulgated.	**General recommendation** The proposed amendments to section 22B and paragraph 43A should be redrafted to make them readable and understandable.

INCOME TAX ACT:
Section 22B, paragraph 43A of Eighth Schedule

2.2 Clarification of the interaction between the anti-dividend stripping and corporate reorganisation rules

Comment	Recommendation
The cross-reference to the corporate reorganisation rules in the definition of a deferral transaction in para 43A is incorrect.	The cross-reference should be to Part III of Chapter 2 of the Act and not Part III of "this Chapter".
We point out that the definition of an extraordinary dividend still does not incorporate a foreign dividend, with the effect that the rules - arguably - do not apply to foreign dividends, notwithstanding that they are included as exempt dividends.	The definition of an extraordinary dividend should specifically include a foreign dividend or, preferably, be linked to the definition of an exempt dividend.

INCOME TAX ACT:
Section 22B, paragraph 43A of Eighth Schedule

Comment	Recommendation
Application to acquirer of old shares in respect of deferral transaction We are in general agreement with the general principle that the company acquiring the shares in terms of a deferral transaction should be treated as having received any exempt dividends received by the seller within 18 months prior to the deferral transaction if the shares are disposed of within 18 months of the deferral transaction. However, we do not agree that the acquirer should be treated as having received those dividends "during the period that it held the shares". The effect of this is that the 18-month rule for determining an extraordinary dividend could effectively be extended indefinitely (on the basis that, every time a deferral transaction takes place, the 18-month period is reset). The effect of the anti-avoidance rule should not be to extend the scope of the dividend-stripping rules beyond the ordinary position, and particularly not to an indefinite period.	The acquirer in terms of a deferral transaction should be deemed as having received or accrued the dividend accruing to the seller at the time that it was received by or accrued to the seller.

INCOME TAX ACT:
Section 22B, paragraph 43A of Eighth Schedule

Comment	Recommendation
Application to acquirer of new shares in exchange for old shares in respect of deferral transaction We are in general agreement with the general principle that the company acquiring new shares in terms of a deferral transaction should be treated as having received any exempt dividends in respect of the old shares within 18 months prior to the deferral transaction in respect of the new shares if the new shares are disposed of within 18 months of the deferral transaction. However, we do not agree that the dividends in respect of the old shares should be treated as having been received during the period that the new shares were held. The effect of this is that the 18-month rule for determining an extraordinary dividend could effectively be extended indefinitely (on the basis that, every time a deferral transaction takes place, the 18-month period is reset). The effect of the anti-avoidance rule should not be to extend the scope of the dividend-stripping rules beyond the ordinary position, and particularly not to an indefinite period.	The dividends in respect of the old shares should be treated as having been received or accrued in respect of the new shares on the same date that they were received or accrued in respect of the old shares, notwithstanding that the new shares were not held by the company at that time.

INCOME TAX ACT:
Section 22B, paragraph 43A of Eighth Schedule

Comment	Recommendation
Unbundling transactions Notwithstanding the proposed amendments, the dividend stripping rules will still present a problem in the context of the reorganization rules in certain scenarios. To illustrate, assume Company A holds all the shares in Company B which in turn holds all the shares in Company C. Company B unbundles the shares in Company C to Company A in terms of section 46 (this involves the payment of a dividend - i.e. the unbundling dividend - in respect of the shares in Company B). Should Company A then dispose of the shares in Company B within 18 months, this will potentially result in the unbundling dividend being added to proceeds in terms of para 43A. This is notwithstanding that the base cost of the shares in Company B is apportioned between these shares and the Company C shares in terms of section 46 (and there is no stripping of value in respect of the shares in Company B when regard is had to the shares in Company B and Company C on a combined basis). Para 43A should not apply in respect of any dividend received in respect of an unbundling transaction.	A distribution of shares in terms of an unbundling transaction should not be treated as a dividend for purposes of the dividend-stripping rules.

INCOME TAX ACT:
Section 22B, paragraph 43A of Eighth Schedule

	Comment	Recommendation
INCOME TAX ACT: Section 22B, paragraph 43A of Eighth Schedule	It appears that the transfer of shares into a high value company before the high value company is disposed of considered to be problematic. It is not entirely clear what the problem is with this from a policy perspective. By definition, the high value company will have significantly more value than the shares in the company being transferred into it. As such, it is highly unlikely that such a series of transactions (i.e. transferring of shares into a high value company, and then disposing of the high value company) will be entered into in order to avoid the application of the dividend-stripping provisions: no third party, acting commercially and at arm's length, is going to accept a the transfer of shares in another company (unless the third party actually want that other company for a genuine commercial purpose). In addition, (3)*(b)*(ii) adds considerable complexity to the legislation. In light of these considerations, it is submitted that (3)*(b)*(ii) is unnecessary and should be removed.	Our primary submission is that subsection/subparagraph (3)*(b)*(ii) is unnecessary, adds significant complexity and should be removed.

Comment	Recommendation
Definition of preference share It is proposed that a preference share be defined as per the definition of s8EA. That definition includes any share that is not an equity share as well as an equity share if any dividend in respect of the share is determined with reference to a specified rate of interest or the time value of money. It is submitted that the definition goes too far by including equity shares in the definition for purposes of the dividend-stripping rules. It is suggested that equity shares which also carry an interest-like dividend right in addition to an equity dividend right are better dealt with through paragraph *(b)* of the definition of an extraordinary dividend with reference to market value and not the subscription price.	A preference share should be defined as any share other than an equity share.

INCOME TAX ACT:
Section 22B, paragraph 43A of Eighth Schedule

	Comment	Recommendation
	The EM indicates that the end of the year of assessment of the shareholder company is to be used as the point in time for testing whether there is a qualifying interest in an operating company. The proposed amendment to subsection (2) follows this approach. However, the proposed amendment to subsection (3) apparently considers the year of assessment of the operating company and not that of the shareholder company.	Consistency is required with respect to the year of assessment being tested.
INCOME TAX ACT: Section 24O	It seems to us to appear overly complex to test whether a company is an operating company with reference to the year of assessment of the shareholder company. The definition of an operating company is determined with reference to the income and operations of the operating company itself. It is therefore submitted that it would make more sense to test whether a company is an operating company with regard to the activities of that company based on its year of assessment.	Consideration should be given to testing whether a company is an operating company with regard to its year of assessment rather than that of the shareholder company.

Comment	Recommendation
The proposed amendments seem to open up a loophole, which would allow equity investments in newly established companies funded with debt to qualify for an interest deduction. This may be illustrated in the following example. Company A has a YOA ending 31 December. On 30 June of Year 1, Company A borrows R1 million and subscribes for shares in a newly incorporated Company B. Company B uses the R1 million to establish a new business which commences trading on 31 August of Year 1. As at the end of Year 1, Company B is an operating company and Company A is permitted to deduct the interest on its loan. Similarly, Company B could simply be a dormant cash shell at the time that it is acquired by Company A (from a third party), but commences trading thereafter.	It is questioned if the policy intent is to allow a business to be established after the acquisition of the shares, or whether the target company should be an operating company at the time the shares are acquired. It may be appropriate, therefore, to test whether a business is carried on at the time of acquisition of the shares initially. This test can thereafter be applied again at the end of each year of assessment.

INCOME TAX ACT:
Section 24O

Comment	Recommendation
The amendments still require the operating company status of a company to be determined at a point in time (i.e. the end of the year of assessment). However, one of the requirements is that 80% of the receipts and accruals of the company must constitute income derived from a business carried on. This test is almost impossible to apply on a particular day and requires a period over which it must be assessed.	The income test for an operating company should be performed over the year of assessment of the company and not at the end of the year of assessment.

INCOME TAX ACT:
Section 24O

	Comment	Recommendation
	Donations tax exclusion While it is acknowledged that the proposed amendment is appropriate, it is submitted that in some instances it adds unnecessary complexity. For example, Person A gives a loan of R50,000 to her child. The purpose of the loan is to fund a business of the child. The loan is subsequently waived in a manner that constitutes a donation. In these circumstances, no donations tax would be payable (the waiver is less than the annual exclusion of R100,000 provided for in s56(2)*(b)*). If the debt waived was R150,000 this would result in a partial application of the debt reduction rules, resulting in a partial application of the debt reduction rules up to the amount of R100,000 in respect of which donations tax is not payable.	It is recommended that the donations exclusion from the debt reduction rules should apply notwithstanding that donations tax is not payable by virtue of s56(2).
INCOME TAX ACT: Section 19, para 12A of Eighth Schedule	**CGT exclusion** It is noted that the proposed para 12A(4A) applies only in the context of allowance assets. This seems to contradict the EM, which refers to a 'capital or allowance asset'.	It should be clarified as to whether the proposed provision will apply to all capital assets or only allowance assets.

Comment	Recommendation
There appears to be a lack of symmetry between para 12A(4) and para 12A(4A). The former applies when the asset in question is held at the time the debt benefit arises, while the latter applies where the debt benefit arises in respect of an asset disposed of in a prior year of assessment. The result is that there is a gap where the debt benefit arises in the same year in which the asset is disposed of, but subsequent to its disposal where neither provision will apply. Presumably, this is not intended.	The provisions should be amended to align the two rules.
It is noted that the proposed para 12A(4A) appears to constitute a departure from the policy position set out in the EM to the TLAB, 2012, to the effect that the debt reduction rules will not give rise to capital gains.	It is submitted that the provision should limit any capital gain having regard to this principle.

INCOME TAX ACT:
Section 19, para 12A of Eighth Schedule

	Comment	Recommendation
	In section 64EB(1), the proviso is amended to provide that the cession rule does not apply if the person to whom the dividend rights are ceded holds, prior to the cession, all the other rights attaching to the share. Currently the proviso applies where the person in question holds all the rights in the share after the cession. This amendment is misplaced. The reason for the proviso is that, as a bundle of personal rights, shares are transferred by way of cession. Therefore, in the absence of the proviso as it stands, any transfer of shares to an exempt person will result in the previous owner of the shares being deemed to be the beneficial owner of any subsequent dividends, resulting in an absurdity.	The proposed amendments to the proviso to s64EB(1) should be removed.
INCOME TAX ACT: Section 64EB	The effective date is proposed to be years of assessment commencing on or after 1 January 2019. This is nonsensical in the context of dividends tax.	The effective date should be amounts paid on or after 1 January 2019 (in line with previous amendments to s64EB).

Comment	Recommendation
No comment.	

DIAMOND EXPORT LEVY ACT:

Comment	Recommendation
We welcome the proposed amendment. However, it is submitted that there is no reason why it should be delayed to years of assessment commencing on or after 1 April 2019, which effectively pushes out the provision by another year.	The effective should be for years of assessment ending on or after 1 January 2019.

INCOME TAX ACT:
Sections 10 and 23(o)

3:INCOME TAX

BUSINESS (FINANCIAL INSTITUTIONS AND PRODUCTS)

PwC

3.1 Allowing newly licenced South African exchanges to utilise the REIT provisions in the Act

	Comment	Recommendation
	We welcome the proposed amendments. However, we note that there are numerous other provisions of the Act which are linked to the JSE and which effectively discriminate against other exchanges. These include: • The definition of "dividend" • The definition of "return of capital" • The definitions of "identical security" and "identical share" • The definition of "junior mining company" in section 12J	All areas of discrimination in tax legislation in favour of the JSE in all tax Acts should be eliminated
INCOME TAX ACT: Section 1; section 25BB	Although strictly not part of the proposed amendments as per the draft TLAB 2018, there are a number of critical issues with the REIT provisions that affect the efficient operation of the REIT regime. Many of these issues are purely of a technical nature (i.e. addressing them would not entail any changes to government policy, and would merely involve the removal of unintended anomalies). Although requests for some of these issues to be addressed were made as part of the Annexure C submission process, none have been addressed in the draft TLAB, 2018.	

Comment	Recommendation
The result is that it is possible that these issues may only be addressed in the 2019 legislative cycle. This is not a desirable situation, as it severely hampers the effective operation of the REIT regime for at least another year. The net effect thereof is an adverse impact on much-needed investment (particularly bricks-and-mortar foreign investment), as well as the growth in perceptions of prospective investors that South Africa's regulatory environment is inflexible and unfriendly towards investment (on the basis that, despite the clear and urgent need for these issues to be addressed, it appears that little - if any - attention is being given to them, despite the fact that they are not contentious issues nor difficult to address). We therefore strongly recommend that urgent attention be given to addressing at least some of these technical issues in the 2018 legislative cycle, particularly in view of the fact that the REIT regime has been in existence since 2012 and there are still technical problems involving its integration into the tax system. This situation cannot be allowed to continue. We set out below two such issues, noting that these are by no means exhaustive of all of the issues involved.	Urgent attention should be given, in the 2018 legislative cycle, to addressing technical problems affecting the efficient operation of the REIT regime. This is necessary in order to protect South Africa's attractiveness as an investment destination as well as to counter perceptions of South Africa's regulatory environment being inflexible and unfriendly towards investment.

INCOME TAX ACT:
Section 1; section 25BB

Comment	Recommendation
Interaction between the anti-avoidance rules in the corporate reorganisation provisions and the REIT regime Concerns arise where shares in property companies are acquired by a REIT in terms of an intra-group transaction in terms of section 45, and where there is a subsequent de-grouping event (which will trigger the degrouping charge). The policy underlying section 25BB (as embodied in section 25BB(5)) is that a disposal of immovable property by a REIT (including shares in property companies) should not give rise to CGT. Accordingly, the degrouping (on the basis that it is essentially a disposal by a REIT of immovable property) should not give rise to CGT. However, the wording of section 45(4) - when read with section 25BB(5) - is arguably problematic, on the basis that it simply deems a capital gain on de-grouping (while section 25BB(5) requires a disposal to have taken place in order for the resulting capital gain to be disregarded). Obviously, were section 45(4) to also deem a disposal to have taken place, this should resolve the problem.	Section 45(4) and section 25BB(5) should be aligned in order to clarify the application of the CGT de-grouping charge in the context of REITs. This could be done simply by amending section 45(4) to provide that the capital gain in question is deemed to be from a disposal of the asset by the transferee company.

INCOME TAX ACT:
Section 1; section 25BB

Comment	Recommendation
Policy underlying section 25BB is unintentionally undermined by the effect of section 42(7) read with section 41(2) A problem arises where a REIT acquires an immovable property in terms of an asset-for-share transaction (i.e. section 42) and, within a period of 18 months, the REIT wishes to dispose of the immovable property. Section 25BB(5) embodies the policy underlying section 25BB (i.e. that disposals of immovable property by a REIT should not give rise to CGT). Accordingly, section 25BB provides that capital gains or losses on disposals by a REIT of immovable property must be disregarded in determining the aggregate capital gain or aggregate capital loss of the REIT. The problem is that, where the immovable property is disposed of within 18 months (which is what will happen in this scenario), section 42(7) effectively requires that the capital gain must be taken into account in determining the taxable capital gain of the REIT for the year of assessment in which the disposal takes place, thereby bypassing the determination of an aggregate capital gain and accordingly the disregard of the capital gain. As is the case with all the corporate reorganisation rules, section 41(2) provides that these rules override 25BB). The result is that the REIT will be subject to CGT on the disposal of immovable property in such circumstances, despite the contrary policy intent. It is noted that this issue arises with all the 18-month ring-fencing provisions in the corporate reorganisation rules and not just under section 42.	Alignment is required between section 25BB(5) and sections 42(7), 44(5), 45(5) and 47(4). This can be done simply by amending section 25BB(5) to provide that the capital gain is simply disregarded rather than disregarded in determining the aggregate capital gain or loss.

INCOME TAX ACT:
Section 1; section 25BB

	Comment	Recommendation
	It is questioned why lease receivables are excluded from the ambit of the proposed provision where IFRS 9 is used. The explanation in the EM suggests that this is because the lessor is entitled to a deduction on the leased assets in terms of section 11*(e)*. We can't see how this relevant. Firstly, not all assets that are leased qualify for a section 11*(e)* allowance or any other capital allowance (consider certain immovable property for example). Secondly, the fact that the lessor may be entitled to a deduction for the leased asset is entirely irrelevant. Should the rentals never be paid and the debts in respect thereof become bad, the lessor will be entitled to a section 11*(i)* allowance, notwithstanding that allowances are claimable in respect of the asset itself. The logic applied in this regard is therefore, in our view, misplaced.	Lease receivables should not be excluded from the doubtful debts allowance.
INCOME TAX ACT: Section 11*(j)*	Section 18(1)*(i)* of the TLAA, 2015, amends section 11*(j)* with effect from a date "to be announced". In light of the proposed amendment, the above amendment should be deleted from the TLAA, 2015.	As a consequential amendment, section 18(1)*(i)* of the TLAA, 2015, should be deleted.

Comment	Recommendation
We have significant concerns with the proposal to effectively treat investments held for less than 12 months by a CIS as being held on income account. The proposal ignores the reality of the role that a CIS plays from an investment perspective and will make investment through a CIS less attractive for investors, thereby directly affecting South Africa's national savings.	
The proposal undermines the general principles of capital versus revenue while ignoring the facts and circumstances. Simply by virtue of the very nature of a CIS (as a vehicle for long-term investment growth), no CIS speculates with regards to investments it makes. Essentially, by definition, a CIS will always hold its investments on capital account. All CIS's operate within a stipulated mandate that is directed at long-term growth of a portfolio of assets. This necessarily entails the regular acquisition and disposal of investments in order to rebalance a portfolio and/or in order to reallocate investments to assets that are considered to have better growth prospects within the stipulated mandate of the CIS. None of this is in conflict with the long-term investment objectives of a CIS and its unit-holders. Furthermore, some CIS's (e.g. "passive" index trackers), are forced (e.g. quarterly) to regularly buy and dispose of their investments in accordance with their mandates.	The proposal is ill-considered and should be withdrawn.

INCOME TAX ACT:
Section 25BA

Comment	Recommendation
The proposal will also undermine the conduit principle underlying the CIS tax regime in two ways. Firstly, it will effectively impose the actions of the CIS on its unit-holders, whose intentions may differ from those of the CIS. Secondly, it will effectively force a CIS to distribute the profits from the disposal of any assets held for less than 12 months so that the CIS is not taxed on these, resulting in a distribution of the capital of the CIS and not only the income derived from its investments in the form of dividends, interest, etc. Again, this will impose a risk from a savings and investment perspective and potentially severely harm South Africa's economic growth in the long term.	The proposal is ill-considered and should be withdrawn.

INCOME TAX ACT:
Section 25BA

Comment	Recommendation
No comments.	

INCOME TAX ACT:
Section 28

4: *INCOME TAX*

BUSINESS INCENTIVES

PwC

Comment	Recommendation
Controlled company test It is proposed that the timing of the controlled group company test be clarified by providing that the qualifying company (QC) must not be a controlled group company on the date of acquisition of any shares in the VCC and at any time during any year of assessment after that date. The proposed wording does not adequately address the uncertainty. There are two possibilities in terms of a QC being a controlled group company insofar as timing is concerned. It could be a controlled group company immediately before the VCC acquires shares in the QC or it could become a controlled group company (of the VCC) as a result of the acquisition of shares in the QC. It is submitted that it is the latter that is of concern from a policy perspective in that a QC should not be a controlled group company in relation to a VCC. This is in line with the stated policy position in the EM to the TLAB, 2011. Finally, the wording has the effect that the controlled group company requirement would not be met if, even after the VCC has acquired an interest in the QC (and arguably even after it has disposed of its entire interest), it is a controlled group company in relation to another non-VCC company.	It is suggested that the relevant provision should read "the company is not a controlled group company in relation to a **Venture Capital Company** on the date of acquisition of any shares in that company by a venture capital company and at any time after that date" or appropriate wording to that effect.

INCOME TAX ACT:
Section 12J

Comment	Recommendation
Investment income threshold test We welcome the intention to remedy the problems with the investment income test. However, the proposed wording is still problematic.	
The proposal is that investment income should be measured in the earlier of the year of assessment in which the QC commences trade or the year of assessment after 36 months following an acquisition of shares by the VCC. The problem lies with the measurement of investment income in the year that trade commences. Firstly, it is not always easy to determine when trade commences - this is determined on a "facts and circumstances" basis, and this area is prone to dispute with SARS. In this regard, refer to IN33 and IN51. Secondly, even in the year of assessment in which trade commences, the QC may generate little or no income other than investment income, resulting in the test being failed. For example, a QC develops a new piece of software and commences marketing it. It has started trading, but may not have any trade income in the year in which it starts trading.	It is suggested that the investment income test should not be applied in the year in which trading commences, but only 36 months after acquisition of the VCC shares.

INCOME TAX ACT:
Section 12J

	Comment	Recommendation
	Investment income threshold test For the purposes of the definition of "qualifying company", "investment income" is as defined in section 12E, which includes all income in the form of dividends. This potentially places significant structural limitations on a QC. For example, a QC may not be a holding company of an operating company or number of operating companies. Such structures may, however, be desired, not only for legitimate domestic purposes (e.g. to ring-fence risk between different projects), but also for international expansion (e.g. setting up a foreign operation). Similar considerations apply regarding interest. It is submitted that dividends or interest derived from controlled companies do not present a policy concern for the VCC regime (unless indirectly derived from such income from non-controlled companies).	"Investment income" should exclude dividends, foreign dividends and interest received by or accrued to a QC from a controlled company (70% or 50% threshold) unless such items of passive income are derived, directly or indirectly, from dividends, foreign dividends or interest from a person that is not a controlled company.
INCOME TAX ACT: Section 12J	It is not clear what the purpose of the word "as" in "as does not exceed" serves in the context of paragraph *(f)* of the definition of a QC.	The proposed insertion of the word "as" should be removed.

Comment	Recommendation
Connected person test - withdrawal of VCC status In terms of section 12J(3A)*(c)*, 125% of expenditure incurred to acquire shares issued by the VCC is included in income of the VCC. However, para *(a)* already denies a deduction by the connected person in question, resulting in a double penalty.	The 125 per cent inclusion in income should exclude any expenditure disallowed as a deduction in terms of para *(a)*.

INCOME TAX ACT:
Section 12J

Comment	Recommendation
Closure of abusive schemes Although we accept that it is imperative to address abusive schemes that use the VCC regime, we have a number of concerns with the proposals to address the abuse. We address these concerns below. Please note that we have not comprehensively dealt with all of the issues that may arise. In this regard, we note that SAVCA has made a comprehensive submission with which we are in substantial agreement. Importantly, it must be noted that the structures making use of different classes of shares (including ring-fencing) range from aggressively abusive to those that are, arguably, less of a concern and are merely intended to overcome perceived shortcomings in the design of the incentive. It is important that Treasury clearly articulates its policy underpinning the VCC regime so that it is clear what is acceptable and what is unacceptable from a policy perspective and so that interventions targeting abuse and unacceptable schemes are adequately and appropriately designed.	

INCOME TAX ACT:
Section 12J

Comment	Recommendation
Trading between QC and investor in VCC It is acknowledged that certain of the schemes that may be regarded as abusive involve a QC deriving the bulk of its income from persons who hold a direct or indirect interest in the QC or from connected persons in relation to the above persons. However, and especially in light of the other proposals directed at different classes of shares, the proposal goes too far and may possibly not be necessary at all in order to prevent the abuse that is of concern. The primary concern (common to all the schemes of which we are aware) is abuse arising from the use of different classes of shares to "ring-fence". The proposed provision effectively completely prevents any trading by a QC with any investor in the VCC or the QC (whether through the VCC or not).	Trading with a shareholder in a VCC should not be completely prevented.

INCOME TAX ACT:
Section 12J

	Comment	Recommendation
	Trading between QC and investor in VCC For example, if the QC happens to earn some of its income from a person who has as little as a one per cent interest in the QC, it will fall foul of the proposed provision. This cannot be the intention. We are aware that VCCs are apparently used as an (arguably) legitimate and non-abusive mechanism for investments in supplier development. In such a scenario, a portion (or even a significant portion) of a QC's income could (legitimately) be derived from investors, without any abuse taking place.	Our primary submission is that the proposed prohibition is unnecessary and should not be introduced on the basis that the abusive schemes can be addressed through other interventions directed at the actual investment in the VCC itself.
	The proposed provision refers to income generated from any investor having a direct or indirect interest in the QC. The concern should not be trading with any investor in the QC, but with trading with any investor who holds an interest in the QC through the VCC.	The proposed provision should apply where income is received by the QC from an investor (or connected person) who holds an interest in the QC by virtue of an interest in the VCC. Furthermore, it is suggested that it should only apply where the investor and the QC are connected persons in relation to each other. Finally, it should apply only where the bulk of the income of the QC is from investors.
INCOME TAX ACT: Section 12J	The provision refers to "substantially" all the receipts and accruals of the QC. This term is vague, open to interpretation and results in uncertainty.	An objective test should be used in place of terms such as "substantially".

Comment	Recommendation
Classes of shares in QCs It is acknowledged that it is possible for different classes of shares to be used in QCs in order to circumvent the controlled company test by attributing a greater proportion of economic rights to the class of share held by the VCC. However, it should be noted that different classes of shares are used in QCs for valid, legitimate, business purposes. Most commonly, this is done in order to provide the VCC with a preferent right to recovery of its investment and returns from the QC ahead of other shareholders (i.e. the VCC ranks ahead of other shareholders). It is therefore not appropriate to prohibit different classes of shares in the QC.	The mischief in question relates specifically to the economic interest of the VCC in the QC and should be targeted specifically rather than by prohibiting different classes of shares. For example, one option could be to provide that a VCC may not hold 70 per cent or more of the participation rights in a QC (excluding any preferences as to returns of capital and profits).

INCOME TAX ACT:
Section 12J

Comment	Recommendation
Classes of shares in VCCs The proposal to prohibit different classes of shares in a VCC is far too broad in its impact. While it is acknowledged that different classes of shares in a VCC are used as a mechanism in the abusive schemes, it is the specific features that are problematic and which enable the abuse (specifically the linking of a specific QC to a specific investor in the VCC) and not simply the existence of different classes of shares. In particular, the schemes which may be regarded as abusive link the economic and voting rights in a QC to a specific class of share in the VCC, effectively making the shareholder in the VCC the *de facto* beneficial owner of the shares in the QC held by the VCC. What is more, the VCC does not make the investment or disposal decisions in relation to the QC, all such decisions are made by the shareholder. Generally, the remaining shareholding in the VCC will be held by the investor in question or by a connected person. In effect, the mechanism circumvents the pooling of investors and assets principle underlying the VCC regime. That said, it must be emphasised that such ring-fencing is, in certain circumstances, used for legitimate purposes and not to abuse the incentive.	It is recommended that the provisions should directly target the mischief in question. It is suggested that this can be done through one of the following options, in order of preference: 1. No shareholder (together with connected persons) in a VCC may hold, directly or indirectly, more than 20% of the shares of any class in a VCC. This provision should not apply to management of a VCC. 2. Exclude from the definition of a venture capital share any share where the participation rights are linked to a particular QC or QCs (although, as further discussed below, this is not a preferred option as it will impact legitimate structures).

INCOME TAX ACT:
Section 12J

Comment	Recommendation
Classes of shares in VCCs Different classes of shares are used in VCCs for legitimate purposes. For example, the management of a VCC will often invest in the VCC through a different class of shares, which entitle the holder to participate in the profits of the VCC on a different basis to the other shareholders. Ordinarily, management would only participate in the profits once a specified rate of return has been achieved by the VCC, at which point management will participate in the upside (this is often referred to as "carried interest"). In other cases, different classes of shares are used for different rounds of capital raising by the VCC (i.e. in order to enable differentiation between the investors of the different rounds of capital raising and the investments in QCs to which the funds are deployed). In other scenarios, different classes of shares are used in a single VCC to distinguish investments in different sectors. The latter two scenarios are primarily done (legitimately) in order to avoid the additional costs and administration associated with having a number of VCCs. The prohibition of different classes of shares would therefore impact on legitimate uses of different classes of shares and which do not infringe on the pooling of investors and investments principle.	

INCOME TAX ACT:
Section 12J

Comment	Recommendation
Classes of shares in VCCs In other instances, VCC shares are linked to specific investments in QCs (i.e. investments are "ring-fenced") in circumstances that may not be regarded as abusive. This would be the case, for example in supplier development models, whereby a corporate invests in a particular supplier through a VCC. In other scenarios, investors in a VCC wish to be able to choose the SMMEs in which they invest, acting as classic "angel" investors rather than through pooled funding. These cases differ from the clearly abusive cases where the investor in the VCC effectively owns the whole of the QC. A distinction should therefore be drawn between the ring-fencing of investments for abusive purposes and those used for legitimate purposes in the interest of funding and growing small business.	

INCOME TAX ACT:
Section 12J

Comment	Recommendation
We welcome the proposal to afford more flexibility to small business funding entities in the distribution of amounts received by or accrued to them during a year of assessment. However, the wording of the proposed amendment is unclear: it is uncertain what the "relevant year of assessment" is (i.e. whether it is the year in which relevant amounts are received or accrued). Moreover, the effective date, which states that the proposed amendment "comes into operation on 1 March 2019" is unclear: it is uncertain whether the amendment will apply in respect of amounts received by or accrued to small business funding entities during years commencing before, ending on or after, or commencing on or after 1 March 2019; or whether it applies in respect of amounts received by or accrued to small business funding entities on or after 1 March 2019 (irrespective of the year of assessment of the small business funding entity in which the amounts are received or accrued).	The wording of section 30C(1)*(d)*(vi) should be clarified to make the operation of this subparagraph clear, even if this entails a redrafting of the entire subparagraph. In addition, the effective date should be clarified. In this regard, there should be no reason why the amendment should not apply to amounts received by or accrued to small business funding entities in their current year of assessment (i.e. there should be no reason why the effective date should not be 1 January 2019, applying in respect of amounts distributed by small business funding entities during years of assessment commencing on or after that date).

INCOME TAX ACT:
Section 30C

Comment	Recommendation
Section 12D We welcome the reduction in the write-off period for owned transmission lines or cables to 10 years.	
Lease premiums We welcome the stated intention to align the write-off period for owned and leased cables. However, for cables that are situated outside South Africa and where the premium will not be taxable, the allowance will only be available if the right of use of the cable is at least 10 years. In other words, if a lease premium is paid in respect of the lease of a submarine cable for a period of five years, the lease premium will not qualify for the allowance. This is at odds with the stated acknowledgment of technological advances and the move towards shorter lease terms, and undermines the purpose of the allowance insofar as cables are concerned.	The minimum lease period for submarine cables should be removed or alternatively reduced to 5 years.

INCOME TAX ACT:
Sections 11(f) and 12D

Comment	Recommendation
The new para *(ee)* of the proviso refers to a right of use or occupation. However, sub-paragraph (vi) of section 11*(f)* refers only to a right of use.	On the basis that it is not possible to "occupy" a transmission line or cable, para *(ee)* of the proviso should refer only to a right of use and not a right of occupation.
We note that the proposed effective date is inconsistent for the different amendments to section 11*(f)* and creates uncertainty.	The effective date for all amendments should be in respect of assets brought into use on or after 1 April 2019.

INCOME TAX ACT:
Sections 11*(f)* and 12D

Comment	Recommendation
No comments.	

INCOME TAX ACT:
Section 12Q

4.5 Extension of employment tax incentive

Comment	Recommendation
We welcome the proposed extension of this incentive.	

EMPLOYMENT TAX INCENTIVE ACT:
Section 12

5:*INCOME TAX*

INTERNATIONAL

PwC

INCOME TAX ACT:
Definitions of "dividend" in sections 1 and 64D

Comment	Recommendation
We note that the EM indicates that the overlap may unintendedly result in tax treaty relief being available in respect of an amount deemed to be a dividend as a result of a transfer pricing secondary adjustment. Firstly, we are not sure what the policy concern is here. The purpose of the secondary adjustment is to protect the dividends tax base. If an actual dividend would have qualified for treaty relief, there can be no quarrel with a secondary adjustment qualifying for treaty relief. Secondly, it is not clear how the proposed amendments will address this concern. Every treaty has its own definition of a dividend which will override the domestic definition and is generally defined with reference to income from shares or income from other corporate rights subject to the same tax treatment as income from shares. As a general principle, a transfer pricing adjustment would not meet this definition and would not qualify for treaty relief. Some treaties do extend the definition to certain deemed dividends (e.g. the SA/UK treaty). However, whether a secondary adjustment will qualify as a dividend for treaty purposes is a question of fact and the terms of the relevant treaty.	The concern expressed insofar as treaty relief for secondary adjustments is concerned is misplaced.

Comment	Recommendation
Amendment to definition of dividend in section 1 We note that the draft Bill includes no effective date for the proposed amendment to the definition of "dividend".	An effective date for the amendment to the definition of "dividend" should be inserted, being years of assessment commencing on or after 1 January 2019.

INCOME TAX ACT:
Definitions of "dividend" in sections 1 and 64D

Comment	Recommendation
Amendment to definition of "dividend" in section 64D The reference to section 31(3)*(b)*(i) is incorrect - item (i) of section 31(3) qualifies/relates to both paragraphs *(a)* and *(b)* of section 31(3). The reference should therefore be to "section 31(3)(i)"	The reference to "section 31(3)*(b)*(i)" should be changed to "section 31(3)(i)".

INCOME TAX ACT:
Definitions of "dividend" in sections 1 and 64D

Comment	Recommendation
The proposed amendment makes reference to "final realisation". This is not a term used in section 24I. Reference should rather be made to the debt being "realised".	The terms "final realisation" should not be used, but rather the defined term of "realised".
Reference is made to a debt becoming "irrecoverable … as a result in (*sic*) the decline in the market value". This is not in line with the stated position in the EM. A debt that is disposed of for an amount less than its face value as a result of a decline in market value is not necessarily due to it being irrecoverable (in fact it may be fully recoverable on maturity), but rather due to an increase in interest yields.	The reference to irrecoverability in the context of a decline in market value is misplaced.

INCOME TAX ACT:
Section 24I

Comment	Recommendation
In the proposed section 7(8)(*a*A) it is not clear what the conjunction between section 7(8)(*a*A)(i)*(aa)* and *(bb)* is intended to be. Should these items be linked by an "and" or an "or". It is suggested that it should be the former. The same is also applicable to section 25B(2B).	The relationship between these items should be clarified in the legislation.
Section 25B(2B)(ii) effectively provides that the provision will not apply where the foreign dividend is derived from an amount that is included in the income of the resident receiving the distribution of trust capital. However, it is possible that such amounts could be included in the income of another resident. For example, Individual A (resident) makes a donation to Foreign Trust. Foreign Trust uses the donation to subscribe for shares in Foreign Company, which places the amount on deposit and earns interest. Foreign Company distributes the interest to Foreign Trust as a dividend which, in a subsequent year, distributes the interest to Individual B (resident). The result is that section 25B(2B) will apply to Individual B. However, the interest will effectively also be taxed in the hands of Individual A in terms of section 7(8).	Section 25B(2B)(ii) should refer to an amount included in the income of any resident rather than "that resident".

INCOME TAX ACT:
Sections 7, 10B, 25B and paras 64B, 72 and 80 of Eighth Schedule

6:VALUE ADDED TAX

6.1 Insertion of the definition of face value under the provisions dealing with irrecoverable debts

Comment	Recommendation
No comments.	

VALUE ADDED TAX ACT:
Sections 22

7: CLAUSE-BY-CLAUSE

Comment	Recommendation
We note that it is proposed that the definition of a "financial instrument" be amended to include "any cryptocurrency". We have no objections to this in principle. However, we note that a cryptocurrency is not defined, leaving this open to interpretation. This is particularly important given that some countries are considering the possibility of introducing their own official digital currencies.	The term "cryptocurrency" should be defined. A possible definition could be "*a digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds and which is not issued or regulated by any central bank*", or words to that effect.

INCOME TAX ACT:
Section 1 (definition of "financial instrument")

Comment	Recommendation
The proposal that amounts incurred and allowed as deductions in terms of section 11F should, for the purposes of section 6*quat*, be prorated between income from sources in and outside South Africa without regard to the facts goes too far. In most instances, contributions to pension funds and provident funds are directly linked to a particular source of income, although this is not generally the case with retirement annuity funds. Take for example the following scenario. Person A earns taxable salary income from a source within South Africa of R1 million and, in terms of the employer's pension fund rules, makes a contribution of 10% thereof (R100,000) to the pension fund. Person A also earns foreign interest of R50,000 on which foreign tax is levied at a rate of 30% (R15,000). It is artificial to allocate a pro rata portion of the pension fund contribution to the foreign interest income for purposes of limiting the rebate for the foreign tax on the foreign interest income because the pension fund contribution is entirely independent of the interest income.	To the extent that a contribution to a retirement fund can be attributed to a particular source of income it should be attributed to that source for purposes of section 6*quat*(1B) and (1D). Only if it cannot be attributed to a particular source of income should it be prorated.

INCOME TAX ACT:
Section 6*quat*

	Comment	Recommendation
	We have no concerns with the proposed section 7F as such and, in fact welcome it. However, it again illustrates a problem with the effective date relating to the introduction of section 7E, which has caused some uncertainty. Section 7E applies to interest paid by SARS on or after 1 March 2018 and deems such interest to have accrued on the date it is paid. However, this ignores the fact that such interest may have accrued on an earlier date and been taxed in a prior year of assessment in accordance with general principles. The result is that such interest could, arguably, be taxed twice, once in the year in which it accrued under general principles and again in the year in which it is received.	It is suggested that the effective date for section 7E should be amended to read "and applicable to amounts of interest paid by SARS on or after that date **to the extent that such interest has not accrued in a prior year of assessment**" or words to that effect.
INCOME TAX ACT: Insertion of section 7F (deduction of interest repaid to SARS)	Section 7F limits the deduction to the extent that the interest is included in taxable income in terms of section 7E. Firstly, such interest is not included in taxable income in terms of section 7E , but rather in terms of the definition of "gross income" (section 7E is simply a timing provision). Secondly, a deduction for repaid interest should not be limited to interest to which section 7E applies, but should also apply to interest that was received prior to 1 March 2018 and which is repaid on or after 1 March 2018.	The reference to section 7E in section 7F should be removed.

Clause 17(c)

Comment	Recommendation
The proposed amendment to the further proviso to "renumber" the relevant provision "for uniformity purposes" results in the provision being nonsensical.	The proposed amendment should be reconsidered.

INCOME TAX ACT:
Section 9D

Comment	Recommendation
The proposed section 9HB(1)*(b)* cross-references a paragraph of the Eighth Schedule without referencing the Eighth Schedule.	The reference to the Eighth Schedule should be included.
The proposed section 9HB(4) deems trading stock to be disposed of for an amount equal to the amount allowed as a deduction. This wording is likely to cause uncertainty given that it differs from the wording used in the corporate reorganisation rules.	It is suggested that the provision should refer to trading stock as defined in section 41 (which includes livestock and produce) and that the wording be consistent with the wording used in the corporate reorganisation rules.

Comment	Recommendation
As a source rule, this provision should be included in section 9 of the Income Tax Act, along with the rest of the source rules (as opposed to being made a new section 9J, which detracts from the ease of applying the law by having related provisions in different parts of the Act). We cannot see any valid reason why this proposed provision should not be merged into section 9.	Incorporate the proposed section 9J into section 9.
There is no effective date for the proposed insertion of section 9J.	On the basis that the proposed provision will bring new items of income into the tax base, an effective date that is linked to years of assessment should be included.

INCOME TAX ACT:
Insertion of section 9J (Interest of non-resident persons in immovable property)

Comment	Recommendation
It is questioned why it is proposed that losses from the trading of cryptocurrencies are effectively subject to the ring-fencing provisions of section 20A(2)*(b)*, whereas losses from the trading of other financial instruments are not. In essence, this provision discriminates against cryptocurrencies relative to other financial instruments.	The proposed amendment to section 20A should be withdrawn.

INCOME TAX ACT:
Section 20A

Comment	Recommendation
In terms of section 23N(5), section 23N does not apply to certain interest incurred in respect of linked units where the interest accrues to certain types of shareholders. It is proposed that section 23N(5) be deleted. No explanation is provided in the EM for the proposed deletion (all that the EM states is that the proposed amendment seeks to "clarify wording for ease of reference").	An explanation is required for the withdrawal of this provision.

INCOME TAX ACT:
Section 23N

Comment	Recommendation
The EM explains that this proposed amendment is intended to clarify that capital losses arising from a redemption of shares between connected persons are ring-fenced. No effective date is provided for the amendment, which will lead to uncertainty in the application thereof. Far from being clarificatory in nature, the proposed amendment fundamentally changes the law with respect to the redemption of shares. Whilst we acknowledge (and have no quibble with) the prerogative of Treasury to propose changes in the law, the effect of the change should be clear insofar as its application is concerned. To this end, an effective date should be provided to clarify whether the amendment applies based on the date of disposal of the shares or in respect of a particular year of assessment.	An appropriate effective date should be provided for the amendment.

INCOME TAX ACT:
Paragraph 39 of the Eighth Schedule

Comment	Recommendation
The proposed paragraph 45(1A)*(a)* refers to "the amount of the a (*sic*) **capital gain** determined in terms of subparagraph 1*(b)*". This is incorrect as subparagraph 1*(b)* does not relate to an amount of a capital gain, but rather to an amount of proceeds.	In the context of paragraph 45(1)*(b)*, the proposed paragraph 45(1A)*(a)* should refer to an amount of proceeds rather than an amount of a capital gain.

INCOME TAX ACT:
Paragraph 45 of the Eighth Schedule

Comment	Recommendation
It is noted that no provision is made for the amendment to the monetary amount in the definition of "small business". This monetary amount and that in para 57(6) are related.	Provision should be made for amendment to the definition of "small business" in addition to the other provisions.

INCOME TAX ACT:
Paragraph 57 of the Eighth Schedule

Comment	Recommendation
It is noted that cryptocurrency is not defined for purposes of the VAT Act.	As indicated elsewhere in this submission in the context of the Income Tax Act, cryptocurrency should also be defined for the purposes of the VAT Act.

VALUE-ADDED TAX ACT:
Paragraph 45 of the Eighth Schedule

	Comment	Recommendation
MINERAL AND PETROLEUM RESOURCES ROYALTY ACT: Section 6	We are in strong disagreement with the proposed amendment. As the draft EM notes, transport, insurance and handling costs were excluded from gross sales on the basis that this would unintentionally increase gross sales, leading to a higher royalty rate. In this regard, the EM to the MPRR Bill stated the following: "the determination of both gross sales and EBIT excludes transportation, insurance and handling charges. This exclusion is necessary so as not to penalize minerals that are located far from markets or an export port." In 2009, section 6(3) was amended to further clarify, the EM stating the following in relation to that amendment: "the proposed amendment clarifies that the calculation of gross sales disregards the transport, insurance and handling **expenditure** that is incurred to effect the disposal of a mineral resource." We disagree with the statement in the draft EM that "the 2009 changes resulted in the policy intent regarding the definition of gross sales not to be clearly expressed in the text of the legislative provision". Quite the opposite in fact, and the court in *United Manganese of Kalahari (Proprietary) Limited v C:SARS* agreed. The proposed amendment, when read with the draft EM, results in policy uncertainty.	The current wording of section 6(3) is fully in line with the policy intent by excluding expenditure incurred in respect of transport, insurance and handling and not just amounts received or accrued in respect thereof. To not exclude expenditure would create significant distortions between different ways in which minerals are disposed of (e.g. CIF versus FOB) and would undermine the policy rationale of the MPRR Act.

8: MATTERS NOT ADDRESSED IN THE BILL

	Comment	Recommendation
INCOME TAX ACT: Section 10(1)*(o)*(ii)	In the draft TLAB, 2017, it was proposed that the section 10(1)*(o)*(ii) foreign employment income exemption be deleted. After public consultation, the proposal was withdrawn on the understanding that amendments would be made to section 10(1)*(o)*(ii) to, *inter alia*, make the exemption more targeted and equitable, which we fully support. As per the Final Response Document on the TLAB, 2017 (dated 15 December 2017), it was proposed by the National Treasury that the effective date for the revised proposal be extended to 1 March 2020 in order, inter alia, to allow more time for individuals to adjust their contracts and/or their circumstances and to finalise or formalise their tax status. In addition, employers who are affected might need some time to make adjustments to arrangements (such as, for example, employment contracts), which are generally of a long-term nature. Given that the implementation of the proposal will have a significant effect on arrangements that are invariably long-term in nature, it is lamentable that no draft proposals were included in the TLAB, 2018 (which would still be effective for years of assessment commencing on or after 1 March 2020). This would enable sufficient time for public comment on any issues with the redrafted provisions, as well as adequate planning by employees and employers affected by the proposal.	In order to provide certainty, it is recommended that the proposed amendments to section 10(1)*(o)*(ii) be included in the TLAB, 2018 - the amendment can be effective for years of assessment commencing on or after 1 March 2020.