2019 DRAFT RATES AND MONETARY AMOUNTS AND REVENUE LAWS AMENDMENT BILL, 2019 TAXATION LAWS AMENDMENT BILL , 2019 DRAFT TAX ADMINISTRATION LAWS AMENDMENT BILL & 2019 DRAFT INCOME TAX AMENDMENT BILL

Joint presentation to with Standing Committee on Finance and Select Committee on Finance

Presenters: National Treasury and SARS | 3 September 2019

national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Officials present

- Ismail Momoniat, NT, DDG: Tax and Financial Sector Policy
- Yanga Mputa, NT, CD: Legal Tax Design
- Chris Axelson, NT, CD: Economic Tax Analysis
- Franz Tomasek, SARS, GE: Legislative R&D
- Ronel Mosehane, SARS, Senior Specialist Legislative R&D

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Legislative mandate for taxation

- Tax revenue collected flows to the **National Revenue Fund**
- Funds are then allocated through a budget appropriation
- Section 213 of the Constitution establishes the National Revenue Fund, and does not allow money to go elsewhere, except "money reasonably excluded by an Act of Parliament"
- Sections 73 and 77 of the Constitution obligate that **only** the Minister of Finance can introduce tax or appropriation bills (which are "money Bills")
- Section 77(3) requires an Act of Parliament for a procedure to amend money bills in Parliament.

From the Constitution:

Money Bills

77. (1) A Bill is a money Bill if it—
(a) appropriates money;
(b) imposes national taxes, levies, duties or surcharges;
(c) abolishes or reduces, or grants exemptions from, any national taxes, levies, duties or surcharges; or
(d) authorises direct charges against the National Revenue Fund, except a Bill envisaged in section 214 authorising direct charges.

73. (1) Any Bill may be introduced in the National Assembly.
(2) Only a Cabinet member or a Deputy Minister, or a member or committee of the National Assembly, may introduce a Bill in the Assembly, but only the Cabinet member responsible for national financial matters may introduce the following Bills in the Assembly:
(a) a money Bill; or
(b) a Bill which provides for legislation envisaged in section 214.

Legislative process

- Section 77(3) of the Constitution states: "All money Bills must be considered in accordance with the procedure established by section 75. An Act of Parliament must provide for a procedure to amend money Bills before Parliament."
- The Money Bills Amendment Procedure and Related Matters Act, 2009 is the Act that provides a framework for how Parliament can amend a money bill.
- However, comprehensive evidence is required to justify amendments, according to section 8(5) and section 11(3) of the Act
  - These include the impact of any changes on: the balance between revenue, expenditure and borrowing; debt levels and debt interest costs; the LT implications for fiscal framework and LT impact on growth; on efficiency, equity, certainty and ease of collection; on investment, employment; etc.
- The tax policy process allows for the publication of draft bills <u>before</u> they are tabled to allow for consultations and amendments to the bills (July/August)
- National Treasury and SARS brief the SCOF on the draft bills, and the SCOF hold public hearings on these draft bills, both before tabling (usually September)
- After consultations and engagements, a revised version of the Bill is presented to SCOF and is subsequently tabled (usually October)

Annual Tax Process starts on Budget Day

- Tax process complex, different to other legislative/expenditure processes
- Tax proposals are highly market-sensitive, and hence <u>no prior consultation</u> process until MoF delivers his Budget
- Tax announcements are generally only made in the Budget, once a year
- Consultation on <u>structure</u> of a tax starts immediately after Budget Day, is largely on changes made to the <u>tax base</u> and <u>administration</u> of a tax
  - Assists in developing and processing of TLAB and TALAB Bills
  - Bills split, as TLAB is a money bill (s77), but TALAB is not (s75)
- Consultation on <u>rate changes</u> is more limited, as is mainly a judgement call mostly (but not only) based on amount of revenue required for Budget
  - Draft Rates and Monetary Thresholds Bill is published <u>on Budget Day</u>
- Draft TLAB and Draft TALAB are <u>published after Budget Day in July</u>, after the <u>first round</u> of consultations with key stakeholders affected by the Bill
  - <u>Second round</u> of consultations take place around Aug and Sept

Annual Tax Process starts on Budget Day

- Parliament starts its own process on draft tax bills as soon as it is possible after such bills are published by the Treasury
- Given the tight timelines (as we aim to enact tax bills by December/January at the latest), and the fact that tax bills follow a s75 process, the SCOF runs the more intensive process, with SECOF running a much shorter process (hopefully there is an agreement between SCOF and SECOF on tax bill processes)
- First presentation by Treasury is (preferably) to JOINT SCOF and SECOF, with a joint process for public comments. Hence request for public comments and hearings normally around September for TLAB and TALAB (and Rates and Monetary if not done earlier)
- After public hearings, Treasury and SARS produce a RESPONSE DOCUMENT for approval by SCOF
- MoF introduces revised tax bills in the National Assembly end of October

Annual Tax Process starts on Budget Day

- After MoF introduces the bills, SCOF formally considers the bill, and considers the bill clause-by-clause
- Any amendments (technical and non-technical) have to be dealt with in terms of the Money Bills Amendment Procedure and Related Matters Act
- After approval by SCOF and National Assembly sometime in November, Bill proceeds to SECOF, for consideration and adoption within one or two weeks
- NCOP approves tax bills in the last week that it sits around first week of December
- President considers and signs bill into law in December or very early January
- NOTE: Tax year for Personal Income Tax is end-Feb, and if Bill is enacted in late January or February, it could cause a number of legal and technical problems

Tax Bills – how best to engage with them

- Tax bills are not easy to read, even for legal practitioners
- It is followed word for word by legal tax practitioners
- Tax amendments are mostly additions and deletions on at least a dozen current tax laws (mainly Income Tax Act, VAT Act, Customs and Excise Act, Carbon Tax Act, Tax Admin Act), hence have to be read with the entire set of all the tax laws that are currently in force
- Treasury and SARS try and make it easier to understand by focusing on the explanatory memorandum that goes with each tax bill, which explains each clause in simple language
- MPs and NCOP members are advised to start with the explanatory memo, as well as the Budget Review (chapter 4, Annexures B and C)
- Hearings also provide an opportunity to identify clauses that are contested, and whose impact becomes clear when considering public comments
- MPs need the wisdom of Solomon when there are opposing views on any amendment!

Role of the National Treasury in tax process

- From the **Annual Performance Plan** of the National Treasury:

PROGRAMME 2: ECONOMIC POLICY, TAX, FINANCIAL REGULATION AND RESEARCH

This programme aims to promote economic policy coherence around the objectives of growth and jobs and improve South Africa's macroeconomic and microeconomic framework by conducting ongoing analysis, research and policy advisory services. The programme supports economic growth, employment and macroeconomic stability and retirement reform by:

- Developing tax policy proposals and supporting tax legislation for the annual budget
- Monitoring the collection of revenue through ongoing consultation with relevant stakeholders, and analysing the factors determining the tax collection

TAX POLICY

This sub-programme is responsible for preparing tax and revenue proposals for the annual national budget, and for drafting the necessary tax legislation to give effect to the proposals adopted. The unit also processes recommendations made by the Davis Tax Committee to the Minister of Finance and provides advice to the Minister on such recommendations. The unit promotes an effective, equitable and efficient tax policy framework and tax administrative system that ensures sustainable growth and delivery on government's mandate to address the needs of all South Africans. This includes providing tax proposals towards improved environmental sustainability, reduction of inequality, and raising of revenue.

- NT role is to provide tax policy proposals and revenue estimates for Minister for Budget

Role of the South African Revenue Service in tax process

- From the **South African Revenue Services Act**:

Objective

3. SARS's objective is the efficient and effective collection of revenue.

Functions

4. (1) To achieve its objective SARS must–

(a) secure the efficient and effective, and widest possible, enforcement of–

(i) the national legislation listed in Schedule 1; and

(ii) any other legislation concerning the collection of revenue that may be assigned to SARS in terms of either legislation or an agreement between SARS and the organ of state or institution entitled to the revenue; and

(b) advise the Minister, at the Minister's request, on–

(i) all matters concerning revenue; and

(ii) the exercise of any power or the performance of any function assigned to the Minister or any other functionary in the national executive in terms of legislation referred to in paragraph *(a)*.

(2) SARS must perform its functions in the most cost-efficient and effective manner and in accordance with the values and principles mentioned in section 195 of the Constitution.

(3) SARS performs its functions–

(a) under the policy control of the Minister; and

(b) subject to any directives and guidelines on policy matters issued by the Minister.

- Main objective is the collection of revenue, which includes interpreting the tax legislation
- But also to provide advice to the Minister on issues related to revenue

- SARS works very closely with NT on policy and revenue matters
- However, SARS have full autonomy in terms of administration
- NT not allowed by law to have sight of any taxpayer's affairs or force SARS to implement tax collection in a particular way
- SARS assists in providing tax policy advice for proposals (e.g. anti-avoidance measures)

2019 DRAFT TAX BILLS

Overview of the 2019 tax process

- The 2019 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill (Rates Bill) was first published on Budget Day (20 February 2019) and published for the second time on 21 July 2019, in order to solicit comments on the tax proposals contained therein.
- The Draft Rates Bill contains tax announcements made in the 2019 Budget, dealing with changes in rates and monetary thresholds and increases of the excise duties on alcohol and tobacco.
- The 2019 Draft Taxation Laws Amendment Bill (TLAB) and the 2019 Draft Tax Administration Laws Amendment Bill (TALAB) were published on 21 July 2019 contain more complex, technical and administrative tax proposals announced in the 2019 Budget.
- This year we also have a separate 2019 Draft Income Tax Amendment Bill which contains environmental tax incentive announcements made in the 2019 Budget that deal with the repeal of the exemption for certified emissions reductions as well as the extension of the energy efficiency savings incentive.

Overview of 2019 tax process AFTER publication of draft Bills

- Due to constitutional requirements, the draft tax bills are split into two separate bills, i.e., money bills in terms of section 77 of the Constitution dealing with national taxes, levies, duties and surcharges (Draft Rates Bill, Draft TLAB, Draft Income Tax Amendment Bill) and an ordinary bill in terms of section 75 of the Constitution, dealing with tax administration issues (Draft TALAB).
- The draft tax bills are published for public comment and SCOF/SECOF will convene public hearings on 19 September 2019, prior to their formal introduction in Parliament.
- NT and SARS will also engage stakeholders submitting comments in more detail through workshops to be held on 5 and 6 September 2019.
- NT and SARS will present a response document on 18 September 2019 after which the draft tax bills will be revised taking into account public comments.

2019 DRAFT RATES BILL

2019 Budget tax proposals

- The 2019 BUDGET contained tax policy measures to raise additional tax revenue
  - Estimated R42.8bn shortfall for 2018/19 compared to estimates from 2018 Budget
  - Tax proposals in 2019 Budget aim to raise R15 billion in tax revenues

- Chapter 4 of Budget Review deals with main revenue raising tax proposals, and Annexure C deals with other tax proposals, including anti-avoidance measures
- Annexure B deals with tax expenditures which is revenue foregone through incentives
- The Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill (Rates Bill) was published on Budget Day (20 February 2019) and contains the key rate and threshold changes
- More complex tax proposals will be dealt with in the draft Taxation Laws Amendment Bill (TLAB) and TALAB Bills to be published in July for public comment
- All the above are first draft bills, and tabled only after public hearings

Tax proposals aim to raise R15 billion

Large tax revenue shortfalls and new expenditure pressures required tax policy interventions to raise additional funding for government. The tax proposals are expected to generate an R15 billion in tax revenue for 2019/20.

The main proposals include the following:

- Not adjusting personal income tax brackets for inflation, but with a 1.1 per cent increase in the primary, secondary and tertiary rebates
- No inflationary adjustment to medical tax credits
- Increase in the eligible income band for the employment tax incentive
- Above inflation increases for excise duties on alcohol and tobacco
- An increase in the health promotion levy rate in line with inflation
- A below inflation increase of 15 cents per litre in the general fuel levy
- A new carbon tax levy on fuel

Largest revenue increase is from personal income taxes

Table 4.3 Impact of tax proposals on 2019/20 revenue[1]

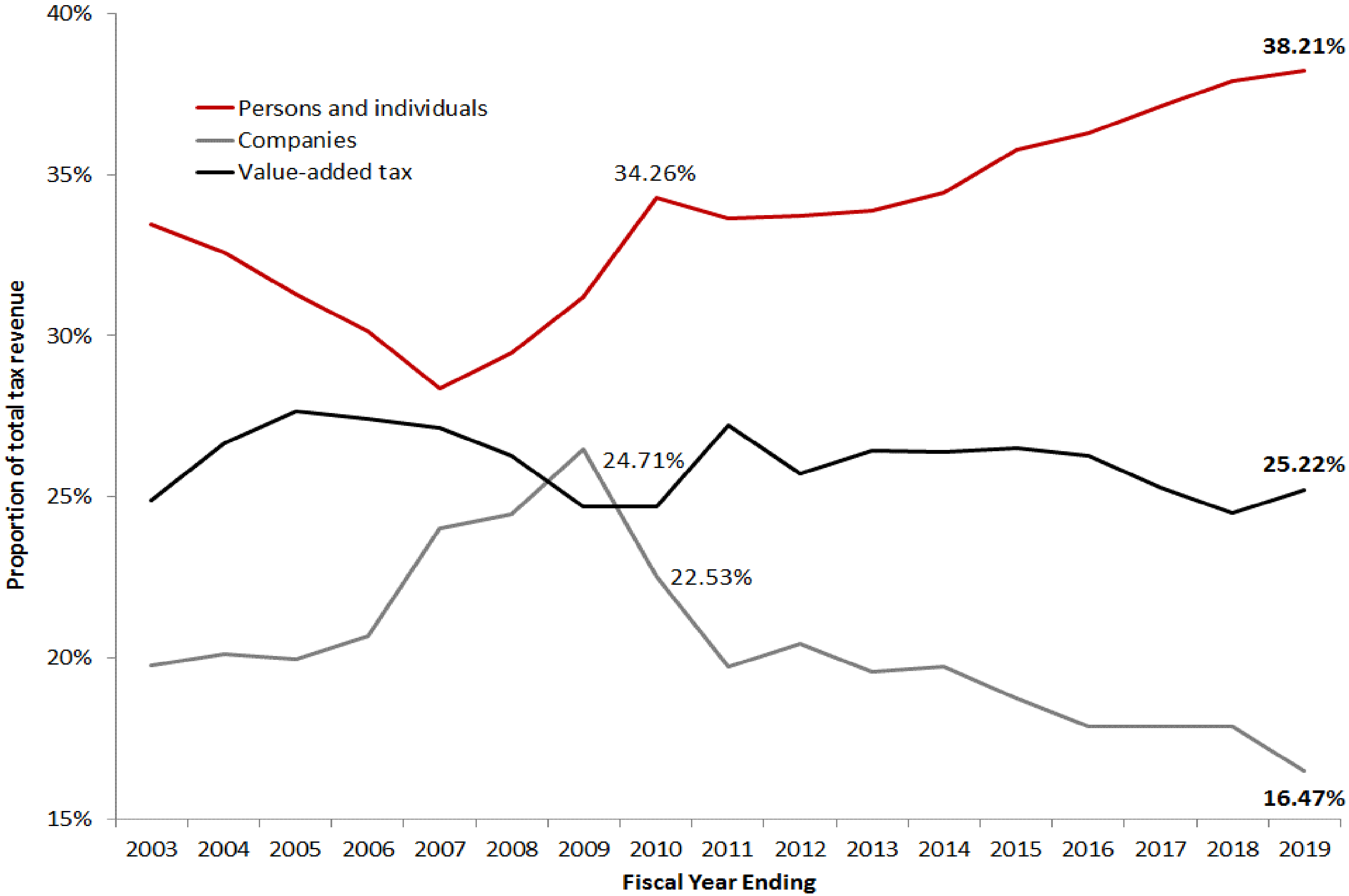
R million		
Gross tax revenue (before tax proposals)		**1 407 208**
Budget 2019/20 proposals		**15 000**
Direct taxes		**13 800**
Taxes on individuals and companies		
Personal income tax	**13 800**	
Revenue from not fully adjusting for inflation	12 800	
Revenue if no adjustment is made	*14 000*	
Partial bracket creep for personal income tax	*-1 200*	
No adjustment to medical tax credit	1 000	
Indirect taxes		**1 200**
General fuel levy adjustment	-500	
Introduction of carbon tax on fuel	1 800	
Additional VAT zero-rated items	-1 100	
Increase in excise duties on tobacco products	400	
Increase in excise duties on alcoholic beverages	600	
Gross tax revenue (after tax proposals)		**1 422 208**

1. Revenue changes are in relation to thresholds that have been fully adjusted for inflation

Source: National Treasury

national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Continues increasing reliance on personal income taxes



Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2019 (Rates Bill)

- The Draft Rates Bill gives effect to the tax proposals dealing with tax rates and monetary threshold announced in the Budget. These proposals relate to:
  - Income Tax
  - Excise Duties
  - Employment tax incentive

- It enacts proposals that take effect on the Budget Day (e.g., 21 February 2018), or on 1 March or 1 April of every year or on the date of promulgation of the Rates Bill
- The items in the Rates Bill consist of the revenue items shown in the previous slide (except for changes to the general fuel levy, the RAF levy, the carbon tax levy on fuel and the health promotion levy)
- NT publishes the Rates Bill for comments on the Budget day, prior to formal introduction in Parliament
- NT and SARS introduces the Rates Bill informally to SCoF
- Thereafter, the Rates Bill is tabled by the Minister formally in Parliament for consideration

Increase in personal income tax of R12.8 billion from not adjusting for inflation

- Budget 2019 raised PIT revenue by not providing relief for inflation on personal income tax brackets
- But rebates were increased by 1.1 per cent
- From 1 March 2019
- By not fully adjusting for inflation, government expects to raise around R12.8 billion compared to what is in the previous forecast

Table 4.4 Personal income tax rates and bracket adjustments

2018/19		2019/20	
Taxable income (R)	**Rates of tax**	**Taxable income (R)**	**Rates of tax**
R0 - R195 850	18% of each R1	R0 - R195 850	18% of each R1
R195 851 - R305 850	R35 253 + 26% of the amount above R195 850	R195 851 - R305 850	R35 253 + 26% of the amount above R195 850
R305 851 - R423 300	R63 853 + 31% of the amount above R305 850	R305 851 - R423 300	R63 853 + 31% of the amount above R305 850
R423 301 - R555 600	R100 263 + 36% of the amount above R423 300	R423 301 - R555 600	R100 263 + 36% of the amount above R423 300
R555 601 - R708 310	R147 891 + 39% of the amount above R555 600	R555 601 - R708 310	R147 891 + 39% of the amount above R555 600
R708 311 - R1 500 000	R207 448 + 41% of the amount above R708 310	R708 311 - R1 500 000	R207 448 + 41% of the amount above R708 310
R1 500 001 and above	R532 041 + 45% of the amount above R1 500 000	R1 500 001 and above	R532 041 + 45% of the amount above R1 500 000
Rebates		**Rebates**	
Primary	R14 067	Primary	R14 220
Secondary	R7 713	Secondary	R7 794
Tertiary	R2 574	Tertiary	R2 601
Tax threshold		**Tax threshold**	
Below age 65	R78 150	Below age 65	R79 000
Age 65 and over	R121 000	Age 65 and over	R122 300
Age 75 and over	R135 300	Age 75 and over	R136 750

Source: National Treasury

No increase in medical tax credits, to assist funding of NHI and provide additional general tax revenue

- Majority of relief from 1.1 per cent increase in rebates goes to those on lower incomes
- Medical tax credits remained the same at R310 per month for first two beneficiaries and R209 for additional beneficiaries
- Not adjusting the medical tax credits raises the most from those on middle incomes

Table 4.5 Estimates of individual taxpayers and taxable income, 2019/20

Taxable bracket	Registered individuals		Taxable income		Income tax payable before relief		Income tax relief after proposals		Income tax from medical tax credits		Income tax payable after proposals	
R thousand	Number	%	R billion	%	R billion	%	R billion	%	R billion	%	R billion	%
R0 - R70[1]	6 369 806	–	183.4	–	–	–	–	–	–	–	–	–
R70 - R150	2 385 046	31.2	254.0	10.0	10.3	1.9	-0.34	28.5	0.05	5.0	10.1	1.8
R150 - R250	1 949 150	25.5	387.4	15.2	36.4	6.6	-0.32	26.9	0.20	23.1	36.2	6.5
R250 - R350	1 169 590	15.3	349.9	13.7	49.6	9.0	-0.19	15.8	0.21	22.1	49.7	9.0
R350 - R500	984 790	12.9	408.5	16.0	75.9	13.7	-0.16	13.2	0.23	21.9	76.0	13.7
R500 - R750	610 331	8.0	367.1	14.4	89.1	16.1	-0.10	8.2	0.15	14.3	89.2	16.1
R750 - R1 000	261 631	3.4	224.7	8.8	66.1	12.0	-0.04	3.5	0.07	6.1	66.2	12.0
R1 000 - R1 500	161 868	2.1	193.9	7.6	65.8	11.9	-0.03	2.2	0.05	4.4	65.8	11.9
R1 500 +	120 751	1.6	362.7	14.2	159.8	28.9	-0.02	1.6	0.04	3.2	159.8	28.9
Total	**7 643 157**	**100.0**	**2 548.1**	**100.0**	**553.0**	**100.0**	**-1.18**	**100.0**	**1.00**	**100.0**	**552.9**	**100.0**
Grand total	**14 012 963**		**2 731.5**		**553.0**		**-1.18**		**1.00**		**552.9**	

1. Registered individuals with taxable income below the income-tax threshold

Source: National Treasury

Above inflation increases in alcohol and tobacco excise duties to raise R1 billion

- The targeted excise burden for wine, beer and spirits is 11 per cent, 23 per cent and 36 per cent of the weighted average retail selling price
- The targeted excise burden for tobacco is 40 per cent of the retail selling price of the most popular brand

Table 4.6 Changes in specific excise duties, 2019/20

Product	Current excise duty rate	Proposed excise duty rate	Percentage change Nominal	Real
Malt beer	R95.03 / litre of absolute alcohol (161,56c / average 340ml can)	R102.07/ litre of absolute alcohol (173,51c / average 340ml can)	7.4	2.2
Traditional African beer	7,82c / litre	7,82c / litre	–	-5.2
Traditional African beer powder	34,70c / kg	34,70c / kg	–	-5.2
Unfortified wine	R3.91 / litre	R4.20 / litre	7.4	2.2
Fortified wine	R6.54 / litre	R7.03 / litre	7.4	2.2
Sparkling wine	R12.43 / litre	R13.55 / litre	9.0	3.8
Ciders and alcoholic fruit beverages	R95.03 / litre of absolute alcohol (161,56c / average 340ml can)	R102.07/ litre of absolute alcohol (173,51c / average 340ml can)	7.4	2.2
Spirits	R190.08 / litre of absolute alcohol (R61.30 / 750ml bottle)	R204.15 / litre of absolute alcohol (R65.84 / 750ml bottle)	7.4	2.2
Cigarettes	R15.52 / 20 cigarettes	R16.66 / 20 cigarettes	7.4	2.2
Cigarette tobacco	R17.44 / 50g	R18.73 / 50g	7.4	2.2
Pipe tobacco	R4.94 / 25g	R5.39 / 25g	9.0	3.8
Cigars	R82.31 / 23g	R89.72 / 23g	9.0	3.8

Source: National Treasury

- Above inflation increases in these excise duties raise additional tax revenue (are part of the R15 billion revenue requirement for 2019/20)
- Effective from 20 February 2019
- It is expected that the excise burden will be slightly above the targeted levels

Employment tax incentive, and other measures not in the Rates Bill

- The eligible income brackets for the employment tax incentive were increased, such that the maximum R1 000 can be claimed on incomes up to R4 500 (from R4 000 previously) and the amount will be tapered down to zero at R6 500 (from R6 000 previously)

Measures not in the Rates Bill

- The health promotion levy was increased by inflation to 2.21 cents per gram of sugar above the threshold of 4 grams of sugar per 100 ml from 1 April 2019
- Increase in the general fuel levy of 15 c/l from 3 April 2019, which will decrease expected tax revenue by R500 million (as it is below inflation)
- Road Accident Fund levy increase of 5 c/l after previous years of above inflation increases
- Introduction of new carbon tax levy on fuel

CARBON TAX AMENDMENTS

Background to Carbon Tax Amendments

- The President signed into law the Carbon Tax Act No 15 of 2019 on 22 May 2019 giving effect to the carbon tax from 1 June 2019.
- To assist energy intensive sectors such as mining and iron and steel to transition their activities during the first phase until Dec 2022, government announced in Budget 2019 an extension of the Section 12L Energy Efficiency Savings tax incentive.
- Due to the introduction of the carbon tax and to eliminate potential double benefits to taxpayers under the carbon tax and income tax, government proposed to repeal the Section 12K income tax exemption for revenues earned from the sale of carbon credits generated from carbon offset projects
- The 2019 Draft Income Tax Amendment Bill containing the above amendments was published for public comments on 30 July 2019.
- Other technical amendments that were included in the 2019 Draft TLAB, which was published for public comments on 21 July 2019 include clarifications of definitions, applicable thresholds, the tax base, units in the formula, and tax free allowances.

2019 DRAFT INCOME TAX AMENDMENT BILL

Repeal of the tax exemption for Certified Emission Reductions (Clause 1 of the Draft Income Tax Amendment Bill: Section 12K of the Income Tax Act)

- In 2009, government introduced a tax exemption for income generated from the sale of certified emission reduction credits arising from projects developed under the Clean Development Mechanism (CDM) of the Kyoto Protocol. The main aim of the incentive was to promote investments in eligible low carbon initiatives including renewable energy and energy efficiency projects in South Africa by partially offsetting the high project registration, monitoring and credit verification costs incurred by project developers.
- Under the Carbon Tax Act, No 15 of 2019 ("Carbon Tax Act"), which became effective on 1 June 2019, taxpayers will now qualify for a carbon offset allowance of up to a maximum of 10 per cent of its total greenhouse gas emissions under the Carbon Tax Act.
- To avoid a double benefit scenario, where the same emissions reductions lead to both an income tax exemption under section 12K of the Act and a lower carbon tax liability for a taxpayer under the Carbon Tax Act, it is proposed that the tax exemption for certified emission reduction units is repealed from the date of introduction of the carbon tax.

Extension of the Energy Efficiency Savings Tax Incentive
(Clause 2 of the Draft Income Tax Amendment Bill: Section 12L of the Income Tax Act)

- In 2013, Government introduced the energy efficiency savings tax incentive to encourage investments in energy efficiency measures to help reduce emissions of greenhouse gases, address climate change, and promote efficient energy use. To date, the incentive has helped to promote significant investments in energy intensive sectors such as mining as well as manufacturing, amounting to about R3 billion in total.
- The energy efficiency savings tax incentive has a sunset provision where only energy efficiency savings generated prior to the year of assessment ending before 1 January 2020 will be eligible to qualify for the incentive. During stakeholder consultations on the carbon tax, there were views that the energy efficiency savings tax incentive should be extended beyond 2020 to ensure that there is long term policy certainty on revenue recycling commitments made under the carbon tax.
- Government proposed to extend the duration of the incentive to be aligned with the first phase of the carbon tax, ending 31 December 2022. It is proposed that the energy efficiency savings incentive be extended to allow for energy efficiency savings deductions from the income of any person carrying on any trade in respect of year of assessment ending before 1 January 2023.

CARBON TAX AMENDMENTS IN 2019 DRAFT TLAB

Technical Carbon Tax Amendments
Clauses 83 to 92 of the 2019 Draft TLAB-Sections 1, 3, 4, 5, 7, 8, 9, 13 & Schedules 1 & 2 of the Carbon Tax Act

- **Thresholds applied to be liable for carbon tax** - has been amended to include activities by taxpayers that also meet the thresholds, not only those above the threshold. This is aligned with the Department of Environmental Forestry and Fisheries requirements for reporting GHG emissions
- **Amendment of Section 4 for the tax base.** Clarifies that taxpayers can use different methodologies to report emissions to DEFF ie. tier 1, 2 and 3. For purposes of tier 1 and 2, taxpayers should use the schedules and emission factors set out in Schedule 1
- **Formulas for determining the total emissions of a taxpayer** have been corrected to clarify the units to be used and convert some unit from kg to tonnes, and specify density factors for converting from volume to mass.
- **Clarification provided on the CPI figures** that will be used to adjust the tax annually.
- **Clarification that the basic tax free allowance** for fossil fuel combustion is the basic tax free allowance ranging from 60 to 75 percent for **all** activities subject to the tax. Process and fugitive emissions allowance changed to 10 %. Schedules also amended to clarify allowances.

OTHER NON-BUDGET TAX-RELATED MEASURES TO BE DEALT WITH SEPARATELY FROM THIS TAX LAWS PROCESS

Other tax-related bills expected in next few months (not part of the annual tax laws process)

- Amendments to SARS Act will be tabled very early next year
  - To give effect to Nugent Commission proposals, related to governance and role of Inspector-General, as well as processes for the appointment and removal of the Commissioner and Deputy-Commissioner(s)

- Separate legislation to strengthen the Tax Ombud also expected to be be tabled next year

- Tax treaty agreements (e.g. Kuwait)

SA/KUWAIT TAX TREATY

Protocol amending the tax treaty between South Africa and Kuwait

- The current tax treaty between SA& Kuwait came into force in 2006
- In 2007, SA announced changes to the secondary tax on companies (STC) to a dividend tax at a shareholder level. The implementation of the dividend withholding tax was contingent to the renegotiation of ten tax treaties that had a zero tax rate withholding tax on dividends (changing the zero tax rate to two withholding tax rates based on shareholding: i.e., 5% and 10% tax rates). These were tax treaties with Australia, Cyprus, Ireland, Kuwait, Netherlands, Malta, Oman, Seychelles, Sweden and the United Kingdom.
- The renegotiations of protocols amending the above-mentioned tax treaties were concluded in 2007 and 2008. All the protocols amending the above-mentioned tax treaties are now in force except the protocol to the SA/Kuwait tax treaty.
- South Africa had for the past 10 years been requesting Kuwait to sign the protocol.
- Currently, SA cannot effectively implement the dividends tax at a shareholder level that came into force in 2012, due to the fact that the tax treaty between SA and Kuwait still has a zero rate withholding tax on dividends. This has a negative impact on the tax treaty between SA and Netherlands as well as the tax treaty between SA/Sweden).

Protocol amending the tax treaty between South Africa and Kuwait

- Both the SA/Netherlands as well as SA/Sweden tax treaties contain a so called “Most Favoured Nation” (“MFN”) clause in the article dealing with withholding tax on dividends. This MFN clause generally provides that if any tax treaty is concluded with another country after the conclusion of the SA/Netherlands tax treaty and/or SA/ Sweden tax treaty, and the withholding tax rate on dividends in the tax treaty with that other country is lower (or zero) than the withholding tax rate on dividends the SA/Netherlands tax treaty as well as SA/Sweden tax treaty, then the more favourable (lower or zero) withholding tax rate on dividends will apply on the SA/Netherlands tax treaty as well as SA/Sweden tax treaty.
- The issue of SA/Kuwait tax treaty tax treaty has become so urgent due to the fact that on 18 January 2019, the Dutch Supreme court found in favour of the taxpayer in its judgment on the interpretation of the MFN clause contained in article dealing with withholding tax on dividends in the SA/Netherlands tax treaty. Again, on 12 June 2019, the SA Tax Court (sitting in Cape Town High Court) delivered a judgement in favour of the taxpayer under the same circumstances between SA/Netherlands tax treaty.
- Based on this court judgement, the total refunds that SA has to pay to taxpayers several billion, including interest.
- We have notified Kuwait that if they do not sign this protocol by September 2019, SA will have no choice but to terminate the tax treaty. The termination of the tax treaty will require parliamentary approval.
- Kuwait has now shown commitment to sign the protocol, and we are in the process of finalising the constitutional requirements for signature. Once signed, it requires ratification by parliament.

2019 DRAFT TLAB

PERSONAL INCOME TAX

Reviewing the tax treatment of surviving spouse pensions (Clause 48 of the Draft TLAB: Paragraph 2 of the Fourth Schedule to the Income Tax Act)

- Members of retirement funds can deduct contributions to their retirement funds from their taxable income when determining their monthly employees tax and annual income tax payable.
- Upon the death of a member, the surviving spouse may be entitled to receive a monthly spousal pension from the retirement fund. This spousal pension is taxable in the surviving spouse's hands by the retirement fund.
- If the surviving spouse also receives a salary or other income, it is added to the spousal pension to determine his/her correct tax liability on assessment. The result of the assessment is often that the surviving spouse has a tax liability that exceeds the employees' tax withheld by the employer and retirement fund during the year of assessment, since the segregation of income pushes them in the higher bracket.
- It has come to Government attention that in most cases, the surviving spouse does not foresee the additional tax liability, and this creates a cash flow burden and tax debt for surviving spouse.
- In order to alleviate the financial burden, it is proposed that the tax rebates should not be taken into account when calculating taxes to be withheld by the retirement funds on the spousal pension.

Tax treatment of bulk payments to former members of closed funds (Clause 46 of the Draft TLAB: Paragraph 2D of the Second Schedule to the Income Tax Act)

- In 2009, the Minister of Finance published a notice in Government Gazette No.32005 approving retirement funds to make tax free payments of "undisclosed secret profits" based on certain criteria.
- When this notice was published, some retirement funds were no longer registered and these deregistered retirement funds had already paid amounts to the fund administrators but the amounts were not yet paid to the affected members and/or beneficiaries.
- In order to ensure consistent tax treatment, it is proposed that changes be made in the Act to make provision for the payment of amounts currently held by fund administrators on behalf of deregistered funds to qualify for tax exemption, provided that they meet the criteria to be determined by the Minister in a notice in Government Gazette.

Exemption relating to annuities from a provident or provident preservation fund
(Clause 14 of the Draft TLAB: Section 10C to the Income Tax Act)

- In 2016, Government introduced some of the broader objectives of the retirement reforms.
- As a result, contributions by both employers and employees to pension, provident and retirement annuity funds qualify for a tax deduction from employees taxable income, subject to a cap. On the other hand, contributions by employers to pension, provident and retirement annuity funds on behalf of employees qualify as a taxable fringe benefit in the hands of employees.
- Consequently, members of provident funds receiving an annuity found themselves in a position where any non-deductible contributions could only be offset against the lump sum received and the balance of the non-deductible contributions is forfeited or lost.
- In order to promote uniform tax treatment of all retirement funds, it is proposed that provident fund members who receive annuities qualify for the same tax exemption status that would be applicable to other retirement funds.

Extending the scope of amounts constituting variable remuneration
(Clause 3 of the Draft TLAB: Section 7B of the Income Tax Act)

- The Income Tax Act contains section 7B, aimed at matching the timing between accrual and payment of various forms of variable remuneration and deems certain amounts to accrue to the employee when they are actually paid.
- It has come to Government's attention that the scope of this section is very limited as it does not cater for certain amounts, such as night shift allowance, stand by allowance.
- In order to address this anomaly, changes are proposed in section 7B so that this section does not apply to specific amounts but applies to amounts bearing certain generic characteristics that are listed in the Act.

GENERAL BUSINESS TAX

Addressing abusive arrangements aimed at avoiding the anti-dividend stripping provisions (Clauses 23, 51 and 59 of the Draft TLAB: Section 22B, Paragraphs 12A & 43A of the Eighth Schedule to the Act)

- The Income Tax Act contains anti avoidance rules dealing with dividend stripping aimed at preventing tax free extraction of profits of a company through exempt dividends.
- In 2017, these rules were strengthened to make provision for exempt dividends paid to a shareholder company within 18 months of disposal of shares held by that shareholder company to be regarded as extra-ordinary dividends and treated as income subject to tax in the hands of the shareholder company.
- It came to Government's attention that certain taxpayers have embarked in abusive schemes involving millions of Rands and have the potential of eroding the tax base in order to circumvent the changes made in 2017.
- In order to curb this abuse, it is proposed that the following changes be made to the Act with effect from 2019 Budget Day, 20 February 2019:
  - The anti-avoidance rules will not only apply at a time when a shareholder company actually disposes of shares in a target company, but will be extended to apply in instances where shares are issued by the target company and the effective interest in the target company is reduced or diluted as a result of such issuance.
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Correcting anomalies arising from applying anti value shifting rules (Clause 28 the Draft TLAB: Section 24BA of the Act)

- The Income Tax Act contains anti value shifting rules aimed at ensuring that all asset for share transactions are done on a value for value basis, i.e. assets are exchanged for shares of equal value.
- At issue is the fact that the write off period reflecting the rate of depreciation of an asset for accounting purposes may be different from the write off period prescribed in the Income Tax Act.
- These differences result in either a deferred tax asset or a deferred tax liability, which may affect the value of shares in a company and may trigger the application of anti value shifting rules, whereas there is actually no value shifting that occurred, but only a difference between tax and accounting reporting standards.
- In order to address this anomaly, it is proposed that changes be made in the tax legislation so that the anti value shifting rules are not triggered in the above-mentioned circumstances, but are only triggered in instances where high value assets are transferred in exchange for low value shares.

Refining provisions around the special interest deduction for debt funded share acquisitions
(Clause 30 of the Draft TLAB: Section 24O of the Income Tax Act)

- The Income Tax Act contains special interest deduction rules in section 24O making provision for companies to deduct interest in respect of interest bearing debt used to acquire a direct or indirect controlling shares (interest) in an operating company.
- In some instances, a company may be unable to acquire a direct controlling interest in an operating company, but instead may acquire an indirect controlling interest by acquiring the shares in a controlling holding company in relation to that operating company.
- It is uncertain whether a company may continue to claim this special interest deduction if the controlling group company unbundles the shares it holds in the operating company to that company (if the indirect controlling interest acquired by that company in the operating company is in effect converted to a direct controlling interest in the operating company)
- In order to address this uncertainty, it is proposed that changes be made in the tax legislation so that in instances where an unbundling transaction involving a company (that previously held an indirect controlling share interest in a holding company) results in a direct controlling share interest in an operating company, that company may continue to claim the special interest deduction.

Clarifying the interaction between corporate reorganisation rules and other provisions of the Act (1)
(Clause 38 of the Draft TLAB: Section 41 of the Income Tax Act)

Clarifying corporate reorganisation rules relating to exchange items and interest bearing instruments

- The Income Tax Act contains corporate reorganisation rules that make provision for tax neutral transfer of assets between companies that are part of same group.
- However, these rules do not specifically address how exchange items and interest bearing instruments should be treated during corporate restructuring.
- This anomaly arises due to the fact that the Act contains specific rules dealing with the tax treatment of interest bearing instruments (section 24J) and tax treatment of exchange items (section 24I).
- At issue is which rules should take precedent during corporate restructurings? Is it corporate reorganisation rules or the abovementioned specific provisions in sections 24J and 24I.
- In order to provide clarity, it is provided that changes be made in the corporate reorganisation rules to provide that the corporate reorganisation rules should not override the application of sections 24J and 24I of the Act.

Clarifying the interaction between corporate reorganisation rules and other provisions of the Act (2)
(Clause 41 of the Draft TLAB: Section 9D of the Income Tax Act)

Harmonising the timing of degrouping charge provisions for intra-group transactions and controlled foreign companies

- The Income Tax Act contains corporate reorganisation rules that make provision for tax neutral transfer of assets between companies that are part of same group.
- However, whenever a company leaves a group, but retains an asset acquired within the last six years through the relief provided in terms of the corporate reorganisation rules, a degrouping charge is triggered. This degrouping charge is intended to revoke the tax neutral status of the original transaction and is designed to deem a capital gain in respect of an asset to arise in the year of assessment in which the degrouping takes place.
- There is misalignment in the timing of the degrouping charge in the corporate reorganisation rules and controlled foreign company rules. In order to address the misalignment, it is proposed that changes be made in the tax legislation to align the timing of the degrouping charge of the controlled foreign companies with timing contained in the corporate reorganisation rules.

Clarifying the interaction between corporate reorganisation rules and other provisions of the Act (2)

(Clause 38 of the Draft TLAB: Section 41 of the Income Tax Act)

Amending the corporate reorganisation rules to cater for company deregistration by operation of law

- The Income Tax Act contains corporate reorganisation rules that make provision for tax neutral transfer of assets between companies that are part of same group.
- In order to qualify for the relief provided in terms of the corporate reorganisation rules, these rules currently contain specific requirements that with regard to liquidation, winding up or deregistration, one or more of the companies involved should cease after the transaction.
- However, the specific requirements contained in the corporate reorganisation rules do not take into account deregistration by operation of law (for example, in terms of the Companies Act).
- It is proposed that changes be made in the corporate reorganisation rules to take into account statutory deregistrations in terms of the Companies Act.

TAXATION OF FINANCIAL INSTITUTIONS AND PRODUCTS

Clarifying inconsistencies in the current REIT tax regime
(Clause 31 of the Draft TLAB : Section 25BB of the Income Tax Act)

- The special tax dispensation of a listed South African resident company that is a Real Estate Investment Trusts (REIT) makes provision for a flow through principle in respect of income and capital gains to be taxed solely in the hands of the investor and not in the hands of REIT. In turn, a REIT may claim distributions to its investors as a deduction against its income.
- This deduction may only be claimed if a distribution is a “qualifying distribution” that is more than 75% of the gross income of a REIT consisting of “rental income’.
- At issue is the fact that the definition of “rental income” does not include unrealised exchange gains or losses arising from the forward exchange contracts entered into by a REIT to hedge its exposure to foreign currency fluctuations in respect of investments in real estate outside South Africa.
- This creates limitations as most REITs have embarked on investments in real estate outside South Africa, in order to diversify and multiply returns for its investors.
- In order to address this, it is proposed that changes be made to the definition of rental income to include any foreign exchange gains arising in respect of an exchange item relating only to a rental income of a REIT.

Refinement to taxation of risk policy funds of long term insurers
(Clause 33 of the Draft TLAB : Section 29A of the Income Tax Act)

- From 2016, risk policy funds were introduced in the tax treatment of long term insurers.
- In general, a risk policy is defined to exclude a contract of insurance in terms of which annuities are being paid. However, there are instances in which a risk policy may result in the payment of benefits in instalments that can only be determined at the time that a claim arises and this does not result in a separate policy that pays annuities.
- In instances where a policy is initially allocated to a risk policy and pays benefits in the form of annuity, the Income tax Act requires the transfer of assets and liabilities pertaining to the risk policy fund to the untaxed policy fund.
- It came to government attention that this transfer of from risk policy to untaxed policy fund creates administrative burden for the insurer.
- In order to remove the administrative burden, it is proposed that changes be made in the Act to remove a contract of insurance in terms of which annuities are being paid from the exclusion in definition of risk policy to ensure that risk policy remains allocated to the risk policy fund even when policy proceeds are paid in a form of annuity.

TAX INCENTIVES

Reviewing the allowable deduction for investors investing in a Venture Capital Company (VCC)
(Clause 17 of the Draft TLAB : Section 12J of the Income Tax Act)

- The VCC tax incentive regime makes provision for taxpayers investing in a VCC to deduct an upfront amount equivalent to the expenses incurred by a taxpayer in acquiring shares issued to that taxpayer by a VCC, from their taxable income.
- In 2018, changes were made to the VCC tax incentive regime to prevent abusive tax structures using the VCC regime including the limitation of abuse of trading between an investor that invested in a VCC and a qualifying company in which the VCC takes up shares.
- It came to Government's attention that some taxpayers are attempting to further undermine the VCC tax incentive regime to benefit from excessive tax deductions. For example, a segment of ultra-high net worth individuals and family offices opt to invest before the tax year end disproportionately high amounts into VCCs thereby reducing their taxable income .
- In order to protect the bottom line impact of high tax expenditure (as a measure of revenue foregone) on the fiscus, it is proposed that changes be made in the VCC tax incentive regime to reintroduce a limitation of the amount to be deducted from taxable income in respect of taxpayers investing in a VCC.

Reviewing the Special Economic Zone (SEZ) tax incentive rules
(Clause 18 of the Draft TLAB : Section 12R of the Income Tax Act)

- The Income Tax Act contains rules dealing with the SEZ regime, that make provision for the qualifying company within the SEZ to be taxed at 15% instead of 28% (applicable to other companies) and also make provisions for accelerated capital deduction in respect of building expenses.
- Although the tax rules were first introduced in 2013, they only came into operation after the SEZ Act was promulgated in 2016. Despite the delay in the promulgation of the SEZ Act, some companies had already started their businesses in the SEZ.
- It came to Government's attention that some businesses are being relocated from outside of the SEZ into the SEZ in order to benefit from the tax incentives. This relocation is made without the new investments, new jobs, which is the eligibility criteria set out in the SEZ policy document by the DTI.
- In addition, some companies are producing goods for sale from the SEZ to connected companies in South Africa that are outside the SEZ. This defies the whole SEZ policy of export orientation and the anti avoidance tax rules and also goes against the international minimum standards set by the OECD forum on harmful Tax Practices and European Union Of Code Of Conduct on Business Tax.
- In order to address this it is proposed that changes be made in the tax legislation.

INTERNATIONAL TAXATION

Reviewing the comparable tax exemption of controlled foreign companies
(Clauses 10 of the Draft TLAB: Sections 9D of the Income Tax Act)

- The CFC rules contain an exemption known as a comparable tax exemption, aimed at reducing the tax compliance burden of SA multinationals conducting business offshore through a CFC and also increasing competitiveness of SA multinationals offshore .
- This exemption makes provision for CFCs operating in foreign countries where tax payable in that foreign country is at least 75% of what would have been payable in South Africa, to exclude the foreign business income from tax in South Africa.
- In the context of the global trend to reduce corporate tax rates (for example, the UK (which is the largest SA trading partner) is gradually decreasing its corporate tax rate to 19% in 2019 and 17% in 2020), in order to allow SA multinationals to be competitive in the global sphere, it is proposed that the comparable tax exemption threshold be reduced from 75% to 67.5%.

Addressing circumvention of controlled foreign company anti-diversionary rules
(Clause 10 of the Draft TLAB: Sections 9D of the Income Tax Act)

- The CFC rules contain anti diversionary rules that make provision for the CFC not to qualify for exemptions if the CFC income is passive income and diversionary income.
- The diversionary rules are targeted at CFC inbound sales, CFC outbound sales and CFC connected services. These rules are aimed at ensuring that CFC business activities are not being used to shift taxable income offshore through transfer mispricing.
- It came to Government attention that the anti-diversionary rules do not adequately address multi layered structures. Certain SA multinationals are circumventing CFC anti-diversionary rules by diverting profits to members of the group that are subject to tax in a lower tax jurisdiction.
- In order to prevent circumvention of the CFC anti-diversionary rules, it is proposed that changes be made in the CFC rules to extend the anti-diversionary rules to include both direct and indirect transactions in this regard.

Reviewing the definition of Permanent Establishment
Clause 2 of the Draft TLAB: Section 1 of the Income Tax the Act)

- On 7 June 2017, South Africa signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI).
- In line with preserving countries sovereignties, countries that are signitories of the MLI have a right to make reservations and notifications. South Africa took a position in the MLI and did not expand the definition of permanent establishment (PE).
- As a result, South Africa's tax treaties are still using the unexpanded definition of the PE. On the other hand, the Income Tax Act definition is linked to the OECD definition, which uses the expanded definition of the PE.
- In order to address this misalignment, it is proposed that changes be made in the Income Tax Act to align the definition of PE with the SA MLI position.

Amendments to the definition of Domestic Treasury Management Company (DTMC)

Clause 2 of the Draft TLAB: Section 1 of the Income Tax the Act)

- In 2013, Government introduced the DTMC regime in order to encourage listed SA multinational companies which are registered with the South African Reserve (SARB) to relocate their treasury operations to South Africa.
- The Income Tax Act defined a DTMC as a company that is incorporated in South Africa, deemed to be incorporated in South Africa, or effectively managed in South Africa, and is not subject to exchange control restrictions.
- In 2018, changes were made in the Income Tax Act to remove the requirement that the DTMC must be a company incorporated or deemed to be incorporated in South Africa, due to the fact that this requirement was burdensome for companies that were incorporated offshore, but have their place of effective management in South Africa, or wanted to move their place of effective management in South Africa.
- However, the definition in the SARB Circular 5/2013 still includes this incorporation requirement. As a result, the 2018 changes in the Income Tax Act are not aligned with the Reserve Bank requirements.
- In order to clarify this perceived tension between SARB policy and tax policy, it is proposed that changes be made both in the Income Tax Act and the SARB Circular 5/23.
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Reviewing of the "affected transaction" definition in the arms length transfer pricing rules

Clause 36 of the Draft TLAB: Section 31 of the Income Tax the Act)

- The Income Tax Act contains transfer pricing rules aimed at preventing a reduction in South African taxable income as a result of mispricing or incorrect characterisation of transaction.
- The "affected transaction" definition relating to arms length transfer pricing rules in the Income Tax Act applies to connected persons as defined in the Act. On the other hand, in both the OECD and UN model tax conventions the "affected transaction" definition applies to associated enterprises.
- In order to address this anomaly, it is proposed that "affected definition" relating to arms length principle should be aligned with the OECD and UN model tax convention.

Value added tax (VAT)

Reviewing section 72 of the VAT Act
(Clause 71 of the Draft TLAB: Section 72 of the VAT Act)

- When the VAT Act was introduced in 1991, it contained provisions in section 72 that gives SARS discretionary powers to apply provisions relating to the calculation or payment of tax or the application of any provision, exemption or zero rate, in cases where "difficulties", anomalies or incongruities have arisen" due to the business conduct of a particular vendor or vendors.
- Over the past years, challenges arose regarding the application of the discretionary provisions in section 72 of the Vat Act versus the application of the other mandatory provisions in the VAT Act.
- In view of the fact that the VAT Act provisions are in itself mandatory, in order to address the above-mentioned anomaly, it is proposed that changes be made in section 72 to align the provisions of this section with the spirit of the other provisions in the VAT Act.

Refining the VAT treatment of foreign donor funded projects
(Clause 64, 66 & 70 of the Draft TLAB: Sections 1, 8 & 50 of the VAT Act)

- The tax legislation provides tax relief (based on a certain criteria) for foreign donor funded projects in terms of the Official Development Assistance Agreement (ODAA)contemplated in section 231(3) of the Constitution.
- At issue is the fact that the criteria set out in the Vat Act is not clear as to who must register the foreign donor funded project, who is entitled to tax relief, in instances where the project is sub-contracted to different contractors.
- In order to address the uncertainty, it is proposed that change be made in the Vat Act.

Ad Valorem Excise Duty on motor vehicles

Policy Background

- The ad valorem excise duty is a taxation on luxurious products to improve the progressivity of the tax system and raise revenue
- It is imposed on passenger and light commercial vehicles according to a progressive formula:

  Vehicles locally manufactured: -

  Rate of duty = ((0,00003 x A) – 0,75)% with a maximum of 30%;

  – where "A" means the recommended retail price, exclusive of VAT, less 20%.

  Vehicles imported: -

  Rate of duty = ((0,00003 x B) – 0,75)% with a maximum of 30%;

  – where "B" means the value for the ad valorem excise duty on imported goods i.t.o. sec 65(8)

- In s65(8) ……the ***value for the purposes of the duty*** (i.e. ad valorem excise duty) shall, in respect of imported goods, be the ***transaction value*** thereof ***plus 15 per cent*** of such value, ***plus any non-rebated customs duty payable*** in terms of Part 1 and any excise duty payable in terms of Section A of Part 2 of Schedule No. 1 on such goods, but excluding the duty specified in the said Section B of Part 2 of Schedule No. 1 on such goods.

Current system and proposed changes

- The dti runs a motor industry incentive programme – the Automotive Production Development Programme (APDP) - which is a customs duty rebate & refund system
- ITAC issues Production Rebate Credit Certificates (PRCCs) to manufacturers for meeting programme requirements
- PRCCs are not only used to reduces the custom duty liability, but also reduce the ad-valorem excise liability/collectable on imported vehicles (i.e. double benefit)
- Without the PRCCs, the full custom duty payable (i.e. 25% on light vehicles and 20% on original equipment components) will be added to these costs to determine the sum on which the ad valorem excise is to be applied
- **This incentive creates a favourable ad valorem excise tax treatment or outcome for imported vehicles over locally manufactured vehicles**

- The DTI proposed changes to NT when it was reviewing the current APDP and developing the SA Automotive Masterplan 2021 – 2035
- TLAB 2019 proposes that the ad valorem calculation be based on the full customs value without the rebates to ensure that local production is not at a disadvantage.

Tax Administration Laws Amendment Bill (TALAB)

Contents: Main amendments

- **Income Tax Act, 1962**
  - Removal of per payment declaration that royalties and interest are exempt or subject to a reduced rate in terms of a double taxation agreement
  - Removal of requirement to submit a declaration to a regulated intermediary in respect of tax free investments

- **Customs and Excise Act, 1964**
  - Authorisation for the Commissioner to prescribe rules relating to the making of advance foreign currency payments

- **Tax Administration Act, 2011**
  - Extension of notice period to institute legal proceedings against the Commissioner
  - Common Reporting Standard mandatory disclosure rules and non-compliance penalties
  - Completing move from tax compliance certificate to tax compliance status

Income Tax Act

- **Removal of per payment declaration that royalties and interest are exempt or subject to a reduced rate in terms of a double taxation agreement:** To ease the compliance burden in respect of the withholding taxes on royalties and interest, it is proposed that the requirement to submit a declaration before each payment be removed and be replaced by a requirement to provide such a declaration once every two years, along with an undertaking to inform the payor if circumstances change during that period (clauses 2 and 3 of Draft Bill: sections 49E and 50E of the Income Tax Act)

- **Removal of requirement to submit a declaration to a regulated intermediary in respect of tax free investments:** To ease the compliance burden in respect of dividends tax on shares held as tax free investments, it is proposed to remove the requirement for a declaration to a regulated intermediary in this regard

Customs and Excise Act

- **Authorisation for the Commissioner to prescribe rules relating to the making of advance foreign currency payments:** To combat illicit financial flows through advance foreign currency payments, it is proposed that the Commissioner be empowered to prescribe rules to require importers intending to make such payments through an authorised dealer to notify SARS of the intention to do so and for authorised dealers to report on such payments; it is also proposed that SARS be permitted to provide information to authorised dealers to verify applications to make advance foreign currency payments (clauses 10 and 17 of Draft Bill: sections 4 and 120 of the Customs and Excise Act)

Tax Administration Act (1)

- **Extension of notice period to institute legal proceedings against the Commissioner:** To provide SARS a more effective period to explore measures that will not require litigation at the public's expense, it is proposed that the one week notice period be extended to one month, while retaining the ability for a taxpayer to request a court to accept a shorter period (clause 26 of Draft Bill; section 12 of the Tax Administration Act)
- **Common Reporting Standard (CRS) mandatory disclosure and non-compliance penalties:** To ensure that structures and arrangements designed to circumvent the internationally agreed CRS are brought to SARS' attention, it is proposed that the Minister be empowered to include the OECD's model mandatory disclosure rules in a revised set of CRS regulations and that failure to comply with the rules be subject to similar penalties to those that exist for non-compliance with the existing reportable arrangement legislation in the Act (clauses 37 and 38 of Draft Bill; sections 210 and 212 of the Tax Administration Act)

Tax Administration Act (2)

- **Completing move from tax compliance certificate to tax compliance status:** To update the current provisions relating to tax compliance status, which still reflect the transition from tax compliance certificates to automated tax compliance status confirmation, and to reduce compliance costs, it is proposed that the provisions be aligned with the automated tax compliance status system and that the Commissioner be empowered to prescribe an increased threshold for the amount of tax debt that will result in a taxpayer being regarded as non-compliant with respect to outstanding tax debt for which arrangements have not been made (clause 43 of Draft Bill; section 256 of the Tax Administration Act)

THANK YOU